I. EXECUTIVE ORDERS
   Executive Order No. 117 ................................................................. 1685

II. IN ADDITION
   Brownfields Property – Hawkins Street Holdings, LLC .................... 1686
   Decision Letters on "Changes Affecting Voting" from US Attorney General 1687
   Tax Review Board ............................................................................. 1688 – 1725

III. PROPOSED RULES
   Environment and Natural Resources, Department of
       Health Services, Commission for ................................................... 1746 – 1748
       Wildlife Resources Commission ....................................................... 1744 – 1746
   Health and Human Services, Department of
       Child Care Commission ................................................................. 1726 – 1733
   Insurance, Department of
       Department .................................................................................. 1733 – 1734
   Justice
       Criminal Justice Education and Training Standards Commission ...... 1734 – 1744
   Occupational Licensing Boards and Commissions
       Dental Examiners, Board of ......................................................... 1748 – 1753

IV. APPROVED RULES ........................................................................ 1754 – 1768
   Environment and Natural Resources, Department of
       Environmental Management Commission
   Health and Human Services, Department of
       Social Services Commission
       Vocational Rehabilitation Services, Division of
   Occupational Licensing Boards and Commission
       Hearing Aid Dealers & Fitters Board
       Medical Board
   Community Colleges, Department of
       Community Colleges, Board of
   State Personnel, Office of
       State Personnel Commission

V. RULES REVIEW COMMISSION ......................................................... 1769 – 1787

VI. CONTESTED CASE DECISIONS
   Index to ALJ Decisions .................................................................... 1788 – 1795
Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

**Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**
Office of Administrative Hearings
Rules Division
Capehart-Crocker House
424 North Blount Street
Raleigh, North Carolina 27601-2817

contact: Molly Masich, Codifier of Rules  molly.masich@ncmail.net  (919) 733-3367
Dana Sholes, Publications Coordinator  dana.sholes@ncmail.net  (919) 733-2679
Julie Edwards, Editorial Assistant  julie.edwards@ncmail.net  (919) 733-3980
Felicia Williams, Editorial Assistant  felicia.s.williams@ncmail.net  (919) 733-3361

**Rule Review and Legal Issues**
Rules Review Commission
1307 Glenwood Ave., Suite 159
Raleigh, North Carolina 27605

contact: Joe DeLuca Jr., Staff Attorney  joe.deluca@ncmail.net  (919) 715-8655
Bobby Bryan, Staff Attorney  bobby.bryan@ncmail.net  (919) 733-0928
Lisa Johnson, Administrative Assistant  lisa.Johnson@ncmail.net  (919) 733-3962

**Fiscal Notes & Economic Analysis**
Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005

contact: Nathan Knuffman, Economist III  nathan.Knuffman@ncmail.net  (919) 807-4728
Jonathan Womer, Asst. State Budget Officer  jonathan.womer@ncmail.net  (919) 807-4737

**Governor’s Review**
Reuben Young
Legal Counsel to the Governor  reuben.young@ncmail.net  (919) 733-5811
116 West Jones Street (919)
Raleigh, North Carolina 27603

**Legislative Process Concerning Rule-making**
Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611

contact: Karen Cochrane-Brown, Staff Attorney  karenc@ncleg.net
Jeff Hudson, Staff Attorney  jeffreyh@ncleg.net  (919) 733-2578
(919) 715-5460 FAX

**County and Municipality Government Questions or Notification**
NC Association of County Commissioners
215 North Dawson Street
Raleigh, North Carolina 27603

contact: Jim Blackburn  jim.blackburn@ncacc.org
Rebecca Troutman  rebecca.troutman@ncacc.org

NC League of Municipalities
215 North Dawson Street
Raleigh, North Carolina 27603

contact: Anita Watkins  awatkins@nclm.org
(919) 715-2893
(919) 715-4000

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<thead>
<tr>
<th>Volume &amp; Issue Number</th>
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# EXPLANATION OF THE PUBLICATION SCHEDULE

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

## GENERAL

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

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

## FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and 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. 117
AMENDING EXECUTIVE ORDER NO. 116,
DESIGNATION OF CERTAIN STATE EMPLOYEES AS COVERED "PUBLIC SERVANTS" UNDER THE STATE GOVERNMENT ETHICS ACT

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

Executive Order No. 116, Designation of Certain State Employees as Covered "Public Servants" Under the State Government Ethics Act, issued by Michael F. Easley on January 26, 2007, is hereby amended as follows:

The following individuals are included as state employees or appointees as covered "public servants" under the State Government Ethics Act:

- David Joyner, Executive Director, North Carolina Turnpike Authority
- Steve DeWitt, Chief Engineer, North Carolina Turnpike Authority
- Grady Rankin, Chief Financial Officer, North Carolina Turnpike Authority
- Jim Eden, Chief Operating Officer, North Carolina Turnpike Authority

This order is effective immediately.

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 sixth day of March in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-first.

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.

SUMMARY OF NOTICE OF INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Hawkins Street Holdings, LLC

Pursuant to N.C.G.S. 130A-310.34, Hawkins Street Holdings, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property, which is the former site of Sonoco Flexible Packaging Company, consists of 4.8 acres and is located at 2203 Hawkins Street. Environmental contamination exists on the Property in groundwater and soil. Hawkins Street Holdings, LLC has committed itself to commercial (including retail and office), residential and ancillary purposes on the Property. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Hawkins Street Holdings, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Public Library of Charlotte & Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202 by contacting Rita Rouse at that address or at (704) 336-2725; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days, and written requests for a public meeting within 21 days, after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Thus, if Hawkins Street Holdings, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on April 3, 2007. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605
February 21, 2007

Mr. David A. Holec
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to thirteen annexations (adopted between September 14, 2006, and November 9, 2006) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on January 16, 2007.

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

Sincerely,

[Signature]

John Tanner
Chief, Voting Section
STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Penalty for Failure to Obtain
A Transporter’s License Issued March 14,
2003 by the North Carolina Secretary of
Revenue in the Amount of $6,250.00

and

The Proposed Penalty for Failure to File
Information Returns Issued March 14, 2003
by the North Carolina Secretary of Revenue
in the Amount of $3,000.00

vs.

William T. Smith d/b/a B&S Enterprises,
Apellant

BEFORE THE TAX REVIEW BOARD

ADMINISTRATIVE DECISION
NUMBER: 480
Docket Number 2003-194

This Matter was heard before the regular Tax Review Board (hereinafter “Board”) in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, November 10, 2005 pursuant to the petition of William T. Smith d/b/a B & S Enterprises (hereinafter “Appellant”) for administrative review of the final decision entered by the Assistant Secretary of Revenue on October 25, 2004. At that hearing, the Assistant Secretary affirmed the proposed assessment of Penalty for Failure to Obtain a Transporter’s License in the amount of $6,250.00 and Penalty for Failure to File Informational Returns in the amount of $3,000.00.

During the tax years 1998 through 2002, the Appellant engaged in the business of operating commercial vehicles for the purpose of transporting motor fuel products. In 2002, the North Carolina Department of Revenue conducted an International Fuel Tax Agreement audit of Appellant. It was discovered that Appellant was not licensed as a motor fuel transporter as required by N.C. Gen. Stat. § 105-236(2), nor had Appellant filed monthly informational returns for the relevant period as required by N.C. Gen. Stat. § 105-236(10)(c). On March 14, 2003, the Department of Revenue sent Appellant a notice of tax assessment in the amount of $9,250.00 for the aforementioned penalties.

Appellants protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments. From the Assistant Secretary’s final decisions, appellants filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.
The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2) "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter, during which appellant and counsel appeared and presented oral argument, and reviewing the Assistant Secretary’s final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary’s final decision is AFFIRMED.

Made and entered into the 8th day of February 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer

Jo Anne Sanford, Chair
North Carolina Utilities Commission

Noel L. Allen, Esquire
Appointed Member
IN THE MATTER OF:
The Proposed Motor Fuels Bulk User Tax  
Amended Assessment Issued by the  
Secretary of Revenue of North Carolina  
April 14, 2004 in the amount of $2,133.06  

vs.

Sun Heating Supplies, Inc.,  
Appellant  

ADMINISTRATIVE DECISION  
NUMBER: 481  
Docket Number 2004-46  

This Matter was heard before the regular Tax Review Board (hereinafter “Board”) in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, November 10, 2005 pursuant to the petition of Sun Heating Supplies, Inc. (hereinafter “Appellant”) for administrative review of the final decision entered by the Assistant Secretary of Revenue on December 20, 2004 affirming the proposed assessment of Motor Fuels Bulk User taxes due in the amount of $2,133.06 plus accruing interest.

Pursuant to an audit by the Internal Revenue Service of the period of September 1, 2000 through August 28, 2003, it was determined that the Appellant had purchased 10,298 gallons of untaxed diesel fuel and had used the purchased fuel to operate at least one highway vehicle and three pieces of off-road equipment. Further, there was no mechanism at the fuel storage facility for measuring dispensed fuel, and Appellant maintained no records memorializing the usage of stored fuel. The Appellant offered limited evidence to the Department showing that not all of the untaxed fuel was used in highway vehicles. The Department equitably assessed a tax based on 75% of the total fuel in question, or 7,721 gallons, on July 15, 2004 in the amount of $2,123.52 plus interest.

Appellants protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments. From the Assistant Secretary’s final decisions, appellants filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”
Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter, and reviewing the Assistant Secretary’s final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary’s final decision is AFFIRMED.

Made and entered into the 8th day of February 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer

Jo Anne Sanford, Chair
North Carolina Utilities Commission

Noel L. Allen, Esquire
Appointed Member
STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessment of Unauthorized Substance Tax for the Taxable Period of June 30, 2004 by the Secretary of Revenue of North Carolina

vs.

Nathaniel Goode, Appellant

BEFORE THE TAX REVIEW BOARD

ADMINISTRATIVE DECISION NUMBER: 482
Docket No. 2004-343

THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by the Nathaniel Goode (hereinafter "Appellant") regarding the Final Decision of Eugene J. Cella, Assistant Secretary of Revenue, sustaining the proposed assessment of unauthorized substance tax for the taxable period of June 30, 2004.

Pursuant to N.C. Gen. Stat. § 105-241.1, an assessment of tax, penalty and accrued interest for the taxable period was mailed to the Appellant. The Appellant protested the assessment and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision sustaining the proposed assessment. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Appellant's petition for administrative review be and is hereby Dismissed.
Made and entered into the 8th day of February 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford
Chair, Utilities Commission

Noel L. Allen, Esq.
STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessments of Additional
Income Tax for the Taxable Years 1999
and 2000 by the Secretary of
Revenue of North Carolina

vs.

Phil Bennett, Appellant

BEFORE THE
TAX REVIEW BOARD

ADMINISTRATIVE DECISION NUMBER: 483
Docket No. 2004-511

THIS MATTER is before the regular Tax Review Board (hereinafter “Board”) upon petition for administrative review filed by Phil Bennett (hereinafter “Appellant”) regarding the Final Decision of Eugene J. Cella, Assistant Secretary of Revenue, sustaining the proposed assessments of additional individual income tax for taxable years 1999 and 2000.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and interest for the years at issue were mailed to the Appellant. The Appellant protested the assessments and filed a request for administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary’s final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter, and it appearing to the Board that the Appellant’s petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant’s petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Appellant’s petition for administrative review be and is hereby Dismissed.
IN ADDITION

Made and entered into the 8th day of February 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Esq.
STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessments of Additional Income Tax for the Tax Year 2002 by the Secretary of Revenue of North Carolina

vs.

Delond Parker, Appellant

BEFORE THE TAX REVIEW BOARD

ADMINISTRATIVE DECISION NUMBER: 484
Docket No. 2005-1

THIS MATTER is before the regular Tax Review Board (hereinafter “Board”) upon petition for administrative review filed by the Appellant regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (Assistant Secretary), sustaining the proposed assessments of additional individual income tax for taxable year 2002.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the year at issue were mailed to the Appellant. The Appellant protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary’s final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant’s petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Appellant’s petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Appellant’s petition for administrative review be and is hereby Dismissed.
Made and entered into the 8th day of February 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Esq.
STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF:

The Motor Fuels Civil Penalty
Assessments Issued May 14, 2004 by
The North Carolina Secretary of
Revenue in the Amount of $2,000.00

Against

Fairway Oaks, LLC,

Appellant

BEFORE THE
TAX REVIEW BOARD

ADMINISTRATIVE DECISION
NUMBER: 688
Docket Number 2003-294

This Matter was heard before the regular Tax Review Board (hereinafter “Board”) in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, April 6, 2006 pursuant to the petition of Fairway Oaks, LLC (hereinafter “Appellant”) for administrative review of the final decision entered by the Assistant Secretary of Revenue on May 12, 2004. At that hearing, the Assistant Secretary affirmed the assessment of two civil penalties totaling $2,000.00 for the improper use of dyed diesel fuel in highway vehicles operated by the Appellant.

On May 14, 2003 the Appellant was the subject of a routine inspection by the Department of Revenue (hereinafter “Department”) of Appellant’s motor fuel operation at his place of business in Whittier, NC. It was discovered that two of Appellant’s three highway vehicles contained dyed fuel in violation of N.C.G.S. 105-449.117. Appellant was also assessed $8,122.61 for bulk fuel use, reduced from $12,644.29 after the Department waived a negligence penalty which was applicable under N.C.G.S. 105-236(5). This bulk fuel assessment is not disputed by Appellant.

Appellants protested the $2,000.00 in penalties assessed, and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the assessments. From the Assistant Secretary’s final decision, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2, asserting that it was an abuse of discretion for the Assistant Secretary not to waive the civil penalties in question.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In
order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is **AFFIRMED**.

Made and entered into the 5th day of July 2006.

**TAX REVIEW BOARD**

[Signature]

Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer

[Signature]

Jo Anne Sanford, Chair
North Carolina Utilities Commission

[Signature]

Noel L. Allen, Esquire
Appointed Member
STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Additional Income Tax for the Taxable Year 2002 By the Secretary of Revenue of North Carolina

vs.

Roger C. Howard,

Appellant

BEFORE THE TAX REVIEW BOARD

ADMINISTRATIVE DECISION

NUMBER: 689

Docket Number 2004-510

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, April 6, 2006 pursuant to the petition of Roger C. Howard (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on June 7, 2005. At that hearing, the Assistant Secretary affirmed the tax assessment for year 2002 of $6,576.16 plus interest, adding a further penalty of $2,002.00.

Appellant did not file a North Carolina individual tax return for the year 2002. Wage and tax information obtained from Appellant's employer were used to calculate a Notice of Individual Income Tax Assessment which was mailed to the Appellant on March 30, 2004. This included additional income tax, a twenty-five percent failure to file penalty, and accrued interest totaling $6,576.16.

Appellant protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments, and added an additional penalty of $2,002.00 under N.C.G.S. 105-163.5(f) for the furnishing by Appellant to his employer of an improper exemption certificate. From the Assistant Secretary's final decision, Appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."
IN ADDITION

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter, during which appellant did not appear, and reviewing the Assistant Secretary’s final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary’s final decision is AFFIRMED.

Made and entered into the 5th day of July 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer

Jo Anne Sanford, Chair
North Carolina Utilities Commission

Noel L. Allen, Esquire
Appointed Member
STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessment of Additional Income Tax for the Taxable Years 2001 and 2002 by the Secretary of Revenue of North Carolina

vs.

Dennis Crisp, Appellant

BEFORE THE TAX REVIEW BOARD

ADMINISTRATIVE DECISION NUMBER: __490__
Docket No. 2005-217

THIS MATTER is before the regular Tax Review Board (hereinafter “Board”) upon petition for administrative review filed by the Taxpayer regarding the Final Decision of Eugene J. Cellar, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (Assistant Secretary), sustaining the proposed assessments of additional individual income tax for tax years 2001 and 2002.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the taxable period at issue were proposed against Appellant. The Appellant protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant’s petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer's petition for administrative review be and is hereby Dismissed.
IN ADDITION

Made and entered into the 5th day of July 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Esquire
Appointed Member
STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessment of Additional Income Tax for the Taxable Year 2000 by the Secretary of Revenue of North Carolina

vs.

Beth M. & Johnny E. Sturdivant,

Appellants

BEFORE THE TAX REVIEW BOARD

ADMINISTRATIVE DECISION NUMBER: 491
Docket No. 2004-62 (B)

THIS MATTER is before the regular Tax Review Board (hereinafter “Board”) upon petition for administrative review filed by the Taxpayer regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (Assistant Secretary), sustaining the proposed assessment of additional individual income tax for tax year 2000.

Pursuant to N.C. Gen. Stat. § 105-241.1, an assessment proposing additional tax, penalty and accrued interest for the taxable period at issue was mailed to Appellants. The Appellants protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessment against the Appellants. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellants filed a notice of intent and petition for administrative review of the Assistant Secretary’s final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellants’ petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellants’ petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer’s petition for administrative review be and is hereby Dismissed.
Made and entered into the 5th day of July 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Esquire
Appointed Member
STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessments of Additional Income Tax for the Taxable Years 2001 through 2004 by the Secretary of Revenue of North Carolina

vs.

Michael Miranda, Appellant

BEFORE THE TAX REVIEW BOARD

ADMINISTRATIVE DECISION NUMBER: 492
Docket No. 2005-356

THIS MATTER is before the regular Tax Review Board (hereinafter “Board”) upon petition for administrative review filed by Michael Miranda (hereinafter “Appellant”) regarding the Final Decision of Eugene J. Cell, Assistant Secretary of Revenue, sustaining the proposed assessments of additional individual income tax for taxable years 2001 through 2004.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the taxable period at issue were mailed to the Appellant. The Appellant protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary’s final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant’s petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant’s petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Appellant’s petition for administrative review be and is hereby Dismissed.
Made and entered into the 27th day of September 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Esq.
STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessments of
Unauthorized Substance Tax dated
July 15, 2003 by the Secretary of
Revenue of North Carolina

vs.

Alfredo Leon Sanchez,
Appellant

BEFORE THE
TAX REVIEW BOARD

ADMINISTRATIVE DECISION
NUMBER: 494
Docket number 2003-444

This Matter was heard before the regular Tax Review Board (hereinafter “Board”) in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, June 29th, 2006 pursuant to the petition of Alfredo Leon Sanchez (hereinafter “Appellant”) for administrative review of the final decision entered by the Assistant Secretary of Revenue on June 22, 2004. At the hearing before the Assistant Secretary, Appellant was assessed an Unauthorized Substance Tax and Penalty of $280,000.00 plus interest for possession of 4000 grams of cocaine.

Prior to the hearing on this matter, the Board considered a written Motion To Continue on behalf of Appellant. This Motion was DENIED by the Board, at which time the Board heard Appellant’s Petition for Administrative Review.

On July 13, 2003, an Iredell County sheriff’s deputy stopped the Appellant’s vehicle for suspicious lane change. After further investigation, Appellant was subsequently arrested for possessing four kilograms of cocaine found hidden in the bumper of his vehicle. Pursuant to N.C.G.S. 105-13.111, on July 15, 2003 a Notice of Unauthorized Substance Tax Assessment was mailed to Appellant, notifying him that based on his possession of 4000 grams of cocaine he owed tax and penalty in the amount of $280,000 plus interest. Although Appellant did not request a hearing before the Secretary of Revenue in writing within 30 days of the date of the Notice, he did comply with N.C.G.S. 105-241.1(b) in that he did timely submit an affidavit dated October 3, 2003 in which he swore that the Notice was not delivered to him. On February 24, 2004 a hearing was held before the Assistant Secretary of Revenue, and thereafter the final decision was issued upholding the Assessment.

From the Assistant Secretary’s final decision, Appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2, asserting in part that the evidence used to sustain the assessment was unlawfully obtained and that Appellant did not constructively possess the controlled substance.

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

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the Appellant to rebut that presumption. In order to rebut the presumption, the Appellant must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter, and reviewing the Assistant Secretary’s final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary’s final decision is AFFIRMED.

Made and entered into the 27th day of September 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford, Chair
North Carolina Utilities Commission

Noel L. Allen, Esquire
Appointed Member
STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessments of Additional Income Tax for the Taxable Years 2002 through 2004 by the Secretary of Revenue of North Carolina

vs.

Michael H. Finnerman, Appellant

BEFORE THE TAX REVIEW BOARD

ADMINISTRATIVE DECISION NUMBER: 495
Docket No. 2005-293

THIS MATTER is before the regular Tax Review Board (hereinafter "Board") upon petition for administrative review filed by Michael H. Finnerman (hereinafter "Appellant") regarding the Final Decision of Eugene J. Cella, Assistant Secretary of Revenue, sustaining the proposed assessments of additional individual income tax for taxable years 2002 through 2004.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the taxable period at issue were mailed to the Appellant. The Appellant protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellant. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Appellant's petition for administrative review be and is hereby Dismissed.
Made and entered into the 27th day of September 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Esq.
STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessments of Additional Income Tax for the Taxable Years 2000 through 2003 by the Secretary of Revenue of North Carolina

vs.

John R. & Kerry A. Moffo, Appellants

BEFORE THE TAX REVIEW BOARD

ADMINISTRATIVE DECISION NUMBER: 696
Docket No. 2005-308

THIS MATTER is before the regular Tax Review Board (hereinafter “Board”) upon petition for administrative review filed by John R. Moffo and Kerry A. Moffo (hereinafter "Appellants") regarding the Final Decision of Eugene J. Cella, Assistant Secretary of Revenue, sustaining the proposed assessments of additional individual income tax for taxable years 2000 through 2003.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing additional tax, penalty and accrued interest for the taxable period at issue were mailed to the Appellant. The Appellants protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Appellants. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellants filed a notice of intent and petition for administrative review of the Assistant Secretary’s final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellants’ petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellants’ petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREEd that Appellants’ petition for administrative review be and is hereby Dismissed.
Made and entered into the 27th day of September 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Esq.
STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessment of Additional  )
Income Tax for the Taxable Years 1998  )
Through 2004 by the Secretary of Revenue  )
of North Carolina  )

v.

Byron W. Sisk,  )

Appellant  )

ADMINISTRATIVE DECISION
NUMBER: 497  
Docket Number 2005-292

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, August 3, 2006 pursuant to the petition of Byron W. Sisk (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on April 6, 2006. At that hearing, the Assistant Secretary sustained the tax assessments for years 1998 through 2004.

Appellant did not file North Carolina individual tax returns for years 1998 through 2004. Wage and tax information obtained from Appellant’s employer were used to calculate Notices of Individual Income Tax Assessment. These Notices reflected tax, penalties and interest for years 1998 through 2004, and were mailed to Appellant on April 6, 2004, April 26, 2005, and September 20, 2005.

Appellant protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments, penalties and interest. From the Assistant Secretary’s final decisions, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.
It appearing to the Board, after conducting an administrative hearing in this matter, during which appellant did not appear, and reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary's final decision is AFFIRMED.

Made and entered into the 1st day of November 2006.

TAX REVIEW BOARD

[Signature]
Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer

[Signature]
Jo Anne Sanford, Chair
North Carolina Utilities Commission

[Signature]
Noel L. Allen, Esquire
Appointed Member
IN THE MATTER OF:
The Denial of Refund of Sales and Use Tax for the Period January 1, 2003 through June 30, 2003 by the Secretary of Revenue of North Carolina v.
MCNC Research & Development Institute, Appellant

This Matter was heard before the regular Tax Review Board (hereinafter “Board”) in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, August 3, 2006 pursuant to the petition of MCNC Research & Development Institute (hereinafter “Appellant”) for administrative review of the final decision entered by the Assistant Secretary of Revenue on March 15, 2006.

Pursuant to N.C. Gen. Stat. § 105-164.14(b), Appellant filed a Nonprofit and Governmental Entity Claim for a refund of state and county sales and use taxes it paid during January 1, 2003 through June 30, 2003. The Department of Revenue denied the refund, and Appellant subsequently objected and requested a hearing before the Secretary of Revenue. At such hearing, Appellant was afforded opportunity to present evidence to support the contention that it is a nonprofit entity as defined by N.C. Gen. Stat. § 105-164.14(b). After conducting the hearing, the Assistant Secretary of Revenue sustained the denial of refund. From the Assistant Secretary’s final decision, Appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

Board members present at the administrative hearing on August 3, 2006 were Stacey Phipps and Noel Allen. Mr. Allen subsequently recused himself from deliberations on this matter due to a possible conflict of interest. On August 24, 2006 the Board was reconvened with Board members Stacey Phipps and Jo Anne Sanford present for deliberations on the evidence.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”
Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter during which Appellant appeared and presented oral argument through counsel, and reviewing the Assistant Secretary’s final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary’s final decision is AFFIRMED.

Made and entered into the 1st day of November 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer

Jo Anne Sanford, Chair
North Carolina Utilities Commission
IN THE MATTER OF:
The Proposed Denial of Refund of the Motor Fuels Tax Division’s Two Identification Marker (Decal) Civil Penalties
Issued on April 19, 2005 by the Secretary of Revenue of the State of North Carolina
Against
The Philippians Project,
2400 Richmond Hill Church Road
East Bend, North Carolina 27018
Appellant

This Matter was heard before the regular Tax Review Board (hereinafter “Board”) in the City of Raleigh, Wake County, North Carolina, in the office of the State Utilities Commission, on Thursday, November 30, 2006 pursuant to the petition of The Philippians Project (hereinafter “Appellant”) for administrative review of the final decision entered by the Assistant Secretary of Revenue on February 27, 2006. At that hearing, the Assistant Secretary sustained two Civil Penalties for Failure to Display Identification Marker (Fuel Decal) stickers on two of Appellant’s heavy trucks.

Appellant owns and operates two heavy trucks in its operations, and Appellant submitted to the Motor Fuels Division an incomplete application requesting the required Fuel Decals for these trucks. Appellant refused to provide either a Social Security Number or a Federal Identification Number where required in the application, and the application was subsequently denied by the Division. N.C. Gen. Stat. § 105-449.52 provides a $100.00 penalty for a motor carrier who operates “a motor vehicle that either fails to carry the registration card required by this Article or fails to display an identification marker in accordance with this Article.” On April 19, 2005, a representative of the Motor Fuels Division met with Appellant and issued two civil penalty assessments for failure to display the required Fuel Decals.

Appellant protested the two civil penalties and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the penalties. From the Assistant Secretary’s final decisions, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:
(b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the Appellant must offer evidence to show that the assessment is not correct. Through counsel, Appellant has presented several constitutional arguments in this matter regarding the application of the law in question to their organization. However, the scope of this Board’s review does not permit consideration of these constitutional arguments.

Thus, it appearing to the Board, after conducting an administrative hearing in this matter and reviewing the Assistant Secretary’s final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary’s final decision is AFFIRMED.

Made and entered into the 29th day of December 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer

JoAnne Sanford, Chair
North Carolina Utilities Commission

Noel L. Allen, Esquire
Appointed Member
IN ADDITION

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF:

Taxes, Penalty, and Interest for the Period
January 1, 2002 through March 31, 2003
Issued by the Secretary of Revenue of the
State of North Carolina in the Amount of
$1,529.44 Plus Subsequently Accruing
Interest

Against
Walter L. Fink
d/b/a WLF Transport,
Appellant

ADMINISTRATIVE DECISION
NUMBER: 900
Docket Number 2005-261

This Matter was heard before the regular Tax Review Board (hereinafter “Board”) in the City of Raleigh, Wake County, North Carolina, in the office of the State Utilities Commission on Thursday, November 30, 2006 pursuant to the petition of Walter L. Fink d/b/a WLF Transport (hereinafter “Appellant”) for administrative review of the final decision entered by the Assistant Secretary of Revenue on June 5, 2006.

Appellant was the subject of an audit of Appellant’s motor fuel carrier operations by the Motor Fuels Division of the North Carolina Department of Revenue for the period of January 1, 2002 through March 31, 2003. Using the best available records, it was determined that the Appellant had under-reported his mileage by 3,185 miles and fuel usage by 159 gallons. Accordingly, on May 5, 2005 the Division issued a proposed tax assessment of $1,529.44, which included penalties for failure to file a quarterly return, a negligence penalty and interest.

Appellants protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained the proposed assessments but waived the penalties, issuing a final decision of tax and interest owed of $1,339.54 through June, 2006. From the Assistant Secretary’s final decision, appellants filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”
Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

It appearing to the Board, after conducting an administrative hearing in this matter, during which Appellant did not appear, and reviewing the Assistant Secretary’s final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary’s final decision is AFFIRMED.

Made and entered into the 29th day of December 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer

Jo Anne Sanford, Chair
North Carolina Utilities Commission

Noel L. Allen, Esquire
Appointed Member
STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF:
The Assessment of Unauthorized
Substance Tax Dated October 25, 2005
By the Secretary of Revenue of the State
of North Carolina

v.

Stanley O'Neal Gill, Appellant

BEFORE THE
TAX REVIEW BOARD

ADMINISTRATIVE DECISION
NUMBER: 501
Docket Number 2005-384

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Utilities Commission, on Thursday, November 30, 2006 pursuant to the petition of Stanley O'Neal Gill (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on May 26, 2006. The final decision sustained Unauthorized Substance Tax and Penalty of $35,000.00 plus interest against Appellant based on his constructive possession of 500 grams of cocaine.

On January 15, 2003, law enforcement officers seized firearms and a large amount of cocaine at Appellant's residence pursuant to an undercover investigation and information received from a confidential informant. Appellant was not physically present at his residence at the time. On April 12, 2004, Appellant pled guilty in United States District Court to the charge of conspiring to possess and distribute cocaine and to the charge of possession of more than 500 grams of cocaine with intent to distribute.

Appellant protested the Unauthorized Substance Tax and Penalty and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue sustained tax and penalty. From the Assistant Secretary's final decision, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the Appellant must offer evidence to show that the assessment is not correct.

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Thus, it appearing to the Board, after conducting an administrative hearing in this matter and reviewing the Assistant Secretary’s final decision, at which Appellant did not appear, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact, and that the final decisions of the Assistant Secretary were supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary’s final decision is AFFIRMED.

Made and entered into the 29th, day of December, 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer

Jo Anne Sanford, Chair
North Carolina Utilities Commission

Noel L. Allen, Esquire
Appointed Member
STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF:
The Proposed Assessment of Additional Income Tax for the Taxable Years 2000 through 2004 by the Secretary of Revenue of North Carolina

v.

Thomas E. Gust, Appellant

ADMINISTRATIVE DECISION NUMBER: 502
Docket Number 2005-201

This Matter was heard before the regular Tax Review Board (hereinafter “Board”) in the City of Raleigh, Wake County, North Carolina, in the office of the State Utilities Commission, on Thursday, November 30, 2006 pursuant to the petition of Thomas E. Gust (hereinafter “Appellant”) for administrative review of the final decision entered by the Assistant Secretary of Revenue on July 6, 2006.

Pursuant to N.C. Gen. Stat. § 105-241.1, an assessment of tax, penalty and accrued interest for the taxable period was mailed to the Appellant. The Appellant protested the assessment and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision sustaining the proposed assessment of additional income tax, penalties and interest for tax years 2000 through 2004. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review with the Tax Review Board.

Pursuant to N.C. Gen. Stat. § 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant’s petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant’s petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Appellant’s petition for administrative review be and is hereby Dismissed.
Made and entered into the 29th day of December 2006.

TAX REVIEW BOARD

Stacey A. Phipps, Chief Deputy Treasurer, on behalf of Richard H. Moore, State Treasurer

Jo Anne Sanford, Chair
North Carolina Utilities Commission

Noel L. Allen, Esquire
Appointed Member
TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to amend the rules cited as 10A NCAC 09 .0102, .0708, .1403, .2701 -.2702, .2704.

Proposed Effective Date: September 1, 2007

Public Hearing:
Date: April 26, 2007
Time: 11 a.m. – 12 p.m.
Location: NC Division of Child Development, 319 Chapanoke Road, Suite 120, Raleigh, NC

Reason for Proposed Action: The NC Child Care Commission is initiating rule-making regarding the requirements for safety of children in child care facilities. These amendments will ensure the safety and welfare of children when they are participating in aquatic activities while in child care. Other rule changes are to amend the criminal record check requirements and to clarify the requirements for in-service training for child care providers. Other changes simply recodify language within the rules for clarity, consistency and ease of reading.

Procedure by which a person can object to the agency on a proposed rule: Anyone wishing to comment on these proposed rules or would like to request copies of the rules, should contact Dedra Alston, Rule-making Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, at (919) 662-4543, or Dedra.Alston@ncmail.net. Written comments will be accepted through June 1, 2007. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.

Comments may be submitted to: Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201, phone (919) 662-4543, fax (919) 662-4568, email Dedra.Alston@ncmail.net.

Comment period ends: June 1, 2007

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.

CHAPTER 09 - CHILD CARE RULES

SECTION .0100 – DEFINITIONS

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). 2006 is sixteen dollars and ninety-five cents ($16.95). 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). 2006 is fifteen dollars and ninety-five cents ($15.95). 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). 2006 is sixteen dollars and ninety-five cents ($16.95). 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) "Licensed or Approved Space" as used in 10A NCAC 09.0512 includes "primary space" as described in 10A NCAC 09 .1401(a), outdoor space as described in 10A NCAC 09 .1402, single use rooms or other administrative areas.

(17) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.

(18) "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.

(19) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.

(20) "Over 15 years old", as referenced in Section .2700 of this Chapter, means an individual who has had their 15th birthday.
"Owner" means any person with a five percent or greater equity interest in a child care facility.

"Parent" means a child's parent, legal guardian, or full-time custodian.

"Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.

"Passageway" means a hall or corridor.

"Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.

"Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.

"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). 2006 is fifteen dollars and ninety-five cents ($15.95). 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.

"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.

"Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).

"Section" means Division of Child Development.

"Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.

"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.

"Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

Authority G.S. 110-85; 110-88; 143B-168.3.

SECTION .0700 - HEALTH AND OTHER STANDARDS FOR CENTER STAFF

10A NCAC 09 .0708 IN-SERVICE TRAINING APPROVAL

Staff may meet the in-service training requirements by attending child-care workshops, conferences, seminars, or courses, provided each training activity satisfies the following criteria:

(1) Prior approval from the Division is not required for training offered by an accredited college or university with nationally recognized regional accreditation, by a government agency, or by a state or national professional organization or its recognized affiliates, affiliates as recognized by the Division, provided the content complies with G.S. 110-91(11). An annual training plan submitted on a form provided by the Division, is required for review by the Division for training provided by a government agency or by a state or national professional organization. The plan is not required for any state, national or international conferences sponsored by professional child care organizations or other similar organizations recognized by the Division.

(2) Prior approval from the Division is required on an annual basis for any agencies or organizations or individuals not specified in Item (1) of this Rule which have staff who provide, or who arrange for the provision of, who wish to provide training for child care operators and staff. To obtain such approval, the agency, or agency, organization or individual shall complete and submit the in-service training approval forms provided by the Division at least 20 business days prior to the training event. A training roster listing the attendees' name, the county of employment and day time phone number shall be submitted to the Division no later than 15 days after the training event. The event sponsor shall provide training evaluations to be completed by attendees and shall keep the evaluations on file for three years. submit its annual training plan to the Division. Approval shall be determined based upon the qualifications of the trainer(s).
(3) Prior approval for training shall be obtained from the Division by any organization, association, or individual not included in Items (1) and (2) of this Rule. Prior approval shall be determined based upon:

(a) The qualifications of the trainer(s), trainer's education, training and experience relevant to the training topic;

(b) Best practice in adult learning principles;

(c) Content that is in compliance with G.S. 110-91(11); and

(d) Contact hours, reasonable for the proposed content and scope of the training session.

(4) No more than five clock hours of the 20 clock hours of training required annually shall be provided by center staff. This restriction shall not apply if the center staff providing the training have been approved according to the criteria outlined in either Item (1) or (2) of this Rule.

The Division may decline to approve:

(a) Agencies, organizations or individuals not meeting the standards listed in this Rule and in G.S. 110-91(11); and

(b) Agencies, organizations or individuals who intentionally falsify any information submitted to the Division.

Authority G.S. 110-85; 110-91(11); 143B-168.3.

SECTION .1400 - SPACE REQUIREMENTS

10A NCAC 09 .1403 AQUATIC ACTIVITIES

(a) The requirements in this Rule apply to aquatic activities, which are defined as activities that take place in or on a body of water such as swimming, swimming instruction, wading, visits to water parks, and boating. Aquatic activities do not include water play activities such as water table play, slip and slide activities or playing in sprinklers.

(b) When children participate in swimming or other aquatic activities, a person who has a current life guard training certificate, issued by the Red Cross or other training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activities, shall accompany the group and shall be present at all times to supervise the children in or near the water and shall not be counted in the staff-child ratio.

(c) One person with a current life guard training certificate is required for each group of 25 or fewer children.

(d) Children under the age of three shall not participate in aquatic activities.

(e) The following staff-child ratios set forth in G.S. 110-91(7)- shall be maintained whenever children participate in swimming activities, including swimming instruction, aquatic activities:

<table>
<thead>
<tr>
<th>Age of Children</th>
<th>Ratio Staff/Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 to 4 Years</td>
<td>1/8</td>
</tr>
<tr>
<td>4 to 5 Years</td>
<td>1/10</td>
</tr>
<tr>
<td>5 Years and Older</td>
<td>1/13</td>
</tr>
</tbody>
</table>

Notwithstanding the staff-child ratios, at no time shall there be fewer than two staff members supervising the aquatic activity.

(f) Children shall be adequately supervised by center staff at all times while participating in aquatic activities. Adequate supervision shall mean that half of the center staff present is in the water and the other half is out of the water and stationed in pre-assigned areas that will enable them to hear, see, and respond quickly to the children at all times. Children shall not enter the water before center staff are stationed in their pre-assigned areas. Center staff shall devote their full attention to supervising the children in their pre-assigned areas of coverage.

(g) Prior to children participating in aquatic activities, the center shall develop policies that address the following:

(1) aquatic safety hazards;

(2) pool and aquatic activity area supervision including restroom or changing room use;

(3) how discipline is handled during aquatic activities;

(4) aquatic area staff-child ratios; and

(5) the facility's specific field trip and transportation policies and procedures.

(h) Prior to accompanying children on aquatic activities all center staff responsible for supervising children during an aquatic activity shall have reviewed:

(1) the center policies as specified in Paragraph (g) of this Rule; and

(2) any specific guidelines provided by the pool operator or other off-site aquatic facility.

The center shall maintain a signed and dated statement verifying staff review of the center and aquatic facility policies for the duration of the staff person's employment.

(i) Any outdoor swimming pool which is located on the child care facility premises shall be enclosed by a fence and shall be separated from the remaining outdoor play area by that fence.

(j) Swimming pool safety rules shall be posted near the any swimming pool located on the child care facility premises. At a minimum these rules shall address:

(1) the location of a first-aid kit;

(2) that non-water toys are prohibited;

(3) that children shall not run or push one another;

(4) that no swimming is allowed without an adult present; and

(5) that glass objects are not allowed.

(k) All swimming pools used by children shall meet the "Rules Governing Public Swimming Pools", in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules is on file with the Division of Child Development, 319 Chapanoke Road, Raleigh, NC 27626, or may be obtained at no cost by writing the North Carolina Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630.

Authority G.S. 110-85; 110-88(5); 110-91(1),(6); 143B-168.3.
SECTION .2700 - CRIMINAL RECORDS CHECKS

10A NCAC 09 .2701 APPLICATION FOR PERMITS

(a) In addition to the requirements set forth in Rules .0302 and .1702, of this Subchapter, the prospective child care provider shall submit to the Division at the time of application the following forms:

1. a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months;
2. a signed Authority for Release of Information using the form provided by the Division; and
3. a completed fingerprint card using SBI form FD-258.

If the prospective child care provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a second fingerprint card shall be submitted in order to complete a national check shall be completed.

(b) The prospective child care provider shall sign a statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation. The prospective child care provider shall maintain this statement on file to be available for review by a representative of the Division until the notice of qualification is received by the provider. If the prospective child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime including, but not limited to, those specified in G.S. 110-90.2, the prospective child care provider shall acknowledge on the statement that he or she is aware that the issuance of a permit is conditional pending approval by the Division.

(c) If the prospective child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the prospective child care provider's qualification. The Division may consider the following in making their decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number of prior offenses; and age of the individual at the time of occurrence.

(d) A prospective child care provider's refusal to complete the required criminal history record check paperwork is reasonable cause to deny issuance of a permit.

(e) The Division shall notify the prospective child care provider in writing of the determination by the Division of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history.

(f) Determination by the Division that the prospective child care provider is disqualified is reasonable cause to deny issuance of a permit.

(g) If the prospective child care provider is a firm, partnership, association, or corporation, the chief executive officer as responsible for the operation of the facility, shall complete the criminal history record check as specified in Paragraph (a) of this Rule.

(h) When a Letter of Intent to Operate pursuant to G.S. 110-106 and G.S. 110-106.1 is submitted to the Division, the person signing the Letter of Intent shall also submit all forms as required in Rule .2702(a) of this Section.

(i) Determination by the Division that the person submitting the Letter of Intent is disqualified is reasonable cause to issue a Notice to Cease Operation.

(j) Any child care provider who owns or operates an existing child care program, and who is applying for a permit for an additional child care program within one year from the date of qualification that was based on fingerprinting, shall submit a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months. A new fingerprint card shall not be required unless deemed necessary by the Division in making the determination of qualification. If the criminal history check was completed more than one year prior to the application for an additional child care program, the applicant shall complete all forms as required in Paragraph (a) of this Rule.

Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.

10A NCAC 09 .2702 CRIMINAL RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS

(a) Child care providers shall submit the following to their employer no later than five working business days after beginning work:

1. a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides;
2. a signed Authority for Release of Information using the form provided by the Division;
3. a fingerprint card using SBI form FD-258; and
4. a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

If the child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, including, but not limited to, those specified in G.S. 110-90.2, the child care provider shall acknowledge on the statement that he or she is aware that the employment is conditional pending approval by the Division. If the child care provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a second fingerprint card shall be submitted in order to complete a national check shall be completed.

(b) If the child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the provider's qualification for employment. The Division may
consider the following in making a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number and type of prior offenses; and age of the individual at the time of occurrence.

(c) The child care provider's employer shall mail the complete and accurate packet that includes the certified criminal history check, fingerprint card(s), and local check to the Division no later than three working business days after receipt. A copy of the submitted information, and the declaration statement, shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division until the notice of qualification is received by the provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division.

(d) The child care provider shall be on probationary status pending the determination of qualification or disqualification by the Division.

(e) The Division shall notify the child care provider in writing of the determination of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the employer, if any, in writing of the Division's determination concerning the child care provider; however, the employer shall not be told the specific information used in making the determination.

(f) If the child care provider changes employers within one year from the date of qualification that was based on fingerprinting, he or she shall submit a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides. This local check shall be submitted to his or her employer no later than five working business days after beginning work. The employer shall complete the steps as defined in Paragraphs (c), (d) and (h) of this Rule, except that the fingerprint card and the Authority for Release of Information as referenced in Paragraph (c) is not required. If the criminal history check was completed more than one year prior to employment, the child care provider shall complete all forms as required in Paragraph (a) of this Rule.

(g) Family. If a family child care home changes the location of operation, the family child care home providers and household members over the age of 15 years old, including family members and non-family members who use the home, on a permanent or temporary basis, as their primary residence who change the location of their operation shall submit a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the provider and household members have lived during the previous 12 months. This local check shall be submitted to the child care consultant no later than 10 business days after the location change. A new fingerprint card shall not be required unless deemed necessary by the Division in making its determination of qualification.

(h) Child care providers determined by the Division to be disqualified shall be terminated by the center or family child care home immediately upon receipt of the disqualification notice.

(i) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified shall be grounds for suspension, denial or revocation of the permit in addition to any other administrative action or civil penalties pursued by the Division. If an employer appeals the administrative action, the child care provider shall not be employed during the appeal process.

(j) A substitute child care provider who is employed for more than five days, whether working full or part-time, shall submit all forms as required in Paragraph (a) of this Rule to the employer by the end of the fifth working day. The employer shall complete the steps as defined in Paragraphs (c), (d) and (h) of this Rule.

(k) If a child care provider or household member is employed or remains at the same facility for three consecutive years, a modified criminal record check shall be conducted by using the Administrative Office of the Courts (AOC) System. On each three year anniversary date of employment, the child care provider or household member shall complete and submit the form provided by the Division. The Division may request a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides, from the provider or household member to verify the AOC results.

(l) For persons employed at the same facility for more than three consecutive years, as of the effective date of this Rule, the required form will be mailed to the provider by the Division on a schedule determined by the Division. These existing staff members shall complete and submit the form to the Division within 10 business days of Division notification.

(m) Existing family child care home providers and household members who were qualified more than three years prior to January 1, 2008 will be notified by a separate mailing and shall complete and submit the required form to the Division within 10 business days of receipt of Division notification.

(n) After a child care provider or household member has received their letter of qualification, the Division may complete a new criminal record check at any time there has been an investigation that references the child care provider or household member conducted by the Department of Social Services or the Division of Child Development. The rule also allows that the Division may complete a new criminal record check for the discovery or indication of any charges or indictments (pending or otherwise) that occurred after the initial qualification. When requested, the child care provider or household member shall complete and submit the packet as described in Paragraph (c) of this Rule to the Division within five business days of the request for a new criminal record check.

(o) Any individual over 15 years old who moves into the household or any individuals who lives in the household who has their 15th birthday after the initial licensing of a family child care home, including family members and non-family members who use the home on a permanent or temporary basis as their primary residence shall complete and submit the packet as described in Paragraph (c) of this Rule to the Division within five business days of moving into the home or their 15th birthday.
PROPOSED RULES

Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.

10A NCAC 09 .2704 CRIMINAL RECORD CHECK REQUIREMENTS FOR NONLICENSED HOME PROVIDERS

(a) The nonlicensed home provider and household members over age 15 years old, including family members and non-family members who use the home on a permanent or temporary basis as their primary residence, shall submit the following to the local purchasing agency:

1. a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months;
2. a signed Authority for Release of Information using the form provided by the Division;
3. a fingerprint card using SBI form FD-258; and
4. a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

This Rule also includes any individual over 15 years old who moves into the household, or any individuals who lives in the household who have their 15th birthday after initial approval, including family members and non-family members who use the home either on a permanent or temporary basis as their primary residence. These persons shall submit items in Subparagraphs (a)(1) through (a)(4) of this Rule to the local purchasing agency within five business days of moving into the home or their 15th birthday.

(b) New nonlicensed home providers and any household member over the age of 15 years old shall submit the complete and accurate packet no later than five working business days after applying for enrollment as a nonlicensed home provider of subsidized child care. If more than 12 months have elapsed since the criminal record check has been completed and subsidy funds were not received, then a new criminal record check must be submitted by the nonlicensed home provider and any household member over the age of 15 years old.

(c) Any individual over the age of 15 years old, including family members and non-family members who use the home, either on a permanent or temporary basis as their primary residence who becomes a household member of a nonlicensed home provider shall submit all criminal records record check forms as required in 10A NCAC 09 .2704, Subparagraphs (a)(1) through (a)(4) of this Rule within ten business days of joining the household.

(d) If the nonlicensed home provider or household member has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the provider's qualification. The Division may consider the following in making a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number of prior offenses; and age of the individual at the time of occurrence.

(e) If the nonlicensed home provider or household member has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the provider's qualification. The Division may consider the following in making a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number of prior offenses; and age of the individual at the time of occurrence.

(f) The local purchasing agency shall mail the local offices a certified criminal history check, check, check from the Clerk of Superior Court's office in the county where the individual resides. Authority for Release of Information using the form provided by the Division, and a fingerprint card(s) to the Division no later than five working business days after receipt. A copy of the submitted information, and the declaration statement, shall be maintained in the nonlicensed home provider's file until the notice of qualification is received by the nonlicensed home provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the nonlicensed home provider's file.

(g) A nonlicensed home provider may receive payment during the period in which the state or national criminal history check is being completed if the applicant would otherwise receive approval or temporary approval from the local purchasing agency for enrollment in the subsidized child care program, subject to the provisions referenced in 10A NCAC 10 .0803(b), .0810, and .0811.

(h) The Division shall notify the nonlicensed home provider in writing of the determination of qualification by the Division of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the local purchasing agency in writing of the Division's determination concerning the nonlicensed home provider; however, the local purchasing agency shall not be told the specific information used in making the determination.

(i) Disqualification of a nonlicensed home provider by the Division shall be reasonable cause for the local purchasing agency to deny further payment.

(j) If a nonlicensed home provider disagrees with the decision of disqualification and files a civil action in district court, the provider may continue to operate as a nonlicensed home provider only but shall not receive payment during the proceedings. If the determination is that the nonlicensed home provider is qualified, the nonlicensed provider shall receive retroactive payment for the care that was provided.

(k) If a nonlicensed home provider or household member is employed or remains open for three consecutive years, a modified criminal record check shall be conducted using the Administrative Office of the Courts (AOC) System. On each three year anniversary date of approval by the local purchasing agency to receive subsidy funds, the provider or household member shall complete and submit the form provided by the Division. The Division may request a certified criminal history from Clerk of Superior Court, from the provider or household member to verify the AOC results.
(l) Existing nonlicensed home providers who have been operating for more than three consecutive years, as of the effective date of this Rule, will be notified by a separate mailing and shall complete and submit the form to the Division within 10 business days of receipt.
(m) After a nonlicensed home provider or household member has been qualified, the Division may complete a new criminal record check at any time there has been an investigation that references the nonlicensed home provider or household member conducted by the Department of Social Services or the Division of Child Development.

The rule also allows that the Division may complete a new criminal record check at any time there has been an investigation that references the nonlicensed home provider or household member conducted by the Department of Social Services or the Division of Child Development.

The rule also allows that the Division may complete a new criminal record check at any time there has been an investigation that references the nonlicensed home provider or household member conducted by the Department of Social Services or the Division of Child Development.

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Fiscal Impact:

☑ State
☐ Local
☐ Substantive (≤$3,000,000)
☐ None

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11B - SPECIAL PROGRAMS

SECTION .0200 - INSURANCE HOLDING COMPANY SYSTEMS

11 NCAC 11B .0222 TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING

(a) An insurer required to give prior notice of a proposed transaction under G.S. 58-19-30(b) shall furnish the required information on Form D. submit a completed Form D referenced in 11 NCAC 11B.0216, which can be found at www.ncdoi.com.

(b) Requests An insurer required to give prior notice of an ordinary dividend or any other ordinary distribution to shareholders under G.S. 58-19-25(d) or an insurer that requests, under G.S. 58-19-30(c), for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(1) The amount of the proposed dividend, dividend or distribution;
(2) The date established for payment of the dividend, dividend or distribution;
(3) A statement as to whether the dividend or distribution is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
(4) A statement identifying the dividend or distribution as an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d) or as an extraordinary dividend or other extraordinary distribution as defined in G.S. 58-19-30(c);
(5) A copy of the calculations determining that the proposed dividend or distribution is an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d), or an extraordinary dividend or other extraordinary distribution as defined in G.S. 58-19-30(c), extraordinary. The work paper shall include the following information:
(A) The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which notification is being given or approval is sought, and commencing on the day after the same day of the same month in the last preceding year;

(B) Surplus as regards policyholders (total capital and surplus) as of the preceding December 31;

(C) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the preceding December 31; and

(D) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the preceding December 31 and the two preceding 12-month periods; and

(E) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years;

(6) A balance sheet and statement of income for the period intervening from between the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; or the prior notification of a dividend or distribution is submitted. The insurer shall indicate the amount of all unrealized capital gains included in unassigned funds;

(7) A brief statement as to the effect of the proposed dividend or distribution upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs; and

(8) A brief statement as to the intended use(s) of the proposed dividend or distribution by the parent, and, if applicable, any upstream parent, of the insurer.

(c) A prior notification of an ordinary dividend or any other ordinary distribution required under G.S. 58-19-25(d) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.

(d) A request for approval of an extraordinary dividend or any other extraordinary distribution required under G.S. 58-19-30(c) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.

(e) For the purposes of the Commissioner's review of all proposed dividend payments or other distributions to shareholders, the factors set forth in G.S. 58-19-30(d) shall be considered.


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**TITLE 12 – DEPARTMENT OF JUSTICE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rules cited as 12 NCAC 09B .0242 - .0245 and amend the rules cited as 12 NCAC 09B .0211, .0215, .0218 - .0222, .0237 - .0240, .0310, .0408 - .0416; 09C .0308, .0601, .0608.

Proposed Effective Date: August 1, 2007

Public Hearing:
Date: May 18, 2007
Time: 1:00 p.m.
Location: NC Dept. of Correction, Office of Staff Development and Training, 2211 Schieffelin Road, Apex.

Reason for Proposed Action:
12 NCAC 09B .0211 – Grammatical corrections, and changed "accredited" to "certified."
12 NCAC 09B .0215 – Removed cost of training manual and added rules references for new courses.
12 NCAC 09B .0218 - .0219 – Changed "re-training" to "re-certification" and "accredited" to "certified."
12 NCAC 09B .0220 - .0222 – Revised description of prerequisite courses and added rules references for new courses.
12 NCAC 09B .0237 – Removed cost of training manual, and added requirement that applicants for course must be fully qualified general instructors, not probationary instructors.
12 NCAC 09B .0310, .0408 - .0409, .0416 – Added rules references for new courses.
12 NCAC 09C .0308 – Added rules references for new SMI courses and revised the description of the three types of speed measurement instrument certification.
12 NCAC 09B .0242 – Outlines requirements for Radar/Lidar Operation course.
12 NCAC 09B .0243 – Outlines requirements for Radar/Lidar Operation re-certification course.
12 NCAC 09B .0244 – Outlines requirements for Radar/Time-Distance/Lidar Operation course.
12 NCAC 09B .0245 – Outlines requirements for Radar/Time-Distance/Lidar Operator re-certification course.

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

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

Comment period ends: June 1, 2007

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

Fiscal Impact:

☐ State
☐ Local
☐ Substantive ($≤3,000,000)
☒ None

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0211 TIME-DISTANCE INSTRUCTOR TRAINING COURSE

(a) The time-distance instructor training course shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a time-distance instructor. This course shall be for a period not to exceed eight consecutive weeks.

(b) Each applicant for the time-distance speed measurement instrument instructor training course shall meet the minimum entry requirements of 12 NCAC 9B .0210(c)(1) and (2) and 12 NCAC 9B .0309. The time-distance instructor training course required for time-distance instructor certification shall include but not be limited to the topic areas and minimum number of hours as outlined in the Time-Distance Instructor Training Course. To qualify for time-distance instructor certification, an applicant shall meet the minimum requirements as outlined in the Time-Distance Instructor Training Course and meet the requirement of 12 NCAC 9B .0408 and .0409.

(c) The "Time-Distance Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the criminal justice time-distance speed measurement instrument instructor training course for time-distance speed measurement instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

(d) Commission accredited Commission-certified schools that are accredited certified to offer the "Time Distance Instructor Training Course" are: The North Carolina Justice Academy.

Authority G.S. 17C-6.

12 NCAC 09B .0215 SUPPLEMENTAL SMI TRAINING

(a) The supplemental speed measuring instrument (SMI) training course for law enforcement officers shall be designed to allow officers an opportunity to be certified on additional speed measurement instruments not included on the officers' initial speed measurement instrument certification. The course shall be designed to provide the trainee with the skills and knowledge to proficiently perform those tasks essential to function as an instructor or operator using the additional speed measuring instrument(s).

(b) Each applicant for supplemental speed measuring instrument training shall:

(1) possess a valid radar, time-distance, or lidar speed measuring instrument instructor or operator certification as a result of successful completion of 12 NCAC 9B .0210, .0211, .0212, .0213, .0214, .0237, or .0238, .0239, .0242, or .0244;

(2) present the endorsement of a Commission-certified school director or agency executive officer or his designee.

(c) The supplemental SMI training course required for certification, on the additional instrument(s), shall include the topic areas and number of hours as outlined in the Supplemental SMI Training Course. To qualify for certification, on the additional instrument(s), an applicant shall meet the requirements as outlined in the Supplemental SMI Training Course and meet the requirements of 12 NCAC 9B .0409.

(d) Certification as instructor or operator of the additional speed measuring instruments shall expire on midnight of the date of
expiration of the instructor or operator certification referred to in 12 NCAC 09B .0215(b) and .0310(a).

(e) The "Supplemental SMI Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the supplemental SMI training course for SMI instructors or operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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

   and may be obtained at a cost of seven dollars and twelve cents ($7.12) from the Academy at the following address:

   North Carolina Justice Academy
   Post Office Box 99
   Salemburg, North Carolina  28385

(f) Commission-certified schools that are certified to offer the "Supplemental SMI Training Course" for Instructors are:

   North Carolina Justice Academy

   and may be obtained at cost from the Academy at the following address:

   North Carolina Justice Academy

   Raleigh, North Carolina  27602

Authority G.S. 17C-6.

12 NCAC 09B .0219  RE-CERTIFICATION TRAINING FOR TIME-DISTANCE INSTRUCTORS

(a) The time-distance instructor re-certification training course shall be designed to provide the instructor with the skills and knowledge to continue to proficiently perform the function of a criminal justice time-distance instructor. This course shall be presented within a period not to exceed one week.

(b) Each applicant for the time-distance instructor retraining re-certification course shall:

   (1) Meet the minimum entry requirements of 12 NCAC 9B .0408 and .0409.

   (2) Have been certified as a time-distance instructor within the three years preceding the completion date of the retraining re-certification course.

(c) The time-distance instructor re-certification training course required for time-distance instructor re-certification shall include but not be limited to the topic areas and minimum number of hours as outlined in The Time-Distance Instructor Training Course. To qualify for time-distance instructor re-certification, an applicant shall meet the minimum requirements as outlined in The Time-Distance Instructor Training Course and meet the requirements of 12 NCAC 9B .0408 and .0409.

(d) The "Time-Distance Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the time-distance instructor re-certification training course for time-distance instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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

   and may be obtained at cost from the Academy at the following address:

   North Carolina Justice Academy
   Post Office Box 99
   Salemburg, North Carolina  28385

   (e) Commission-accredited schools that are accredited to offer the "Time-Distance Instructor Re-Certification Training Course" are:

   North Carolina Justice Academy

   Authority G.S. 17C-6.

12 NCAC 09B .0220  RE-CERTIFICATION COURSE FOR RADAR OPERATORS
(a) The radar operator re-certification training course shall be designed to provide the law enforcement officer with the skills and knowledge to continue to proficiently perform the function of a radar operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a radar operator re-certification course shall meet the requirements of 12 NCAC 9C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in radar operator re-certification courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 9B .0220(b), but such personnel must have successfully completed the radar operator training course (12 NCAC 9B .0212) or the radar TD/SMI operator training course (12 NCAC 9B .0213), one introductory level speed measurement instrument course that included instruction on operation of radar instruments. Courses that meet this requirement are described in 9B .0212, .0213, .0242, and .0244.

(d) The radar operator re-certification training course required for radar/time-distance operator re-certification shall include but not be limited to the topic areas and minimum number of hours as outlined in The Radar Operator Training Course. To qualify for radar/time-distance operator re-certification, an applicant shall meet the minimum requirements as outlined in The Radar Operator Training Course and meet the requirements of 12 NCAC 9B .0408 and .0409.

(e) The "Radar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the radar operator re-certification training course for radar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

Authority G.S. 17C-6.

12 NCAC 09B .0222 RE-CERTIFICATION COURSE FOR TIME-DISTANCE OPERATORS

(a) The time-distance operator re-certification training course shall be designed to provide the trainee with the skills and knowledge to continue to proficiently perform the function of a time-distance operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a time-distance operator re-certification course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in time-distance operator re-certification courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0222(b), but such personnel must have successfully completed the radar and TD/SMI operator training course (12 NCAC 9B .0213) or the

radar operator training course (12 NCAC 09B .0212) and the TD/SMI operator training course (12 NCAC 09B .0214), one or more introductory level speed measurement instrument courses that included instruction on operation of radar instruments and time-distance instruments. Courses that meet this requirement are described in 09B .0212, .0213, .0214, .0242, and .0244.

(d) The radar/time-distance operator re-certification training course required for radar/time-distance operator re-certification shall include but not be limited to the topic areas and minimum number of hours as outlined in The Radar/Time-Distance Operator Training Course. To qualify for radar/time-distance operator re-certification, an applicant shall meet the minimum requirements as outlined in The Radar/Time-Distance Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Time-Distance Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the radar/time-distance operator re-certification training course for radar/time-distance operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

Authority G.S. 17C-6.
applicant shall meet the minimum requirements as outlined in the Time-Distance Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Time-Distance Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the time-distance operator re-certification training course for time-distance operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602
and may be obtained at cost from the Academy at the following address:
North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

Authority G.S. 17C-6.

12 NCAC 09B .0237 LIDAR INSTRUCTOR TRAINING COURSE

(a) The Lidar Instructor Training Course shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a lidar instructor. This course shall be for a period not to exceed six consecutive weeks.

(b) The Lidar Instructor Training Course required for lidar instructor certification shall include the topic areas and number of hours as outlined in the Lidar Instructor Training Course. To qualify for lidar instructor certification, an applicant shall meet the requirements as outlined in The Lidar Instructor Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) Each applicant for lidar instructor training shall:

   (1) Present the endorsement of a Commission-recognized school director or agency executive officer or his designee.

   (2) Possess full criminal justice General Instructor Certification as required in 12 NCAC 09B .0302.

   (3) Possess a current and valid lidar operator certification.

(d) The "Lidar Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the lidar instructor training course for lidar instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602

and may be obtained at a cost of sixteen dollars and five cents ($16.05) from the Academy at the following address:
North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

(e) Commission-certified schools that are certified to offer the Lidar Instructor Training Course are: The North Carolina Justice Academy.

Authority G.S. 17C-6.

12 NCAC 09B .0238 CERTIFICATION TRAINING FOR LIDAR OPERATORS

(a) The Lidar Operator Training Course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a law enforcement lidar operator. This course shall be for a period not to exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency shall be enrolled in the Lidar Operator Training Course. Such a trainee shall not be certified as a lidar operator until the Basic Law Enforcement Training Course has been successfully completed and probationary or general law enforcement certification has been granted. Sheriffs, deputy sheriffs and federal law enforcement personnel, including armed forces personnel, shall be allowed to participate in lidar operator training courses on a space available basis at the discretion of the school director without having enrolled in or having successfully completed the Basic Law Enforcement Training Course and without being currently certified in a probationary status or holding general law enforcement certification. The Lidar Operator Training Course required for lidar operator certification shall include the topic areas and number of hours as outlined in the Lidar Operator Training Course. To qualify for lidar operator certification, an applicant shall meet the requirements as outlined in the Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) The "Lidar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the Lidar Operator Training Course for lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602
and may be obtained at a cost of sixteen dollars and five cents ($16.05) from the Academy at the following address:
North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

Authority G.S. 17C-6.

12 NCAC 09B .0239 RE-CERTIFICATION TRAINING FOR LIDAR INSTRUCTORS

(a) The Lidar Instructor Re-Certification Training Course shall be designed to provide the instructor with the skills and knowledge to continue to proficiently perform the function of a lidar instructor. This course shall be presented within a period not to exceed one week.
(b) Each applicant for a Lidar Instructor Re-Certification Training Course shall:

1. possess criminal justice General Instructor Certification as required in 12 NCAC 09B .0302; and
2. have been certified as a lidar instructor within the three years preceding the completion date of the re-certification training course.

(c) The Lidar Instructor Re-Certification Training Course required for lidar instructor re-certification shall include the topic areas and number of hours as outlined in the Lidar Instructor Training Course. To qualify for lidar instructor re-certification, an applicant shall meet the requirements as outlined in the Lidar Instructor Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(d) The "Lidar Instructor Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the Lidar Operator Re-Certification Training Course for lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602
and may be obtained at a cost of sixteen dollars and five cents ($16.05) from the Academy at the following address:
North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

(e) Commission-certified schools that are certified to offer the Lidar Operator Re-Certification Training Course are: The North Carolina Justice Academy.

Authority G.S. 17C-6.

12 NCAC 09B .0240 RE-CERTIFICATION TRAINING COURSE FOR LIDAR OPERATORS

(a) The Lidar Operator Re-Certification Training Course shall be designed to provide the law enforcement officer with the skills and knowledge to proficiently perform the function of a lidar operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a Lidar Operator Re-Certification Training Course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in Lidar Operator Re-Certification Training Courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0238(b), but such personnel must have successfully completed the Lidar Operator Training Course, an introductory level speed measurement instrument course that included instruction on operation of lidar instruments. Courses that meet this requirement are described in 09B .0238, 0242, and 0244.

(d) The Lidar Operator Re-Certification Training Course required for lidar operator re-certification shall include the topic areas and number of hours as outlined in the Lidar Operator Training Course. To qualify for lidar operator re-certification, an applicant shall meet the requirements as outlined in the Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Lidar Operator Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the Lidar Operator Re-Certification Training Course for lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602

and may be obtained at a cost of sixteen dollars and five cents ($16.05) from the Academy at the following address:
North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

Authority G.S. 17C-6.
(a) The radar/time-distance/lidar operator training course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a radar, time-distance, and lidar operator. This course shall be for a period not to exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency may be enrolled in the radar/time-distance/lidar speed measurement instrument operator training course. Such a trainee shall not be certified as a radar, time-distance, and lidar speed measurement instrument operator until the basic law enforcement training course has been successfully completed and probationary or general law enforcement certification has been granted. Sheriffs, deputy sheriffs, and federal law enforcement personnel, including but not limited to armed forces personnel, shall be allowed to participate in radar, time-distance, and lidar speed measurement instrument operator training courses on a space available basis at the discretion of the school director without having enrolled in or having successfully completed the basic law enforcement training course and without being currently certified in a probationary status or holding general law enforcement certification. The radar/time-distance/lidar operator training course required for radar, time-distance, and lidar operator certification shall include the topic areas and number of hours as outlined in the Radar/Time-Distance/Lidar Operator Training Course. To qualify for radar, time-distance, and lidar operator certification, an applicant shall meet the minimum requirements as outlined in the Radar/Time-Distance/Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) The "Radar/Time-Distance/Lidar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the radar/time-distance/lidar operator training course for radar, time-distance, and lidar instrument operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

Authority G.S. 17C-6.
 PROPOSED RULES

(b) Each applicant for a Radar/Time-Distance/Lidar Operator Re-Certification Training Course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in Radar/Time-Distance/Lidar Operator Re-Certification Training Courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0243(b), but such personnel must have successfully completed one or more introductory level speed measurement instrument courses that included instruction on operation of radar instruments, time-distance instruments and lidar instruments. Courses that meet this requirement are described in 09B .0212, .0213, .0214, .0238, .0242, and .0244.

(d) The Radar/Time-Distance/Lidar Operator Re-Certification Training Course required for radar, time-distance, and lidar operator re-certification shall include the topic areas and number of hours as outlined in the Radar/Time-Distance/Lidar Operator Training Course. To qualify for radar, time-distance, and lidar operator re-certification, an applicant shall meet the requirements as outlined in the Radar/Time-Distance/Lidar Operator Training Course and meet the requirements of 12 NCAC 09B.0408 and .0409.

(e) The "Radar/Time-Distance/Lidar Operator Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the Radar/Time-Distance/Lidar Operator Re-Certification Training Course for radar, time-distance, and lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

Authority G.S. 17C-6.

SECTION .0400 - MINIMUM STANDARDS FOR COMPLETION OF TRAINING

12 NCAC 09B .0408 COMPREHENSIVE WRITTEN EXAMINATION -- BASIC SMI CERTIFICATION

(a) At the conclusion of the classroom instruction portion of a school's offering of any speed measurement instrument operators' operator courses or recertification courses, an authorized representative of the Commission shall administer to all candidates for certification as operators a comprehensive written examination.

(b) The exam shall be an objective test covering the topic areas contained in the certified course curriculum.

(c) The Commission's representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each candidate for certification.

(d) A trainee shall pass the operator training course as required in 12 NCAC 09B .0212, .0213, .0214, .0238, .0242, or .0244 by achieving 70 percent correct answers.

(e) An operator seeking recertification shall pass the operator training recertification course as specified in 12 NCAC 09B .0220, .0221, .0222, or .0245 by achieving 75 percent correct answers.

(f) A trainee who has fully participated in a scheduled delivery of a certified training course and has demonstrated 100 percent competence in each motor-skill or performance area of the course curriculum but has failed to achieve the prescribed score, as specified in Paragraph (d) of this Rule, on the Commission's comprehensive written examination may request the director of the Standards Division to authorize a re-examination of the trainee.

(g) The trainee's request for re-examination shall be made in writing on the Commission's form and shall be received by the Standards Division within 30 days of the examination.

(h) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course.

(i) A trainee shall have, within 90 days of the original examination, only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety.

(j) The trainee shall be notified by the Standards Division staff of a place, time, and date for re-examination.

(3) Successfully complete a commission-approved SMI instructor re-certification course as required in 12 NCAC 09B .0218 or .0219, or .0239.

(b) All SMI instructors seeking re-certification shall successfully complete the re-certification course within 12 months from expiration of the initial certification period or re-certification period. If re-certification training is not obtained within the 12-month period, successful completion of the appropriate instructor training program as required in 12 NCAC 09B.0308 will be required to obtain instructor certification. This prescribed 12-month period does not extend the instructor certification period.

Authority G.S. 17C-6.

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0310 TERMS AND CONDITIONS -- SMI INSTRUCTORS

(a) The term of a Speed Measurement Instrument (SMI) instructor, which includes radar, time-distance, time-distance speed measurement instrument, and LIDAR lidar instructors, is three years from the date the Commission issues the certificate, unless sooner terminated by the Commission. The certificate may be renewed for subsequent three year periods. The SMI instructor desiring renewal shall:

(1) Hold general instructor certification as required in 12 NCAC 09B .0303.

(2) Have been active in the SMI classroom instructional process during the previous certification period.

21:19 NORTH CAROLINA REGISTER APRIL 2, 2007

1741
(k) If the trainee fails to achieve the prescribed minimum score on the re-examination, the trainee may not be recommended for certification and shall enroll and complete a subsequent course offering in its entirety before further examination may be permitted.

Authority G.S. 17C-6.

12 NCAC 09B .0409 SATISFACTION OF TRAINING -- SMI OPERATORS

(a) To satisfy the training requirements for operator certification, a trainee shall complete all of the following:

(1) Achieve a score of 75 percent correct answers on the comprehensive written examination provided for in 12 NCAC 09B .0408(d).

(2) Demonstrate successful completion of a certified offering of courses as prescribed under either 12 NCAC 09B .0212, .0213, .0214, .0215, .0238, .0239, .0242, or .0244 as shown by the certification of the school director.

(3) Demonstrate 100 percent proficiency in the motor-skill and performance subject areas as demonstrated to a certified Speed Measurement Instrument (SMI) instructor as prescribed in 12 NCAC 09B .0409(c)(3).

(4) Present evidence showing prior North Carolina certification in a Commission-certified operator training course as prescribed in 12 NCAC 09B .0212, .0213, .0214, .0238, .0242, .0244 as evidence showing prior certification which meets or exceeds North Carolina certification, or present evidence showing completion of 16 hours of supervised field practice within 90 days after completing a Commission-certified radar operator training course as prescribed in 12 NCAC 09B .0212 or 12 NCAC 09B .0213, .0214, .0238, .0242, .0244.

(b) Any trainee failing to achieve 100 percent proficiency in the motor-skill area may request written permission from the Director of the Standards Division for re-examination. The trainee's request for re-examination shall be made in writing and received by the Standards Division within 30 days of the original examination. The trainee's request for re-examination shall be made in writing and received by the Standards Division within 30 days of the original examination. The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course. A trainee shall have, within 90 days of the original examination, only one opportunity for motor-skill re-examination and must satisfactorily complete each identified area of deficiency on the original motor-skill examination. The trainee shall be notified by the Standards Division staff of a place, time, and date for re-examination. If the trainee fails to achieve the prescribed score on the examination, the trainee shall not be recommended for certification and shall enroll and complete a subsequent course offering in its entirety before further examination may be permitted.

(c) To satisfy the training requirements for operator re-certification, an operator seeking re-certification shall:

(1) Achieve a score of 75 percent correct answers on the comprehensive written examination provided for in 12 NCAC 09B .0408(e).

(2) Demonstrate successful completion of a certified offering of courses as prescribed under either 12 NCAC 09B .0212, .0213, .0220, .0221, .0222, .0239, .0240, .0243, or .0245 as shown by the certification of the school director.

(3) Satisfy all motor-skill requirements as required in 12 NCAC 09B .0409(a)(3).

(4) At the time a trainee seeking operator re-certification fails to achieve the prescribed requirements on the comprehensive written examination as specified in 12 NCAC 09B .0409(c)(3), certification of the officer automatically and immediately terminates and that officer shall not be re-certified until successful completion of a subsequent course offering as prescribed under either 12 NCAC 09B .0212, .0213, .0214, or .0238, .0239, .0242, or .0244 before further examination may be permitted.

(e) At the time a trainee seeking operator re-certification fails to achieve the prescribed motor-skill requirements as specified in 12 NCAC 09B .0409(c)(3), certification of the officer automatically and immediately terminates and that officer shall not be re-certified until successful completion of the required motor-skill testing. Provided, however, such an officer may request re-examination as prescribed in 12 NCAC 09B .0409(b).

Authority G.S. 17C-6.

12 NCAC 09B .0416 SATISFACTION OF MINIMUM TRAINING -- SMI INSTRUCTOR

(a) To acquire successful completion of the "Speed Measurement Instrument (SMI) Instructor Training Courses," and the "SMI Instructor Re-Certification Courses," the trainee shall:

(1) Satisfactorily complete all required course work as specified in Rules .0210, .0211, .0218, and .0219, .0219, .0219, .0237, or .0239 of this Subchapter for the specific course in attendance; and

(2) Achieve a score of 75 percent correct answers on a commission-administered comprehensive written examination.

(b) If the trainee passes the written examination but fails to meet the minimum criteria on an area of motor-skill testing, he/she shall be authorized one opportunity for a re-test. Such re-test must be at the recommendation of the school director and a request must be made to the Standards Division within 30 days of the original testing. Re-examination must be completed within 90 days of the original testing. Failure on the re-test requires enrollment in a subsequent SMI operator course and an SMI instructor course.

Authority G.S. 17C-6; 17C-10.
SUBCHAPTER 09C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS

12 NCAC 09C .0308 SPEED MEASUREMENT INSTRUMENT (SMI) OPERATORS CERTIFICATION PROGRAM

(a) Standards Division staff shall issue certification in one of the following categories:

1. Radar operator: Speed Measurement Instrument (SMI) certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0210, .0211, .0212, .0213, .0218, .0220, .0221, or .0222, .0224, .0223, or .0245:

2. Radar and time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0211, .0213, .0219, or .0221:

3. (2) Time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0211, .0213, .0214, .0219, .0221, or .0222, .0223, or .0224, .0244, or .0245:

4. Lidar speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0238, .0237, .0238, .0239, or .0240, .0240, .0242, .0243, .0244, or .0245:

(b) Certification in one or more category reflects operational proficiency in the designated type(s) of approved equipment for which the trainee has been examined and tested. Such certification shall be for a three year period from the date of issue and re-certifications shall be for a three year period from the date of issue, unless sooner terminated by the Commission. The applicant shall meet the following requirements for operator certification or re-certification within 90 days of course completion and upon the presentation of documentary evidence showing that the applicant:

1. Has successfully completed the training program as required in 12 NCAC 09B .0210, .0211, .0212, .0213, .0214, .0218, .0219, .0220, .0221, .0222, .0237, .0238, .0239, or .0240, .0240, .0242, .0243, .0244, or .0245; and

2. Has successfully completed a Commission-certified basic law enforcement training course as required in 12 NCAC 09B .0400 and is currently certified in a probationary status or holds general law enforcement certification; or

(c) Certified operators shall be notified by the Commission not less than 90 days prior to expiration of certification. All applicants for re-certification shall successfully complete a Commission-approved re-certification course within 12 months from the expiration of the previous certification. If re-certification is not obtained within the 12 month period, successful completion of the appropriate operator training programs as required by 12 NCAC 09B .0409(a) shall be required to obtain operator certification. This prescribed 12 month period shall not extend the operator certification period beyond its specified expiration date. When a re-certification course is successfully completed prior to the expiration of the previous certification, the new certification shall be issued by the Criminal Justice Standards Division effective upon the receipt of the Post-delivery Report of Training Course Presentation.

(d) Operator re-certification shall be issued only to officers with current law enforcement certification.

(e) All certifications issued pursuant to this Rule and the standards in effect between November 1, 1981 and July 1, 1982 shall continue with full force and effect; however, said certifications shall be subject to the provisions of 12 NCAC 09C .0308(c) and (d).

Authority G.S. 17C-6.

SECTION .0600 - EQUIPMENT AND PROCEDURES

12 NCAC 09C .0601 APPROVED SPEED-MEASURING INSTRUMENTS

The following procedures shall be adhered to for approval of speed-measuring instruments:

(1) Prior to the inclusion as an approved speed-measuring instrument, the manufacturer of said instrument shall certify in writing to the Criminal Justice Standards Division that said instrument meets or exceeds the applicable standards set out in the "Model Performance Specifications for Police Traffic Radar Devices" as published by the National Highway Traffic Safety Administration, United States Department of Transportation (as in effect July 1, 1982) which is hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
The purpose of this Rule is to establish the minimum requirements for operating speed-measuring instruments used by law enforcement officers to measure the speed of vehicles for enforcement of speed laws and regulations. All operating procedures shall conform with G.S. 8-50.2 and 17C-6. The operating procedures for each specific Radar, Time-Distance, and Lidar speed-measuring instrument, as outlined in Appendix "C" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

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

and may be obtained at no cost from the National Highway Traffic Safety Administration at the following address:

National Highway Traffic Safety Administration
400 Seventh Street, SW
Washington, DC 20590

The manufacturer shall provide evidence that the instrument meets or exceeds the applicable standards published by the National Highway Traffic Safety Administration, United States Department of Transportation.

(2) All speed-measuring instruments shall be evaluated by representatives from the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Department of Crime Control and Public Safety. A summary of the findings shall be submitted in writing to the Criminal Justice Standards Division's Radarspeed Measurement Instrument Program Administrator.

(3) A current list of all approved speed-measuring instruments shall be included in Appendix "A" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy.

(4) The "Speed-Measurement Instrument Operator Training Course Manuals" as published by the North Carolina Justice Academy shall be applied as the basic curriculum for the speed-measuring instrument operator training courses as administered by the North Carolina Criminal Justice Education and Training Standards Commission. Copies of these publications may be inspected at the office of the agency:

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

and may be obtained at a cost of seven dollars and twelve cents ($7.12) from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

Authority G.S. 8-50.2; 17C-6.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10F .0373 - .0374.

Proposed Effective Date: August 1, 2007

Rule .0373:
Public Hearing: 15A NCAC 10F .0373
Date: April 19, 2007
Time: 7:00 p.m.
Location: 1924 Courthouse, 30 North College Ave., Newton, NC

Rule .0374:
Public Hearing: 15A NCAC 10F .0374
Date: April 26, 2007
Time: 7:00 p.m.
Location: Pitts School Road Elementary School Cafeteria, 720 Pitts School Road, Concord, NC

Reason for Proposed Action:
15A NCAC 10F .0373 – Duke Energy has petitioned the Wildlife Resources Commission for the establishment of exclusionary zones near Duke hydroelectric power stations for the purpose of protecting public safety.

15A NCAC 10F .0374 - Alcoa Power Generating Inc., has petitioned the Wildlife Resources Commission for the
establishment of exclusionary zones near Alcoa hydroelectric power stations for the purpose of protecting public safety.

Procedure by which a person can object to the agency on a proposed rule: Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for these rules. For these rules, the contact person is Joan Troy.

Comments may be submitted to: Joan Troy, 1701 Mail Service Center, Raleigh, NC 27699-1701, email Joan.Troy@ncwildlife.org

Comment period ends: June 1, 2007

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 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0373 DUKE ENERGY CORPORATION HYDROELECTRIC STATION EXCLUSIONARY ZONES

(a) Regulated Area. This Rule applies to the area one hundred feet upstream or downstream from the stations and dams (and associated structures, abutments and equipment of these stations and dams) listed in Paragraph (f) of this Rule.

(b) Swimming or boating. No swimming or other entry of a person in or upon a boat, raft or other floating object shall be permitted within one hundred feet onto the watercourse downstream or the surface waters upstream of the hydroelectric station and associated dam or dams.

(c) Fishing. No person shall fish from the hydroelectric station or from any powerhouse, structure, abutment or equipment associated with the dam except for those at designated public access areas.

(d) Paragraph (b) of this Rule shall not apply to persons who, with consent of Duke Energy Corporation, law enforcement or emergency personnel or North Carolina state employees acting in an official capacity requiring access for the purpose of maintaining, repairing or evaluating facilities of Duke Energy Corporation.

(e) Placement and Maintenance of Markers. Duke Energy Corporation is designated as a suitable entity for placement and maintenance of buoys and other signs indicating the areas in which boating, swimming and fishing are prohibited by this Rule.

(f) Duke Energy Corporation hydroelectric stations and dams affected by this Rule:

1. Bridgewater Hydroelectric Station (Paddy Creek Dam, Linville Dam and Catawba Dam) in the Catawba River in Burke and McDowell counties;
2. Cowans Ford Hydroelectric Station (Cowans Ford Dam) in the Catawba River in Lincoln and Mecklenburg counties;
3. Lookout Hydroelectric Station (Lookout Dam) in the Catawba River in Catawba and Iredell counties;
4. Mountain Island Hydroelectric Station (Mountain Island Dam) in the Catawba River in Gaston and Mecklenburg counties;
5. Oxford Hydroelectric Station (Oxford Dam) in the Catawba River in Alexander and Catawba counties;
6. Rhodhiss Hydroelectric Station (Rhodhiss Dam) in the Catawba River in Burke and Caldwell counties; and
7. Tuxedo Hydroelectric Station (Tuxedo Dam) in the Green River in Henderson County.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0374 ALCOA POWER GENERATING INC. HYDROELECTRIC STATION EXCLUSIONARY ZONES

(a) Regulated Area. This Rule applies to the area one hundred feet upstream or downstream from the stations and dams (and associated structures, abutments and equipment of these stations and dams) listed in Paragraph (f) of this Rule.

(b) Swimming or boating. No swimming or other entry of a person in or upon a boat, raft or other floating object shall be permitted within one hundred feet onto the watercourse downstream or the surface waters upstream of the hydroelectric station and associated dam or dams.

(c) Fishing. No person shall fish from the hydroelectric station or from any powerhouse, structure, abutment or equipment associated with the dam except for those at designated public access areas.

(d) Paragraph (b) of this Rule shall not apply to persons who, with consent of Alcoa Power Generating, Inc., law enforcement or emergency personnel or NC state employees acting in an official capacity requiring access for the purpose of maintaining, repairing or evaluating facilities of Alcoa Power Generating, Inc.
**Proposed Rules**

(e) Placement and Maintenance of Markers. Alcoa Power Generating, Inc. is designated as a suitable entity for placement and maintenance of buoys and other signs indicating the areas in which boating, swimming and fishing are prohibited by this Rule.

(f) Alcoa Power Generating Inc., hydroelectric stations affected by this Rule:

1. Narrows Hydroelectric Station in Yadkin River in Stanly and Montgomery Counties;
2. High Rock Hydroelectric Station in Yadkin River in Rowan and Davidson Counties.

Authority G.S. 75A-3; 75A-15.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 15A NCAC 18A .2609, .2620, and .2638.

Proposed Effective Date: November 1, 2007

Public Hearing:
Date: April 17, 2007
Time: 10:00 a.m.
Location: 2728 Capital Blvd., Raleigh, NC

Reason for Proposed Action: To improve the safety of foods that have been cooked and reheated and cooled to prevent microbial growth and reduce the possibility of foodborne illness.

Procedure by which a person can object to the agency on a proposed rule: Any objections to these rules may be submitted in writing via mail, delivery service, hand delivery or email to Kristina V. Nixon, P.O. Box 722, Edenton, NC 27932, phone (252) 482-1952, email kristi.nixon@ncmail.net

Comments may be submitted to: Kristina V. Nixon, P.O. Box 722, Edenton, NC 27932, phone (252) 482-1952, email kristi.nixon@ncmail.net

Comment period ends: June 1, 2007

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 (15A NCAC 18A .2609)
- Substantive ($3,000,000) (15A NCAC 18A .2609)
- None (15A NCAC 18A .2620 and .2638)

**Chapter 18 - Environmental Health**

**Subchapter 18A - Sanitation**

**Section .2600 – The Sanitation of Food Service Establishments**

15A NCAC 18A .2609 Refrigeration: Thawing: and Preparation of Food

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

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

(c) Potentially hazardous foods shall be thawed:

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

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

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

1. poultry, poultry stuffings, stuffed meats, and stuffings containing meat shall be cooked to heat all parts of the food to at least 165°F (74°C) with no interruption of the cooking process, and
(2) pork and any food containing pork shall be cooked to heat all parts of the food to at least 150° F (66° C), and

(3) ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C), and

(4) roast beef shall be cooked to an internal temperature of at least 130° F (54° C), and

(5) beef steak shall be cooked to a temperature of 130° F (54° C) unless otherwise ordered by the immediate consumer.

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

(g) Potentially hazardous foods that have been cooked and then refrigerated shall be reheated to 165° F (74° C) or higher throughout before being served or before being placed in a hot food storage facility except that, food in intact packages from processing plants that are regulated by the food regulatory agency that has jurisdiction over the plants may initially be reheated to 140° F (60° C) or above; or 45° F (7° C) or below.

(h) All potentially hazardous foods shall be stored at temperatures of 140° F (60° C), 135° F (57° C) or above; or 45° F (7° C) or below except during necessary periods of preparation and serving. However, roast beef, as described in Subparagraph (e)(4) of this Rule shall be stored at a temperature of at least 130° F (54° C) or above; or 45° F (7° C) or below.

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

(1) the food is marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;

(2) the food is cooked and served, served if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from required temperature control;

(3) food in unmarked containers or packages or marked to exceed the four hour limit in Subparagraph (1) of this Paragraph, is discarded; and

(4) written procedures approved by the Department, as being in accordance with these Rules, are maintained in the establishment for the handling of food from the time of completion of the cooking process or when the food was otherwise removed from required temperature control.

These procedures shall be made available to the Department upon request.

(k) An establishment wishing to move foods controlled under Paragraphs (i) and (j) of this Rule for immediate consumption on the premises, shall have their written procedures for the handling of the food from the time of completion of the cooking process or when the food was otherwise removed from required temperature control, approved by the Department, as being in accordance with these Rules, and shall maintain those approved procedures in the establishment.

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

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

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

(o) Cooked potentially hazardous food shall be cooled:

(1) within two hours from 135°F (57°C) to 70°F (21°C); and

(2) within a total of six hours from 135°F (57°C) to 45°F (7°C) or less.

(p) Potentially hazardous food shall be cooled within four hours to 45°F (7°C) or less, if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(q) Cooling shall be accomplished in accordance with the time and temperature criteria specified in Paragraphs (o) and (p) of this Rule by using one or more of the following methods based on the type of food being cooled:

(1) placing the food in shallow pans;

(2) separating the food into smaller or thinner portions;

(3) using rapid cooling equipment;

(4) stirring the food in a container placed in an ice water bath;

(5) using containers that facilitate heat transfer;

(6) adding ice as an ingredient; or

(7) other effective methods.

(r) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:
proposed rules

15A NCAC 18A .2620 STORAGE AND HANDLING OF UTENSILS AND EQUIPMENT

(a) After bactericidal treatment, utensils shall be air-dried and stored above the floor in a clean place. Wherever practicable, containers and utensils shall be covered or inverted or stored in tight, clean cabinets; and glasses and cups shall be stored inverted. It shall not be considered practicable to invert plates and bowls which slide when inverted or to cover plates and bowls positioned for immediate use during business hours. Utensils used in restaurants or food service establishments and equipment shall be handled in such a manner as to prevent contamination, and employees shall avoid handling clean surfaces that will come in contact with customers’ mouths.

(b) Drain racks, trays, and shelves shall not be made of corrosible material, and shall be kept clean. These items are not required to be made of plastic.

(c) Spoons, spatulas, dippers, and other in-use utensils shall be stored between use in the food product with the handles extending out of the food, stored dry on a clean surface or in a container of water if the water is maintained at a temperature of at least 140°F (57°C).

(d) When utensils are used to dispense frozen products or moist foods, the utensils may be stored in running water dipper wells only when the water has sufficient velocity to flush food residues into the overflow drain.

(e) Single-service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a manner to prevent contamination of the utensils by hands. Single-service cup dispensers or similar devices shall be used when single-service cups are used. Nothing in the rules in this Section shall prohibit the use of plastic bags in which single-service cups or similar devices are received as the dispenser for those items.

Authority G.S. 130A-248.

15A NCAC 18A .2638 GENERAL REQUIREMENTS FOR PUSHCARTS AND MOBILE FOOD UNITS

(a) A permit shall be issued by the local health department which provides sanitation surveillance for the restaurant or commissary from which the pushcart or mobile food unit is to operate, if the local health department determines that the pushcart or mobile food unit complies with these Rules.

(b) The permit shall be posted on the pushcart or mobile food unit. Grade cards shall not be posted.

(c) The local health department which issues the permit shall be provided by individuals receiving a permit a list of counties and locations where each pushcart or mobile food unit will operate.

(d) Individuals receiving a permit to operate a pushcart or mobile food unit shall provide the local health department in each county in which food service operations are proposed a list of locations where they will operate. Such lists must be kept current.

(e) Prior to initiating food service operations in a particular jurisdiction, the operator of the pushcart or mobile food unit shall submit to that particular jurisdiction such carts or units for inspection or reinspection to determine compliance with this Section.

(f) Pushcarts or mobile food units shall operate in conjunction with a permitted restaurant or commissary and shall report at least daily to the restaurant or commissary for supplies, cleaning, and servicing. Facilities, in compliance with this Section, shall be provided at the restaurant or commissary for storage of all supplies. The pushcart shall also be stored in an area that protects it from dirt, debris, vermin and other contamination. Water faucets used to supply water for pushcarts and mobile food units shall be protected to prevent contact with chemicals, splash and other sources of contamination. Solid waste storage and liquid waste disposal facilities must also be provided on the restaurant or commissary premises.

(g) All foods shall be obtained from approved sources and shall be handled in a manner so as to be clean, wholesome, and free from adulteration.

(h) All potentially hazardous foods shall be maintained at 45°F (7°C) or below or 140°F (60°C) or above, or as required in Rule .2609 of this Section. A metal stem-type thermometer accurate to 2°F (1°C.) shall be available to check food temperatures.

(i) Only single-service eating and drinking utensils shall be used in serving customers. Single-service items must be properly stored and handled.

(j) All garbage and other solid waste shall be stored and disposed of in an approved manner.

(k) Employees shall be clean as to their person and foodhandling practices. Clean outer clothing and hair restraints are required.

(l) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or who has a boil, infected wound, or an acute respiratory infection with cough and nasal discharge, shall work with a pushcart or mobile food unit in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces, with disease-causing organisms or transmitting the illness to other persons.

(m) All equipment and utensils shall comply with the rules of this Section.

(n) The pushcart or mobile food unit shall be kept in a clean and sanitary condition and be free of flies, roaches, rodents, and other vermin.

Authority G.S. 130A-248.
Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16Q .0101, .0301-.0303, .0401, .0501.

Proposed Effective Date: August 1, 2007

Public Hearing:
Date: April 19, 2007
Time: 7:00 p.m.
Location: Board Office, 507 Airport Blvd., Suite 105, Morrisville, NC 27560

Reason for Proposed Action: To create a definition for complex enteral conscious sedation, amend the definition of enteral conscious sedation and regulate the administration of complex enteral conscious sedation.

Procedure by which a person can object to the agency on a proposed rule: Written objections to the proposed rule amendments may be directed to the Chief Operations Officer, N.C. State Board of Dental Examiners, 507 Airport Blvd., Ste. 105, Morrisville, NC. 27560 on or before June 1, 2007.

Comments may be submitted to: Bobby D. White, Chief Operations Officer, 507 Airport Blvd., Ste. 105, Morrisville, N.C. 27560

Comment period ends: June 1, 2007

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 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0100 – DEFINITIONS

21 NCAC 16Q .0101 GENERAL ANESTHESIA AND SEDATION DEFINITIONS

For the purpose of these rules relative to the administration of general anesthesia, parenteral conscious sedation, complex enteral conscious sedation and enteral conscious sedation by or under the direction of a dentist, the following definitions shall apply:

1. "Analgesia" – the diminution or elimination of pain.
2. "Anti-anxiety sedative" – a sedative agent administered in a dosage intended to reduce anxiety without diminishing consciousness or protective reflexes.
3. "Anxiolysis" – pharmacological reduction of anxiety through the administration of a minor psychosedative which allows for uninterrupted interactive ability in a totally awake patient with no compromise in the ability to maintain patient airway consciously and without assistance.
4. "Behavioral management" – the use of pharmacological or psychological techniques singly or in combination, to modify behavior to a level that dental treatment can be performed effectively and efficiently.
5. "Competent" - displaying special skills or knowledge derived from training and experience.
6. "Complex enteral conscious sedation" is conscious sedation that is achieved by the oral or rectal administration of multiple pharmacological agents, in single or multiple doses, within a 24 hour period, including the time of treatment, possibly in combination with nitrous oxide. Complex conscious sedation is administered primarily for behavioral management.
7. "Conscious sedation" – an induced state of a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond purposefully to verbal command, and that is produced by pharmacologic or non-pharmacologic agents, or a combination thereof. In accordance with this particular definition, the drugs or techniques used shall carry a margin of safety wide enough to render unintended loss of consciousness unlikely.
8. "Deep sedation" – an induced state of a depressed level of consciousness accompanied by partial loss of protective reflexes, including the ability to continually maintain an airway independently or respond purposefully to verbal command, and is produced by pharmacological agents.
9. "Direct supervision" – the dentist responsible for the sedation/anesthesia procedure shall be physically present in the facility and shall be continuously aware of the patient's physical status and well being.
"Enteral conscious sedation" is conscious sedation that is achieved by the oral or rectal administration of a single pharmacological agent through the alimentary tract either orally or rectally, in one or more doses, within a twenty-four hour period, including the time of treatment, possibly in combination with nitrous oxide. Enteral conscious sedation is administered primarily for behavioral management.

"Facility" – the location where a permit holder practices dentistry and provides anesthesia/sedation services.

"Facility inspection" - an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care.

"General anesthesia" is the intended controlled state of depressed consciousness produced by pharmacologic agents and accompanied by a partial or complete loss of protective reflexes, including the ability to maintain an airway and respond purposefully to physical stimulation or verbal commands.

"Immediately available" – on-site in the facility and available for immediate use.

"Local anesthesia" – the elimination of sensations, especially pain, in one part of the body by the regional application or injection of a drug.

"May" – indicates freedom or liberty to follow a reasonable alternative.

"Minor psychosedative/minor tranquilizer" – pharmacological agents which allow for uninterrupted interactive ability in a patient with no compromise in the ability to maintain a patient airway continuously and without assistance and carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Must" or "shall" – indicates an imperative need or duty or both; an essential or indispensable item; mandatory.

"Parenteral conscious sedation" – is conscious sedation achieved by the administration of pharmacological agents intravenously, intramuscularly, subcutaneously, submucosally, intranasally, or transdermally. Parenteral conscious sedation is administered primarily for behavioral management.

"Protective reflexes" – includes the ability to swallow and cough.

"Vested adult" – a responsible adult who is the legal parent or guardian, or designee of a legal parent or guardian, entrusted with the care of a minor following the administration of general anesthesia or conscious sedation.

Authority G.S. 90-28; 90-30.1.

SECTION .0300 - PARENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0301 PARENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT

(a) A dentist may administer or employ a certified registered nurse anesthetist to administer parenteral conscious sedation or complex enteral conscious sedation to dental patients on an outpatient basis provided he obtains a permit from the Board by submitting the appropriate information on an application form provided by the Board and pays a fee of fifty dollars ($50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) A dentist applying for a permit to administer parenteral conscious sedation or complex enteral conscious sedation must meet at least one of the following criteria:

(1) Satisfactory completion of a minimum of 60 hours of didactic training and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or

(2) Satisfactory completion of an undergraduate or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or

(3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or

(4) Authorization for the use of general anesthetics by holding a permit for the same issued by the Board; or

(5) Utilization of a certified registered nurse anesthetist under his supervision to administer intravenous sedation to dental patients.

(c) To be eligible for a parenteral conscious sedation permit or a complex enteral conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, staffed with supervised auxiliary personnel who shall document annual, successful completion of basic life support (BSL) training and be capable of assisting with procedures, problems and emergencies incident thereto.

(d) The Board may, based upon formal application, grant a permit authorizing the use of parenteral conscious sedation or complex enteral conscious sedation to a dentist who has been utilizing parenteral conscious sedation or complex enteral conscious sedation in a competent and effective manner for the past five years preceding the effective date of this Rule, but who has not had the benefit of formal training as outlined in Paragraph (b) of this Rule, provided that said dentist meets the requirements of Paragraphs (c) and (d) of this Rule.

(e) A dentist who holds a parenteral conscious sedation permit or a complex enteral conscious sedation permit shall not...
intentionally administer deep sedation although deep sedation may occur briefly unintentionally. A dentist who is qualified to administer parenteral conscious sedation and holds a parenteral conscious sedation permit or who is qualified to administer complex enteral conscious sedation and holds a complex enteral conscious sedation permit is also authorized to administer enteral conscious sedation without obtaining a separate enteral conscious sedation permit.

**Authority G.S. 90-28; 90-30.1.**

**21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT**

(a) A dentist administering parenteral conscious sedation or complex enteral conscious sedation is solely responsible for providing that the environment in which the parenteral conscious sedation or complex enteral conscious sedation is to be administered meets the following requirements:

1. The facility is equipped with:
   - An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
   - A chair or table for emergency treatment, including chair suitable for CPR or CPR Board;
   - Lighting as necessary for specific procedures; and
   - Suction equipment as necessary for specific procedures, including non-electrical back-up suction;

2. The following equipment is maintained:
   - A positive oxygen delivery system, including full face mask for adults and pediatric patients;
   - Oral and nasal airways of various sizes;
   - Blood pressure monitoring device; and
   - Pulse oximeter.

3. The following emergency equipment is maintained:
   - I.V. setup as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
   - Syringes as necessary for specific procedures; and
   - Tourniquet and tape;

4. The following drugs are maintained with a current shelf life and within easy accessibility from the operatory and recovery area:
   - Epinephrine;
   - Atropine;
   - Antiarrythmic;
   - Narcotic antagonist;
   - Antihistamine;
   - Corticosteroid;
   - Nitroglycerine;
   - Bronchial dilator;
   - Antiemetic;
   - Benzodiazepine antagonist;
   - Muscle relaxant for intubation; and
   - 50% Dextrose;

5. Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies is provided; and

6. The following records are maintained:
   - Patient’s current written medical history, including known allergies and previous surgery;
   - Drugs administered during the procedure, including route of administration, dosage, time and sequence of administration;
   - A sedation record which shall include:
     - Blood pressure;
     - Pulse rate;
     - Respiration;
     - Duration of procedure;
     - Documentation of complications or morbidity; and
     - Status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of conscious sedation while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

1. Monitoring blood pressure, pulse, and respiration;
2. Drug dosage and administration;
3. Treatment of untoward reactions including respiratory or cardiac depression;
4. Sterilization;
5. Use of CPR certified personnel;
6. Monitoring of patient during recovery;
7. Sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

1. Laryngospasm;
2. Bronchospasm;
3. Emesis and aspiration;
4. Respiratory depression and arrest;
5. Angina pectoris;
6. Myocardial infarction;
7. Hypertension/Hypotension;
8. Allergic reactions;
9. Convulsions;
10. Syncope;
11. Bradycardia;
12. Insulin shock; and
13. Cardiac arrest.

(d) A dentist administering parenteral conscious sedation or complex enteral conscious sedation shall ensure that the facility is staffed with auxiliary personnel who shall document annual
successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(e) Upon request, the holder of an anesthesia, or parenteral conscious sedation or complex enteral conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide parenteral, complex enteral conscious sedation or enteral conscious sedation services for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the office in which the parenteral, complex enteral conscious sedation or enteral conscious sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes auxiliary personnel who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the parenteral conscious sedation or secondary to an unexpected medical complication.

Authority G.S. 90-28; 90-30.1; 90-48.

21 NCAC 16Q .0303 TEMPORARY APPROVAL PRIOR TO SITE INSPECTION

(a) If a dentist meets the requirements of Rule .0301 of this Section, he shall be granted temporary approval to continue to administer parenteral conscious sedation or complex enteral conscious sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed three months. An on-site evaluation of the facilities, equipment, procedures, and personnel shall be required. The evaluation shall be conducted in accordance with Rules .0202-.0205 of this Subchapter, except that evaluations of dentists applying for parenteral conscious sedation or complex enteral conscious sedation permits may be conducted by dentists who have been issued parenteral conscious or complex enteral conscious sedation permits by the Board and who have administered parenteral conscious sedation or complex enteral conscious sedation for at least three years. Fees required by Rules .0202-.0205 of this Subchapter shall apply.

(b) An evaluation may be made any time it is deemed necessary by the Board.

(c) Temporary approval shall not be granted to a provisional licensee.

Authority G.S. 90-28; 90-30.1.

SECTION .0400 - ENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0401 ENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist to administer enteral conscious sedation, he or she shall obtain either a parenteral conscious sedation permit issued by the Board, a general anesthesia permit issued by the Board, a complex enteral conscious sedation permit issued by the Board or an enteral conscious sedation permit issued by the Board. A permit is not required for prescription administration of DEA controlled drugs prescribed for postoperative pain control intended for home use. A dentist may obtain an enteral conscious sedation permit from the Board by submitting the appropriate information on an application form provided by the Board and paying a fee of fifty dollars ($50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) A dentist who holds only an enteral conscious sedation permit shall not administer deep sedation or general anesthesia.

(c) Application:

(1) An enteral conscious sedation permit may be obtained by completing an application form provided by Board, a copy of which may be obtained from the Board office, and meeting the requirements of Section .0400 of this Subchapter.

(2) The application form must be filled out completely and appropriate fees paid.

(3) Prior to issuance of an enteral conscious sedation permit the applicant shall undergo a facility inspection. The Board shall direct an evaluator to perform this inspection. The applicant shall be notified in writing that an inspection is required and provided with the name of the evaluator who shall perform the inspection. The applicant shall be responsible for successful completion of inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.

(4) An applicant for the enteral conscious sedation permit shall be licensed and in good standing with the Board in order to be approved. For purposes of these rules "good standing" means that a licensee is not suspended, whether or not the suspended license is on probation. Applications from licensees who are not in good standing shall not be approved.

(d) Educational/Professional Requirements:

(1) The dentist applying for an enteral conscious sedation permit shall meet one of the following criteria:

(A) successful completion of training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, and have documented administration of enteral conscious sedation in a minimum of five cases;

(B) successful completion of an ADA accredited post-doctoral training program which affords comprehensive training necessary to administer and manage enteral conscious sedation;
(C) successful completion of an eighteen hour enteral conscious sedation course which must be approved by the Board based on whether it affords comprehensive training to administer and manage enteral conscious sedation;

(D) successful completion of an ADA accredited post graduate program in pediatric dentistry; or

(E) is a North Carolina licensed dentist in good standing who has been utilizing enteral conscious sedation in a competent manner for the five years preceding January 1, 2002, in his or her office facility has passed an on-site inspection by a Board evaluator as required in Paragraph (b)(3) of this Rule. Competency shall be determined by presentation of successful administration of enteral conscious sedation in a minimum of five clinical cases.

(2) Prior to administering enteral conscious sedation to children under the age of 13, a dentist who qualifies only for an enteral conscious sedation permit shall also successfully complete a six hour course in pediatric enteral conscious sedation developed by the Pediatric Dentistry Department at the University of North Carolina or an equivalent course and submit documentation showing successful completion of such course to the Board. The requirements of this paragraph shall not apply to Pediatric Dentists who meet the requirements of Paragraph (c)(1)(D) of this Rule nor to those dentists who otherwise meet the requirements of Paragraph (c)(1)(E) of this Rule and in addition have administered enteral conscious sedation to children under the age of 13 in a competent manner for the five years preceding January 1, 2002. Competency shall be determined by presentation of successful administration of enteral conscious sedation in a minimum of five clinical cases.

Authority G.S. 90-28; 90-30.1.

SECTION .0500 - RENEWAL OF PERMITS

21 NCAC 16Q .0501 ANNUAL RENEWAL REQUIRED

(a) General anesthesia, parenteral conscious sedation, complex enteral conscious sedation and enteral conscious sedation permits shall be renewed by the Board on an annual basis. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses.

(b) Anesthesia, parenteral conscious sedation, complex enteral conscious sedation and enteral conscious sedation permits shall be subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of anesthesia, parenteral conscious sedation, complex enteral conscious sedation or enteral conscious sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0700 of this Subchapter.

(c) As a condition for renewal of the general anesthesia permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0202 are met and document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other equivalent course, and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

(d) As a condition for renewal of the parenteral conscious sedation or complex enteral conscious sedation permit, the permit holder shall ensure that meet the requirements of 21 NCAC 16Q .0302 are met and also meet one of the following criteria: document current, successful completion of advanced cardiac life support (ACLS) training or its age-specific equivalent, or other equivalent course; or document annual, successful completion of basic life support (BLS) training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal: sedation; medical emergencies; monitoring IV sedation and the use of monitoring equipment; pharmacology of drugs and agents used in IV sedation; physical evaluation, risk assessment, or behavioral management; or audit ACLS/PALS courses.

(e) As a condition for renewal of the enteral conscious sedation permit, the permit holder shall ensure that the requirements of 16Q .0402 are met and shall document annual, successful completion of basic life support (BLS) training and obtain six hours of continuing education every two years in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal: pediatric or adult sedation; medical emergencies; monitoring sedation and the use of monitoring equipment; pharmacology of drugs and agents used in sedation; physical evaluation, risk assessment, or behavioral management; or audit ACLS/PALS courses.

Authority G.S. 90-28; 90-30.1; 90-48.
Rules approved by the Rules Review Commission at its meeting on February 15, 2007

<table>
<thead>
<tr>
<th>Register Citation to the Notice of Text</th>
<th>SOCIAL SERVICES COMMISSION</th>
<th>HHS - VOCATIONAL REHABILITATION SERVICES</th>
<th>ENVIRONMENTAL MANAGEMENT COMMISSION</th>
<th>HEARING AID DEALERS AND FITTERS BOARD</th>
<th>MEDICAL BOARD</th>
<th>COMMUNITY COLLEGES, BOARD OF</th>
<th>STATE PERSONNEL COMMISSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>10A NCAC 06T .0201*</td>
<td>Nature and Purpose of State Adult Day Care Fund</td>
<td>10A NCAC 89C .0402*</td>
<td>15A NCAC 02B .0306*</td>
<td>21 NCAC 22B .0603</td>
<td>21 NCAC 32T .0101*</td>
<td>23 NCAC 02C .0202*</td>
<td>25 NCAC 01H .0631*</td>
</tr>
</tbody>
</table>

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

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

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

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

(c) The maximum rate for the purchase of adult day care services under contract shall not exceed thirty-three dollars and seven cents ($33.07) per day, per client. The maximum rate for the purchase of adult day health services under contract shall not exceed forty dollars ($40.00) per day, per client. Adult day health services may only be purchased for an individual following a preadmission health assessment as specified in 10A NCAC 06S .0204(b)(2)(A) and a determination that the
individual needs one or more services delineated in 10A NCAC 06S .0402(a)(1) through (3).

(d) The maximum reimbursement rate for transporting an adult day care client to an adult day care program shall not exceed one dollar and fifty cents ($1.50) for a one-way trip.

History Note:  
Authority G.S. 143B-153;  
Eff. January 1, 1982;  
Temporary Amendment Eff. July 27, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; 
Amended Eff. December 1, 1994; July 1, 1990;  
Temporary Amendment Eff. December 8, 1997;  
Amended Eff. March 1, 2007; April 1, 2005; April 1, 1999.

10A NCAC 89C .0402 VENDOR COMPLIANCE

(a) The Division shall use only those training vendors, treatment vendors, community rehabilitation program vendors, and room and board vendors who have been approved by the Division and determined to be in compliance with Title VI of the Civil Rights Act of 1964. Vendors may request approval or the Division may request that a vendor or facility consider serving Division clients. In either case, a staff member of the Division shall conduct an on-site vendor review to determine that the vendor is in compliance with Title VI of the Civil Rights Act of 1964. In addition, the vendor shall sign an assurance of compliance form indicating that services will be provided in compliance with Title VI of the Civil Rights Act of 1964.

(b) Out-of-state vendors may be added to the Division's list of approved vendors upon certification from the respective state's Division of Vocational Rehabilitation Services that the vendor is in compliance with Title VI of the Civil Rights Act of 1964.

(c) Vendors who wish to be added to the Division's list of those in compliance with Title VI of the Civil Rights Act of 1964 shall contact:

Section Chief, Program Policy, Planning, and Evaluation  
Division of Vocational Rehabilitation Services  
805 Ruggles Drive  
2801 Mail Service Center  
Raleigh, North Carolina 27699-2801

History Note:  
Authority G.S. 143-546; 34 C.F.R. 76.500;  
Eff. February 1, 1976;  

10A NCAC 89C .0502 ELIGIBILITY AND MOST SIGNIFICANT DISABILITY

The Supported Employment Program shall serve only those individuals with the most significant disabilities as defined in 10A NCAC 89A.0102.

History Note:  
Authority G.S. 143-545; 143-546; 34 C.F.R. 363.3;  
Eff. October 1, 1994;  

Title 15A – Department of Environment and Natural Resources
1998 with the revision to the primary classification for portions of the Broad River [Index No. 9-23.5] from Class WS-IV to Class C and Second Broad River [Index Nos. 9-41-(10.5) and 9-41-(14.5)] and First Broad River [Index No. 9-50-(11)] from Class WS-IV to Class WS-V.

(g) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007, with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to its mouth in Lake Summit at elevation 2011 from Class C Tr to Class B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 1, 2000, with the reclassification of Lake Montonia [Index No. 9-54-1-(1)], and all tributaries, from Class B to Class B HQW.

(i) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007, with the reclassification of the North Fork First Broad River (Index No. 9-50-4), including all tributaries, from its source to the First Broad River from Class C Tr to Class C Tr ORW.

(j) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007, with the reclassification of a segment of the Broad River [Index No. 9-(25.5)] from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to the City of Shelby proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to a point approximately 0.3 mile downstream of its confluence with Cane Creek from Class C to Class WS-IV. The City of Shelby proposed water supply intake is to be placed on the Broad River at a point approximately one mile upstream of its confluence with the First Broad River.

(l) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007, with the reclassification of a segment of the Broad River [Index No. 9-29-(1)] from a point 0.5 mile upstream of the Town of Forest City proposed water supply intake to the Town of Forest City proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the Town of Forest City proposed water supply intake to a point approximately 0.2 mile downstream of Rutherford County SR 1145 (Town of Rutherfordton water supply intake) from Class C to Class WS-IV. The Town of Forest City proposed water supply intake is to be placed on the Broad River at a point approximately 0.4 mile downstream of McKinney Creek.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);
Eff. February 1, 1976;
Amended Eff. March 1, 2007; April 1, 2001; August 1, 2000; August 1, 1998; September 1, 1994; August 3, 1992; February 1, 1986; January 1, 1985.

15A NCAC 02D .0902 APPLICABILITY

(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) Regardless of any other statement of applicability of this Section, this Section does not apply to:

(1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;

(2) sources whose emissions do not exceed 800 pounds of volatile organic compounds per calendar month and that are:

(A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;

(B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;

(C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or

(D) research and development laboratory activities provided the activity produces no commercial product or feedstock material; or

(3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(c) The following rules of this Section apply statewide:

(1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;

(2) .0926, Bulk Gasoline Plants;

(3) .0927, Bulk Gasoline Terminals;

(4) .0928, Gasoline Service Stations Stage I;

(5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;

(6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;

(7) .0948, VOC Emissions from Transfer Operations;
(d) Rule .0953, Vapor Return Piping for Stage II Vapor Recovery, of this Section applies in Davidson, Durham, Forsyth, Guilford, Wake, Dutchittle Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(e) All sources located in Mecklenburg County that were required to comply with any of the Rules in Subparagraphs (e)(1) or (2) of this Rule before July 5, 1995 shall continue to comply with these Rules:
   (1) .0917 through .0937 of this Section, or
   (2) .0943 through .0945 of this Section.

(f) The rules in this Section apply to sources with the potential to emit 100 tons or more volatile organic compounds per year in the following areas:
   (1) Cabarrus County,
   (2) Gaston County,
   (3) Lincoln County,
   (4) Mecklenburg County,
   (5) Rowan County,
   (6) Union County,
   (7) Davidson Township and Coddle Creek Township in Iredell County.

(g) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. Compliance shall be in accordance with Rule .0909 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-
215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. March 1, 2007; August 1, 2004; July 1, 2000;
April 1, 1997; July 1, 1996; July 1, 1995; May 1, 1995; July 1, 1994.

15A NCAC 02D .0909 COMPLIANCE SCHEDULES FOR SOURCES IN NONATTAINMENT AREAS

(a) Applicability. With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (f), (g), or (h) of Rule .0902 of this Section.

(b) Exceptions. This Rule does not apply to:
   (1) sources in Mecklenburg County required to comply with the requirements of this Section under Rule .0902(e) of this Section;
   (2) sources covered under Rule .0953 or .0954 of this Section; or
   (3) sources required to comply with the requirements of this Section under Rule .0902(c) of this Section.

(c) Maintenance areas. The owner or operator of any source subject to this Rule because of the application of Paragraph (g) or (h) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:
   (1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
(A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;

(B) The compliance schedule shall contain the following increments of progress:

(i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;

(ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and

(iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed;

(C) Final compliance shall be achieved within three years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.

(2) if compliance is to be achieved by using low solvent content coating technology:

(A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;  

(B) The compliance schedule shall contain the following increments:

(i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;

(ii) a date by which evaluation of product quality and commercial acceptance shall be completed;

(iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;  

(iv) a date by which process modifications shall be initiated; and

(v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin;

(C) Final compliance shall be achieved no later than April 1, 2009.

(3) The owner or operator shall certify to the Director within five days after each increment deadline of progress in this Paragraph, whether the required increment of progress has been met.

(d) Nonattainment areas. The owner or operator of any source subject to this Rule because of the application of Paragraphs (f) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

(1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:

(A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;

(B) The compliance schedule shall contain the following increments of progress:

(i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;

(ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and

(iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed;

(C) Final compliance shall be achieved no later than April 1, 2009.

(2) if compliance is to be achieved by using low solvent content coating technology:

(A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007.

(B) The compliance schedule shall contain the following increments:
(i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;

(ii) a date by which evaluation of product quality and commercial acceptance shall be completed;

(iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;

(iv) a date by which process modifications shall be initiated; and

(v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin;

(C) Final compliance shall be achieved no later than April 1, 2009.

(3) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress in this Paragraph, whether the required increment of progress has been met.

(e) If the Director requires a test to demonstrate that compliance has been achieved, the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) Sources already in compliance.

(1) Maintenance Areas. Paragraph (c) of this Rule shall not apply to sources that are in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.

(2) Nonattainment areas. Paragraphs (d) or (h) of Rule .0902 of this Section the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon start-up of the source.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. March 1, 2007; July 1, 2000; April 1, 1997; July 1, 1995; July 1, 1994; July 1, 1988; January 1, 1983.

15A NCAC 02D .1402 APPLICABILITY
(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) The requirements of this Section shall apply to all sources May 1 through September 30 of each year.

(c) Rules .1409(b) and .1416 through .1423 of this Section apply statewide.

(d) Rules .1407 through .1409 and .1413 of this Section apply to sources with the potential to emit 100 ton or more nitrogen oxides per year in the following areas:

(1) Cabarrus County
(2) Gaston County
(3) Lincoln County
(4) Mecklenburg County
(5) Rowan County
(6) Union County
(7) Davidson Township and Coddle Creek Township in Iredell County

(e) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register
containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .1403 of this Section.

(g) Regardless of any other statement of applicability of this Section, this Section does not apply to any:

1. If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
   (A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable limitation or standard;
   (B) The owner or operator shall perform any required testing, according to Rule .1415 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation; and
   (C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation.

2. If compliance with this Section is to be achieved through the installation of:
   (A) stationary combustion turbine constructed before January 1, 1979, that has a federally enforceable permit that restricts:
       (i) its potential emissions of nitrogen oxides to no more than 25 tons between May 1 and September 30;
       (ii) it to burning only natural gas or oil; and
       (iii) its hours of operation as described in 40 CFR 96.4 (b) (1)(ii) and (iii).

History Note:
- Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);
- Eff. April 1, 1995;
- Amended Eff. April 1, 1997; July 1, 1995; April 1, 1995;
- Temporary Amendment Eff. November 1, 2000;
- Amended Eff. April 1, 2001;
- Temporary Amendment Eff. August 1, 2001;

15A NCAC 02D .1403 COMPLIANCE SCHEDULES

(a) Applicability. This Rule applies to sources covered by Paragraph (d), (e), or (f) of Rule .1402 of this Section.

(b) Maintenance areas. The owner or operator of a source subject to this Rule because of the applicability of Paragraph (e) or (f) of Rule .1402 of this Section, shall adhere to the following increments of progress and schedules:

(1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
   (A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable limitation or standard;
   (B) The owner or operator shall perform any required testing, according to Rule .1415 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation; and
   (C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation.
combustion modification technology or other source modification:

(A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director's notice in the North Carolina Register.

(B) The compliance schedule shall contain the following increments of progress:
   (i) a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;
   (ii) a date by which installation of the modification shall begin;
   (iii) a date by which installation of the modification shall be completed; and
   (iv) if the source is subject to a limitation, a date by which compliance testing shall be completed.

(C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative limitation according to Rule .1412 of this Section. If such a petition is made, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.

(4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:

(A) The owner or operator shall make all necessary modifications according to Subparagraph (b)(2) of this Rule.

(B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.

(C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.

(5) Increments of progress certification. The owner or operator shall certify to the Director, within five days after each increment deadline of progress in this Paragraph, whether the required increment of progress has been met.

(c) Nonattainment areas. The owner or operator of a source subject to this Rule because of the applicability of Paragraph (d) of Rule .1402 of this Section, shall adhere to the following:

(1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:

(A) The owner or operator shall notify the Director in writing by August 1, 2007;

(B) The owner or operator shall perform any required testing, according to Rule .1415 of this Section, by January 1, 2008; and

(C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, by January 1, 2008.

(2) If compliance with this Section is to be achieved through the installation of a combustion modification technology or other source modification:

(A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007.

(B) The compliance schedule shall contain a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts.

(C) The compliance schedule shall contain a date by which installation of the modification shall begin.
(D) The compliance schedule shall contain a date by which installation of the modification shall be completed.

(E) If the source is subject to a limitation, the compliance schedule shall contain a date by which compliance testing shall be completed.

(F) Final compliance shall be achieved no later than April 1, 2009.

(3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:

(A) The owner or operator shall abide by the applicable requirements of Subparagraphs (c)(1) or (c)(2) of this Rule for certification or modification of each source to be included under the averaging plan;

(B) The owner or operator shall submit a plan to implement an emissions averaging plan according to Rule .1410 of this Section by August 1, 2007.

(C) Final compliance shall be achieved within one year no later than January 1, 2008.

(4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:

(A) The owner or operator shall make all necessary modifications according to Subparagraph (c)(2) of this Rule.

(B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.

(C) Final compliance shall be achieved no later than April 1, 2009.

(5) Increments of progress certification. The owner or operator shall certify to the Director, within five days after the deadline for each increment of progress in this Paragraph, whether the required increment of progress has been met.

(d) Sources already in compliance.

(1) Maintenance Areas. Paragraph (b) of this Rule shall not apply to sources that are in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.

(2) Nonattainment areas. Paragraphs (c) of this Rule shall not apply to sources in an area named in Paragraph (d) of Rule .1402 of this Section that are in compliance with applicable rules of this Section on March 1, 2007.

(e) New sources.

(1) Maintenance areas. The owner or operator of any new source of nitrogen oxides not permitted before the date the Director notices in the North Carolina Register according to Paragraph (e), (f), or (g) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source. The owner or operator of any new source covered under Rules .1407, .1408, .1409, .1413, or .1418 of this Section shall comply with all applicable rules in this Section upon start-up of the source.

(2) Nonattainment areas. The owner or operator of any new source of nitrogen oxides not permitted before March 1, 2008 in an area identified in Paragraph (d) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1997; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. March 1, 2007; July 18, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

21 NCAC 22B .0603 FEE SCHEDULE
The Board hereby establishes the following fees:

(1) For a continuing education make-up class provided by the Board, not to exceed two days (per person, per day). $ 50.00

(2) For a license examination preparation course provided by the Board, not to exceed three days (per person, per day). $ 50.00

(3) For approval of a continuing education program provider. $ 50.00

(4) Verifying and recording attendance at a continuing education program. (per program, per person) $ 40.00

(5) For a voluntary apprentice training workshop (per person, per day, not to exceed three days). $ 15.00

$ 50.00
## APPROVED RULES

### 21:19 NORTH CAROLINA REGISTER  APRIL 2, 2007

### 21 NCAC 32T .0101 CLINICAL PHARMACIST PRACTITIONER

**(a) Definitions as used in the Rule:**

1. "Medical Board" means the North Carolina Medical Board.
2. "Pharmacy Board" means the North Carolina Board of Pharmacy.
3. "Joint Subcommittee" means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.
4. "Clinical Pharmacist Practitioner or CPP" means a licensed pharmacist who is approved to provide drug therapy management under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.

"Supervising Physician" means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written agreement.

"Approval" means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.

"Continuing Education or CE" is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.

"Clinical Experience approved by the Boards" means work in a pharmacy practice setting which includes experience consistent with the following components as listed in Parts (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Parts (b)(1)(B) of this Rule.

### (b) CPP application for approval.

1. The requirements for application for CPP approval include that the pharmacist:
   - (A) has an unrestricted and current license to practice as a pharmacist in North Carolina;
   - (B) meets one of the following qualifications:
     - (i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Pharmacist as certified by the Commission for Certification in Geriatric Pharmacy, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards;
     - (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards;
   - (C) is a licensed pharmacist who meets one of the following qualifications:(i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Pharmacist as certified by the Commission for Certification in Geriatric Pharmacy, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards;
   - (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards;

### Examination fee

(6) Examination fee. $ 75.00

### Application for a license by examination

(7) Application for a license by examination. $150.00

### Application for a license to fit and sell hearing aids in this state by a licensee of another state or territory

(8) Application for a license to fit and sell hearing aids in this state by a licensee of another state or territory. $150.00

### Issuance of certificate of license after successfully passing examination

(9) Issuance of certificate of license after successfully passing examination. $ 25.00

### Application for registration as an apprentice

(10) Application for registration as an apprentice. $100.00

### Renewal of apprentice registration

(11) Renewal of apprentice registration. $150.00

### Annual license renewal

(12) Annual license renewal. $150.00
   - (a) Late fee to reinstate expired license within 60 days after license expiration (in addition to renewal fee). $ 25.00
   - (b) Late fee to reinstate expired license more than 60 days after license expiration (in addition to renewal fee). $ 50.00

### To reissue a suspended license more than 90 days after but not more than two years after license suspended

(13) To reissue a suspended license more than 90 days after but not more than two years after license suspended. $200.00


**21 NCAC 32T .0101 CLINICAL PHARMACIST PRACTITIONER**

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     - (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards;
Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement; or

(iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement;

(C) submits the required application and the fee to the Medical Board;

(D) submits any information deemed necessary by the Medical Board in order to evaluate the application; and

(E) has a signed supervising physician agreement.

If for any reason a CPP discontinues working in the approved physician arrangement, the clinical pharmacist practitioner shall notify both Boards in writing within ten days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.

(2) All certificate programs referred to in Subpart (b)(1)(B)(i) of this Rule must contain a core curriculum including the following components:

(A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;

(B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;

(C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;

(D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and laboratory tests;

(E) referring patients to other health professionals as appropriate;

(F) administering medications;

(G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics of their medication and related therapy;

(H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;

(I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;

(J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;

(K) ordering of and educating patients regarding proper usage of devices, and durable medical equipment;

(L) providing emergency first care;

(M) retrieving, evaluating, utilizing, and managing data and professional resources;

(N) using clinical data to optimize therapeutic drug regimens;

(O) collaborating with other health professionals;

(P) documenting interventions and evaluating pharmaceutical care outcomes;

(Q) integrating pharmacy practice within healthcare environments;

(R) integrating national standards for the quality of healthcare; and

(S) conducting outcomes and other research.

(3) The completed application for approval to practice as a CPP shall be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.

(A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or

(B) the application shall be denied; or

(C) the application shall be approved with restrictions.

(c) Annual Renewal.

(1) Each CPP shall register annually on the anniversary of his or her birth date by:

(A) verifying a current Pharmacist license;

(B) submitting the renewal fee as specified in Subparagraph (j)(2) of this Rule;

(C) completing the Medical Board's renewal form; and

(D) reporting continuing education credits as specified by the Medical Board.

(2) If the CPP has not renewed within 30 days of the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.
(d) Continuing Education.
   (1) Each CPP shall earn 35 hours of practice relevant CE each year approved by the Pharmacy Board.
   (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.

(e) The supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP; and shall review and countersign each order written by the CPP within seven days.

(f) The written CPP agreement shall:
   (1) be approved and signed by both the supervising physician and the CPP and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
   (2) be specific in regards to the physician, the pharmacist, the patient and the disease;
   (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
   (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
   (5) include a pre-determined plan for emergency services;
   (6) include a plan and schedule for weekly quality control, review and countersignature of all orders written by the CPP in a face-to-face conference between the physician and CPP;
   (7) require that the patient be notified of the collaborative relationship; and
   (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.

(g) The supervising physician of the CPP shall:
   (1) be fully licensed with the Medical Board and engaged in clinical practice;
   (2) not be serving in a postgraduate medical training program;
   (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
   (4) supervise no more than three pharmacists.

(h) The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner".

(i) The CPP may be censured or reprimanded or the CPP's approval may be restricted, suspended, revoked, annulled, denied or terminated by the Medical Board or Pharmacy Board and the pharmacist may be censured or reprimanded or the pharmacist's license may be restricted, suspended, revoked, annulled, denied, or terminated by the Pharmacy Board, in accordance with provisions of G.S. 150B if either Board finds one or more of the following:
   (1) the CPP has held himself or herself out or permitted another to represent the CPP as a licensed physician;
   (2) the CPP has engaged or attempted to engage in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
   (3) the CPP has performed or attempted to provide medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
   (4) The CPP commits any act prohibited by any provision of G.S. 90-85.38 as determined by the Pharmacy Board or G.S. 90-14(a)(1), (a)(3) through (a)(14) and (c) as determined by the Medical Board; or
   (5) the CPP has failed to comply with any of the provisions of this Rule.

Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.

(j) Fees:
   (1) An application fee of one hundred dollars ($100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
   (2) The fee for annual renewal of approval, due on the CPP's anniversary of birth date is fifty dollars ($50.00).
   (3) No portion of any fee in this Rule is refundable.

History Note  Authority G.S. 90-6(c); 90-18(c)3a; 90-18.4; Eff. April 1, 2001; Amended Eff. March 1, 2007; October 1, 2001.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

23 NCAC 02C .0202 FACULTY
(a) General
   (1) Colleges shall employ faculty members so as to meet Southern Association of Colleges and Schools' criteria.
   (2) Colleges shall determine appropriate teaching and non-teaching loads for faculty and for technical assistants to the faculty so as to meet Southern Association of Colleges and Schools' criteria.
23 NCAC 02D .0101 ESTABLISHING PAY RATES

(a) The monthly and annual salaries or hourly rates of pay from state funds for full-time and part-time personnel in community colleges shall be established by the college president and approved by the board of trustees within the budget approved for the college by the State Board except that the state-funded portion of the president's salary shall be approved by the system president in accordance with the state salary schedule for presidents. Salary increases shall be granted annually or upon promotion to a higher position. Legislative increases shall be granted according to requirements set forth by the General Assembly. The State Board shall adopt a minimum and maximum amount of state funds which may be paid to any individual working in a college. Individuals shall be paid no less than the minimum and not more than the maximum amounts at a level determined by the salary approving authority at the college.

(b) All hourly, monthly, and annual salaries for full-time or part-time personnel shall be certified by the president of the college by the State Board except that the state-funded portion of the president's salary shall be approved by the system president as recommended by the board of trustees within the budget approved for the college by the State Board except that the state-funded portion of the president's salary shall be approved by the system president in accordance with the state salary schedule for presidents. Salary increases shall be granted annually or upon promotion to a higher position. Legislative increases shall be granted according to requirements set forth by the General Assembly. The State Board shall adopt a minimum and maximum amount of state funds which may be paid to any individual working in a college. Individuals shall be paid no less than the minimum and not more than the maximum amounts at a level determined by the salary approving authority at the college.

(c) The State Board shall adopt a state salary schedule for presidents in the system. The System President shall determine the proper placement of a newly-hired president on the state salary schedule based on the size of the college and the individual's years of eligible experience in accordance with the following provisions:

(1) For the purpose of this Paragraph, an increment is defined as an additional year of experience on the state salary schedule adopted by the State Board.

(2) College size shall be determined by the total FTE served and reported in the enrollment reports furnished the system office.

(3) A president of a post-secondary education institution shall be allowed increments for prior experience on a year-for-year basis for a maximum of 20 years.

(4) An executive vice president, vice president, other senior administrator of a post-secondary institution, a state-level administrative department, or a superintendent of a public school system may be given increment experience on the president salary schedule upon recommendation of the board of trustees and approval of the System President as follows:

one increment for three years of actual experience;
two increments for five years of actual experience;
three increments for seven years of actual experience;
four increments for 10 or more years of actual experience.

A president, chief operating officer or chief financial officer of a business or industry may be granted increment experience as provided in this Part.

(A) Progression form the minimum or "0" step to the midpoint or step "20" shall be based on additional years of experience;

(B) Advancement toward grade maximum after attaining the midpoint of the grade shall be based on merit increases as recommended by the local boards and within state allocations available;

(C) Newly-hired presidents shall not receive salary increments for any years in which a salary freeze was in effect for community college presidents.

(5) Changes in grade levels:

(A) Presidents with 0 to 20 years of eligible experience moving to another grade shall be placed in the new grade's range at the current experience level; and

(B) Presidents with greater than 20 years of experience moving to a lower grade will receive a salary adjustment only if the current salary exceeds the new salary grade's maximum salary limit, in which case, the salary will be adjusted to the maximum of the new grade.

(6) Total salary compensation from all sources shall not exceed the maximum for the salary grade as determined by the college's size.
Salary compensation is defined as those monies paid from whatever source for which no documentation or expense is required, or which is treated as salary for retirement benefit purposes.

(7) An interim or acting president's salary will be set at the step of the salary grade for the respective college. Years of eligible experience will be awarded up to 20 years for placement on the appropriate step. However, a board of trustees may grant a college employee appointed interim or acting president a 10 percent salary increase instead of placing the employee on the president's salary schedule.

(8) Presidential salary grades shall reflect the following:

<table>
<thead>
<tr>
<th>FTE</th>
<th>Minimum</th>
<th>Midpoint</th>
<th>Maximum</th>
</tr>
</thead>
</table>

These data shall be increased annually based on legislative action and reviewed no less than every three years to assure their continued national competitiveness.

(d) Post-secondary institution as used in this Rule means a junior college, community college or four-year institution of higher education.

History Note: Authority G.S. 115D-5; 115D-54; S.L. 2005-276; Eff. February 1, 1976; Amended Eff. March 1, 2007; December 1, 2004; September 1, 1993; December 1, 1989; July 1, 1984; August 1, 1981.

TITILE 25 – STATE PERSONNEL COMMISSION

25 NCAC 01H.0631 POSTING AND ANNOUNCEMENT OF VACANCIES

(a) Vacant positions shall be publicized by the agency having the vacancy.

(b) Vacancies which shall be filled from within the agency workforce shall have an application period of not less than five working days and shall be prominently posted in at least the following locations:

(1) The personnel office of the agency having the vacancy; and

(2) The particular work unit of the agency having the vacancy.

(c) Vacancies to be filled from within or outside the state government workforce shall be listed with the Office of State Personnel and the Employment Security Commission as required by G.S. 96-29. Such vacancies shall have an application period of not less than five working days. For purposes of this Rule, "state government workforce" shall mean those employees who are subject to Articles 1, 2, 5, 6, 7, 8, 13 and 14 of Chapter 126 of the North Carolina General Statutes.

(d) Each vacancy shall be described in an announcement which includes:

(1) For graded classes: the position number, classification title, salary grade and range, essential functions, knowledge, skills, abilities, minimum training and experience, and any vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H.0607(c), the application period, and the appropriate contact information;

(2) For banded classes: the position number, banded class title, banded class salary range or recruitment range corresponding to the competencies and duties, salary grade equivalency, essential functions, competencies, minimum training and experience, vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H.0607(c), the application period, and the appropriate contact information; and

(3) For all vacancy listings: a closing date shall be given unless the classification has been determined as critical. Factors used in determining critical classifications shall include: agency turnover; number of positions in class; geographic location; scarcity of skills; safety, health or quality of care for clients. Such critical classifications shall be approved by the State Personnel Commission. On those classes determined to be critical, which are considered open and continuous postings, agencies shall determine how long applications shall be considered active.

(e) Posting is not required when an agency determines that it will not openly recruit. This decision shall be based upon a bona fide business need and is the responsibility of the agency head. Examples are:

(1) Vacancies that are committed to a budget reduction;

(2) Vacancies used to avoid a reduction in force;

(3) Vacancies used for disciplinary transfers or demotions;

(4) Vacancies to be filled by transfer of an employee to avoid the threat of bodily harm;

(5) Vacancies that are designated exempt policymaking under G.S. 126-5(d);

(6) Vacancies that must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security;

(7) Vacancies to be filled by chief deputies and chief administrative assistants to elected or appointed department heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed department heads, chief deputies, or chief administrative assistants;

(8) Vacancies to be filled by an eligible exempt employee who has been removed from an exempt position and is being placed back in a
position subject to all provisions of the State Personnel Act;
(9) Vacancies to be filled by a legally binding settlement agreement;
(10) Vacancies to be filled in accordance with a formal, pre-existing written agency workforce plan; and
(11) Vacancies that must be filled immediately because of a widespread outbreak of a serious communicable disease.

(f) The Office of State Personnel may withhold approval for an agency to fill a job vacancy as set out in G.S. 126-7.1.

History Note: Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1; Eff. March 1, 2007.

25 NCAC 01H .0635 MINIMUM QUALIFICATIONS
(a) The employee or applicant must possess at least the minimum qualifications set forth in the class specification of the vacancy being filled. Additional minimum qualifications, if any, included on the specific vacancy announcement must also be met. The additional qualifications shall have a documented business need. Qualifications include training, experience, competencies and knowledge, skills and abilities. The minimum qualifications on the vacancy announcement shall bear a direct and logical relationship to the minimums on the class specification, class administration guidelines developed by the Office of State Personnel, and the specific position description. This requirement shall apply in new appointments, promotions, demotions or reassignments, transfers, and reinstatements.

(b) Qualifications necessary to perform successfully may be attained in a variety of combinations. Reasonable substitutions of formal training and job-related experience, one for the other, may be made.
(c) Agency management is responsible for determining and defending the vacancy-specific qualifications that are in addition to minimum training and experience requirements. Such vacancy-specific qualifications shall bear a logical and job-related relationship to the minimum requirements.
(d) The Office of State Personnel shall make the final determination as to whether the employee or applicant meets the minimum qualifications in questionable selection situations.

History Note: Authority G.S. 126-4(4); Eff. March 1, 2007.
This Section contains information for the meeting of the Rules Review Commission on Thursday March 15, 2007 & April 19, 2007, 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
John B. Lewis
Mary Beach Shuping
Judson A. Welborn
John Tart

RULES REVIEW COMMISSION MEETING DATES

April 19, 2007        May 17, 2007

Note: The following minutes have not yet been approved as final by the RRC and are subject to change until they are approved. They will be reviewed, corrected if necessary, and approved at the next monthly meeting of the RRC. If you have any questions or corrections concerning the minutes or action taken by the RRC please contact: Joe DeLuca at 919-715-8655, or Bobby Bryan at 919-733-0928.

RULES REVIEW COMMISSION
March 15, 2007
MINUTES

The Rules Review Commission met on Thursday, March 15, 2007, in the Division of Community Assistance Conference Room B of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jim Funderburk; Jeff Gray; Thomas Hilliard, III; Mary Shuping; Robert Saunders; John Tart; and David Twiddy.

Staff members present were: Joe DeLuca, Commission Counsel; Bobby Bryan, Commission Counsel; and Barbara Townsend, Administrative Assistant.

The following people attended the meeting:

Wendy A. Craig    Elder Law Section, NCBAR
Susan Ryan        Division of Medical Assistance
Marjorie Morris   Division of Medical Assistance
Andy Wilson       Division of Medical Assistance
Elliot A. Rushing Secretary of State
Robert Croom      Dept. of Justice
Robert A. Potter  Department of Insurance
John Hoomani      Department of Labor
Erin Gould        Department of Labor
Jan Moxley        DHHS – Office of Long Term Care
Daniel Garner     Office of the Commissioner of Banks
Lonnie Christopher Office of the Commissioner of Banks
Belinda Smith     Department of Justice
Donna Smith       Department of Justice
Angela Floyd      Division of Medical Assistance
Ellie Sprenkel    Department of Insurance
Nancy Pate        Department of Environment and Natural Resources
Gretchen Aycock  Department of Administration

21:19  NORTH CAROLINA REGISTER  APRIL 2, 2007

1769
Nadine Pfeiffer Division of Facility Services
Sam Clark Health Care Facilities Association
Mike Lopazanski Division of Coastal Management
Elizabeth Bishop NCDVRS
Mary Bethel AARP
Bill Wilson AARP
Jan Withers Division of Deaf and Hard of Hearing
Denise Stanford Pharmacy Board/General Contractors Board
Alice Lenihan DHHS – Division of Public Health
Jean Stanley Board of Nursing
David Kalbacker Board of Nursing
Julie Edwards Office of Administrative Hearings
Molly Masich Office of Administrative Hearings
Curtis Venable Pisgah Legal Services
Felicia Williams Office of Administrative Hearings

APPROVAL OF MINUTES

The meeting was called to order at 10:10 a.m. with Mr. Funderburk presiding. He reminded the Commission that all members have a duty to avoid conflicts of interest and the appearances of conflict as required by NCGS 138A-15(e). Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the February 15, 2007 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

10A NCAC 21B .0314: DHHS/Medical Assistance – The Commission approved the rewritten rule submitted by the agency with Commissioners Tart, Saunders, Shuping and Funderburk voting for approval of the rule and Commissioners Hilliard, Twiddy and Gray voting against.

10A NCAC 21B .0314(Temporary Rule): DHHS/Medical Assistance – The rule was withdrawn by the agency.

10A NCAC 89C .0103: DHHS/Vocational Rehabilitation – The Commission approved the rewritten rule submitted by the agency.

10A NCAC 89D .0101; .0204: DHHS/Vocational Rehabilitation – The Commission approved the rewritten rules submitted by the agency.

18 NCAC 07B .0107; .0902: Secretary of State – The Commission approved the rewritten rules submitted by the agency.

Prior to the review of the rules from the Pharmacy Board Commissioner Saunders recused himself and did not participate in any discussion or vote concerning these rules because his law firm represents the Pharmacy Board. His written explanation is part of the record of the meeting.

21 NCAC 46 .1601; .1608; .2613; .3101: Pharmacy Board – The Commission approved the rewritten rules submitted by the agency.

23 NCAC 3A .0113: Board of Community Colleges - No action was taken. It is anticipated that the objection to this rule will be considered at the next meeting of the Board.

LOG OF FILINGS

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

Prior to the review of the rule from the Department of Insurance, the rules from the Office of the Commissioner of Banks, and the rules from DHHS/Mental Health Commissioner Twiddy recused himself and did not participate in any discussion or vote concerning these rules because he is a licensed insurance agent, president of Gateway Bank and is on the Board for Albemarle Mental Health. This written explanation is part of the record of the meeting.

Prior to the review of the rule for the Medical Board and the rule for the Board of Nursing Commissioner Shuping left the meeting.
01 NCAC 41D .0101-.0102; .0201-.0203; .0301-.0304; .0401: Department of Administration – These rules were withdrawn by the agency and will be refiled for the April meeting.

10A NCAC 17C .0108: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to lack of statutory authority, ambiguity, and lack of necessity. Staff had originally proposed an objection based on lack of authority to classify or otherwise qualify interpreters as apparently set out in (a). That objection still applies to the language of the rule. However, after a conversation with the Program Planner, it became apparent that the actual reason for this rule, the intent of this rule, is to describe and implement the list that is maintained of qualified and licensed interpreters and their classifications. (These classifications are grandfathered in from an earlier time.) This rule, at least as far as (a) is concerned, does not do that. Therefore (a) is either ambiguous or unnecessary.

10A NCAC 17C .0204: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity and lack of necessity. First, this rule appears to be a restatement of statutory law and is therefore unnecessary. However, based on my conversations with the agency staff, I believe that the rule is included for two reasons: 1.) It is to replace and essentially repeats an existing rule that is to be repealed; and 2.) It was believed by the agency that this rule would allow them to pay for interpreter services rendered only by "qualified" interpreter – a "qualified interpreter is one licensed by the state. This rule does not accomplish the latter aim. To the extent that is the aim of this rule, then it is ambiguous.

10A NCAC 17C .0205: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. This rule informs people that in order to become a qualified interpreter, they must apply to (and presumably be licensed by, although that is not stated) the state licensing board for interpreters. This is a restatement of the law and is unnecessary.

10A NCAC 17D .0206: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. In (b)(4) of this rule and Rule .0211, there are similar time limits set out for either "eligibility" to receive equipment or eligibility to reapply for new equipment. Since the two rules overlap but are not identical, and may actually apply to different situations, it is unclear what the requirements and limitations of the two rules are.

10A NCAC 17D .0211: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. In this rule and Rule .0206 (b)(4), there are similar time limits set out for either "eligibility" to receive equipment or eligibility to reapply for new equipment. Since the two rules overlap but are not identical, and may actually apply to different situations, it is unclear what the requirements and limitations of the two rules are. There is also a similar provision in Rule .0213, but with a different "lease" or "loan" period.

10A NCAC 17D .0213: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. This rule has the same problem concerning eligibility or renewal time limits as Rules .0206 and .0211.

10A NCAC 17D .0219: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to lack of necessity. There does not appear to be any substantive provisions binding on the agency that is not an internal matter. The necessity to verify the applicant’s income is already found, at least by implication, in Rules .0206 and .0210.

10A NCAC 17D .0220: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity and lack of necessity. Paragraph (a) does contain a substantive provision in that vendors must submit "information" along with invoices for payments. However, it is unclear what information must be submitted. Paragraphs (b) and (c) are unnecessary since they are internal matters.

10A NCAC 17D .0302: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to lack of necessity. This rule is unnecessary. It creates neither rights nor obligations for anyone and is probably solely related to internal agency operations.

10A NCAC 17D .0304: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission objected to this rule due to ambiguity. It is unclear in (b) how the actual length of the lease period is determined within the "one month to two years" period allowed in (b).

10A NCAC 41B .0301: Department of Health and Human Services – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (b)(1), it is not clear what method or methods for the performance of chemical analyses have been approved by the Department. There is no authority cited for setting these standards outside rulemaking. In (c), it is not clear what courses are on the application. There is no authority cited for setting requirements on an application. This objection applies to existing language in the rule.
10A NCAC 41B .0304: Department of Health and Human Services – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (c), it is not clear when the Director will grant an exception from meeting the requirements of the paragraph. This is a waiver provision without specific guidelines in violation of G.S. 150B-19(6). This objection applies to existing language in the rule.

10A NCAC 41B .0306: Department of Health and Human Services – The Commission objected to this rule due to lack of statutory authority and lack of necessity. This rule is not consistent with G.S. 20-139.1(b2). The statute requires the Department to perform preventive maintenance, not to grant certificates to others to do so. If these personnel are Department employees, then the rule is unnecessary as applying only to the Department's internal management. This objection applies to existing language in the rule.

10A NCAC 41B .0313: Department of Health and Human Services – The Commission objected to this rule due to lack of statutory authority, ambiguity, and lack of necessity. In (a)(1), it is not clear what standards the Department uses in approving methods of performing chemical analysis. It is also not clear what are the Department's standards of accuracy, reliability, convenience, and efficiency of operation. There is no authority cited for setting these outside rulemaking. As written, (a)(2) is an internal management provision and not a rule. It is therefore unnecessary. The second sentence in (b)(1) and all of (b)(2) are beyond the agency's authority. It has cited no authority for it to establish the purpose for which results can be used, and the statutes determine what evidence is admissible. This objection applies to existing language in the rule.

13 NCAC 12 .0601: Department of Labor – The Commission objected to the rule due to lack of statutory authority. This rule defines "complaint" as used in G.S. 95-25.15(a) as only an oral complaint and prohibits written complaints. That definition appears to be more limited than envisioned by the statute.

21 NCAC 46 .1505; .1507: Pharmacy Board – These rules were withdrawn by the agency.

COMMISSION PROCEDURES AND OTHER BUSINESS

Commissioner Saunders made a motion on behalf of the committee that was appointed to review and discuss RRC rules, policies and procedures that the RRC schedule a public hearing to take comment concerning whether the RRC should amend its existing rules (otherwise known as RRC Policies and Procedures) or adopt any new rules. The motion passed. The RRC will have a hearing at 10:00 a.m. prior to the Commission's regular meeting Thursday, May 17, 2007. The hearing will last no longer than 45 minutes. The RRC will accept any written or oral comments, including proposed rules or amendments offered prior to or at the hearing.

The meeting adjourned at 12:02 p.m.

The next scheduled meeting of the Commission is Thursday, April 19, 2007 at 10:00 a.m.

Respectfully submitted,
Dana Sholes

LIST OF APPROVED PERMANENT RULES
March 15, 2007 Meeting

BANKS, OFFICE OF THE COMMISSIONER

Examiner Committee Report
Reports of Condition and Income
Publisher's Copy Report of Condition
Loan Documentation
Leasing of Personal Property
Definitions: Issuance of Capital Notes and Debentures
Capital Debentures and Notes
Annual Vacation

04 NCAC 03C .0701
04 NCAC 03C .0702
04 NCAC 03C .0703
04 NCAC 03C .1001
04 NCAC 03C .1002
04 NCAC 03C .1101
04 NCAC 03C .1102
04 NCAC 03C .1301

USS NORTH CAROLINA BATTLESHIP COMMISSION
RULES REVIEW COMMISSION

Hours of Operation 07 NCAC 05 .0202
Admission Prices 07 NCAC 05 .0203

HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Scope 10A NCAC 01G .0101
Application for NC NOVA Special Licensure Designation 10A NCAC 01G .0102

HHS-FACILITY SERVICES
Performance Standards 10A NCAC 14C .2103
Definitions 10A NCAC 14C .3301

HHS - DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE
Petitions 10A NCAC 17A .0101
Notice 10A NCAC 17A .0102
Hearing Officer 10A NCAC 17A .0103
Hearings 10A NCAC 17A .0104
Statement of Reasons for and Against Rulemaking Decision 10A NCAC 17A .0105
Record of Rulemaking Proceedings 10A NCAC 17A .0106
Fees 10A NCAC 17A .0107
Declaratory Rulings 10A NCAC 17A .0108
Contested Cases 10A NCAC 17A .0109
Relationship to the Department of Health and Human Services 10A NCAC 17B .0101
Function and Responsibilities 10A NCAC 17B .0201
Maintenance of Classification Records 10A NCAC 17C .0101
Reciprocity 10A NCAC 17C .0102
Applicability 10A NCAC 17C .0103
Definitions 10A NCAC 17C .0104
Eligibility 10A NCAC 17C .0105
Application 10A NCAC 17C .0106
Classification Team and Evaluators 10A NCAC 17C .0107
Review and Appeal of Classification Decisions 10A NCAC 17C .0109
Change of Name or Address of Classification Holders 10A NCAC 17C .0110
Eligibility 10A NCAC 17C .0201
Contracted Interpreter Services 10A NCAC 17C .0202
Licensure of Interpreters 10A NCAC 17C .0203
Eligibility 10A NCAC 17D .0101
Contracted Interpreter Services 10A NCAC 17D .0102
Certification of Interpreters 10A NCAC 17D .0103
Interpreter Services: Judicial: Leg. and Admin. Proc. 10A NCAC 17D .0104
Interpreter Application: Judicial: Leg. and Admin. Proc. 10A NCAC 17D .0105
Definitions 10A NCAC 17D .0202
Division Responsibilities 10A NCAC 17D .0203
Information Concerning the Program 10A NCAC 17D .0204
Application Information and Procedures 10A NCAC 17D .0205
Certification of Impairment 10A NCAC 17D .0207
Age Requirements 10A NCAC 17D .0208
Residency Requirements
10A NCAC 17D .0209

Financial Eligibility
10A NCAC 17D .0210

Provision of Equipment Sets
10A NCAC 17D .0212

Telephone Bills: Maintenance: Reporting Loss, Damage, or Recipients
10A NCAC 17D .0214

Relocation or Death or Recipients
10A NCAC 17D .0215

Rights/Consumer Appeals
10A NCAC 17D .0221

Purpose
10A NCAC 17D .0301

Eligibility Requirements
10A NCAC 17D .0303

Maintenance: Reporting Loss, Damage, or Theft
10A NCAC 17D .0305

HHS-MEDICAL ASSISTANCE

Waiver of Transfer of Assets Penalty Due to Undue Hardship
10A NCAC 21B .0314

HHS - MENTAL HEALTH

Scope
10A NCAC 29A .0101

Definitions
10A NCAC 29A .0102

Criteria For Admissions
10A NCAC 29A .0103

Application for Admission
10A NCAC 29A .0104

Priority for Admission
10A NCAC 29A .0105

Maximum Number of Class Members to be Served
10A NCAC 29A .0106

Funds for Assaultive Children
10A NCAC 29A .0107

Scope
10A NCAC 29A .0108

Definitions
10A NCAC 29A .0109

Eligibility Criteria
10A NCAC 29A .0111

Emotional, Mental or Neurological Handicap Defined
10A NCAC 29A .0112

Violent or Assaultive Behavior Defined
10A NCAC 29A .0113

Determination that State has not Provided Appropriate Tre...
10A NCAC 29A .0114

Application for Designation as Youth Behavioral Services ...
10A NCAC 29A .0115

Determination of Eligibility
10A NCAC 29A .0116

Re-review of Eligibility Decisions
10A NCAC 29A .0117

Needs Assessment
10A NCAC 29A .0118

Service Planning
10A NCAC 29A .0119

Provision of Services
10A NCAC 29A .0120

Area Program Requirements
10A NCAC 29A .0121

Division Requirements
10A NCAC 29A .0122

Prior Notice of Decision
10A NCAC 29A .0123

Mediation
10A NCAC 29A .0124

Contested Case Hearings
10A NCAC 29A .0125

Administrative Review by Review Officer
10A NCAC 29A .0126

Evaluation Reports
10A NCAC 29A .0127

Thomas S. Community Services
10A NCAC 29B .0101

Scope
10A NCAC 29B .0102

Definitions
10A NCAC 29B .0103

Reporting Requirements
10A NCAC 29B .0104

Death Review Requirements
10A NCAC 29B .0105
Thomas S. Mortality Review Committee
Scope
Explanation of Terms
Designation Procedures

HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Limitation of Permit
Screening Test for Alcohol Concentration
Approval: Alcohol Screening Test Devices: Use

HEALTH SERVICES, COMMISSION FOR
Definitions
Authorized WIC Vendors

HHS - VOCATIONAL REHABILITATION SERVICES
Rates of Payment
General Policies
Community Rehabilitation Program Standards

CODE OFFICIALS QUALIFICATION BOARD
Continuing Education Requirements
Approved Courses

INSURANCE, DEPARTMENT OF
Model Regulation Permitting the Recognition of Preferred ...

LABOR, DEPARTMENT OF
Exceptions to Civil Penalty
Notification at Time of Hiring
Amusement Device Inspection Fee Schedule

CRIME CONTROL AND PUBLIC SAFETY
Definitions
Securing Vehicles When Operator is Arrested
Vehicles Transported and Stored Over Objection of Owner
Transporting and Storing Vehicles
Notification
Release of Vehicles
Vehicle Inventory
Reimbursement of Wrecker Operators
Rotation, Zone, Contract, and Deviation from System
Rotation Wrecker Service Regulations
Recording Wrecker Requests/Incidents

21:19
NORTH CAROLINA REGISTER
APRIL 2, 2007
1775
AGENDA
RULES REVIEW COMMISSION
Thursday, April 19, 2007, 10:00 A.M.

I. Ethics reminder by the chair as set out in G.S. 138A-15(e)

II. Approval of the minutes from the last meeting

III. Follow-Up Matters:
   A. DHHS/Division of Services for the Deaf and Hard of Hearing - 10A NCAC 17C .0108; .0204; .0205 (Deluca)
   B. DHHS/Division of Services for the Deaf and Hard of Hearing – 10A NCAC 17D .0206; .0211; .0213; .0219; .0220; .0302; .0304 (Deluca)
   C. Department of Health and Human Services – 10A NCAC 41B .0301; .0304; .0306; .0313 (Bryan)
D. Department of Labor – 13 NCAC 12 .0601 (Bryan)
E. Board of Community Colleges – 23 NCAC 3A .0113 (DeLuca)

IV. Review of Log of Permanent Rule filings for RRC review filed between February 21 and March 20, 2007 (attached)

V. Review of Temporary Rules (If Any)

VI. Commission Business
   • Next meeting: May 17, 2007
Commission Review
Log of Permanent Rule Filings
February 21, 2007 through March 20, 2007

ADMINISTRATION, DEPARTMENT OF

The rules in Chapter 41 are from the State Energy Office.

The rules in Subchapter 41D concern the energy policy act credit and banking selling program including general provisions (.0100); credit banking and selling program provisions (.0200); proceeds and distribution (.0300); and reports (.0400).

MENTAL HEALTH, COMMISSION OF

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); licensing procedures (.0400); area program requirements; over-authority on county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500);
specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); and consultation and education services (.6900).

**Scope**

Repeal/*

**Staff**

Repeal/*

**Operations**

Repeal/*

**Physical Plant**

Repeal/*

The rules in Subchapter 28I concern other rules pertaining to state operated facilities and services including rules governing deportment: traffic, parking and registration of vehicles at division facilities (.0100); procedures for obtaining adult protective services (.0200); and prescribing of medication above recommended dosages (.0300).

**Firearms**

Repeal/*

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

The rules in Chapter 28 are mental health rules about state operated facilities and services.

The rules in Subchapter 28I concern other rules pertaining to state operated facilities and services including rules governing deportment: traffic, parking and registration of vehicles at division facilities (.0100); procedures for obtaining adult protective services (.0200); and prescribing of medication above recommended dosages (.0300).

**Firearms**

Adopt/

**ALARM SYSTEMS LICENSING BOARD**

The rules in Chapter 11 are from the N.C Alarm Systems Licensing Board and cover the organization and general provisions (.0100); license applications and requirements (.0200); registration of employees of licensees (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

**Prohibited Acts**

Amend/**

**ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission and the Department of Environment and Natural Resources.

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards and classifications themselves (.0200); stream classifications (.0300); effluent limitations (.0400); and monitoring and reporting requirements (.0500).

**Location of Sampling Sites and Mixing Zones**

Amend/*

**Standards for Toxic Substances and Temperature**

Amend/*

**Fresh Surface Water Quality Standards for Class C Waters**

Amend/*

**Fresh Surface Water Quality Standards for Class WS-I Waters**


Rules Review Commission

Amend/*
Fresh Surface Water Quality Standards for Class WS-II Waters
Amend/*
Fresh Surface Water Quality Standards for Class WS-III Waters
Amend/*
Fresh Surface Water Quality Standards for Class WS-IV Waters
Amend/*
Fresh Surface Water Quality Standards for Class WS-V Waters
Amend/*
Tidal Salt Water Quality Standards for Class SC Waters
Amend/*
Tidal Salt Water Quality Standards for Class SA Waters
Amend/*
Tidal Salt Water Quality Standards for Class SB Waters
Amend/*
Catawba River Basin
Amend/*

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); clean air interstate rules (.2400); and mercury rules for electric generators (.2500).

Best Available Retrofit Technology
Amend/*

Wildlife Resources Commission

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10A cover general WRC practices and procedures including petitions for rulemaking (.0400); declaratory rulemaking (.0500); warning tickets (.1000); and waivers (.1100).

Particular Offenses
Amend/*

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

Migratory Game Birds
Amend/*
big Game Kill Reports
Amend/*
Permitted Archery Equipment
Amend/*
Possession of Mute Swans
Adopt/*
Bear
Amend/*
Deer
Amend/*
Amend/*
Wild Boar (Both Sexes) 15A NCAC 10B .0204
Amend/*
Raccoon and Opossum 15A NCAC 10B .0205
Amend/*
Wild Turkey 15A NCAC 10B .0209
Amend/*
Open Seasons 15A NCAC 10B .0302
Amend/*
Traps 15A NCAC 10B .0304
Adopt/*

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100), general rules (.0200), game fish (.0300), non-game fish (.0400) and primary nursery areas (.0500).

Public Mountain Trout Waters 15A NCAC 10C .0205
Amend/*
Fishing License Exemptions 15A NCAC 10C .0216
Adopt/*
Open Seasons: Creel and Size Limits 15A NCAC 10C .0305
Amend/*
Manner of Taking Non-game Fishes 15A NCAC 10C .0401
Amend/*
Taking Non-game Fishes for Bait 15A NCAC 10C .0402
Amend/*
Special Device Fishing 15A NCAC 10C .0404
Amend/*
Permitted Special Devices and Open Seasons 15A NCAC 10C .0407
Amend/*
Descriptive Boundaries 15A NCAC 10C .0503
Amend/*

The rules in Subchapter 10D are game lands rules.

General Regulations 15A NCAC 10D .0102
Amend/*
Hunting On Game Lands 15A NCAC 10D .0103
Amend/*

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

Application for Certificate of Vessel Number 15A NCAC 10F .0102
Amend/*
Transfer of Ownership 15A NCAC 10F .0103
Amend/*
Certificate of Number 15A NCAC 10F .0104
Amend/*
Numbering Pattern 15A NCAC 10F .0105
Amend/*
Display of Vessel Numbers 15A NCAC 10F .0106
Amend/*
The rules in Subchapter 10G concern distribution and sale of hunting: fishing: and trapping license including license agents (.0100); boat registration agents (.0200); fur tag agents (.0300); wildlife service agents (.0400); and licensee requirements (.0500).

The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), controlled fox hunting preserves (.1200), and reptiles and amphibians (.1300).

The rules in Subchapter 10J cover wildlife conservation areas.

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); primitive camps (.3500); and rules governing the sanitation of resident camps (.3600).

Definitions
Adopt/* 15A NCAC 18A .3601
Standards and Approval of Plans
Adopt/* 15A NCAC 18A .3602
Permits
Adopt/* 15A NCAC 18A .3603
Public Display of Grade Card
Adopt/* 15A NCAC 18A .3604
Inspections and Reinspections
Adopt/* 15A NCAC 18A .3605
Grading
Adopt/* 15A NCAC 18A .3606
Procedure When Infections Suspected
Adopt/* 15A NCAC 18A .3607
Site
Adopt/* 15A NCAC 18A .3608
Water Supply
Adopt/* 15A NCAC 18A .3609
Liquid Wastes
Adopt/* 15A NCAC 18A .3610
Solid Wastes
Adopt/* 15A NCAC 18A .3611
Swimming Pools
Adopt/* 15A NCAC 18A .3612
Camp Building Construction and Maintenance Requirements
Adopt/* 15A NCAC 18A .3613
Lodging Facilities
Adopt/* 15A NCAC 18A .3614
Toilet: Handwashing: Laundry: and Bathing Facilities
Adopt/* 15A NCAC 18A .3615
Drinking Water Facilities
Adopt/* 15A NCAC 18A .3616
Premises: Vermin Control and Miscellaneous
Adopt/* 15A NCAC 18A .3617
Food Service Facilities
Adopt/* 15A NCAC 18A .3618
Field Sanitation
Adopt/* 15A NCAC 18A .3619
Food Service Employees
Adopt/* 15A NCAC 18A .3620
Food Supplies
Adopt/* 15A NCAC 18A .3621
Food Protection
Adopt/* 15A NCAC 18A .3622
Milk and Milk Products
Adopt/* 15A NCAC 18A .3623
Ice Handling
Adopt/* 15A NCAC 18A .3624
Seafood
Adopt/* 15A NCAC 18A .3625
Refrigeration: Thawing: and Preparation of Food
Adopt/*

Re-Serving of Food
Adopt/*

Food Service Utensils and Equipment
Adopt/*

Cleaning of Equipment and Utensils
Adopt/*

Storage and Handling of Utensils and Equipment
Adopt/*

Food Service Area Storage Spaces
Adopt/*

Food Service Area Lighting
Adopt/*

Food Service Area Ventilation
Adopt/*

Food Service Area and Lavatory Facilities
Adopt/*

Food Service Area Toilet Facilities
Adopt/*

Food Service Area Floors
Adopt/*

Food Service Area Walls and Ceilings
Adopt/*

Kitchen Premises: Miscellaneous
Adopt/*

Informal Review Process and Appeals Procedure
Adopt/*

COSMETIC ART EXAMINERS, BOARD OF

The rules in Chapter 14 are from the Cosmetic Art Examiners.

The rules in Subchapter 14H are from the Cosmetic Art Examiners and cover sanitation for both operators and facilities.

Sanitary Ratings and Posting of Ratings
Amend/*

Footspa Sanitation
Amend/*

Sanitation Prohibited Practices
Amend/*

Equipment for Beginner Department
Amend/*

Equipment in Advanced Department
Amend/*

Equipment
Amend/*

Students' Personal Supplies
Amend/*
The rules in Subchapter 14N deal with examinations including general provisions (.0100), cosmetologist exam (.0200), manicurist exam (.0300), cosmetologist teacher exam (.0400), and manicurist teach examination (.0500), esthetician examination (.0600), and esthetician teacher examination (.0700).

Initial Application and Fees  
Amend/*  

Re-examination  
Amend/*  

Full Time and Part Time Equivalency  
Adopt/*  

The rules in Subchapter 14R are continuing education rules.

Application Criteria and Continuing Education Course Appr...  
Amend/*  

LANDSCAPE CONTRACTORS REGISTRATION BOARD  

Chapter 28 contains rules for the Registration Board of Landscape Contractors including statutory and administrative provision (.0100); practice of landscape contractor (.0200); examination and licensing procedures (.0300); rules: petitions: hearings (.0400); declaratory rulings (.0500); administrative hearings: procedures (.0600).

Authority: Name and Location of Board  
Amend/*  

Applications and Examination  
Amend/*  

Reinstatement After Revocation  
Amend/*  

OCCUPATIONAL THERAPY, BOARD OF  

The rules in Chapter 38 are from the Board of Occupational Therapy and cover organization and general provisions (.0100); application for license (.0200); licensing (.0300); general (.0400); rules (.0500); administrative hearing procedures (.0600); and professional corporations (.0700); continuing competence activity (.0800); supervision, supervisory roles, and clinical responsibilities of occupational therapist and occupational therapy assistants (.0900); supervision of limited permittees (.1000); and supervision of unlicensed personnel (.1100).

Purpose  
Amend/*  

Board Office  
Amend/*  

Definitions  
Amend/*  

Application Process  
Amend/*  

Fees  
Amend/*  

License Number: Display of License  
Amend/*  

License Renewal  
Amend/*  

Limited Permits  
Amend/*
Grounds for License Denial or Discipline
Amend/*

Continuing Duty to Report Certain Crimes and Civil Suits
Amend/*

Change of Address or Business Name
Amend/*

Advertising
Amend/*

Procedure for Adoption of Rules
Amend/*

Authority and Definitions
Amend/*

Prerequisites for Incorporation
Amend/*

Certificate of Registration
Amend/*

General and Administrative Provisions
Amend/*

Continuing Competence Definitions
Adopt/*

Continuing Competence Requirements for Licensure
Adopt/*

Approval of Activities for Maintaining Continuing Competence
Adopt/*

Scope of Qualified Activities for Maintaining Continuing ... Adopt/*

Qualified Activities for Maintaining Continuing Competence
Adopt/*

Waiver of Requirements
Adopt/*

Documentation/Reporting Procedures
Adopt/*

Audit of Continuing Competence Activities
Adopt/*

Notification of Supervision Change
Adopt/*

Supervision is an Interactive Process
Adopt/*

Types of Supervision
Adopt/*

Documentation of Supervision
Adopt/*

Delineation of Clinical Responsibilities
Adopt/*

Limited Permit Defined
Adopt/*

Supervision of Limited Permittee
Adopt/*

Service Competency of Limited Permittee
Adopt/*

Signature of Limited Permittee
Adopt/*

Board Notification
Adopt/*
Adopt/*
Responsibility of the Occupational Therapy Practitioner                  21 NCAC 38 .1101
Adopt/*
Delegation of Duties to Unlicensed Personnel                      21 NCAC 38 .1102

COMMUNITY COLLEGES, BOARD OF

The rules in Chapter 2 concern Community Colleges.

The rules in Subchapter 2E cover educational programs including program classification (.0100); curriculum programs (.0200); adult, extension, and community service programs (.0300); industrial services (.0400); articulation (.0500); and vocational curriculum (.0600).

Courses and Standards for Curriculum Programs                        23 NCAC 02E .0204
Amend/*

STATE PERSONNEL COMMISSION

The rules in Chapter 1 are from the Office of State Personnel.

The rules in Subchapter 1C concern personnel administration including employment (.0100); general employment policies (.0200); personnel records and reports (.0300); appointment (.0400); work schedule (.0500); competitive service (.0600); secondary employment (.0700); requirements for teleworking programs (.0800); employee recognition programs (.0900); and separation (.1000).

Temporary Employment Services                                      25 NCAC 01C .0216
Adopt/*
Temporary Appointment                                                25 NCAC 01C .0405
Amend/*
Temporary Part-time Appointment                                      25 NCAC 01C .0407
Repeal/*
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.
- Selina Brooks
- Melissa Owens Lassiter
- Don Overby
- Beecher R. Gray
- A. B. Elkins II
- Joe Webster

### CASES AND DECISIONS

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>NUMBER</th>
<th>ALJ</th>
<th>DATE OF DECISION</th>
<th>PUBLISHED DECISION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ALCOHOL BEVERAGE CONTROL COMMISSION</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Santos Fernandez T/A Paraiso vs. ABC Commission</td>
<td>05 ABC 1828</td>
<td>Chess</td>
<td>05/31/06</td>
<td></td>
</tr>
<tr>
<td>Owls Eyes of Asheville, LLC, T/A Hooters vs. ABC Commission</td>
<td>05 ABC 1989</td>
<td>Chess</td>
<td>06/07/06</td>
<td></td>
</tr>
<tr>
<td>Carlos Salas T/A Boom Boom Boom Night Club, 1205 Elgin Avenue</td>
<td>06 ABC 0719</td>
<td>Chess</td>
<td>06/07/06</td>
<td></td>
</tr>
<tr>
<td>ABC Commission v. T/A Minit Shop</td>
<td>06 ABC 0862</td>
<td>Morrison</td>
<td>01/04/07</td>
<td></td>
</tr>
<tr>
<td>ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club</td>
<td>06 ABC 1262</td>
<td>Gray</td>
<td>08/07/06</td>
<td></td>
</tr>
<tr>
<td>ABC Commission v. Kenneth A. Jones, T/A Ken One Stop</td>
<td>06 ABC 1368</td>
<td>Gray</td>
<td>12/04/06</td>
<td></td>
</tr>
<tr>
<td><strong>CRIME VICTIMS COMPENSATION</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Timothy P. Webber v. Crime Victims Compensation Commission</td>
<td>05 CPS 1568</td>
<td>Lassiter</td>
<td>06/08/06</td>
<td>21:01 NCR 109</td>
</tr>
<tr>
<td>Valerie Joy McGill v. Crime Victims Compensation Commission</td>
<td>06 CPS 0038</td>
<td>Gray</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Torrey Charles v. Crime Victims Compensation Commission</td>
<td>06 CPS 0051</td>
<td>Chess</td>
<td>09/21/06</td>
<td></td>
</tr>
<tr>
<td>Charles Leon Champion v. Crime Victims Compensation Commission</td>
<td>06 CPS 0155</td>
<td>Elkins</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Teresa M. Marley v. Crime Victims Compensation Commission</td>
<td>03 CPS 0185</td>
<td>Elkins</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Dantevius L. Bland v. Crime Victims Compensation Commission</td>
<td>06 CPS 0654</td>
<td>Elkins</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Sharron Smith v. Crime Control and Public Safety</td>
<td>06 CPS 0708</td>
<td>Gray</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Elaine B. Deloatch v. Crime Victims Compensation Commission</td>
<td>06 CPS 0736</td>
<td>Wade</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Christopher Lee Vess v. Crime Control Victims Compensation Services</td>
<td>06 CPS 0890</td>
<td>Gray</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Chris K. Daniels v. Crime Control and Public Safety, Div. of Victim Compensation</td>
<td>06 CPS 0909</td>
<td>Lassiter</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Tamika L. Howard-Smith v. Crime Victims Compensation Commission</td>
<td>06 CPS 1161</td>
<td>Elkins</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Danny Thom v. Victim Compensation</td>
<td>06 CPS 1237</td>
<td>Overby</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>James A. Hillman v. Crime Victims Compensation Commission</td>
<td>06 CPS 1339</td>
<td>Wade</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Jacqueline D. Dupree v. Crime Victims Compensation Commission</td>
<td>06 CPS 1360</td>
<td>Overby</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Pervis R. Owens Sr v. OAH, Crime Victims Compensation Commission</td>
<td>06 CPS 1492</td>
<td>Morrisson</td>
<td>06/08/06</td>
<td></td>
</tr>
<tr>
<td>Brian Curlee v. Crime Victims Compensation Commission</td>
<td>06 CPS 1677</td>
<td>Wade</td>
<td>06/08/06</td>
<td></td>
</tr>
</tbody>
</table>

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

### DEPARTMENT OF AGRICULTURE

- Shacound Muse Bey v. Dept. of Agriculture | 06 DAG 0985 | Morrison | 08/16/06
- Clara Church v. Dept. of Agriculture and Consumer Services | 06 DAG 1422 | Wade | 12/11/06

### DEPARTMENT OF CULTURAL RESOURCES

- William H. Miller v. Cultural Resources, State Historic Preservation | 06 DCR 0439 | Mann | 07/03/06

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

- Andrea Green, Parent, on behalf of her Miner Child, Andrew Price | 01 DHR 2149 | Gray | 06/29/06
- Charles N. Long v. DHHS, Wake County Human Services | 02 DHR 0932 | Lassiter | 12/21/06
- Michael Eugene Dalton v. DHHS, DFS | 02 DHR 1456 | Lassiter | 10/06/06
- Marquelle's Enrichment Center for Edith James and Wilhelmenia
Selvia Chapel Child Care Center ID# 74000208, Bishop A. H. Hartfield v. DHHS, Div. of Child Development

Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program

Jack Williamson v. Div. of Medical Assistance Third Party Recovery

Shawqi Abdalla Ibismam Omar v. OAH

Daniel Marshall v. DHHS

Katie Morris v. DHHS

Michael Glenn Shell v. Board of Health Care Workers Registry, DHHS

Angel Allman v. Div. of Medical Assistance Medical Policy

Tammie L. Greene v. DHHS, Div. of Medical Assistance

Carol Denny v. DHHS

Myrna Diane Bunns v. DHHS, Division of Child Development

Joseph Randy Creech v. Dix, DHHS

Annette Alexander v. DHHS

Bernice Norman v. Wash Co. Dept. of Social Services

Daisey Fish v. Dorthea Dix Hospital

Delisa Jean Scott v. DHHS, DFS

Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program

Myrna A. Batson v. Broughton Hospital

Digna A. Marte v. DHHS, Div. of Medical Assistance

Carolyn W. Cooper, Happy Days Child Care Center v. Div. of Child Development, DHHS

Eric Becton v. DHHS

Bibian Nwamguma v. Health Care Personnel Registry

Grace A. Wright v. Wake County Health and Human Services, Program Interg Program Dept.

Abid Ali d/b/a Durham Food Mart v. DHHS, Division of Public Health, Women and Children's Health Section

Regina A McLean v. DHHS, Citizen Affairs/Administration

Regina A McLean v. Human Health Client Assistant Program

Christy Laws v. DHHS

Kara Elmore v. DHHS, DFS

James Soules v. DHHS

DeJuanawurdyangeni v. Child Care Center v. Child Abuse/ Neglect

Angela M. Rhodes v. New Hanover County DSS

Full Potential, LLC v. DHHS

Little Town Learning Center, Inc., By Angela Beacham v. DHHS, Div. of Public Health, Child and Adult Care Food Program

Alberta Denise Murphy v. DHHS and Registry

Forsyth Memorial Hospital, Inc d/b/a Forsyth Medical Center and Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, CON and North Carolina Baptist Hospital Lexington Memorial Hospital, Inc. and High Point Regional Health System

Bettie B. Woods v. Gardian Ad Litem, Angela Phillips, Lincoln County DSS/Catawba BAL

Rockingham County Department of Social Services v. Medicaid/Value Options

Denise Little v. Catawba County LME, John Hardy, Director

Edna Cray - Kids Academy v. DHHS, Div. of Public Health Child and Adult Care Food Program

Barbara J. Younce v. DHHS, DFS

Norman Lavel Bracey, Jr., v. Social Services (Medicaid)

Keneya Shaw v. DMH/DD/SAS

Elaine Weidman v. DHHS, DFS, Health Care Personnel Registry

Ariel Horowitz, Minor, by her Parents David Horowitz and Rosalind Heiko v. Div. of Medical Assistance, MH/DD/SAS and DHHS

Kerry T. Williams v. Wake County Dept. of Social Services

Brentwood Child Care Center (92001147) v. DCD/Child Abuse Neglect Unit

Angela Fay Carraway v. DHHS

Ivory Jade Alson v. Wake Co. Dept. of Social Services

Angela M. Rhodes v. New Hanover County DSS

DeJuana Byrd Heavenly Angels Child Center v. Child Abuse/ Neglect

James Soules v. DHHS

Kara Elmore v. DHHS, DFS

James Soules v. DHHS

DeJuanawurdyangeni v. Child Care Center v. Child Abuse/ Neglect

Angela M. Rhodes v. New Hanover County DSS

Full Potential, LLC v. DHHS

Little Town Learning Center, Inc., By Angela Beacham v. DHHS, Div. of Public Health, Child and Adult Care Food Program

Alberta Denise Murphy v. DHHS and Registry

Forsyth Memorial Hospital, Inc d/b/a Forsyth Medical Center and Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, CON and North Carolina Baptist Hospital Lexington Memorial Hospital, Inc. and High Point Regional Health System

Bettie B. Woods v. Gardian Ad Litem, Angela Phillips, Lincoln County DSS/Catawba BAL

Rockingham County Department of Social Services v. Medicaid/Value Options

Denise Little v. Catawba County LME, John Hardy, Director

Edna Cray - Kids Academy v. DHHS, Div. of Public Health Child and Adult Care Food Program

Barbara J. Younce v. DHHS, DFS

Norman Lavel Bracey, Jr., v. Social Services (Medicaid)

Keneya Shaw v. DMH/DD/SAS

Elaine Weidman v. DHHS, DFS, Health Care Personnel Registry

Ariel Horowitz, Minor, by her Parents David Horowitz and Rosalind Heiko v. Div. of Medical Assistance, MH/DD/SAS and DHHS

Kerry T. Williams v. Wake County Dept. of Social Services

Brentwood Child Care Center (92001147) v. DCD/Child Abuse Neglect Unit

Angela Fay Carraway v. DHHS

Ivory Jade Alson v. Wake Co. Dept. of Social Services

Angela M. Rhodes v. New Hanover County DSS

DeJuana Byrd Heavenly Angels Child Center v. Child Abuse/ Neglect

James Soules v. DHHS

Kara Elmore v. DHHS, DFS

James Soules v. DHHS

DeJuanawurdyangeni v. Child Care Center v. Child Abuse/ Neglect

Angela M. Rhodes v. New Hanover County DSS

Full Potential, LLC v. DHHS

Little Town Learning Center, Inc., By Angela Beacham v. DHHS, Div. of Public Health, Child and Adult Care Food Program

Alberta Denise Murphy v. DHHS and Registry

Forsyth Memorial Hospital, Inc d/b/a Forsyth Medical Center and Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, CON and North Carolina Baptist Hospital Lexington Memorial Hospital, Inc. and High Point Regional Health System

Bettie B. Woods v. Gardian Ad Litem, Angela Phillips, Lincoln County DSS/Catawba BAL

Rockingham County Department of Social Services v. Medicaid/Value Options

Denise Little v. Catawba County LME, John Hardy, Director

Edna Cray - Kids Academy v. DHHS, Div. of Public Health Child and Adult Care Food Program

Barbara J. Younce v. DHHS, DFS

Norman Lavel Bracey, Jr., v. Social Services (Medicaid)

Keneya Shaw v. DMH/DD/SAS

Elaine Weidman v. DHHS, DFS, Health Care Personnel Registry

Ariel Horowitz, Minor, by her Parents David Horowitz and Rosalind Heiko v. Div. of Medical Assistance, MH/DD/SAS and DHHS

Kerry T. Williams v. Wake County Dept. of Social Services

Brentwood Child Care Center (92001147) v. DCD/Child Abuse Neglect Unit

Angela Fay Carraway v. DHHS

Ivory Jade Alson v. Wake Co. Dept. of Social Services

Angela M. Rhodes v. New Hanover County DSS

DeJuana Byrd Heavenly Angels Child Center v. Child Abuse/ Neglect

James Soules v. DHHS

Kara Elmore v. DHHS, DFS

James Soules v. DHHS

DeJuanawurdyangeni v. Child Care Center v. Child Abuse/ Neglect

Angela M. Rhodes v. New Hanover County DSS

Full Potential, LLC v. DHHS

Little Town Learning Center, Inc., By Angela Beacham v. DHHS, Div. of Public Health, Child and Adult Care Food Program

Alberta Denise Murphy v. DHHS and Registry

Forsyth Memorial Hospital, Inc d/b/a Forsyth Medical Center and Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, CON and North Carolina Baptist Hospital Lexington Memorial Hospital, Inc. and High Point Regional Health System

Bettie B. Woods v. Gardian Ad Litem, Angela Phillips, Lincoln County DSS/Catawba BAL

Rockingham County Department of Social Services v. Medicaid/Value Options

Denise Little v. Catawba County LME, John Hardy, Director

Edna Cray - Kids Academy v. DHHS, Div. of Public Health Child and Adult Care Food Program

Barbara J. Younce v. DHHS, DFS

Norman Lavel Bracey, Jr., v. Social Services (Medicaid)

Keneya Shaw v. DMH/DD/SAS

Elaine Weidman v. DHHS, DFS, Health Care Personnel Registry

Ariel Horowitz, Minor, by her Parents David Horowitz and Rosalind Heiko v. Div. of Medical Assistance, MH/DD/SAS and DHHS

Kerry T. Williams v. Wake County Dept. of Social Services

Brentwood Child Care Center (92001147) v. DCD/Child Abuse Neglect Unit

Angela Fay Carraway v. DHHS

Ivory Jade Alson v. Wake Co. Dept. of Social Services

Angela M. Rhodes v. New Hanover County DSS

Play and Learn Childcare, Mary Ellen Helton v. DHHS, Div. of Public Health, Child and Adult Care Food Program

RTTS, Inc v. DHHS, DFS, Mental Health Licensure and Cert. Section

Rhonda Bunngarner v. DHHS, Div. of Medical Assistance

Zabrina Johnson v. DHHS

Leea Holt, Tari Guevara v. Div. of Child Development, DHHS

Reno Judd/Noreen Currie v. DHHS

New Directions II, Tamara Perry v. DHHS, DFS, Mental Health Licensure & Certification Section

New Directions II Lane House, Tama Perry v. DHHS, DFS Mental Health Licensure & Certification Section

Beverly M. West v. DHHS

Hospice and Palliative Care Center of Alamance-Caswell, LLC v. DHHS, DFS, Division, Licensure and Certification Section and Community Home Care of Vance County, Inc. d/b/a Community Home Care and
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Decision No.</th>
<th>Judge</th>
<th>Decision Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospice Hospice and Palliative Care Center of Alamance-Caswell, LLC v. DHHS</td>
<td>06 DHR 1248</td>
<td>Elkins</td>
<td>12/15/06</td>
</tr>
<tr>
<td>DFS, Licensure and Certification Section, CON Section and Liberty Home Care, LLC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sherri Groves v. Div. of Child Development</td>
<td>06 DHR 1252</td>
<td>Gray</td>
<td>09/14/06</td>
</tr>
<tr>
<td>GraceLand Food Mart, James C. McGirt, Owner v. DHHS</td>
<td>06 DHR 1266</td>
<td>Elkins</td>
<td>09/22/06</td>
</tr>
<tr>
<td>April Ivelisse Truitt v. DHHS</td>
<td>06 DHR 1288</td>
<td>Elkins</td>
<td>12/12/06</td>
</tr>
<tr>
<td>Willie P. Little v. Medicaid</td>
<td>06 DHR 1315</td>
<td>Gray</td>
<td>11/09/06</td>
</tr>
<tr>
<td>Debra Brown v. DHHS</td>
<td>06 DHR 1323</td>
<td>Gray</td>
<td>11/27/06</td>
</tr>
<tr>
<td>Grandma's House Night Care, Shirley Brown v. Jeff Gaster, Dept. of Child Development</td>
<td>06 DHR 1331</td>
<td>Overby</td>
<td>11/27/06</td>
</tr>
<tr>
<td>Mary Jane Rutledge v. NCOAH</td>
<td>06 DHR 1332</td>
<td>Gray</td>
<td>09/12/06</td>
</tr>
<tr>
<td>Rebecca G Banks v. Dept. of Social Services, Crystal Jackson</td>
<td>06 DHR 1333</td>
<td>Overby</td>
<td>11/28/06</td>
</tr>
<tr>
<td>Jamie Dayton for Crystall Cooper v. DHHS, Div. of MH/DD/SAS Customer Service Section</td>
<td>06 DHR 1357</td>
<td>Webster</td>
<td>12/15/06</td>
</tr>
<tr>
<td>Scott Andrew Broadway v. DHHS (Medicaid)</td>
<td>06 DHR 1395</td>
<td>Gray</td>
<td>11/13/06</td>
</tr>
<tr>
<td>Kyle Collier, a minor, by his mother and legal guardian, Orbie Etheridge v. DHHS</td>
<td>06 DHR 1412</td>
<td>Morrison</td>
<td>12/22/06</td>
</tr>
<tr>
<td>Betty Betts v. Division of Medical Assistance</td>
<td>06 DHR 1449</td>
<td>Morrison</td>
<td>11/02/06</td>
</tr>
<tr>
<td>Rita Perterson v. OAH</td>
<td>06 DHR 1456</td>
<td>Wade</td>
<td>12/13/06</td>
</tr>
<tr>
<td>Phyllis Hale for daughter Haley Hale v. OAH</td>
<td>06 DHR 1467</td>
<td>Elkins</td>
<td>12/11/06</td>
</tr>
<tr>
<td>Lots of Love Child Development Center v. DHHS</td>
<td>06 DHR 1471</td>
<td>Lassiter</td>
<td>12/15/06</td>
</tr>
<tr>
<td>Rodney Winstead Jr v. DHHS</td>
<td>06 DHR 1475</td>
<td>Morrison</td>
<td>10/26/06</td>
</tr>
<tr>
<td>Aunt Alice Daycare Center, Alice Camara v. DHHS, Nutrition Program</td>
<td>06 DHR 1490</td>
<td>Lassiter</td>
<td>10/13/06</td>
</tr>
<tr>
<td>Mr. Timmy P. Pless, Barry Moore, Advocate v. DHHS, Div. of Medical Assistance</td>
<td>06 DHR 1500</td>
<td>Wade</td>
<td>12/13/06</td>
</tr>
<tr>
<td>LaShawn Hardy v. Health Care Personnel Registry</td>
<td>06 DHR 1501</td>
<td>Overby</td>
<td>01/04/07</td>
</tr>
<tr>
<td>Connie Lee Yates v. DHHS</td>
<td>06 DHR 1558</td>
<td>Morrison</td>
<td>09/27/06</td>
</tr>
<tr>
<td>Valyncia J. London v. DHHS</td>
<td>06 DHR 1601</td>
<td>Lassiter</td>
<td>11/13/06</td>
</tr>
<tr>
<td>Kelly A. Schofield, M.D., v. DHHS, Mental Health Licensure and Certification</td>
<td>06 DHR 1602</td>
<td>Gray</td>
<td>02/21/07</td>
</tr>
<tr>
<td>Rose Marie (Allala) Severowell v. Wake County &amp; Johnston County, DHHS</td>
<td>06 DHR 1623</td>
<td>Gray</td>
<td>11/09/06</td>
</tr>
<tr>
<td>Uniquely Supported, Inc, Shawn Kuhl (provide appropriate supervision)</td>
<td>06 DHR 1634</td>
<td>Lassiter</td>
<td>12/04/06</td>
</tr>
<tr>
<td>Julian Jones v. Edwards – Prior Approval</td>
<td>06 DHR 1679</td>
<td>Gray</td>
<td>12/20/06</td>
</tr>
<tr>
<td>Natasha Renee McNeely v. Western Carolina Center, J Iverson Riddle</td>
<td>06 DHR 1682</td>
<td>Lassiter</td>
<td>10/31/06</td>
</tr>
<tr>
<td>Tishea Talley v. Nurse Registry</td>
<td>06 DHR 1724</td>
<td>Overby</td>
<td>11/22/06</td>
</tr>
<tr>
<td>Diane Jenkins-Mother/Guardian for Erza Carl Johnson v. DHHS, Div. of Mental Health Development Disabilities and Substance Abuse</td>
<td>06 DHR 1784</td>
<td>Lassiter</td>
<td>01/24/07</td>
</tr>
<tr>
<td>Linda Lea, Grace Manor v. Licensure Section</td>
<td>06 DHR 1789</td>
<td>Lassiter</td>
<td>01/24/07</td>
</tr>
<tr>
<td>Polley Clinic of Dermatology &amp; Dermatological Surgery PA</td>
<td>06 DHR 1939</td>
<td>Gray</td>
<td>01/08/07</td>
</tr>
<tr>
<td>Medical Mobility Center v. Div. of Medical Medicaid Program</td>
<td>06 DHR 2034</td>
<td>Gray</td>
<td>12/14/06</td>
</tr>
<tr>
<td>Kim Michelle Sinclair, Kim Sinclair (Jasmine) v. DHHS</td>
<td>06 DHR 2117</td>
<td>Overby</td>
<td>01/11/07</td>
</tr>
<tr>
<td>Shanon B. Kessler (mother), Cassie L. Kessler (daughter) v. Social Services</td>
<td>06 DHR 2170</td>
<td>Overby</td>
<td>01/25/07</td>
</tr>
<tr>
<td>Teresa B. Morton, v. Santana T. Deberry and Dreddal Pratt, Chief of OEMS, Office of Emergency Medical Services</td>
<td>06 DHR 2180</td>
<td>Webster</td>
<td>02/08/07</td>
</tr>
<tr>
<td>Emily Thompson, Drug America v. Medicaid/NCDHHS</td>
<td>06 DHR 2341</td>
<td>Gray</td>
<td>02/20/07</td>
</tr>
<tr>
<td>Marijana Fisher Ford v. DHHS, DFS</td>
<td>06 DHR 2358</td>
<td>Lassiter</td>
<td>02/20/07</td>
</tr>
<tr>
<td>DEPARTMENT OF ADMINISTRATION</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate Express Office Products, Inc. v. NC Division of Purchase and Contract, &amp; Office Depot, Inc.</td>
<td>06 DOA 0112</td>
<td>Gray</td>
<td>05/17/06</td>
</tr>
<tr>
<td>Hershel Sarraf, Oro Avanti, Inc. v. DOA, Div. of Purchase and Contract</td>
<td>06 DOA 0646</td>
<td>Wade</td>
<td>09/20/06</td>
</tr>
<tr>
<td>DEPARTMENT OF CORRECTIONS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michael Eugene Hunt v. DOC</td>
<td>06 DOC 0498</td>
<td>Gray</td>
<td>06/20/06</td>
</tr>
<tr>
<td>DEPARTMENT OF JUSTICE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Steven Forrest Brubaker v. NC Criminal Justice Education and Training Standards Commission</td>
<td>05 DOJ 1405</td>
<td>Elkins</td>
<td>05/31/06</td>
</tr>
<tr>
<td>Jeffrey Michael Quinn v. Criminal Justice Training Standards Comm.</td>
<td>05 DOJ 1406</td>
<td>Elkins</td>
<td>08/04/06</td>
</tr>
<tr>
<td>Christopher Paul Stanfield v. Criminal Justice and Training Standards Commission and Sheriff's Education and Training Standards Comm.</td>
<td>05 DOJ 1520</td>
<td>Wade</td>
<td>08/28/06</td>
</tr>
<tr>
<td>Christopher Paul Stanfield v. Criminal Justice and Training Standards Comm and Sheriff's Education and Training Standards Comm.</td>
<td>05 DOJ 1521</td>
<td>Wade</td>
<td>08/28/06</td>
</tr>
<tr>
<td>Todd Franklin Wyke v. Criminal Justice Education and Training Standards Commission</td>
<td>05 DOJ 2223</td>
<td>Lassiter</td>
<td>09/15/06</td>
</tr>
<tr>
<td>Michael Edward Sutton v. NC Criminal Justice Education &amp; Training Standards Commission</td>
<td>06 DOJ 0012</td>
<td>Morrison</td>
<td>05/09/06</td>
</tr>
<tr>
<td>Philip Lee Holdaway v. Sheriff's Education and Training Standards Comm.</td>
<td>06 DOJ 0069</td>
<td>DeLuca</td>
<td>08/04/06</td>
</tr>
<tr>
<td>Anthony Lee Davis v. Sheriff's Education and Training Standards Comm.</td>
<td>06 DOJ 0070</td>
<td>Gray</td>
<td>08/26/06</td>
</tr>
<tr>
<td>Bobbie Jo Bulinis v. Sheriff's Education and Training Standards Comm.</td>
<td>06 DOJ 0071</td>
<td>Lassiter</td>
<td>12/13/06</td>
</tr>
<tr>
<td>Todd Franklin Wyke v. DOJ, Company Police Program</td>
<td>06 DOJ 0146</td>
<td>Lassiter</td>
<td>09/15/06</td>
</tr>
<tr>
<td>Scotty Eugene Robinson v. Sheriff's Education and Training Standards Commission</td>
<td>06 DOJ 0200</td>
<td>Mann</td>
<td>12/08/06</td>
</tr>
<tr>
<td>Angela Renee Lail v. Sheriff's Education and Training Standards Comm.</td>
<td>06 DOJ 0228</td>
<td>Gray</td>
<td>08/06/06</td>
</tr>
<tr>
<td>James Woodrow Jacobs v. Sheriff's Education and Training Standards Commission</td>
<td>06 DOJ 0229</td>
<td>Gray</td>
<td>07/12/06</td>
</tr>
<tr>
<td>VIRBLE LEAKE, JR. v. PRIVATE PROTECTIVE SERVICES BOARD</td>
<td>06 DOJ 0397</td>
<td>Morrison</td>
<td>10/05/06</td>
</tr>
</tbody>
</table>
CONTESTED CASE DECISIONS

Jason Matthew Lish v. Criminal Justice Education and Training Standards Commission 06 DOJ 0579 Wade 09/12/06
Matthew Vicente Saylors v. Criminal Justice Education and Training Standards Commission 06 DOJ 0597 Wade 12/27/06
Christopher Brian Mingia v. Criminal Justice Education and Training Standards Commission 06 DOJ 0598 Wade 09/12/06
Thomas M. Combs v. DOJ, Company Police Program 06 DOJ 0640 Elkins 10/16/06
Russell Lee Weaver v. Criminal Justice Education and Training Standards Commission 06 DOJ 0662 Gray 01/03/07
Christopher S. Cummings v. DOJ, Company Police Program 06 DOJ 0696 Gray 08/11/06
Allison M. Burdette v. Company Police Program 06 DOJ 0733 Wade 08/11/06
Amber Lee Baldwin v. Sheriffs' Education and Training Standards Comm. 06 DOJ 0814 Gray 06/26/06
Reginald Warren v. Criminal Justice Education and Training Standards Commission 06 DOJ 0880 Gray 09/08/06
Betty Perry v. Criminal Justice Education and Training Standards Comm. 06 DOJ 0881 Lassiter 09/20/06
Danny Kaye Barham and NC Detective Agency, Inc v. Private Protective Services Board 06 DOJ 0870 Morrison 07/08/06
David L. Williams v. Private Protective Services Board 06 DOJ 0876 Morrison 07/18/06
Donna G. Redding v. Private Protective Services Board 06 DOJ 0877 Morrison 08/01/06
Joseph O. Smiley v. Private Protective Services Board 06 DOJ 0878 Morrison 08/01/06
Sean Thomas Roberts v. Sheriffs' Education and Training Standards Comm. 06 DOJ 1061 Elkins 11/30/06
William Eugene Lomke v. Sheriffs' Education and Training Standards Commission 06 DOJ 1293 Overby 11/28/06
Amy Pearl King v. Sheriffs' Education and Training Standards Comm. 06 DOJ 1295 Lassiter 10/10/06
Marcellus Moore v. Criminal Justice Education and Training Standards Commission 06 DOJ 1296 Mann 01/22/07
Frankey Denese White v. Sheriffs' Education and Training Standards Commission 06 DOJ 1297 Gray 11/03/06
John Robert Fedyuszyn v. Alarm Systems Licensing Board 06 DOJ 1345 Wade 12/27/06
Jerry Lynn Cheek v. Sheriffs' Education and Training Standards Comm. 06 DOJ 1496 Elkins 12/11/06
Quintin G. Burnett v. Criminal Justice Education and Training Standards Commission 06 DOJ 1646 Gray 12/20/06
Michael Abbot Copeland v. Sheriffs' Education and Training Standards Commission 06 DOJ 1742 Gray 02/05/07
James Phillip Daniel v. Sheriffs' Education and Training Standards Comm. 06 DOJ 1743 Gray 01/08/07
Ronnie Lee Bland v. Criminal Justice Education and Training Standards Commission 06 DOJ 1749 Gray 01/18/07
Annette Lasister Joyner v. Sheriffs' Education and Training Standards Commission 06 DOJ 1750 Gray 01/08/07
Joshua Michael Richardson v. Sheriffs' Education and Training Standards Commission 06 DOJ 1788 Gray 01/08/07
Katrina Moore Bowden v. Sheriffs' Education and Training Standards Commission 06 DOJ 1919 Gray 01/18/07

DEPARTMENT OF STATE TREASURER
Phyllis Dianne Smith v. Department of State Treasurer Retirement Systems Division 05 DST 1378 Wade 12/27/06
Percy E. Myers v. Retirement Systems Division, LGERS, 06 DST 0048 Chess 05/31/06
Larry D. Beck v. Local Governmental Employees' Retirement System, a Corporation, et al 06 DST 0366 Overby 01/03/07
Mary B. Spencer v. State Treasurer, Retirement Systems Division 06 DST 0534 Chess 11/09/06
Harry Whisnant v. Teachers' and State Employees' Retirement System of NC, a Corporation, Board of Trustees of the Teachers' and State Employees' Retirement System of NC, A body politic and Corporate, DOT, Retirement Systems Div. and the State of NC 06 DST 0591 Gray 09/19/06
Robin C. Fish v. Department of Treasurer Retirement Systems Division 06 DST 1353 Overby 01/11/07

EDUCATION, STATE BOARD OF
Darrell Wayne Parcell v. State Board of Education 05 EDC 1861 Morrison 10/11/06
Elizabeth Ann Mical v. Department of Public Instruction 05 EDC 1962 Morrison 08/04/06
Margaret Frances Handest v. Dept. of Public Instruction, Center for Recruitment and Retention 05 EDC 2057 Morrison 10/11/06
Linda Ellis v. Dept. of Public Instruction - National Board – Certification 06 EDC 0002 Morrison 10/12/06
Monica Robertson v. Department of Public Instruction 06 EDC 0359 Morrison 08/02/06
Gail G. Brooks v. Department of Public Instruction 06 EDC 0437 Morrison 08/07/06
Reginald Powe v. Public Schools of North Carolina, State Board of Educ. Department of Public Instruction, Superintendent's Ethics Advisory Committee 06 EDC 1116 Elkins 10/03/06
Charlie L. Richardson v. Department of Public Instruction Licensure Section 06 EDC 1131 Gray 11/03/06
Brenda H. Cox v. Center for Recruitment & Retention National Board for Professional Teaching Standards, Dept. of Public Instruction 06 EDC 1546 Elkins 12/11/06
Catherine (Cathy) Rush v. State Board of Education, Dept. of Public Instruction 06 EDC 1622 Gray 11/09/06
Melissa Thomas v. State Board of Education 06 EDC 1667 Gray 01/29/07
Katrina Walker v. DPI 06 EDC 1804 Gray 01/29/07
Jeffrey Wayne McClain v. Wake Co. Public School System 06 EDC 2042 Elkins 01/05/07
James Aaron Swafford v. DPI 06 EDC 2175 Elkins 01/17/07
Wendy Holloway v. State Board of Education 07 EDC 0048 Gray 02/22/07
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Court No.</th>
<th>Judge</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>DEPT. OF ENVIRONMENT AND NATURAL RESOURCES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Howard L. Hardy v. Co. of Craven Department of Health</td>
<td>00 EHR 0803</td>
<td>Gray</td>
<td>06/26/06</td>
</tr>
<tr>
<td>Waterkeeper Alliance, et al., and Richard Dove v. DENR, Division of Water</td>
<td>02 EHR 1353</td>
<td>Gray</td>
<td>01/30/07</td>
</tr>
<tr>
<td>Quality, Murphy-Brown, LLC, Brown's of Carolina, LLC, Carroll's Foods, LLC,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Murphy Farms, LLC, North Carolina Pork Council, Inc, NC Poultry Federation,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inc.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wheatley Oil Company, Inc v. DENR, Div. of Waste Management</td>
<td>03 EHR 0030</td>
<td>Gray</td>
<td>08/04/06</td>
</tr>
<tr>
<td>Audiddies, Inc v. DENR</td>
<td>03 EHR 1312</td>
<td>Lassiter</td>
<td>10/18/06</td>
</tr>
<tr>
<td>Joe L. Wilson v. DENR</td>
<td>03 EHR 1641</td>
<td>Gray</td>
<td>10/09/06</td>
</tr>
<tr>
<td>Ronald L. Preston v. Davidson County Health Department</td>
<td>03 EHR 2329</td>
<td>Gray</td>
<td>08/24/06</td>
</tr>
<tr>
<td>Audiddies, Inc v. DENR</td>
<td>04 EHR 0103</td>
<td>Lassiter</td>
<td>10/18/06</td>
</tr>
<tr>
<td>Sandra M. Netting v. DENR</td>
<td>04 EHR 1768</td>
<td>Gray</td>
<td>09/29/06</td>
</tr>
<tr>
<td>County of Davidson v. DENR, Div. of Air Quality</td>
<td>04 EHR 0362</td>
<td>Wade</td>
<td>09/01/06</td>
</tr>
<tr>
<td>Coastland Corporation, James E. Johnson, Jr., Pres v. Pamlico County</td>
<td>04 EHR 0842</td>
<td>Lassiter</td>
<td>10/31/06</td>
</tr>
<tr>
<td>Health Department, Environmental Health</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Partners Recycling, Inc v. DENR</td>
<td>04 EHR 1503</td>
<td>Wade</td>
<td>12/15/06</td>
</tr>
<tr>
<td>Laney Oil Company, Inc, UST# 04-04/09P, UST# 04-050P v DENR</td>
<td>05 EHR 0135</td>
<td>Gray</td>
<td>06/20/06</td>
</tr>
<tr>
<td>Anton Tomassetti v. DENR, Div. of Air Quality</td>
<td>05 EHR 0321</td>
<td>Gray</td>
<td>06/12/06</td>
</tr>
<tr>
<td>Raymond S. Carpenter v. DENR</td>
<td>05 EHR 2009</td>
<td>Bryan</td>
<td>08/28/06</td>
</tr>
<tr>
<td>John Graham v. DENR, Div. of Air Quality</td>
<td>05 EHR 2029</td>
<td>Gray</td>
<td>05/08/06</td>
</tr>
<tr>
<td>Samuel Buck Kiser v. DENR, Div. of Waste Management</td>
<td>05 EHR 2120</td>
<td>Chess</td>
<td>07/25/06</td>
</tr>
<tr>
<td>Christopher S. Anderson, Jan HP Anderson v. Ashe County Health Dept.</td>
<td>06 EHR 0558</td>
<td>Elkins</td>
<td>07/31/06</td>
</tr>
<tr>
<td>Heyward Ledford, Wolfpen Associates, Inc v. DENR</td>
<td>06 EHR 0679</td>
<td>Gray</td>
<td>06/12/06</td>
</tr>
<tr>
<td>Parnell-Kinlaw Group, Inc v. DENR, Div. of Land Quality</td>
<td>06 EHR 0743</td>
<td>Mann</td>
<td>09/26/06</td>
</tr>
<tr>
<td>William P. Ferris v. DENR, Division of Coastal Management</td>
<td>06 EHR 0908</td>
<td>Gray</td>
<td>02/22/07</td>
</tr>
<tr>
<td>William &amp; Valerie Brodie v. DENR/Division of Coastal Management and</td>
<td>06 EHR 0910</td>
<td>Mann</td>
<td>11/08/06</td>
</tr>
<tr>
<td>Town of Carolina Beach</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Robin R. Moore v. DENR, Div. of Waste Management</td>
<td>06 EHR 0986</td>
<td>Lassiter</td>
<td>11/07/06</td>
</tr>
<tr>
<td>Danny Ray Thorpe v. Brunswick Co. Health Dept., Environmental Health</td>
<td>06 EHR 1041</td>
<td>Gray</td>
<td>08/07/06</td>
</tr>
<tr>
<td>Health Department</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>David Edgar Hine v. DENR, Div of Waste Management, Solid Waste Section</td>
<td>06 EHR 1044</td>
<td>Mann</td>
<td>12/15/06</td>
</tr>
<tr>
<td>John Darlinton v. Division of Water Quality</td>
<td>06 EHR 1081</td>
<td>Gray</td>
<td>02/01/07</td>
</tr>
<tr>
<td>Dianne D. Vereen v. Brunswick Co. Health Department</td>
<td>06 EHR 1126</td>
<td>Elkins</td>
<td>09/27/06</td>
</tr>
<tr>
<td>Princeton Recreational Park v. DENR</td>
<td>06 EHR 1196</td>
<td>Wade</td>
<td>12/13/06</td>
</tr>
<tr>
<td>American Canoe Association, ET.AL v. DENR and DM Farms of Rosehill LLC</td>
<td>06 EHR 1254</td>
<td>Overby</td>
<td>01/02/07</td>
</tr>
<tr>
<td>C.F. Little and Patsy H. Little v. DENR</td>
<td>06 EHR 1340</td>
<td>Lassiter</td>
<td>09/22/06</td>
</tr>
<tr>
<td>Fall Creek Land Co Lot/201 Yellowtop Mountain Estates</td>
<td>06 EHR 1436</td>
<td>Wade</td>
<td>12/27/06</td>
</tr>
<tr>
<td>Cliff S. Barnes v. EMC</td>
<td>06 EHR 1450</td>
<td>Wade</td>
<td>12/08/06</td>
</tr>
<tr>
<td>Joe Walter Sprouse and Talitha LeeAnn Bradburn Sprouse v. The</td>
<td>06 EHR 1472</td>
<td>Lassiter</td>
<td>01/24/07</td>
</tr>
<tr>
<td>Buncombe County Health Center, Environmental Health Division</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>John P. Leonard, Agent for Magnolia Pointe LP v. County of Durham</td>
<td>06 EHR 1568</td>
<td>Gray</td>
<td>10/13/06</td>
</tr>
<tr>
<td>Engineering Department</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alvin R. Newell and Barbara A. Newell v. Haywood Co. Health Dept.</td>
<td>06 EHR 1652</td>
<td>Lassiter</td>
<td>01/24/07</td>
</tr>
<tr>
<td>Environmental Health</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DEPARTMENT OF INSURANCE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Robert Bryan Bender and James V. Bender, Jr. and Wife, Sheron</td>
<td>05 INS 0067</td>
<td>Lassiter</td>
<td>10/06/06</td>
</tr>
<tr>
<td>Bender v. Teachers' and State Employees' Comprehensive Major Medical Plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Heidi L. Roth v. Teachers' and State Employees' Comprehensive Major</td>
<td>05 INS 1779</td>
<td>Lassiter</td>
<td>10/19/06</td>
</tr>
<tr>
<td>Medical Plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>James D. Kelly Jr. v. State Health Plan</td>
<td>06 INS 0013</td>
<td>Morrison</td>
<td>08/07/06</td>
</tr>
<tr>
<td>Daniel C. Johnson v. Teachers' and State Employees' Comprehensive Major</td>
<td>06 INS 0353</td>
<td>Morrison</td>
<td>07/03/06</td>
</tr>
<tr>
<td>Medical Plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Donna Jones/Mark Jones v. Teachers' and State Employees' Comprehensive</td>
<td>06 INS 0779</td>
<td>Wade</td>
<td>12/29/06</td>
</tr>
<tr>
<td>Medical Plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rebecca P. Murray v. George C. Stokes, Executive Administrator</td>
<td>06 INS 0864</td>
<td>Elkins</td>
<td>12/21/06</td>
</tr>
<tr>
<td>N.C. State Health Plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kerry Stewart v. Teachers' and State Employees' Comprehensive Major</td>
<td>06 INS 1113</td>
<td>Elkins</td>
<td>01/04/07</td>
</tr>
<tr>
<td>Medical Plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lou Ann Ostadi v. Teachers' and State Employees' Comprehensive Major</td>
<td>06 INS 1141</td>
<td>Lassiter</td>
<td>01/24/07</td>
</tr>
<tr>
<td>Medical Plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Harry F. Reynolds v. Teachers' and State Employees' Comprehensive Major</td>
<td>06 INS 1348</td>
<td>Morrison</td>
<td>12/22/06</td>
</tr>
<tr>
<td>Medical Plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LICENSING BOARD FOR GENERAL CONTRACTORS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licensing Board for General Contractors v. S.N. Davis Company, Inc</td>
<td>06 LBC 0827</td>
<td>Webster</td>
<td>01/24/07</td>
</tr>
<tr>
<td>(License No. 49245) and Shelby G. Davis, as Qualifier</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OFFICE OF STATE PERSONNEL</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sgt. Gerry R. Mouzon v. Crime Control &amp; Public Safety, NC State Highway</td>
<td>02 OSP 0392</td>
<td>Gray</td>
<td>06/15/06</td>
</tr>
<tr>
<td>Case Title</td>
<td>DOcket No.</td>
<td>Judge</td>
<td>Date</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>------------</td>
<td>----------</td>
<td>----------</td>
</tr>
<tr>
<td>Darian Lee Hybl v. Halifax Community College (HCC)</td>
<td>02 OSP 1036</td>
<td>Gray</td>
<td>06/15/06</td>
</tr>
<tr>
<td>Georgia Warren v. DOT</td>
<td>02 OSP 1911</td>
<td>Wade</td>
<td>08/08/06</td>
</tr>
<tr>
<td>Georgia Warren v. DOT</td>
<td>02 OSP 2179</td>
<td>Wade</td>
<td>08/08/06</td>
</tr>
<tr>
<td>Ricky Lee v. County of Buncombe</td>
<td>03 OSP 0822</td>
<td>Lassiter</td>
<td>01/26/07</td>
</tr>
<tr>
<td>Emily Flores v. College of Agriculture and Life Sciences NC State</td>
<td>04 OSP 1518</td>
<td>Lassiter</td>
<td>10/13/06</td>
</tr>
<tr>
<td>James Ray Merrill v. Broughton Hospital</td>
<td>05 OSP 1767</td>
<td>Lassiter</td>
<td>12/13/06</td>
</tr>
<tr>
<td>Sandra S. Denmark v. Dorothea Dix Hospital, DHHS</td>
<td>06 OSP 1685</td>
<td>Gray</td>
<td>01/16/07</td>
</tr>
<tr>
<td>Melvin Sutton v. DOT</td>
<td>06 OSP 1657</td>
<td>Gray</td>
<td>11/21/06</td>
</tr>
<tr>
<td>Wendy Anderson v. Agricultural and Technical State University</td>
<td>06 OSP 1733</td>
<td>Gray</td>
<td>12/14/06</td>
</tr>
<tr>
<td>Brenda Stroud v. DST</td>
<td>06 OSP 1722</td>
<td>Gray</td>
<td>01/18/07</td>
</tr>
<tr>
<td>Carlisle Johnson v. NCSU Dining</td>
<td>06 OSP 1719</td>
<td>Gray</td>
<td>01/05/07</td>
</tr>
<tr>
<td>James D. Abrams v. Craven Co. DOT</td>
<td>06 OSP 1358</td>
<td>Gray</td>
<td>10/13/06</td>
</tr>
<tr>
<td>Calvin D. Ellis v. Fayetteville State University</td>
<td>06 OSP 1336</td>
<td>Wade</td>
<td>12/08/06</td>
</tr>
<tr>
<td>Melvin Daniels v. DOC</td>
<td>06 OSP 1299</td>
<td>Elkins</td>
<td>12/11/06</td>
</tr>
<tr>
<td>Febby Manuel v. DMA, DHHS</td>
<td>06 OSP 1280</td>
<td>Elkins</td>
<td>09/07/06</td>
</tr>
<tr>
<td>James Walter Gibson v. DOT</td>
<td>06 OSP 1343</td>
<td>Mann</td>
<td>05/19/06</td>
</tr>
<tr>
<td>Lisa A. Forbes v. Dorothea Dix Hospital</td>
<td>06 OSP 1343</td>
<td>Gray</td>
<td>03/29/06</td>
</tr>
<tr>
<td>Lisa A. Forbes v. Dorothea Dix Hospital</td>
<td>06 OSP 1315</td>
<td>Gray</td>
<td>03/29/06</td>
</tr>
<tr>
<td>Sharon B. Matthews v. DOT, DMV</td>
<td>06 OSP 1219</td>
<td>Wade</td>
<td>06/28/06</td>
</tr>
<tr>
<td>Michael D. Bognarowicz v. NC Wildlife Resources Commission</td>
<td>06 OSP 1024</td>
<td>Bryan</td>
<td>05/18/06</td>
</tr>
<tr>
<td>Pamela C. Granger v. UNC-CH</td>
<td>06 OSP 0007</td>
<td>Lassiter</td>
<td>12/22/06</td>
</tr>
<tr>
<td>Malcolm Shelton Davis v. DHHS</td>
<td>06 OSP 0015</td>
<td>Smith</td>
<td>09/12/06</td>
</tr>
<tr>
<td>Kamaria Smith v. DHHS</td>
<td>06 OSP 0130</td>
<td>Mann</td>
<td>06/06/06</td>
</tr>
<tr>
<td>Lisa A. Forbes v. Dorothea Dix Hospital</td>
<td>06 OSP 0134</td>
<td>Gray</td>
<td>03/29/06</td>
</tr>
<tr>
<td>Lisa A. Forbes v. Dorothea Dix Hospital</td>
<td>06 OSP 0135</td>
<td>Gray</td>
<td>03/29/06</td>
</tr>
<tr>
<td>Leilia J. Bailey v. Winston-Salem State University</td>
<td>06 OSP 0211</td>
<td>Elkins</td>
<td>10/23/06</td>
</tr>
<tr>
<td>Reginald Powe v. Public Schools of NC State Board of Education, Dept of</td>
<td>06 OSP 0238</td>
<td>Lassiter</td>
<td>05/09/06</td>
</tr>
<tr>
<td>Nita Bass v. Craven County Department of Social Services</td>
<td>06 OSP 0346</td>
<td>Lassiter</td>
<td>09/12/06</td>
</tr>
<tr>
<td>Lisa Green v. DOC</td>
<td>06 OSP 0379</td>
<td>Lassiter</td>
<td>06/02/06</td>
</tr>
<tr>
<td>James Walter Gibson v. DOT</td>
<td>06 OSP 0543</td>
<td>Gray</td>
<td>05/19/06</td>
</tr>
<tr>
<td>Caria Faulk v. Columbus Co. Dept. of Social Services</td>
<td>06 OSP 0546</td>
<td>Lassiter</td>
<td>07/06/06</td>
</tr>
<tr>
<td>Todd R. Holbrook v. DOT, DMV</td>
<td>06 OSP 0644</td>
<td>Gray</td>
<td>12/13/06</td>
</tr>
<tr>
<td>Thomasina Burrows v. DHHS, Div. of Vocational Rehabilitation Services/</td>
<td>06 OSP 0665</td>
<td>Elkins</td>
<td>11/06/06</td>
</tr>
<tr>
<td>Emily Flores v. College of Agriculture and Life Sciences NC State</td>
<td>04 OSP 1518</td>
<td>Lassiter</td>
<td>10/13/06</td>
</tr>
<tr>
<td>Patron, and Brian Beatty, Secretary CC &amp; PS</td>
<td>05 OSP 1024</td>
<td>Bryan</td>
<td>05/18/06</td>
</tr>
<tr>
<td>Constance M. Blackmon v. Winston-Salem State University</td>
<td>05 OSP 1280</td>
<td>Elkins</td>
<td>06/28/06</td>
</tr>
<tr>
<td>Patricia Green e. Asst. State Bar, ALA</td>
<td>05 OSP 1280</td>
<td>Elkins</td>
<td>06/28/06</td>
</tr>
<tr>
<td>Reginald Powe v. Public Schools of NC State Board of Education, Dept of</td>
<td>06 OSP 0238</td>
<td>Lassiter</td>
<td>05/09/06</td>
</tr>
<tr>
<td>Robin D. Long v. UNC Greensboro</td>
<td>06 OSP 0684</td>
<td>Lassiter</td>
<td>06/27/06</td>
</tr>
<tr>
<td>Reginald Powe v. Public Schools of NC State Board of Education, Dept of</td>
<td>06 OSP 0669</td>
<td>Lassiter</td>
<td>11/02/06</td>
</tr>
<tr>
<td>Rona Coltrane McLeod v. Guilford Co. Dept. of Public Health</td>
<td>06 OSP 0703</td>
<td>Wade</td>
<td>06/28/06</td>
</tr>
<tr>
<td>Jan-Lee Wells v. Fayetteville State Sate</td>
<td>06 OSP 0731</td>
<td>Gray</td>
<td>08/10/06</td>
</tr>
<tr>
<td>Katrina Martin v. DHHS, Division of Vocational Rehabilitation Services</td>
<td>06 OSP 0768</td>
<td>Wade</td>
<td>12/27/06</td>
</tr>
<tr>
<td>Pamela Y. Turner v. DHHS, Whitaker School</td>
<td>06 OSP 0787</td>
<td>Wade</td>
<td>12/29/06</td>
</tr>
<tr>
<td>Timothy Don Reynolds v. Morrison Correctional Institution</td>
<td>06 OSP 0853</td>
<td>Lassiter</td>
<td>07/26/06</td>
</tr>
<tr>
<td>Geraldine Blackston-Ramos v. Maurice Boswell, Mary Washum, Cynthia</td>
<td>06 OSP 0831</td>
<td>Lassiter</td>
<td>07/12/06</td>
</tr>
<tr>
<td>Chambree, Phyllis Sharpe, Dennis Davis, Bill McNeal, Wake County</td>
<td>06 OSP 0831</td>
<td>Lassiter</td>
<td>07/12/06</td>
</tr>
<tr>
<td>Public Schools/Human Resource Department/Preventive Services/</td>
<td>06 OSP 0851</td>
<td>Gray</td>
<td>08/25/06</td>
</tr>
<tr>
<td>Partnership for Educational Success</td>
<td>06 OSP 0863</td>
<td>Wade</td>
<td>08/26/06</td>
</tr>
<tr>
<td>Walter Giese v. Onslow County Board of Health</td>
<td>06 OSP 0989</td>
<td>Gray</td>
<td>01/22/07</td>
</tr>
<tr>
<td>Connie W. Williams v. DOC, Division of Prisons</td>
<td>06 OSP 1028</td>
<td>Lassiter</td>
<td>12/28/06</td>
</tr>
<tr>
<td>Juliana W. Smith v. Alamance-Caswell Area Mental Health, Developmental</td>
<td>06 OSP 1059</td>
<td>Lassiter</td>
<td>08/09/06</td>
</tr>
<tr>
<td>Disabilities, and Substance Abuse Authority</td>
<td>06 OSP 1059</td>
<td>Lassiter</td>
<td>08/09/06</td>
</tr>
<tr>
<td>Dr. Miriam W. McIntosh v. Durham Co. Health Department</td>
<td>06 OSP 1060</td>
<td>Lassiter</td>
<td>08/09/06</td>
</tr>
<tr>
<td>Maria Olae-Lingg v. UNC Health Care</td>
<td>06 OSP 1143</td>
<td>Lassiter</td>
<td>10/12/06</td>
</tr>
<tr>
<td>Alonzo Vann v. DOT</td>
<td>06 OSP 1145</td>
<td>Wade</td>
<td>12/29/06</td>
</tr>
<tr>
<td>Hattie Miller v. DOI, Food and Drug Protection Division</td>
<td>06 OSP 1287</td>
<td>Gray</td>
<td>02/06/07</td>
</tr>
<tr>
<td>Tamra M. Burroughs v. Div. of Services for the Deaf and Hard of Hearing</td>
<td>06 OSP 1280</td>
<td>Elkins</td>
<td>09/07/06</td>
</tr>
<tr>
<td>Febby Manuel v. DMA, DHHS</td>
<td>06 OSP 1282</td>
<td>Elkins</td>
<td>09/07/06</td>
</tr>
<tr>
<td>Melvin Sutton v. DOT</td>
<td>06 OSP 1299</td>
<td>Elkins</td>
<td>12/11/06</td>
</tr>
<tr>
<td>Calvin D. Ellis v. Fayetteville State University</td>
<td>06 OSP 1336</td>
<td>Wade</td>
<td>12/08/06</td>
</tr>
<tr>
<td>James D. Abrams v. Craven Co. DOT</td>
<td>06 OSP 1358</td>
<td>Gray</td>
<td>10/13/06</td>
</tr>
<tr>
<td>Dousee Morris v. DOC</td>
<td>06 OSP 1409</td>
<td>Gray</td>
<td>11/21/06</td>
</tr>
<tr>
<td>Claudette Johnson v. NCSU Dining</td>
<td>06 OSP 1509</td>
<td>Gray</td>
<td>12/07/06</td>
</tr>
<tr>
<td>Wendie Anderson v. Agricultural and Technical State University</td>
<td>06 OSP 1562</td>
<td>Elkins</td>
<td>01/05/07</td>
</tr>
<tr>
<td>Melvin Sutton v. DOT</td>
<td>06 OSP 1657</td>
<td>Gray</td>
<td>11/21/06</td>
</tr>
<tr>
<td>Sandra S. Denmark v. Dorothea Dix Hospital, DHHS</td>
<td>06 OSP 1685</td>
<td>Gray</td>
<td>01/16/07</td>
</tr>
<tr>
<td>James Ray Merrill v. Broughton Hospital</td>
<td>06 OSP 1767</td>
<td>Lassiter</td>
<td>12/13/06</td>
</tr>
<tr>
<td>Brenda Stroud v. DST</td>
<td>06 OSP 1722</td>
<td>Gray</td>
<td>01/18/07</td>
</tr>
<tr>
<td>Darian Lee Hybl v. Halifax Community College (HCC)</td>
<td>06 OSP 1773</td>
<td>Gray</td>
<td>12/14/06</td>
</tr>
<tr>
<td>Case Title</td>
<td>DOCKET</td>
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<td>DATE</td>
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<tr>
<td>---------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Teresa S Weedon v. UNC-CH</td>
<td>06 OSP</td>
<td>Elkins</td>
<td>02/22/07</td>
</tr>
<tr>
<td>Tabitha McDoo v. UNCW</td>
<td>06 OSP</td>
<td>Morrison</td>
<td>12/29/06</td>
</tr>
<tr>
<td>Todd Williams v. Appalachian State University</td>
<td>06 OSP</td>
<td>Overby</td>
<td>02/05/07</td>
</tr>
<tr>
<td>Terry D. Moses v. DOT</td>
<td>06 OSP</td>
<td>Gray</td>
<td>02/15/07</td>
</tr>
<tr>
<td>Tobias Guillame v. Fayetteville State University</td>
<td>06 OSP</td>
<td>Gray</td>
<td>02/16/07</td>
</tr>
<tr>
<td>Karen Denise Mikeal v. DHHS, Developmental Disabilities and Substance Abuse</td>
<td>06 OSP</td>
<td>Gray</td>
<td>02/16/07</td>
</tr>
<tr>
<td>Anthony W. Allen v. Wake County Human Service</td>
<td>06 OSP</td>
<td>Overby</td>
<td>02/14/07</td>
</tr>
<tr>
<td>Katharine V. Raleigh Ph.D, MPH v. Disability Determination Services</td>
<td>07 OSP</td>
<td>Overby</td>
<td>02/14/07</td>
</tr>
<tr>
<td>General Counsel</td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>SECRETARY OF STATE</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Regina H. Autry v. SOS</td>
<td>05 SOS</td>
<td>Chess</td>
<td>11/28/06</td>
</tr>
<tr>
<td>Tisha L. Jones v. Dept. of Secretary of State</td>
<td>05 SOS</td>
<td>Gray</td>
<td>05/19/06</td>
</tr>
<tr>
<td>Temeka A. Brooks v. Dept of Secretary of State</td>
<td>06 SOS</td>
<td>Mann</td>
<td>05/26/06</td>
</tr>
<tr>
<td>Laksha England v. Dept. of SOS</td>
<td>06 SOS</td>
<td>Mann</td>
<td>09/13/06</td>
</tr>
<tr>
<td>Brendalyn D. Blackmon v. Dept. of Secretary of State</td>
<td>06 SOS</td>
<td>Wade</td>
<td>08/11/06</td>
</tr>
<tr>
<td>Jennifer Carol Daniels v. Dept. of SOS</td>
<td>06 SOS</td>
<td>Lassiter</td>
<td>10/12/06</td>
</tr>
<tr>
<td>Mary P. Lee v. SOS</td>
<td>06 SOS</td>
<td>Mann</td>
<td>01/12/07</td>
</tr>
<tr>
<td>Gerald Haskins v. SOS, Notary Division</td>
<td>06 SOS</td>
<td>Gray</td>
<td>01/03/07</td>
</tr>
<tr>
<td><strong>UNC HOSPITALS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Linda Sisco v. UNC Hospitals</td>
<td>05 UNC</td>
<td>Gray</td>
<td>05/09/06</td>
</tr>
<tr>
<td>Karen H. Moore v. UNC Hospitals</td>
<td>06 UNC</td>
<td>Elkins</td>
<td>06/08/06</td>
</tr>
<tr>
<td>Krista Singletary v. UNC Hospitals</td>
<td>06 UNC</td>
<td>Mann</td>
<td>10/12/06</td>
</tr>
<tr>
<td>Larry E. Rogers v. UNC Hospitals</td>
<td>06 UNC</td>
<td>Elkins</td>
<td>07/31/06</td>
</tr>
<tr>
<td>Cynthia Lodestro v. UNC Hospitals</td>
<td>06 UNC</td>
<td>Wade</td>
<td>08/11/06</td>
</tr>
<tr>
<td>Margaret Brannham v. UNC Hospitals</td>
<td>06 UNC</td>
<td>Elkins</td>
<td>09/07/06</td>
</tr>
<tr>
<td>Ta-Wanda &amp; David Wilson v. UNC Hospitals</td>
<td>06 UNC</td>
<td>Lassiter</td>
<td>09/12/06</td>
</tr>
<tr>
<td>Angel C. Carey v. UNC Hospitals</td>
<td>06 UNC</td>
<td>Lassiter</td>
<td>09/07/06</td>
</tr>
<tr>
<td>Ricky Hayes v. UNC-CH</td>
<td>06 UNC</td>
<td>Overby</td>
<td>12/01/06</td>
</tr>
<tr>
<td>Bonnie G. Cheek v. UNC-CH</td>
<td>06 UNC</td>
<td>Gray</td>
<td>12/14/06</td>
</tr>
<tr>
<td>Regina H. Autry v. SOS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>WELL CONTRACTOR'S CERTIFICATION COMMISSION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stuart Spruill, Remediation Equipment Specialist Inc v. Well Contractor's Certification Commission</td>
<td>06 WCC</td>
<td>Gray</td>
<td>02/28/07</td>
</tr>
</tbody>
</table>