

NORTH CAROLINA REGISTER

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July 15, 2008

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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.

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Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (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 (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603

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

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603

contact: Anita Watkins awatkins@ncmlm.org

NORTH CAROLINA REGISTER
 Publication Schedule for January 2008 – December 2008

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
22:18	03/17/08	02/25/08	04/01/08	05/16/08	05/20/08	07/01/08	01/2009	12/12/08
22:19	04/01/08	03/10/08	04/16/08	06/02/08	06/20/08	08/01/08	01/2009	12/27/08
22:20	04/15/08	03/25/08	04/30/08	06/16/08	06/20/08	08/01/08	01/2009	01/10/09
22:21	05/01/08	04/10/08	05/16/08	06/30/08	07/21/08	09/01/08	01/2009	01/26/09
22:22	05/15/08	04/24/08	05/30/08	07/14/08	07/21/08	09/01/08	01/2009	02/09/09
22:23	06/02/08	05/09/08	06/17/08	08/01/08	08/20/08	10/01/08	01/2009	02/27/09
22:24	06/16/08	05/23/08	07/01/08	08/15/08	08/20/08	10/01/08	01/2009	03/13/09
23:01	07/01/08	06/10/08	07/16/08	09/02/08	09/22/08	11/01/08	01/2009	03/28/09
23:02	07/15/08	06/23/08	07/30/08	09/15/08	09/22/08	11/01/08	01/2009	04/11/09
23:03	08/01/08	07/11/08	08/16/08	09/30/08	10/20/08	12/01/08	01/2009	04/28/09
23:04	08/15/08	07/25/08	08/30/08	10/14/08	10/20/08	12/01/08	01/2009	05/12/09
23:05	09/02/08	08/11/08	09/17/08	11/03/08	11/20/08	01/01/09	01/2009	05/30/09
23:06	09/15/08	08/22/08	09/30/08	11/14/08	11/20/08	01/01/09	01/2009	06/12/09
23:07	10/01/08	09/10/08	10/16/08	12/01/08	12/22/08	02/01/09	05/2010	06/28/09
23:08	10/15/08	09/24/08	10/30/08	12/15/08	12/22/08	02/01/09	05/2010	07/12/09
23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 142
PROCLAMATION OF STATE OF EMERGENCY
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA**

Section 1. I have determined that a state of emergency, as defined in Chapter 166A of the North Carolina General Statutes, exists in Hyde, Tyrrell, and Washington counties, due to a wildfire, which began on June 1, 2008, and which has threatened the health, safety, and protection of citizens and produced hazardous travel conditions.

Section 2. Pursuant to Chapter 166A of the North Carolina General Statutes, I, therefore, proclaim the existence of a state of emergency in Hyde, Tyrrell, and Washington counties.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A of the North Carolina General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the declared counties.

Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

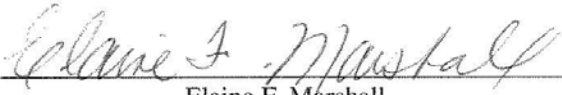
Section 7. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

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 June in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-second.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



U.S. Department of Justice

Civil Rights Division

JKT:MSR:ANS:maf
DJ 166-012-3
2007-3189
2007-3371

Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

July 26, 2007

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

Dear Mr. Holec:

This refers to eight annexations (Ordinance Nos. 07-58 through 07-60, and 07-75 through 07-79 (2007)) 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 submissions on June 19 and July 5, 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 these submissions 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,

A handwritten signature in black ink, appearing to read "John Tanner".

John Tanner
Chief, Voting Section

Note from the Codifier

Approved Rules Pending the General Assembly

Rules approved by the Rules Review Commission subject to review pursuant to G.S. 150B-21.3 by the General Assembly in the session beginning in May 2008 have completed 30 legislative days. The rules pending this session have been entered into the NC Administrative Code with the exceptions listed below.

Pursuant to G.S. 150B-21.3, if a bill that specifically disapproves a rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. A rule that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.

Legislation has been introduced to disapprove the following rules:

	RRC Approved	Bill Introduced	Ratified
AGRICULTURE			
02 NCAC 09E .0116 Unpasteurized Milk	10/18/07	HB 2524	*
BANKS, OFFICE OF THE COMMISSIONER			
04 NCAC 03M .0101 Definitions	03/20/08	SB 2164	
04 NCAC 03M .0205 Financial Responsibilities	03/20/08	SB 2164	
04 NCAC 03M .0301 Approval of Providers and Programs	03/20/08	SB 2164	
BUILDING CODE COUNCIL			
Fire Code 903.2.1.2 Group A-2 Sprinklers	09/20/07	SB 1675	
CRIME CONTROL AND PUBLIC SAFETY			
14A NCAC 09H .0308 Definitions	03/15/07	HB 2789	
14A NCAC 09H .0310 Securing Vehicles When Operator is Arrested	03/15/07	HB 2789	
14A NCAC 09H .0311 Vehicles Transported & Stored Over Objection of Owner	03/15/07	HB 2789	
14A NCAC 09H .0313 Transporting and Storing Vehicle	03/15/07	HB 2789	
14A NCAC 09H .0314 Notification	03/15/07	HB 2789	
14A NCAC 09H .0315 Release of Vehicles	03/15/07	HB 2789	
14A NCAC 09H .0316 Vehicle Inventory	03/15/07	HB 2789	
14A NCAC 09H .0317 Reimbursement of Wrecker	03/15/07	HB 2789	
14A NCAC 09H .0320 Rotation, Zone, Contract, and Deviation from System	03/15/07	HB 2789	
14A NCAC 09H .0321 Rotation Wrecker Service Regulations	03/15/07	HB 2789	
14A NCAC 09H .0322 Recording Wrecker Requests/Incidents	03/15/07	HB 2789	
14A NCAC 09H .0323 Sanctions for Violations	03/15/07	HB 2789	
14A NCAC 09H .0324 Hearing Procedures	03/15/07	HB 2789	
ENVIRONMENTAL MANAGEMENT COMMISSION			
15A NCAC 02H .1005 Stormwater Requirements: Coastal Counties	03/20/08	HB 2138	
15A NCAC 02R .0402 Schedule of Fees	10/18/07	HB 2795	
NURSING			
21 NCAC 36 .0318 Faculty	06/28/07	SB 1662	*
STATE PERSONNEL COMMISSION			
25 NCAC 01C .0216 Temporary Employment Services	05/17/07	HB 2748	*
25 NCAC 01C .0217 OSP Temporary Employment Service	05/17/07	HB 2748	*
25 NCAC 01C .0405 Temporary Appointment	05/17/07	HB 2748	*
25 NCAC 01C .0407 Temporary Part-time Appointment	05/17/07	HB 2748	*

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

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

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to amend the rule cited as 02 NCAC 38 .0601.

Proposed Effective Date: November 1, 2008

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than July 30, 2008, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: This rule permits motor fuel retail outlets with annual sales of less than 60,000 gallons to use the half-pricing method of displaying the price per gallon when their dispensers are not capable of displaying the full price. With the recent rise in motor fuel prices, more retail outlets are affected by these equipment limitations. It would cause an economic hardship for these smaller volume outlets to have to purchase new equipment. The proposed rule change would increase the sales volume limit from 60,000 to 600,000 gallons per year, but establish a sunset on use of half-pricing method of January 1, 2011.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Comments may be submitted to: David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125 extension 238, fax (919) 716-0090, email david.mcleod@ncmail.net

Comment period ends: September 15, 2008

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 38 - STANDARDS DIVISION

SECTION .0600 - SALE OF PETROLEUM PRODUCTS

02 NCAC 38 .0601 RETAIL MOTOR FUEL DISPENSERS/HALF-PRICING

(a) All retail motor fuel dispensing outlets shall sell motor fuel by the full price per gallon method, except as provided in (b) of this Rule.

(b) ~~Retail~~ Until January 1, 2011, retail motor fuel dispensing outlets which sell ~~60,000~~ 600,000 gallons of motor fuel or less per each 12 month period may sell motor fuel by the half-price per gallon method, (except as provided in 02 NCAC 38 .0603).

(c) All motor fuel dispensers using the half-pricing method shall bear the following statements on each dial face:

- (1) "CAUTION: DUE TO A SHORTAGE OF COMPUTER PARTS THIS DISPENSER INDICATES ONLY 1/2 THE TOTAL SALE PRICE." This statement must be composed of one-fourth inch letters and must be located above or to the side of the sale price indicator;
- (2) "1/2 TOTAL SALE." This statement must be composed of three-fourths inch letters and must be affixed to cover the total sale or total price identification statement of the dial face;
- (3) "GALLONS." No change;
- (4) "CENTS PER 1/2 GALLON INCLUDING TAX." This statement must be composed of three-eighths inch letters and must be affixed to cover the cents or price per gallon statement on the dial face;
- (5) "\$___ PER GALLON." This statement must contain three-eighths inch letters and must be located directly beneath the statement described in (4) of this Paragraph and must have the full price per gallon written in the blank space.

- (d) The sale of motor fuel through those dispensers as described in (c) of this Rule shall be priced in even tenths of a cent (example: \$1.002, \$1.004, etc.).
- (e) Advertised pricing shall be by the price per gallon.

Authority G.S. 81A-2; 81A-23.

None

CHAPTER 63 - SERVICES FOR THE BLIND

SUBCHAPTER 63C - BUSINESS ENTERPRISES PROGRAM

SECTION .0200 - LICENSING AND PLACEMENT

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHHS/Division of Services for the Blind intends to amend the rules cited as 10A NCAC 63C .0202, .0204.

Proposed Effective Date: January 1, 2009

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by contacting the Assistant Director of Services for the Blind at (919) 733-9822 no later than July 30, 2008.

Reason for Proposed Action: Request of the Committee of Blind Vendors and with the support of the Division.

Procedure by which a person can object to the agency on a proposed rule: Submit a written request to: Debbie Jackson, Director, DHHS Division of Services for the Blind, 2601 Mail Service Center, Raleigh, NC 27699-2601.

Comments may be submitted to: Mary Flanagan, DHHS Division of Services for the Blind, 2601 Mail Service Center, Raleigh, NC 27699-2601, phone (919) 733-9822, fax (919) 733-9769, email mary.flanagan@ncmail.net

Comment period ends: September 15, 2008

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)

10A NCAC 63C .0202 ELIGIBILITY FOR LICENSING

(a) The Division shall interview prospective licensees as referred by the rehabilitation program and shall make written recommendations to the Chief of Business Enterprises concerning the potential of the referral commensurate with the specific job requirements of the Business Enterprises Program.

(b) To be licensed:

- (1) The consumer must meet the definition of legally blind as outlined in 34 CFR 395.1;
- (2) The consumer must be at least 18 years of age;
- (3) The consumer must be physically able to perform all the duties as further detailed in this Chapter;
- (4) All consumers must be evaluated for and demonstrate proficiency of skill in basic mobility, activities of daily living, mathematics and basic food service practices;
- (5) The consumer must be familiar with the rules and regulations for Business Enterprises facility operators. The consumer must successfully complete the Business Enterprises training program sponsored by the Division and must be certified by the Division as capable of operating a Business Enterprises facility; and facility;
- (6) The consumer must be a citizen of the United States. The consumer must have no previous conviction(s) of any felony class A through E; E; and
- (7) The consumer must have no previous conviction(s) of any felony class A through E.

Authority G.S. 111-27; 34 C.F.R. 395; 20 U.S.C. sec. 107.

10A NCAC 63C .0204 FILLING OF VACANCIES

(a) The Division shall make available a listing of available Business Enterprises facilities to all licensees.

(b) Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief of Business Enterprises.

(c) Transfers and promotions shall be based on the following procedures:

- (1) The Division shall send a notice of available facilities to all operators and licensees on the last 10 working day of the month. The notice shall provide a short description of the vacancy and who to contact for more information.

- (2) All applications shall be post-marked by the 10th of the following month and mailed to the office of the Chief of Business Enterprises.
- (3) Interviews shall be conducted on the second Friday of the month which follows the application deadline.
- (4) At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant shall calculate the applicant's points for sanitation, seniority, Financial Analysis/Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant of his point total. The applicant shall have five working days to review the point total and request any adjustments.
- (5) After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3), (4), (5), (6), (7) of this Rule] for each applicant, the applicant with the highest point total (if above 60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on. In the case of an exact tie, the applicant with the most time in the Business Enterprises Program shall be awarded the location.
- (6) Applicants shall be notified as soon as possible after their interview whether or not they have been awarded a location. This notification shall be by telephone and followed up in writing.
- (7) Upon being awarded a location, the applicant shall have 30 days to fill the vacancy. The Division shall agree to a different time frame if adhering to the 30-day time frame would cause a hardship to the applicant awarded the facility. The location shall not be filled for 15 working days following the award to allow time for administrative appeals to be filed. If an appeal is filed, the location shall not be filled until the appeal is resolved. If there is only one applicant for a location, the 15-day waiting period shall not apply.
- ~~(8) If an applicant is awarded a facility and does not accept the position, the applicant shall not be able to apply for another position for one year. An applicant may withdraw his application up to two days prior to his interview and avoid the penalty. Applicants who apply for and are awarded more than one location shall not be penalized as long as they accept one award.~~
- (9)(8) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the last two years, and the applicant did not meet his financial analysis and operating standards for the last 12 months that his agreement was in effect, the applicant shall repeat the necessary on-the-job-training. The Interview Committee may also recommend refresher course training to assure qualified management.
- ~~(10)(9)~~ Licensees/operators not selected may file an administrative appeal as provided for in Subchapter 63C Section .0400. The fifteen-day limit to file an appeal shall begin from the date the licensee/operator is informed by telephone of the results of the award.
- ~~(11)(10)~~ An applicant must have operated a Business Enterprises location for six months prior to the cut-off date for calculating financial performance according to standards to be considered an operator, otherwise, the operator shall be in licensee status. The cut-off date is defined as the 12-month period ending with the last day of the same month in which the vacancy is advertised.
- ~~(12)(11)~~ If an operator leaves the Business Enterprises Program and then applies for a location within months of leaving, his financial performance according to standards for the 12 months prior to his leaving shall be used to calculate points in the Financial Performance Section.
- ~~(13)(12)~~ Financial analyses of facilities shall be done every two years. The analysis shall be on the facility not the operator; however, an operator may request a new analysis after at least four months in the new facility. If an applicant's financial analysis is ~~more than two years old but less than two and one half~~ years old and the applicant's performance is neither above 100% nor below 85% on either measure, the financial analysis shall be considered current.
- ~~(14)(13)~~ An applicant who does not hold the required level of license for the vacancy may be awarded the facility contingent upon successfully completing the required training. Applicants who hold the required level of license but have not operated a facility at that level for at least two years shall complete refresher on-the-job training if the applicant did not meet his financial analysis and operating standards for the last 12 months that his agreement was in effect.
- ~~(15)(14)~~ An operator may not sit on the Interview Committee for a location for which he/she is applying or if a member of his/her immediate family has applied for a vacant facility. For this purpose immediate family shall be defined as spouse, parent, child, brother and sister. Also included are the step, half and in-law relationships. If the Vice-Chairman and the Chairman of the Elected Committee of Vendors and the Chairman of the sub-

committee on Transfer and Promotion are all restricted from sitting on the Interview Committee under this Rule, those three must pick another Elected Committee of Vendors member to sit on the Interview Committee.

(+6)(15) The schedule for awarding vacancies may be changed to accommodate holidays, too many applications to process in one day, or at any time necessary due to program conflicts as determined by the chief of Business Enterprises and the Vice-Chairman of the Elected Committee of Vendors. All applicants shall be notified in writing of the date, time and place of their interview.

(+7)(16) Applicants shall be reimbursed for their expenses to come to the interview at the state's established per diem rates. The Business Enterprises Program shall only reimburse for two interviews per year. After that, applicants shall bear their own expenses for coming to interviews. Licensees who have active rehabilitation cases shall be reimbursed through the rehabilitation program.

(d) The Division shall use the following criteria in determining points:

- (1) Sanitation:
 - (A) Ten point maximum;
 - (B) One point for each sanitation grade point above ninety;
 - (C) Sanitation grade to be arrived at by averaging all sanitation scores received during last two years;
 - (D) Five points shall be subtracted for any adjusted B grade in the last two years;
 - (E) The Business Enterprises Counselor shall determine an adjusted grade by adding back in any points subtracted for deficiencies over which the operator has no control. Operator shall inform Business Enterprises Counselor when an inspection has occurred so he can review the inspection and adjust the grade if needed. It is the operator's responsibility to make sure the Business Enterprises Counselor has copies of every sanitation inspection form from the relevant period so that he or she can calculate an accurate grade.

- (2) Seniority:
 - (A) Five point maximum;
 - (B) Seniority points shall be awarded as follows:

Years in Business Enterprises Program – Points
0 to 4.99 - 0 points
5 to 9.99 - 1 point
10 to 14.99 - 2 points

- 15 to 19.99 - 3 points
- 20 to 24.99 - 4 points
- 25 and over - 5 points

(C) Seniority is defined as the amount of time in yearly increments an individual has been working in the Business Enterprises Program as an operator. An operator must work 51% of the working days in a month to receive credit for that month. The cutoff date for accruing time in the Program shall be the end of the month when the vacancy is advertised. Business Enterprises operators shall receive credit for one year of seniority for any combined 12-month period.

(3) Performance According to Financial Analysis/Operating Standards: Operating standards shall be determined by tabulating all the invoices for purchases for resale for each facility for a period of three months. The optimum sales and gross profit percentage shall be determined by computing the maximum potential for sales and gross profit without consideration for theft, waste or poor management. Each operator is required to maintain 85% of the optimum standard established for each facility for sales and gross profit. Eighty-five percent of the optimum sales and gross profit percentage shall be considered the operating standard for each facility.

- (A) 50 Points Maximum;
- (B) Applicants shall receive 20 points for meeting or exceeding 85% of their sales standard;
- (C) Applicants shall receive 20 points for meeting or exceeding 85% of their gross profit percentage standard;
- (D) Applicants shall receive five points for meeting or exceeding 92.5% of their sales optimum;
- (E) Applicants shall receive five points for meeting or exceeding 92.5% of their gross profit percentage optimum;
- (F) Points according to Financial Analysis/Operating Standards in this Section shall be calculated using the established optimum standards as determined by the current financial analysis for both sales and gross profit percentages. The optimum standard shall be determined by computing the maximum potential sales volume and gross profit percentage for a consecutive three-month period.

- (i) Use sales and gross profit figures for the twelve-month period ending with the last day of the same month in which the vacancy is advertised. This is the cut-off date for financial performance calculations.
 - (ii) Take the facility's average monthly sales for the past twelve months, and calculate what percentage of the established optimum it is. If it is over 85%, the applicant gets 20 points; if it is 92.5% or more, the applicant gets an additional five points.
 - (iii) Take the facility's gross profit percentage for the last twelve months and calculate what percentage of the established optimum it is. If it is over 85%, the applicant gets 20 points. If it is 92.5% or more, the applicant gets an additional five points.
- (4) Customer and Building Management Relations:
- (A) Five points shall be deducted for each written site management complaint in the past two years, up to a maximum of 10 points.
 - (B) If the applicant has more than three written site management complaints, he shall not be considered for the award. No site management complaint that is more than three years old may be used against an operator. Site management is defined as the property official for the property on which a BEP facility is located.
- (5) Oral Exam/Interview:
- (A) 30 points maximum.
 - (B) Interview shall be face to face (no conference calls).
 - (C) All applicants shall be interviewed.
 - (D) The Interview Committee shall consist of:
 - (i) The Chief of Business Enterprises, or Deputy Chief or Assistant Director of Programs and Facilities as designated by Chief,
 - (ii) The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the vacancy occurs, and
- (iii) The Vice-Chairman of the Elected Committee of Vendors or the Chairman in his absence, or in the absence of the Chairman, the Chairman of the Transfer and Promotion subcommittee.
- (E) Oral Exam part shall consist of 10 questions drawn either from a pool of standard questions or developed by the Interview Committee prior to the interview. The oral exam questions shall relate to any special needs of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. Each member of the Interview Committee shall evaluate the applicant's response to each question in the oral exam. The applicant shall receive one point by demonstrating basic knowledge, the applicant shall receive one and one-172 half points for demonstrating above average knowledge, and the applicant shall be awarded 1 two points for demonstrating exceptional knowledge for each interview question. There shall be at least one question involving a calculation and a talking calculator shall be provided, although applicants may bring their own. The oral exam shall yield a possible 20 points.
- (F) The interview part shall consist of a variety of questions in a give and take format. Each member of the Interview Committee shall evaluate the applicant's response to the interview questions and shall award up to 10 additional points based on the applicant's previous food service experience, knowledge and/or financial performance. If the applicant meets the requirements for the facility, the applicant will receive five additional points. If the applicant's qualifications exceed the requirements of the facility, he may be awarded up to ten additional points. The interview shall include the following elements: questions related to business philosophy to promote general discussion to enable the interview panel to evaluate the applicant's expertise, maturity, experience and ability; a discussion of any related work experience

outside the Business Enterprises Program; at least two business math questions. Since points are awarded for seniority, time in the Business Enterprises Program shall not be considered as a reason to award points; however, relevant work experience in the Business Enterprises Program may be discussed and taken into consideration. Applicants may bring letters of recommendation, certificates, and other documents that would aid the Interview Committee in awarding its discretionary points.

- (G) Each interviewer shall award discretionary points individually and the total score of Oral Exam and Interview points from each interviewer shall be averaged and added to the applicant's points from the other Sections.

(6) Licensees and trainees:

- (A) A licensee who has no previous experience in the North Carolina Business Enterprises Program shall be assigned 35 points in the Financial Analysis/Operating Standards category. If the licensee scores 90% or above on the National Restaurant Association's ServSafe exam, he/she shall be awarded three points in the sanitation category.
- (B) A licensee with previous Business Enterprises experience shall be assigned 35 points in the Financial Analysis/Operating Standards category. Previous sanitation records shall be considered, if available; or the applicant may take the National Restaurant Association's ServSafe exam. If the licensee scores 90% or above on the ServSafe exam, he/she shall be given three points in the Sanitation Section.
- (C) Applicants shall have satisfactorily completed Level I training or have a Level I license to be interviewed. The four levels of Business Enterprises facilities are defined as follows: Level I has no cooking or on-site food preparation and includes only service via vending machines or over the counter service. To include snacks, candy, pre-packaged sandwiches, coffee, and assorted beverages. Level II service is similar to a deli operation where hot and cold food is prepared on site. Level III

service includes all of the above with the addition of a grill and fryer. Level IV service consists of full-service cafeteria style facilities. An applicant shall score at least 60 total points to be awarded a location. If the applicant scores at least 55 points but less than 60 points, the interview panel may make a conditional award if the panel agrees it is in the best interest of the Business Enterprises Program.

Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0311.

Proposed Effective Date: May 1, 2009

Public Hearing:

Date: August 14, 2008

Time: 6:30 p.m.

Location: Bladen Community College, Multipurpose/Auditorium Building, 7418 Highway 41 West, Dublin, NC

Reason for Proposed Action:

Proposed reclassification for portion of Cape Fear River: The Lower Cape Fear Water and Sewer Authority ("Authority") has requested that a portion of the Cape Fear River in Bladen and Cumberland Counties (Cape Fear River Basin) be reclassified from Class C to Water Supply-IV (WS-IV) Critical Area (CA) and WS-IV Protected Area (PA). The reason for the reclassification is to allow a new intake structure to be placed in the river in order to supply initially Smithfield Packing Company, and in the future, potentially several southern coastal plain municipalities with an additional source of potable water. In October 2004, the Environmental Management Commission (EMC), the Division of Water Resources, and the Lumber River Council of Governments (COG) entered into a cooperative agreement to assure that area groundwater resources are monitored and "a regional plan for long-range, sustainable water supply sources is developed" that would include Smithfield's participation and investigation of additional water sources, including surface water sources. A regional plan was developed, the Authority was formed to include representation of several municipalities, and this proposed reclassification is an outgrowth of that plan. The proposed CA would extend along the river from the proposed intake, which is to be placed approximately 2 miles upstream of County Road 1316, to a point approximately 0.5 miles upstream of the proposed intake. There are no named tributaries to the Cape Fear River in the proposed CA. The proposed PA would extend along the river from a point

approximately 0.5 miles upstream of the proposed intake to a point approximately 1 mile upstream of Grays Creek. The proposed PA includes several entire named tributaries, as well as the lower portions of many named tributaries, to the Cape Fear River; most of these waters are presently classified C, and the remaining waters carry the B classification. Approximately 160 acres of land and 30,628 acres of land will be included in the new CA and PA, respectively. The waters to be reclassified meet water supply water quality standards according to 2007 DWQ studies. If reclassified, development and discharge restrictions will apply. There are several animal operations and one NPDES wastewater discharger, Dupont Fayetteville Works, in the proposed water supply watershed; the above-mentioned animal operations and discharger most likely will not be impacted by current regulations associated with this reclassification. There are not any known planned dischargers and developments in the entire proposed reclassification area that would likely be impacted by the proposal according to local government and DWQ staff. Bladen County and Cumberland County are the local governments with jurisdiction in the reclassification area, and these local governments would need to modify water supply watershed protection ordinances within 270 days after the reclassification effective date. Bladen County supports the reclassification, and Cumberland County does not object to the proposal.

Procedure by which a person can object to the agency on a proposed rule: You may attend the public hearing and make relevant verbal comments, and/or submit written comments, data or other relevant information by September 15, 2008. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. The EMC is very interested in all comments pertaining to the proposed reclassification. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed reclassification. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (See General Statute 150-21.2(g)). Written comments on the proposed reclassification may be submitted to Elizabeth Kountis of the Water Quality Planning Section at the postal address, e-mail address, or fax number listed in this notice.

Comments may be submitted to: Elizabeth Kountis, DENR/ Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919) 807-6418, fax (919) 807-6497, email elizabeth.kountis@ncmail.net

Comment period ends: September 15, 2008

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 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0311 CAPE FEAR RIVER BASIN

(a) The Cape Fear River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Winston-Salem Regional Office
585 Woughtown Street
Winston-Salem, North Carolina
 - (B) Fayetteville Regional Office
225 Green Street
Systel Building Suite 714
Fayetteville, North Carolina
 - (C) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (D) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina
 - (E) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina
 - (F) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

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

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) December 14, 1980;
- (4) August 9, 1981;
- (5) April 1, 1982;

- (6) December 1, 1983;
- (7) January 1, 1985;
- (8) August 1, 1985;
- (9) December 1, 1985;
- (10) February 1, 1986;
- (11) July 1, 1987;
- (12) October 1, 1987;
- (13) March 1, 1988;
- (14) June 1, 1988;
- (15) July 1, 1988;
- (16) January 1, 1990;
- (17) August 1, 1990;
- (18) August 3, 1992;
- (19) September 1, 1994;
- (20) August 1, 1998;
- (21) April 1, 1999;
- (22) August 1, 2002;
- (23) November 1, 2004;
- (24) November 1, ~~2007-2007~~;
- (25) May 1, 2009.

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

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

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

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

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

eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.

- (3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach Inlet was reclassified from Class SA to Class SA ORW.

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

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

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

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

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

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

Class WS-V, Deep River [Index No. 17-(41.5)] from Class WS-IV to Class C, and the Cape Fear River [Index 18-(10.5)] from Class WS-IV to Class WS-V.

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

(l) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of the Deep River [Index No. 17-(4)] from the dam at Oakdale-Cotton Mills, Inc. to the dam at Randleman Reservoir (located 1.6 mile upstream of U.S. Hwy 220 Business), and including tributaries from Class C and Class B to Class WS-IV and Class WS-IV & B. Streams within the Randleman Reservoir Critical Area have been reclassified to WS-IV CA. The Critical Area for a WS-IV reservoir is defined as 0.5 mile and draining to the normal pool elevation of the reservoir. All waters within the Randleman Reservoir Water Supply Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in 15A NCAC 02B .0248.

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

- (1) Mill Creek [Index Nos. 18-23-11-(1), 18-23-11-(2), 18-23-11-3, 18-23-11-(5)] from its source to the Little River, including all tributaries was reclassified from Class WS-III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.
- (2) McDeed's Creek [Index Nos. 18-23-11-4, 18-23-11-4-1] from its source to Mill Creek, including all tributaries was reclassified from Class WS III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.

The "@" symbol as used in this Paragraph means that if the governing municipality has deemed that a development is covered under a "5/70 provision" as described in Rule 15A NCAC 02B .0215(3)(b)(i)(E) (Fresh Surface Water Quality Standards for Class WS-III Waters), then that development is not subject to the stormwater requirements as described in rule 15A NCAC 02H .1006 (Stormwater Requirements: High Quality Waters).

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

- (1) A portion of Rocky River [Index Number 17-43-(1)] from a point approximately 0.3 mile upstream of Town of Siler City upper reservoir dam to a point approximately 0.3 mile downstream of Lacy Creek from WS-III to WS-III CA.
- (2) A portion of Rocky River [Index Number 17-43-(8)] from dam at lower water supply reservoir for Town of Siler City to a point

approximately 65 feet below dam (site of proposed dam) from C to WS-III CA.

- (3) A portion of Mud Lick Creek (Index No. 17-43-6) from a point approximately 0.4 mile upstream of Chatham County SR 1355 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.
- (4) A portion of Lacy Creek (17-43-7) from a point approximately 0.6 mile downstream of Chatham County SR 1362 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.

(o) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water Quality maintains a Geographic Information Systems data layer of these UWLs.

- (1) Military Ocean Terminal Sunny Point Pools, all on the eastern shore of the Cape Fear River [Index No. 18-(71)] were reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (2) Salters Lake Bay near Salters Lake [Index No. 18-44-4] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (3) Jones Lake Bay near Jones Lake [Index No. 18-46-7-1] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (4) Weymouth Woods Sandhill Seep near Mill Creek [18-23-11-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (5) Fly Trap Savanna near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (6) Lily Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (7) Grassy Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (8) The Neck Savanna near Sandy Run Swamp [Index No. 18-74-33-2] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (9) Bower's Bog near Mill Creek [Index No. 18-23-11-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (10) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(p) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective May 1, 2009 as follows:

- (1) a portion of Cape Fear River [Index No. 18-(26)] (including tributaries) from Smithfield Packing Company's intake, located approximately 2 miles upstream of County Road 1316, to a point approximately 0.5 miles

upstream of Smithfield Packing Company's intake from Class C to Class WS-IV CA.
(2) a portion of Cape Fear River [Index No.18-(26)] (including tributaries) from a point approximately 0.5 miles upstream of Smithfield Packing Company's intake to a point approximately 1 mile upstream of Grays Creek from Class C to Class WS-IV.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

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

Fiscal Impact:

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0200 - GENERAL ANESTHESIA

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16Q .0204, .0303, .0403.

21 NCAC 16Q .0204 PROCEDURE FOR EVALUATION OR INSPECTION

Proposed Effective Date: November 1, 2008

Public Hearing:

Date: August 7, 2008

Time: 7 p.m.

Location: 507 Airport Boulevard, Suite 105, Morrisville, NC

Reason for Proposed Action:

21 NCAC 16Q .0204 – is proposed for amendment to increase the fees collected by the Board for inspections and evaluations of applicants for general sedation permits by \$100.

21 NCAC 16Q .0303 – is proposed for amendment to provide that the Board may charge a fee of \$275 for each inspection and evaluation conducted for applicants seeking a permit to administer moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes and nitrous oxide.

21 NCAC 16Q .0403 – is proposed for amendment to permit the Board to charge a \$275 inspection fee for inspection and evaluations of applicants seeking minimal sedation permits.

Procedure by which a person can object to the agency on a proposed rule: Written comments may be sent to Bobby D. White, Chief Operations Officer, NC Dental Board, 507 Airport Boulevard, Suite 105, Morrisville, NC 27560.

Comments may be submitted to: Bobby White, 507 Airport Boulevard, Suite 105, Morrisville, NC 27560

Comment period ends: September 15, 2008

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

(a) When an evaluation or on-site inspection is required, the Board will designate two or more qualified persons, each of which has administered general anesthesia for at least ~~whom is qualified to administer general anesthesia and has so administered~~ such for a minimum of three years preceding the inspection, exclusive of his training in general anesthesia. When an on-site inspection involves only a facility and equipment check and not an evaluation of the dentist, ~~thesuch~~ inspection may be accomplished by one or more evaluators.

(b) Any dentist-member of the Board may observe or consult in any evaluation.

(c) The inspection team shall determine compliance with the requirements of the Rules in this Subchapter, as applicable, by assigning a grade of "pass" or "fail".

(d) Each evaluator shall report his recommendation to the Board, setting forth the details supporting his conclusion. The Board is not bound by these recommendations. The Board shall ~~determine~~ make the final determination as to whether or not the applicant has passed the evaluation/inspection and shall notify the applicant in writing of its decision. ~~so notify the applicant, in writing.~~

(e) At least a 15-day notice shall be given prior to an evaluation or inspection. The entire ~~evaluation~~ inspection fee of ~~two hundred seventy five dollars (\$275.00)~~ three hundred seventy five dollars (\$375.00) shall be due 10 days ~~after from~~ the date of receipt of such notice. An inspection fee of two hundred seventy five dollars (\$275.00) shall be due 10 days after the dentist receives notice of the inspection of each additional location at which the dentist administers general anesthesia. A fee of one hundred seventy five dollars (\$175.00) shall be due 10 days from the date of receipt of notice prior to an evaluation or inspection of any additional locations in which the same dentist also administers general anesthesia.

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

SECTION .0300 - PARENTERAL CONSCIOUS SEDATION

CHAPTER 46 – BOARD OF PHARMACY

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

(a) If a dentist meets the requirements of Paragraphs (a) – (e) of Rule .0301 of this Subchapter, he/she shall be granted temporary approval to administer moderate conscious sedation, or moderate pediatric conscious sedation until a permit can be issued. If a dentist meets the requirements of Paragraph (j) of Rule .0301 of this Subchapter, he/she shall be granted temporary approval to administer moderate conscious sedation limited to oral routes and nitrous oxide inhalation. 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 prior to issuance of a permanent permit. The evaluation shall be conducted in accordance with Rules .0204 -.0205 of this Subchapter, except that evaluations of dentists applying for moderate conscious sedation permits may be conducted by dentists who have been issued moderate conscious sedation permits by the Board and who have been approved by the Board, as set out in these Rules. Fees required by Rule .0204 of this Subchapter shall apply. A two hundred seventy five dollar (\$275.00) inspection fee shall be collected for each site inspected pursuant to this Rule.

(b) An inspection may be made upon renewal of the permit or for cause.

(c) Temporary approval shall not be granted to a provisional licensee or applicants who are the subject of a pending Board disciplinary investigation or whose licenses have been revoked, suspended or are subject to an order of stayed suspension or probation.

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

SECTION .0400 - ENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0403 TEMPORARY APPROVAL PRIOR TO SITE INSPECTION

(a) A dentist whose facility has not been inspected but who has otherwise met the requirements of Rule .0401 of this Section may seek temporary approval to administer minimal 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.

(b) Temporary approval shall not be granted to a provisional licensee to an applicant who is the subject of a disciplinary investigation or whose license has been revoked or suspended or is the subject of a probation or stayed suspension order.

(c) A two hundred seventy five dollar (\$275.00) fee shall be collected for each site inspected pursuant to Rule .0401 of this Section.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .2107.

Proposed Effective Date: January 1, 2009

Public Hearing:

Date: September 15, 2008

Time: 5:00 p.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: To facilitate the casting and counting of electronic ballots for the election of members of North Carolina Board of Pharmacy.

Procedure by which a person can object to the agency on a proposed rule:

Any person may object to the proposed amendment by attending the public hearing on September 15, 2008 and/or by submitting a written objection by September 15, 2008 to Jay Campbell, Executive Director, North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, email jcampbell@ncbop.org. The North Carolina Board of Pharmacy is interested in all comments pertaining to the proposed rule. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rule.

Comments may be submitted to: Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, email jcampbell@ncbop.org

Comment period ends: September 15, 2008

Procedure for Subjecting a Proposed Rule to Legislative

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

Fiscal Impact:

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

SECTION .2100 - ELECTIONS

21 NCAC 46 .2107 **BALLOTS: CASTING AND COUNTING**

(a) The Board shall provide a ballot to all eligible voters in April of each year that there is an election for Board position(s). The Board shall employ the following method for balloting:

- (1) The Board shall provide access to an electronic ballot to all eligible voters; and
- (2) A paper ballot shall be mailed, with return envelope, to all any eligible voters in April of each year. voter who makes a written request for a paper ballot in lieu of access to an electronic ballot and whose request is actually received by the Board on or before April 20.

(b) A brief description of a nominee's qualifications, provided by the nominee and edited, if necessary, by the secretary, shall accompany each ballot. qualifications shall be accessible to all eligible voters casting their ballots electronically. The same description of the nominee's qualifications shall accompany each paper ballot sent pursuant to Subparagraph (a)(2) of this Rule.

(c) On or before May 15, all Secret ballots shall be cast in the envelope provided by mail or electronically, physically delivered to the Board office in the envelope provided before May 15. or postmarked, if the ballot is sent by U.S. mail.

(d) Ballots received shall be counted and certified by the Board of Pharmacy Elections at the next regularly scheduled May Board meeting meeting following an election. The Board of Pharmacy Elections shall determine the validity of any challenged ballot ballot, and electronic and/or mechanical devices may be used in compiling election results. No person running for election or re-election may participate in the counting and certification of ballots for the election or re-election involving that person.

(e) The secretary treasurer Executive Director shall convey the certified election results to the Governor.

Authority G.S. 90-85.7.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to amend the rule cited as 23 NCAC 02D .0202.

Proposed Effective Date: November 1, 2008

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): To demand a public hearing, please send the written demand to Q. Shante Martin, NC Community College System, 200 West Jones Street, MSC 5001, Raleigh, NC 27699-5001, or by emailing the demand to martins@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in North Carolina Register.*

Reason for Proposed Action: *The State Board of Community Colleges wants to simplify the process for colleges providing tuition refunds.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections shall be addressed to President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5001 within the comment period, and must be postmarked by 11:59 p.m. on the last day of the comment period.*

Comments may be submitted to: *Q. Shante Martin, 200 West Jones Street, MSC 5001, Raleigh, NC 27603, phone (919) 807-6961, fax (919) 807-7171, email martins@nccommunitycolleges.edu*

Comment period ends: September 15, 2008

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 02 - COMMUNITY COLLEGES

SUBCHAPTER 02D - COMMUNITY COLLEGES: FISCAL AFFAIRS

SECTION .0200 - STANDARD STUDENT FEES

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

- (a) Tuition:
 - (1) Student Residence Classification. The classification of students for tuition purposes shall be made pursuant to G.S. 115B-2, 115D-39, 116-143.1, 116-143.3, and 116-143.5.
 - (2) Tuition Rates In-State:
 - (A) A general and uniform tuition rate is established by the State Board as set by the Legislature for full-time

- curriculum students per semester or term for North Carolina residents.
- (B) A North Carolina resident who is a part-time student shall pay a per credit hour rate for curriculum instruction, as established by the State Board, for any semester or term as set by the Legislature.
- (3) Learning Laboratory. No tuition fees charged.
- (4) Tuition Creditable Upon Transfer of Student. When a student has paid the required tuition at a college and is given permission to transfer to another college within the system during the academic semester for which the tuition was paid, the college from which the student transfers shall issue to him a statement certifying the amounts of tuition that have been paid, and the college to which he is transferring shall accept such certificate in lieu of requiring payment again. [Also, see 23 NCAC 02D .0323(b)(2) which provides information regarding reporting student hours in membership.]
- (5) Tuition Student Enrolled in More Than One College. Where a student desires to enroll for the same semester at two or more colleges of the system, the total amount of tuition and fees may be paid to the student's "home" college. "Home" college is defined as the college which the student initially registers for classes. The "home" college shall, in that case, assume responsibility for arranging with the other college or colleges for enrolling the student in appropriate classes without further charge. Such arrangement shall be made by exchange of letters between the colleges involved. Student membership hours for instruction received shall, in any event, be reported by the college in which the respective instruction occurred.
- (6) Tuition Rates Out-of-State:
- (A) Any full-time curriculum student who is an out-of-state resident shall pay tuition fees as established by the State Board for each semester or term as set by the Legislature.
- (B) An out-of-state resident who is a part-time student shall pay a per credit hour rate for curriculum instruction as established by the State Board as set by the Legislature.
- (7) Tuition Waivers:
- (A) Individuals in the categories set forth in G.S. 115D-5(b) shall be exempt from tuition for specialized training courses only, unless otherwise permitted under this Rule.
- (B) College Staff Members. Full-time college staff members employed for a 9, 10, 11, or 12 month term may enroll in one curriculum or extension course per semester, as well as the summer term, in the system without payment of tuition or registration fee.
- (C) Basic Law Enforcement Training Program (BLET) for law enforcement officers. All law enforcement officers employed by a municipal, county, state, or federal law enforcement agency when taking courses in a state-mandated BLET training program, are exempt from tuition payment. Also, trainees shall be exempt from BLET class tuition if a letter of sponsorship from a state, county, or municipal law enforcement agency is on file at the college.
- (D) Individuals meeting the criteria set forth in G.S. 115B-2 shall not be charged tuition.
- (E) High school students taking courses pursuant to Paragraph (c) (concurrent enrollment) and Paragraph (e) (cooperative high school programs) of 23 NCAC 02C .0305 of this Chapter shall not be charged tuition.
- (F) Patients in state alcoholic rehabilitation centers shall not be charged tuition.
- (G) Juveniles committed to the Department of Juvenile Justice and Delinquency Prevention shall not be charged tuition.
- (H) Prison inmates shall not be charged tuition.
- (b) Pre-Enrollment Deposit. The local board of trustees may establish a pre-enrollment deposit up to a maximum of fifteen dollars (\$15.00). The pre-enrollment deposit, if established, shall be required only when a prospective student has made application for admission and has been accepted. This advance payment is not refundable unless the class(es) fails to materialize or a refund is required by the death of the student. This advance payment shall be deposited to the State Treasurer and credited against the full tuition due from the student during the regular registration period. For the purposes of this Rule, any tuition refund granted shall not include the pre-enrollment deposit of the student unless a refund is granted when a class fails to materialize or because of the student's death.
- (c) Late Enrollment Fee. A late enrollment fee up to five dollars (\$5.00) may be charged curriculum students registering after the specific closing date of registration, with such fees becoming state funds.
- (d) Tuition Refunds. Each college shall allow a 100 percent tuition refund up to and including the census date of the course. Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester shall be refunded to the estate

of the deceased, upon request by the deceased's estate within 90 days of the student's death.

- ~~(1) A refund shall not be made except under the following circumstances:~~
 - ~~(A) A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) of the academic semester or term as noted in the college calendar. Also, a student is eligible for a 100 percent refund if the class in which the student is officially registered is cancelled due to insufficient enrollment.~~
 - ~~(B) A 75 percent refund shall be made if the student officially withdraws from the class(es) prior to or on the official 10 percent point of the semester.~~
 - ~~(C) For classes beginning at times other than the first week (seven calendar days) of the semester a 100 percent refund shall be made if the student officially withdraws from the class prior to the first class meeting. A 75 percent refund shall be made if the student officially withdraws from the class prior to or on the 10 percent point of the class.~~
 - ~~(D) A 100 percent refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75 percent refund shall be made if the student officially withdraws from a contact hour class on or before the tenth calendar day of the class.~~
- ~~(2) To comply with applicable federal regulations regarding refunds, federal regulations supersede the state refund regulations stated in this Rule.~~
- ~~(3) Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester may be refunded to the estate of the deceased.~~
- ~~(4) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt local refund policies.~~
- (e) Military Tuition Refund. Upon request of the student, each college shall:
 - (1) Grant a full refund of tuition and fees to military reserve and National Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations then taking place outside the state of North

- (2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

(f) Additional Rules for Tuition Refunds.

- (1) As used in Paragraph (d) of this Rule, the term "census date" is defined as the official 10 percent point of any semester, term, or course as noted in the college calendar.
- (2) For the purposes of Paragraph (d) of this Rule, a student is ineligible for a 100% refund except when all withdrawals and enrollments for the student are granted by a single college.
- (3) To comply with applicable federal regulations regarding refunds, federal regulations shall supersede the state refund regulations provided in this Rule to the extent the federal regulations and state regulations are contradictory.

Authority G.S. 115D-5; 115D-39; 116-143.1; P.L. 93-508; S.L. 1995, c. 625.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01C .1009; 01E .0210 and repeal the rule cited as 25 NCAC 01D .0517.

Proposed Effective Date: December 1, 2008

Public Hearing:

Date: August 13, 2008

Time: 10:00 a.m.

Location: Office of State Personnel, 3rd Floor, Administration Building, Raleigh, NC

Reason for Proposed Action: *To clarify how vacation is paid when an employee is separated.*

Procedure by which a person can object to the agency on a proposed rule: *A person may object to these proposed rules by one of the following methods: 1. A written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. 2. An email to peggy.oliver@osp.nc.gov. 3. A telephone call to Peggy Oliver at 919-807-4832.*

Comments may be submitted to: *Peggy S. Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 807-4832, fax (919) 715-9750, email peggy.oliver@osp.nc.gov*

Comment period ends: September 15, 2008

Authority G.S. 126-4(6),(10).

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 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01C - PERSONNEL ADMINISTRATION

SECTION .1000 - SEPARATION

25 NCAC 01C .1009 SEPARATION: PAYMENT OF VACATION LEAVE

~~(a) Lump sum payment for vacation leave shall be made only at the time of separation. An employee shall be paid in a lump sum for accumulated leave not to exceed maximum of 240hours when separated from state service due to resignation, dismissal, or reduction in force. In case of death, the employee's estate shall be paid for all unused vacation leave. Payment for vacation leave shall be in accordance with 25 NCAC 01E .0210.~~

Authority G.S. 28-A-25-6(a)(c); 126-4.

SUBCHAPTER 01D - COMPENSATION

SECTION .0500 - SEPARATION

25 NCAC 01D .0517 LEAVE

~~(a) Vacation Leave. Employees are paid in a lump sum for accumulated vacation leave.~~
~~(b) Sick Leave. Accumulated sick leave at the time of separation shall be reinstated if reemployment occurs within three years.~~

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0200 - VACATION LEAVE

25 NCAC 01E .0210 SEPARATION: PAYMENT OF VACATION LEAVE

(a) Lump sum payment for vacation leave is made only at the time of separation.

(b) When separated from state service due to resignation, dismissal, ~~reduction in force~~ or death, an employee shall be paid in a lump sum for accumulated vacation leave not to exceed a maximum of 240 hours. The employee is not entitled to any scheduled holiday occurring after the last day of work. The employee ceases to accumulate leave and ceases to be entitled to take sick leave. The last day of work is the date of separation.

(c) When separated from state service due to service ~~retirement~~ ~~or retirement~~, early retirement, or reduction in force, an employee ~~may may~~, at the discretion of management, elect to exhaust vacation leave after the last day of work but prior to the effective date of ~~retirement~~ the separation. All benefits accrue while leave is being exhausted including holidays that occur during the period. Unused leave not exhausted shall be paid in a lump sum not to exceed 240 hours. An employee who was reduced in force and who had over 240 hours of vacation leave at the time of separation shall have the excess leave reinstated when reemployed within one year. The date of separation is as follows:

- (1) If leave is exhausted, the last day of leave is the date of separation.
- (2) If no leave is exhausted, the last day of work is the date of separation.

(d) If an employee separates and is overdrawn on leave, deductions shall be made from the final salary check.

~~(e) Payment for leave may be made on the regular payroll or on a supplemental payroll, reflecting the number of days of leave and the amount of payment. This leave shall be charged to the budget subhead under which the employee's position was charged. A separate check must be issued for any part of any travel due.~~

~~(f)(e)~~ Retirement deduction shall be made from all leave payments.

~~(g)(f)~~ Receipt of lump sum leave payment and retirement benefit shall not be considered as dual compensation.

~~(h)(g)~~ In the case of a deceased employee, payment for unpaid salary, leave, and travel must be made, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, payment must be made in accordance with the provisions of G.S. 28A-25-6.

Authority G.S. 28A-25-6(a),(c); 126-4.

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	Shannon Joseph

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
Partnership T/A C Js Lounge v. ABC Commission	07 ABC 0201	Overby	03/11/08	
Benita, Inc., T/A Pantana Bob's v. ABC Commission	07 ABC 1584	Overby	04/21/08	23:01 NCR 141
Original Grad, Inc/ T/A Graduate Food and Pub	07 ABC 1648	Joseph	02/25/08	
AM Enterprises of Fayetteville, Inc., T/A Izzy's Sports Bar v. ABC Commission	08 ABC 0371	Lassiter	06/13/08	
Bhavesh Corporation, T/A K&B Foomart v. ABC Commission	08 ABC 0508	Overby	05/19/08	
<u>CRIME VICTIMS COMPENSATION</u>				
Carrie R. McDougal v. Victims Compensation Services Division	07 CPS 1970	Elkins	05/23/08	
Steel Supply and Erection Co., Department of Crime Control and Public Safety, Division of State Highway Patrol and Department of Revenue	08 CPS 0777	Overby	05/29/08	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Arthur Burch and Margaret and Burch v. Department of Health and Human Services	07 DHR 0242	Brooks	04/30/08	
Judy E. Pettus v. Office of Chief Medical Examiner, Thomas B. Clark, Iii, Md, Pathologist	07 DHR 0535	Webster	05/05/08	
Shirley Brooks Dial v. Health Care Personnel Registry	07 DHR 0931	Webster	02/27/08	
Midtown Food Mart #2, Kerab Giebrehiwot, Mehreteab Wooldeghebibel and Fesseha Zeru	07 DHR 1044	Webster	04/25/08	
Midtown Food Mart III, Chenet Hailesslassi and Fesseha Zeru v. DHHS	07 DHR 1045	Webster	04/28/08	
Mrs. Elizabeth Futrell v. Value Options	07 DHR 1331	Lassiter	06/09/08	
Cornell Jones v. DHHS, Division of Health Services Regulation	07 DHR 1399	Joseph	04/22/08	
Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 1440	Joseph	05/07/08	
Ray Dukes, Bright Future Learning Center v. DHHS, Division of Public Health, Child and Adult Care Food Program	07 DHR 1473	Joseph	04/08/08	
Hospice of the Piedmont, Inc., v. DHHS, Division of Health Service Regulation, Licensure and Certification Section and DHHS, Division of Health Service Regulation, CON Section	07 DHR 1617	Elkins	05/21/08	
Janice Addison v. Value Options	07 DHR 1618	Webster	05/16/08	
Rebecca Dehart v. DHHS, Division of Health Service Regulation Health Care Personnel Registry Section	07 DHR 1650	Elkins	05/21/08	
Ellen Brown v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	07 DHR 1651	Elkins	05/21/08	
Joann Lennon v. Value Options Medicaid	07 DHR 1770	Webster	05/16/08	
Angeline Currie v. DHHS	07 DHR 1986	Elkins	06/04/08	
Tameala Jones v. OAH	07 DHR 1993	Webster	05/16/08	
Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 2020	Joseph	05/07/08	

CONTESTED CASE DECISIONS

Family & Youth Services, Inc. Angela Ford, President v. DHHS, Division of Medical Assistance Provider Services	07 DHR 2057	Webster	05/16/08
Yolanda Jones v. DHHS, Adult Licensure Section	07 DHR 2081	Webster	05/16/08
Tianna Troy Legal guardian Mother Traci Lookadoo v. Value Option	07 DHR 2087	Elkins	05/23/08
Alexis Ford/Linda M McLaughlin v. DHHS	07 DHR 2111	Elkins	06/04/08
Kevin McMillian/Linda M McLaughlin v. DHHS	07 DHR 2239	Elkins	06/04/08
Maurisha Bethea/Linda McLaughlin v. DHHS	07 DHR 2240	Elkins	06/04/08
Anna Fields v. Value Options	07 DHR 2326	Joseph	06/02/08
Larry Hopper v. DHHS	07 DHR 2356	May	06/20/08
Shelby Davis v. DHHS	08 DHR 0014	Lassiter	05/09/08
Lenora King v. DHHS	08 DHR 0034	Joseph	05/01/08
Forest Mewborn v. Health Care Personnel Registry	08 DHR 0043	Elkins	05/23/08
Wilma Jackson v. Value Options	08 DHR 0082	Joseph	06/02/08
Carmelita Wiggins v. Value Options	08 DHR 0198	Webster	05/16/08
Lisa Helms v. DHHS	08 DHR 0255	Overby	06/17/08
Mamaue Aytch v. DHHS	08 DHR 0325	Elkins	05/23/08
Fannie M. Wilson v. OAH	08 DHR 0393	Webster	06/17/08
Angela D Seabrooks/The Jabez House LLC v. DHHS/Division of Mental Health, Developmental and Substance Abuse Services, The Guilford Center	08 DHR 0403	Joseph	06/09/08
William McCray Pretty v. DHHS, Division of Facility Services	08 DHR 0411	Webster	06/12/08
Earline Ross (Quentin Galloway) v. DHHS (Medicaid)	08 DHR 0549	May	06/09/08
Frances Milligan v. DHHS	08 DHR 0566	May	06/19/08
Betty Williams v. DHHS	08 DHR 0570	Joseph	06/02/08
Susan Nelson v. Medicaid	08 DHR 0573	May	06/09/08
Brent Morris Per Dedrea Moors (Mother) v. Priscilla Valet, DMA	08 DHR 0585	May	06/09/08
Brenda M. Finney v. Medicaid	08 DHR 0586	Joseph	06/09/08
Lakeva Robinson v. DMA/Value Options	08 DHR 0625	May	05/28/08
Tina Miller v. OAH, DHHS	08 DHR 0661	Lassiter	06/10/08
Michelle D. Mills v. DHHS, Division of Health Service Regulation	08 DHR 0712	Joseph	06/09/08
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