

NORTH CAROLINA REGISTER

VOLUME 23 • ISSUE 03 • Pages 188 - 284

August 1, 2008

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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 (919) 733-2678
424 North Blount Street (919) 733-3462 FAX
Raleigh, North Carolina 27601-2817

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 733-3367
Dana Vojtko, Publications Coordinator dana.vojtko@ncmail.net (919) 733-2679
Julie Edwards, Editorial Assistant julie.edwards@ncmail.net (919) 733-2696
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 (919) 733-2721
Raleigh, North Carolina 27605 (919) 733-9415 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 715-8655
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 733-0928
Angela Person, Administrative Assistant angela.person@ncmail.net (919) 733-2721

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.

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Downtown Urban Ventures, LLC**

Pursuant to N.C.G.S. 130A-310.34, Downtown Urban Ventures, 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 Carrboro, Orange County, North Carolina. The Property, formerly known as the Butler Property, consists of 0.97 acres and is located at 105 Padgett Lane. Environmental contamination exists on the Property in soil and groundwater. Downtown Urban Ventures, LLC has committed itself to construction of a 98,963 square foot mixed use condominium and commercial/office space complex on the Property. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Downtown Urban Ventures, 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 Carrboro Town Hall, 310 West Main St., Carrboro, NC 27510 by contacting Town Clerk Sarah Williamson at that address, at (919) 918-7309 or at swilliamson@townofcarrboro.org; 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 after the date this Notice is published in a newspaper of general circulation serving the area in which the Property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if Downtown Urban Ventures, 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 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 August 2, 2008. All such comments and requests should be addressed as follows:

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



U.S. Department of Justice
Civil Rights Division

CC:MSR:JRK:par
DJ 166-012-3
2008-2543

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

June 18, 2008

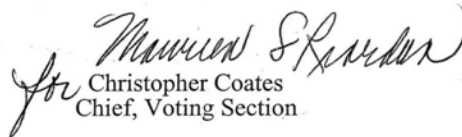
Mr. David A. Holec
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to three annexations (Ordinance Nos. 2008-16, 2008-17 and 2008-18 (2008)) and their designation to districts for 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 April 29, 2008.

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

Sincerely,


Christopher Coates
Chief, Voting Section

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

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

TITLE 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 48A .1702.

Proposed Effective Date: December 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 rule by submitting a request in writing no later than August 16, 2008, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: The proposed amendment to this rule would add two new plants, Bushkiller and Beach Vitex, to the list of class B noxious weeds. This will allow the Department to take regulatory actions to prevent the introduction and spread of these weeds in North Carolina.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rule 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 30, 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 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .1700 - STATE NOXIOUS WEEDS

02 NCAC 48A .1702 NOXIOUS WEEDS

(a) Class A Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class A Noxious Weeds:

- (1) All weeds listed in 7 C.F.R. 360.200 which is hereby incorporated by reference including subsequent amendments and editions. A full list of Federal Noxious Weeds may be found at: http://www.access.gpo.gov/nara/cfr/waisidx_07/7cfr360_07.html. ~~Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twelve dollars (\$12.00);~~
- (2) Elodea, African -- Lagarosiphon spp. (all species);
- (3) Fern, Water -- Salvinia spp. (all except S. minima);
- (4) Mile-a-Minute -- Polygonum perfoliatum;
- (5) Stonecrop, Swamp -- Crassula helmsii;
- (6) Water-chestnut -- Trapa spp.

(b) Class B Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class B Noxious Weeds:

- (1) Betony, Florida--Stachys floridana Shuttlew.;
- (2) ~~Bushkiller—Cayratia japonica Thunb.;~~
- (~~2~~)(3) Fieldcress, Yellow--Rorippa sylvestris (L.) Bess.;
- (~~3~~)(4) Lythrum -- Any Lythrum species not native to North Carolina;
- (~~4~~)(5) Puncturevine--Tribulus terrestris L.;
- (~~5~~)(6) Thistle, Canada--Cirsium arvense (L.) Scop.;
- (~~6~~)(7) Thistle, Musk--Carduus nutans L.;
- (~~7~~)(8) Thistle, Plumeless--Carduus acanthoides L.;
- (9) ~~Vitex, Beach—Vitex rotundifolia L.f.;~~
- (~~8~~)(10) Watermilfoil, Eurasian -- Myriophyllum spicatum L.;

~~(9)~~(11) Waterprimrose, Uruguay -- Ludwigia hexapetala (Hook & Arn.) Zardini, Gu & Raven.

(c) Class C Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class C Noxious Weeds: Bittersweet, Oriental – Celastrus orbiculatus Thunb.

Authority G.S. 106-420.

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

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11F - ACTUARIAL

SECTION .0600 – RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt the rule cited as 11 NCAC 11F .0606 and amend the rules cited as 11 NCAC 11F .0601 - .0603, .0605.

Proposed Effective Date: December 1, 2008

Public Hearing:

Date: August 19, 2008

Time: 10:00 a.m.

Location: 4105-2 Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: The new requirements for preneed insurance and the transition period are needed to comply with the updated NAIC Model Law.

Procedure by which a person can object to the agency on a proposed rule: The Department of Insurance will accept written objections to these rules until the expiration of the comment period on September 30, 2008.

Comments may be submitted to: Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 733-4529, fax (919) 733-6495, email esprenkel@ncdoi.net

Comment period ends: September 30, 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:

11 NCAC 11F .0601 DEFINITIONS

As used in this section:

- (1) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)*. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.
- (2) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.
- (3) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.
- (4) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.
- (5) Preneed life insurance means a life insurance policy which, whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured being the person for whose service the funds were paid.
- ~~(5)~~(6) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e).

11 NCAC 11F .0602 2001 CSO MORTALITY TABLE AS MINIMUM STANDARD

(a) At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this section, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005, and before the date specified in paragraph (b) of this rule to which G.S. 58-58-50(c)(2)(a), G.S. 58-58-55(e)(4)h.6, 11 NCAC 11F .0403(a) or 11 NCAC 11F .0403(b) are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on or after January 1, 2009, to which G.S. 58-58-50(c)(2)(a), G.S. 58-58-55(e)(4)h.6, 11 NCAC 11F .0403(a) or 11 NCAC 11F .0403(b) are ~~applicable~~. applicable, except for preneed life insurance as specified in 11 NCAC 11F .0606.

(c) The 2001 CSO Mortality Table shall be the basis for computation of minimum values related to extended term benefits for policies for which the 2001 CSO Mortality Table is the minimum standard for valuation and nonforfeiture purposes.

Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e).

11 NCAC 11F .0603 CONDITIONS

(a) For each plan of insurance with separate rates for smokers and nonsmokers an insurer shall use one of the following:

- (1) Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;
- (2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by G. S. 58-58-50(g) and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or
- (3) Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(b) For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

(c) When the 2001 CSO Mortality Table is used for ~~For~~ the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, ~~the 2001 CSO Mortality Table~~ it may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of 11 NCAC 11F .0604 and 11 NCAC 11F .0400, relative to use of the select and ultimate form.

(d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the Commissioner shall be based on an asset adequacy analysis as specified in 11 NCAC 11F .0303.

Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e).

11 NCAC 11F .0605 GENDER-BLENDED TABLES

(a) For any ordinary life insurance policy delivered or issued for delivery in this state on or after January 1, 2005, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture ~~benefits~~. benefits, except for preneed life insurance policies issued after December 31, 2008, as provided in 11 NCAC 11F .0606. Notwithstanding this rule, the 2001 CSO Mortality Table, consisting of separate rates of mortality for male and female lives, shall be the minimum valuation standard even if blended tables are used in determining minimum cash surrender values and nonforfeiture benefits.

(b) When using a gender-blended table based on the 2001 CSO Mortality Table for determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the company shall choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

(c) An insurer's issuance of the same kind of policy of life insurance on both a sex-distinct and a sex-neutral basis shall not solely constitute a violation of Article 63 of Chapter 58 of the North Carolina General Statutes.

Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e).

11 NCAC 11F .0606 MINIMUM STANDARDS FOR PRENEED LIFE INSURANCE

(a) For preneed life insurance, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for policies issued after December 31, 2008, shall be the Commissioners' 1980 Standard Ordinary Life Valuation Mortality Tables (1980 CSO), without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983. If the policy utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a table that is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F), without ten-year selection factors may, at the option of the insurer, be substituted for the 1980 CSO Table to determine minimum cash surrender values and nonforfeiture benefits. A mortality table which is the same blend of the 1980 CET Table (M) and 1980 CET (F) may be substituted for the 1980 CET Table. The blended tables must be selected from those published in the 1984 Proceedings of the NAIC, Vol. I., or in the 1987 Proceedings of the NAIC, Volume I.

(b) Notwithstanding 11 NCAC 11F .0606(a), for preneed life insurance policies issued after December 31, 2008 and before January 1, 2012, the 2001 CSO Mortality Table may be used as the minimum standard for reserves and nonforfeiture values. If an insurer elects to use the 2001 CSO Mortality Table as a minimum standard for any preneed life insurance policy issued

after December 31, 2008 and before January 1, 2012, the insurer shall provide, as a part of the actuarial memorandum submitted in support of the insurer's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

- (1) A complete list of all preneed policy forms that use the 2001 CSO Mortality Table as a minimum standard;
(2) A certification signed by the appointed actuary stating that the reserve methodology employed by the insurer in determining reserves for the preneed life insurance policies issued after December 31, 2008 and using the 2001 CSO Mortality Table as a minimum standard, develops adequate reserves for these policies without being aggregated with any other policies; and
(3) Supporting information regarding the adequacy of reserves for preneed life insurance policies issued after December 31, 2008 and using the 2001 CSO Mortality Table as a minimum standard for reserves. The supporting information shall include documentation of the actuarial assumptions and methods used in testing these reserves for adequacy.

Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e).

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 09H .0101 - .0105 and amend the rule cited as 12 NCAC 09B .0301.

Proposed Effective Date: December 1, 2008

Public Hearing:

Date: August 28, 2008

Time: 1:00 p.m.

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

Reason for Proposed Action:

12 NCAC 09B .0301 – Adds failure to deliver training to qualified retired law enforcement officers in the manner specified in 12 NCAC 09H and knowingly and willfully aiding a qualified retired law enforcement officer to obtain certification by means of fraud, as reasons for suspending or revoking certification of a firearms instructor.

12 NCAC 09H .0101 – Outlines the purpose of the Qualified Retired Law Enforcement Officers' Firearms Qualification Certification Program.

12 NCAC 09H .0102 – Outlines minimum training specifications for participants in the program.

12 NCAC 09H .0103 – Outlines the responsibilities of instructors for the program.

12 NCAC 09H .0104 – Sanctions for violation of the rules of the program.

12 NCAC 09H .0105 – Outlines required forms and fees for the program.

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.gov

Comment period ends: September 30, 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: A copy of the fiscal note can be obtained from the agency.

- 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 .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS

(a) Any person participating in a commission-accredited criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making

presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification or Professional Lecturer Certification as outlined in Rules .0302, .0304 and .0306 of this Section. Such instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and reflected on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-accredited course shall remain competent in his/her specialized areas. Such competence includes remaining current in the instructors area of expertise, which shall be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

(d) The Standards Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(e) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
- (5) revoking the individual's certification.

(f) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise; or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09B .0209; or
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation; or

- (8) has failed to meet or maintain good moral character as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (9175); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and their progeny, as required to effectively discharge the duties of a criminal justice ~~instructor~~ instructor; or
- (9) has failed to deliver training in a manner consistent with the Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102; or
- (10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification/certification under the Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud or misrepresentation.

Authority G.S. 17C-6.

SUBCHAPTER 09H - QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS

SECTION .0100 - FIREARMS QUALIFICATION CERTIFICATION PROGRAM

12 NCAC 09H .0101 PURPOSE

The Commission hereby establishes rules to allow for the firearms qualification certification of qualified retired law enforcement officers, as defined in G.S. 14-415.10, who are authorized by federal law, Section 926C of Title 18 of the United States Code, to lawfully carry handguns concealed. These Rules establish the method by which a qualified retired officer shall be tested to determine whether the officer meets the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm. These Rules do not apply to qualified retired law enforcement officers who complete the required training and firearms qualification with the agency from which they retired.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

12 NCAC 09H .0102 MINIMUM TRAINING SPECIFICATIONS

(a) Each qualified retired law enforcement officer must qualify with each handgun he/she will carry in accordance with the standards outlined in 12 NCAC 09E .0105(1) and 12 NCAC 09E .0106(a),(c),(e),(f) and (g).

(b) In addition to the standards set out in Rules 09E .0105 and .0106, each qualified retired law enforcement officer shall also receive a minimum of two hours of instruction on the North Carolina laws of self defense and the use of force by private

citizens, detention of persons by private persons, and assistance to law enforcement officers by private persons.

(c) Qualified retired law enforcement officers shall qualify with each handgun that will be carried concealed at least once every 12 months. For the purpose of this Rule, handgun shall include semi-automatic pistols or revolvers.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

12 NCAC 09H .0103 INSTRUCTORS

(a) Only instructors who hold current Specialized Instructor Certification in Firearms issued by the Criminal Justice Education and Training Standards Commission as outlined in Rules 09B .0302 and 09B .0304 may conduct the firearms qualification training as specified in Rule 09H .0102.

(b) Each instructor specified in Paragraph (a) of this Rule will record and retain the firearms qualification scores for each qualified retired law enforcement officer trained by the instructor for a period of five years. These scores will not be transmitted to the Criminal Justice Standards Division unless requested but must be available for inspection by Criminal Justice Standards Division representatives at reasonable times. If the instructor is conducting training on behalf of a North Carolina training institution, the institution shall maintain the records in lieu of the instructor in order to comply with this Rule.

(c) Upon successful qualification, the instructor shall sign and date the Retired Law Enforcement Officers Firearms Qualification Certification Application Form (F-9R) attesting to the successful qualification.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

12 NCAC 09H .0104 SANCTIONS

(a) The Commission shall summarily deny or revoke the applicant for firearms qualification certification or the qualified retired law enforcement officer's firearms qualification certification when the Commission finds the applicant or retired officer has willfully and intentionally falsified any application or documentation required for qualification certification. Any applicant or qualified retired law enforcement officer summarily denied or revoked may request an administrative hearing with the Commission subsequent to the summary denial or revocation in accordance with G.S. Chapter 150B, Article 3A.

(b) The Commission may deny or suspend the applicant or retired law enforcement officer's firearms qualification certification when the Commission finds the applicant or retired officer:

- (1) has failed to successfully complete the required training or qualification specified in Rule 09H .0102; or
- (2) is ineligible to receive and possess firearms under federal or state law.

(c) Before taking action, the Standards Division shall investigate the alleged violation of Paragraph (b) of this Rule and present a report of its findings to the Probable Cause Committee of the Commission.

(d) The Probable Cause Committee shall convene prior to the next regular meeting of the Commission, and shall make a

determination as to whether or not probable cause exists that the Commission's rules have been violated.

(e) The Probable Cause Committee may:

- (1) direct the Standards Division to conduct a further investigation of the alleged violation;
- (2) direct the Standards Division to conduct an administrative hearing in the matter, pursuant to 12 NCAC 09A .0107 and 26 NCAC 03; or
- (3) determine the appropriate sanctions against the violator pursuant to Paragraphs (f) and (g) of this Rule.

(f) Denials or revocations in accordance with Paragraph (a) of this Rule will be permanent. The retired officer will be ineligible to ever receive firearms qualification certification from the Commission.

(g) Denials or suspensions in accordance with Paragraph (a) of this Rule will be:

- (1) until the applicant or retired officer has successfully completed the required training or qualification specified in Rule 09H .0102; or
- (2) until the applicant or retired officer is eligible to receive and possess firearms under federal or state law.

(h) Any applicant or qualified retired law enforcement officer who receives firearms qualification certification under these Rules who becomes ineligible under any of the standards enumerated in this Rule has an affirmative duty to notify the Criminal Justice Commission of such disqualification within five calendar days of the occurrence of the event.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

12 NCAC 09H .0105 FILING AND FEES

Each applicant for firearms qualification certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program shall submit the following to the Commission:

- (1) An original Commission-approved application form containing the applicant's notarized signature which attests that the applicant meets the definition of qualified retired law enforcement officer set forth in G.S. 14-415.10 and is eligible to possess firearms under federal and state law. The application form must also include the signature of a current Commission certified Specialized Firearms Instructor attesting that the applicant has met the training and qualification standards as specified in Rule 09H .0102 and lists the handguns with which the qualified retired officer qualified;
- (2) A copy of the qualified retired officer's photographic identification indicating retirement status issued by the law enforcement agency from which the applicant retired; and
- (3) A fee of fifty dollars (\$50.00) for the initial one-year qualification and a fee of twenty-five dollars (\$25.00) for the annual renewal

thereafter. Applications and fees shall be submitted to:

Criminal Justice Standards Division
North Carolina Department of Justice
Post Office Drawer 149
Raleigh, NC 27602

All fees shall be paid by certified check or money order made payable to the North Carolina Department of Justice.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

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 adopt the rules cited as 15A NCAC 02D .1808; 02T .1307 - .1309 and amend the rules cited as 15A NCAC 02T .1304 - .1305.

Proposed Effective Date: January 1, 2009

Public Hearing:

Date: August 26, 2008

Time: 7:00 p.m.

Location: James Sprunt Community College – Monk Auditorium, 133 James Sprunt Drive, Kenansville, NC

Public Hearing:

Date: August 27, 2008

Time: 7:00 p.m.

Location: Archdale Building – Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, NC

Reason for Proposed Action: Session Law 2007 – 523 directs the Environmental Management Commission (EMC) to adopt rules governing the performance standards for new or expanding swine farms. In fulfillment of the EMC's charge, the Performance Standard rules in 15A NCAC 02T .1307 establish minimum standards for new or expanding swine farms. Rule 15A NCAC 02T .1308 establishes the application requirements for new or expanding swine farms. Rule 15A NCAC 02T .1309 establishes conversion requirements for existing facilities that voluntarily convert to innovative treatment systems. Rule 15A NCAC 02D .1808 establishes odor regulations for new or expanding swine farms. Modified rules 15A NCAC 02T .1304 - .1305 direct a person who desired to construct a new or expanding swine farm to the requirements of the Performance Standards.

Procedure by which a person can object to the agency on a proposed rule: A person may submit written objections concerning the Performance Standard rules for new or expanding swine farms (adoption of 15A NCAC 02T .1307 - .1309, 15A NCAC 02D .1808, and the amendment of 15A NCAC 02T .1304 - .1305 to the Aquifer Protection Section of the NCDENR-Division of Water Quality). Such correspondence should be brought to the attention of: Mr. Keith Larick,

NCDENR/DWQ – Aquifer Protection Section, 1636 Mail Service Center, Raleigh, NC 27699-1636, Phone (919) 715-6697, Fax (919) 715-6048, Email keith.larick@ncmail.net. Oral comments may be made during the hearings. Written copies of oral statements exceeding three minutes are requested. All written comments must be submitted by September 30, 2008. An objection lodged at public hearing to the Performance Standard rules must be submitted in writing.

Comments may be submitted to: Keith Larick, Aquifer Protection Section, 1636 Mail Service Center, Raleigh, NC 27699-1636, phone (919) 715-6697, fax (919) 715-0648, email keith.larick@ncmail.net

Comment period ends: September 30, 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: A copy of the fiscal note can be obtained from the agency.

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

Fiscal Note posted at http://www.osbm.state.nc.us/files/pdf-files/DENR07112008.pdf

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1800 - CONTROL OF ODORS

15A NCAC 02D .1808 EVALUATION OF NEW OR MODIFIED SWINE FARMS

(a) Purpose. The purpose of this Rule is to specify the methods for evaluating new or modified swine farms for compliance with the performance standards in G.S. 143-215.10I(b)(3).

(b) Applicability. This rule shall apply to new or modified swine farms that shall meet the performance standards in G.S. 143-215.10I(b)(3).

(c) Requirements. New or modified swine farms subject to this Rule shall comply with the requirements in Section .1800 of this

Chapter and the performance standards in G.S. 143-215.10I(b)(3).

(d) Evaluation of new or modified swine farms. For the purpose of evaluating odor at new or modified swine farms for compliance with the performance standards in G.S. 143-215.10I(b)(3), the following shall apply:

- (1) When a field olfactometry method and instrumentation is used to determine odor intensity at the designated evaluation location, as specified in Paragraph .1802(e) of this Section, the measured dilution-to-threshold ratio shall be less than or equal to 7:1 as determined using the published instrument procedures and instructions; or
- (2) When odor intensity is determined using an Odor Intensity Referencing Scale (OIRS) as specified in ASTM 544-99, the instantaneous observed level shall be less than the equivalent of 225 parts per million n-butanol in air. In addition, the average of 30 consecutive observations conducted over a minimum of 30-minutes at designated evaluation locations shall be less than the equivalent of 75 parts per million n-butanol in air and a minimum of four readings out of the minimum 30 readings shall be less than or equal to the equivalent 25 parts per million n-butanol in air.

G.S. 143-215.10I; 143-215.3(a)(1); 143-215.107(a)(11); 143-215.108(a).

SUBCHAPTER 02T – WASTE NOT DISCHARGED TO SURFACE WATERS

SECTION .1300 – ANIMAL WASTE MANAGEMENT SYSTEMS

15A NCAC 02T .1304 STATE PERMITTING REQUIREMENTS

- (a) This rule applies to animal waste management systems that meet the definition of an animal operation in G.S. 143-215.10B but are not subject to regulation under Rule .1305.
- (b) An animal waste management plan shall be submitted as follows:

- (1) The animal waste management practices or combination of practices which are selected to comprise a plan for a specific facility must meet NRCS standards, or the standard of practices adopted by the Soil and Water Conservation Commission pursuant to 15A NCAC 06F .0104, or standards for any combination of practices which provide water quality protection and are approved by one of these two agencies, and all applicable state statutes and rules at the time of development or design. NRCS standards relating to phosphorus application rates for animal waste are not incorporated as part of this rule.

- (2) As required by G.S. 143-215.10C, plans must be approved by any technical specialist and the certificate submitted to the Division on Division supplied forms or forms approved by the Division as providing the same information as required by the Division's forms. The technical specialist must approve that the best management practices that comprise the plan meet the applicable minimum standards and specifications.
- (3) The land application and siting setbacks must meet the applicable conditions established in G.S. 106-803 and NRCS Standards at the time of construction.
- (4) New and expanded animal waste treatment systems such as lagoons and waste storage structures shall be located at least 100 feet from a perennial stream or perennial waterbody. For new and expanding systems, this setback requirement shall also apply to areas where an established vegetative cover will not be maintained because of the concentration of animals, with the exception of stock trails and stream crossings.
- (5) The waste shall not be applied at greater than agronomic rates.
- (6) For animal waste management facilities desiring to increase their animal population beyond that currently permitted, a new individual permit or new certificate of coverage to operate under a general permit must be issued before the additional animals are stocked.

(c) For each change of ownership of the system, the new owner must notify the Division in writing within 60 days of transfer of ownership.

(d) New and expanding swine facilities must demonstrate compliance with Rule .1307 of this Section prior to receiving a permit from the Division.

Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.

15A NCAC 02T .1305 NPDES PERMITTING REQUIREMENTS

- (a) This Rule applies to animal waste management systems subject to regulation under 40 CFR 122.23 and G.S. 143-215.10C.
- (b) With the exception of dry litter poultry systems, an animal waste management plan shall be submitted as follows:

- (1) The animal waste management practices or combination of practices which are selected to comprise a plan for a specific facility must meet NRCS standards, or the standard of practices adopted by the Soil and Water Conservation Commission pursuant to 15A NCAC 06F .0104, or standards for any combination of practices which provide water quality protection and are approved by one of these two agencies, and all applicable state

statutes and rules and all applicable federal requirements at the time of development or design.

- (2) As required by G.S. 143-215.10C, plans must be approved by any technical specialist and the certificate submitted to the Division on Division supplied forms or forms approved by the Division as providing the same information as required by the Division's forms. The technical specialist must approve that the best management practices that comprise the plan meet the applicable minimum standards and specifications.
- (3) The land application and siting setbacks must meet the applicable conditions established in G.S. 106-803, NRCS Standards and 40 CFR Part 412 at the time of construction.
- (4) New and expanded animal waste treatment systems such as lagoons and waste storage structures shall be located at least 100 feet from a perennial stream or perennial waterbody. For new and expanding systems, this setback requirement shall also apply to areas where an established vegetative cover will not be maintained because of the concentration of animals, with the exception of stock trails and stream crossings.
- (5) The waste shall not be applied at greater than agronomic rates.
- (6) For animal waste management facilities desiring to increase their animal population beyond that currently permitted, a new individual permit or new certificate of coverage to operate under a general permit must be issued before the additional animals are stocked.

(c) Dry litter poultry systems, for the purpose of this Rule and G.S. 143-215.10C, shall submit an animal waste management plan as follows:

- (1) The animal waste management practices or combination of practices which are selected to comprise a plan for a specific facility must meet NRCS standards, or the standard of practices adopted by the Soil and Water Conservation Commission, or standards for any combination of practices which provide water quality protection and are approved by one of these two agencies, and all applicable state statutes and rules and all applicable federal requirements at the time of development or design.
- (2) The land application and siting setbacks must meet the conditions established in NRCS standards and 40 CFR Part 412 at the time of construction.
- (3) New and expanded animal waste structures such as houses and dry stacks shall be protected from the 100-year flood.

- (4) The waste shall not be applied at greater than agronomic rates.
- (5) For animal waste management facilities desiring to increase their animal population beyond that currently permitted, a new individual permit or new certificate of coverage to operate under a general permit must be issued before the additional animals are stocked.

(d) For each change of ownership of the system, the new owner must notify the Division in writing within 60 days of transfer of ownership.

(e) Systems shall meet all applicable requirements of 40 CFR Part 122 and 40 CFR Part 412.

(f) New and expanding swine facilities must demonstrate compliance with Rule .1307 of this Section prior to receiving a permit from the Division.

Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.

15A NCAC 02T .1307 SWINE WASTE MANAGEMENT SYSTEM PERFORMANCE STANDARDS

(a) This Rule applies to animal waste management systems subject to regulation under G.S. 143-215.10(I).

(b) An animal waste management system that serves a swine farm subject to regulation under G.S. 143-215.10(I), shall meet or exceed all of the following performance standards:

- (1) Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.
 - (A) Earthen structures must be designed and constructed with synthetic liners to eliminate seepage.
 - (B) Solids storage structures shall meet proper engineering practices and applicable NRCS design standards.
 - (C) The Certified Animal Waste Management Plan (CAWMP) must meet current NRCS Standards for a Comprehensive Nutrient Management Plan (CNMP) as defined by Part 600, Subpart E of the NRCS National Planning Procedures Handbook.
 - (D) Swine waste treatment structures that automatically convey swine waste using pumps must have audible and visible high water alarms with an auto dialer device set to contact the farm owner or farm manager or have a gravity overflow to a basin that can contain the flow rate of the largest pump in the system for the maximum amount of time that an operator will not be on-site. An alternative to this option is a secondary containment structure designed, constructed, and operated to contain the steady-state volume of the largest animal waste

- treatment structure and the flow rate of the largest pump in the system for the maximum amount of time that an operator will not be on-site.
- (E) No more than the equivalent volume of one month of design flow of untreated swine waste shall be accumulated and stored prior to the initiation of treatment.
- (2) Substantially eliminate atmospheric emission of ammonia.
- (A) Combined ammonia emissions from swine waste treatment and storage structures may not exceed an annual average of 0.2 kg NH₃-N/wk/1,000 kg of steady-state live weight;
- (B) Ammonia emissions from land application sites shall not exceed 0.2 kg NH₃-N/wk/1,000 kg of steady-state live weight; and
- (C) Ammonia emissions from the swine farm must not exceed an annual average of 0.9 kg NH₃-N/wk/1,000 kg of steady-state live weight.
- (3) Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located. Swine waste management systems must reduce odor levels, frequency, and duration from the whole farm, such that there is no objectionable odor, as defined in 15A NCAC 02D .1808, at the property boundary.
- (4) Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.
- (A) Swine waste management systems shall meet the vector attraction reduction requirements in Rule .1107 of this Subchapter for the land application of separated solids and biological residuals.
- (B) Swine waste management systems shall meet the pathogen reduction requirements in Rule .1106 of this Subchapter for Class A biosolids that are to be land applied pursuant to .1106(a)(1) or for Class B biosolids that are to be otherwise applied to land.
- (C) Fecal coliform concentrations in the final liquid effluent shall not exceed an annual average of 400,000 Most Probable Number/100mL.
- (5) Substantially eliminate nutrient and heavy metal contamination of soil and groundwater. Swine waste management systems that land apply effluent shall:
- (A) Meet the current NRCS requirements for a Comprehensive Nutrient Management Plan (CNMP) as

defined by Part 600, Subpart E of the NRCS National Planning Procedures Handbook; and

- (B) Demonstrate through predictive calculations or modeling that land application of swine waste at the proposed rate will not cause or contribute to a violation of groundwater standards under 15A NCAC 02L.

Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.

15A NCAC 02T .1308 EVALUATION AND APPROVAL OF SWINE WASTE MANAGEMENT SYSTEMS

(a) This Rule shall provide for the evaluation, approval and permitting of swine waste management systems that are required to meet the performance standards in Rule .1307 of this Section.

(b) APPLICATION: The applicant shall submit a permit application in writing to the Division to qualify a swine waste management system as meeting the performance standards. The application shall include the following:

- (1) operation and maintenance procedures, system classification, proposed management entity and system operator requirements;
- (2) a description of the swine waste management system, including materials used in construction, and its proposed use;
- (3) a summary of pertinent literature, published research, and previous experience with and performance of a waste management system of similar waste characteristics;
- (4) 12 months of results of testing, research or monitoring of pilot- or full-scale operational system(s) and shall identify whether the testing, research or monitoring provided was conducted by a third party research or testing organization;
- (5) documentation of the protocol used to evaluate the performance of the swine waste management system;
- (6) the identity and qualifications, if applicable, of any proposed research or testing organization and the principal investigators, and an affidavit certifying that the organization and principal investigators have no conflict of interest and do not stand to gain financially from the sale of the technology;
- (7) an affidavit certifying that the swine waste management system submitted for approval is the same as the certified or listed product or identify any modifications made to the submitted system;
- (8) a procedure to address system malfunction and replacement;
- (9) notification of any proprietary or trade secret information, system, component, or device;
- (10) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare

these documents. The following documents shall be provided to the Division by the applicant: [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

(A) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;

(B) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and

(C) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

(11) a complete animal waste management system permit application in accordance with Section .0100 of this Subchapter.

(12) upon approval by the Division, in lieu of the requirements of Subparagraphs (3) – (6) of this Paragraph, the applicant may submit data from a full-scale facility previously permitted by the Division.

(c) APPROVAL OF NEW OR EXPANDING SWINE WASTE MANAGEMENT SYSTEMS: The Division shall review all applications submitted in accordance with Rule .0107 of this Subchapter. The Division shall approve the swine waste management system in accordance with Rule .0108 of this Subchapter, and when the applicant can show that the performance standards of Rule .1307 of this Section will be met.

(d) MONITORING REQUIREMENTS: Once the newly permitted system comes into steady state conditions or within six months, whichever comes sooner, system performance shall be monitored for two years with quarterly sampling to assure that the treatment system is meeting performance standards. If, after two years the treatment system is compliant with Rule .1307 of this Section, monitoring of the performance standards in Rule .1307 shall be performed on the following schedule:

(1) Ammonia emissions monitoring from swine waste treatment and storage structures shall be required as follows:

(A) Ammonia air emissions from open-air structures shall be directly sampled

once per calendar year, with alternating years having sampling during the warm and cold seasons, or

(B) Liquid from open-air waste treatment and storage structures shall be sampled at a minimum of once per quarter.

(2) Monitoring of odor intensity shall be required on an annual basis, with alternating years having sampling during the warm and cold seasons.

(3) Effluent monitoring shall be required at a minimum of once per quarter.

Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.

15A NCAC 02T .1309 LAGOON CONVERSION REQUIREMENTS

(a) This Rule applies to existing animal waste management systems that convert from anaerobic lagoons as the primary method of treatment to innovative animal waste management systems, and have not expanded the steady-state live weight of the swine farm.

(b) An innovative animal waste management system shall meet the requirements of Rules .1307 and .1308 of this Section.

(c) Upon approval by the Division, a permittee may abandon and close out an innovative animal waste management system permitted under Rules .1307 and .1308 of this Section and revert to the requirements of Rule .1304 or .1305 of this Section if all of the following criteria are met:

(1) The innovative animal waste management system is properly constructed according to the approved design and specifications.

(2) The innovative animal waste management system is properly operated and maintained.

(3) The permit for the anaerobic lagoon animal waste management system issued prior to 1 September 2007 pursuant to Session Law 2007-523(1)(b) remains valid, and

(4) The anaerobic lagoon animal waste management system has been maintained and may operate in compliance with the requirements of its permit.

Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0205, .1401 - .1402, .1404 - .1405, .2101 - .2102, .2104 - .2105, .2401 - .2402, .2404 - .2405; 07J .0701, .0703; 07M .0301 - .0303, .0306 - .0307.

Proposed Effective Date: December 1, 2008

Public Hearing:

Date: September 24, 2008

Time: 3:00 p.m.

Location: Sea Trail Resort and Conference Center, 211 Clubhouse Road, Sunset Beach, NC 28468

Reason for Proposed Action:

15A NCAC 07H .0205, .1401 - .1402, .1404 - .1405, .2101 - .2102, .2104 - .2105, .2401 - .2402, .2404 - .2405 -The CRC is proceeding with rule making in order to make changes to three General Permits for estuarine shoreline stabilization. Section 07H .1400 establishes a GP for the construction of groins in estuarine and public trust waters and ocean hazard areas. Section 07H .2100 establishes a GP for the construction of marsh enhancement breakwaters for shoreline protection in estuarine and public trust waters and ocean hazard areas. Section 07H .2400 establishes a GP for the placement of riprap for wetland protection in estuarine and public trust waters. The CRC is proposing changes to all rules under Sections 07H .1400, 07H .2100, and 07H .2400. The CRC is proceeding with rule making in order to amend its administrative rule that governs coastal wetlands (07H .0205). The CRC does not currently regulate alteration of coastal wetlands unless it is associated with a development activity that already requires a CAMA Permit.

15A NCAC 07J .0701, .0703 - The Coastal Resources Commission (CRC) is proceeding with rulemaking in order to make changes to its permanent administrative rules that establish procedures for variance petitions.

15A NCAC 07M .0301 - .0303, .0306 - .0307 - The CRC is proceeding with rulemaking in order to make changes to its guidelines to local governments for providing public access to ocean beaches and public trust waters.

Procedure by which a person can object to the agency on a proposed rule: Objections may be filed in writing and addressed to the Director, NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

Comments may be submitted to: Jim Gregson, 400 Commerce Avenue, Morehead City, NC 28557, phone (252) 808-2808, fax (252) 247-3330

Comment period ends: September 30, 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 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0205 COASTAL WETLANDS

(a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Coastal wetlands contain some, but not necessarily all, of the following marsh plant species:

- (1) Cord Grass (Spartina alterniflora),
(2) Black Needlerush (Juncus roemerianus),
(3) Glasswort (Salicornia spp.),
(4) Salt Grass (Distichlis spicata),
(5) Sea Lavender (Limonium spp.),
(6) Bulrush (Scirpus spp.),
(7) Saw Grass (Cladium jamaicense),
(8) Cat-tail (Typha spp.),
(9) Salt Meadow Grass (Spartina patens),
(10) Salt Reed Grass (Spartina cynosuroides).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of ENR pursuant to G.S. 113-230 (a).

(b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal marshlands. The amount of exportation and degree of importance appears to be variable from marsh to marsh, depending primarily upon its frequency of inundation and inherent characteristics of the various plant species. Without the marsh, the high productivity levels and complex food chains typically found in the estuaries could not be maintained.

Man harvests various aspects of this productivity when he fishes, hunts, and gathers shellfish from the estuary. Estuarine dependent species of fish and shellfish such as menhaden, shrimp, flounder, oysters, and crabs currently make up over 90 percent of the total value of North Carolina's commercial catch. The marshlands, therefore, support an enormous amount of commercial and recreational businesses along the seacoast.

The roots, rhizomes, stems, and seeds of coastal wetlands act as good quality waterfowl and wildlife feeding and nesting materials. In addition, coastal wetlands serve as the first line of defense in retarding estuarine shoreline erosion. The plant stems and leaves tend to dissipate wave action, while the vast network of roots and rhizomes resists soil erosion. In this way, the coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

Marshlands also act as nutrient and sediment traps by slowing the water which flows over them and causing suspended organic and inorganic particles to settle out. In this manner, the nutrient storehouse is maintained, and sediment harmful to marine organisms is removed. Also, pollutants and excessive nutrients are absorbed by the marsh plants, thus providing an inexpensive water treatment service.

(c) Management Objective. To conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values; to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource essential to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses shall be those consistent with the management objective in this Rule. Highest priority of use shall be allocated to the conservation of existing coastal wetlands. Second priority of coastal wetland use shall be given to those types of development activities that require water access and cannot function elsewhere.

Unacceptable land uses may include, but would not be limited to, the following examples: restaurants and businesses; residences, apartments, motels, hotels, and trailer parks; parking lots and private roads and highways; and factories. Examples of acceptable land uses may include utility easements, fishing piers, docks, and agricultural uses, such as farming and forestry drainage, as permitted under North Carolina's Dredge and Fill Act or other applicable laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing, cutting, or burning of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands shall be governed according to the following provisions:

- (1) Alteration of coastal wetlands shall be exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
 - (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
 - (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
 - (C) Alteration of the substrate shall not be allowed;
 - (D) All cuttings/clippings shall remain in place as they fall;
 - (E) All mowing, cutting or burning coastal wetlands by federal and state resource management agencies, or by academic institutions associated with

research efforts, shall be allowed subject to approval from the Division of Coastal Management;

- (F) Coastal wetlands may be burned at no less than five-year intervals provided that proposals for the area to be burned are submitted to the Division of Coastal Management 30 days prior to the planned activity, and the applicant is able to document that he/she has given notice of the proposed activity to the adjacent riparian property owner(s); and
- (G) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on lots without a pier access.

- (2) Alteration of coastal wetlands with chemicals or herbicides of any type shall be allowed only when conducted by Federal or State resource management agencies or as part of academic research efforts.
- (3) Coastal wetland alteration not meeting the exemption criteria of this Rule shall require a CAMA permit. CAMA permit applications for coastal wetland alterations shall be subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have an adverse impact on the habitat or fisheries resources.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(1); 113A-124.

SECTION .1400 - GENERAL PERMIT FOR CONSTRUCTION OF GROINS IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1401 PURPOSE

A permit under this section shall allow the construction of ~~wooden and riprap~~ groins in the estuarine and public trust waters AECs according to the authority provided in Subchapter 07J .1100 and according to the rules in this Section. This general permit shall not apply to the oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

15A NCAC 07H .1402 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and ~~his~~ the applicant's name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within 10 days of receipt of the notice. The notice shall also indicate that no response shall be interpreted as no objection. ~~DCM staff~~ The Division of Coastal Management shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If the Division of Coastal Management determines that the project exceeds the guidelines established by the General Permit process, the applicant shall be notified that an application for a major development permit shall be required.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative ~~to review the proposed development so that the proposed groin alignment can be marked.~~ Written authorization to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter during this visit. Construction shall be completed within 120 days of the issuance of the ~~general authorization permit~~ or the authorization shall expire and it shall be necessary to re-examine the ~~proposed development alignment~~ to determine if the general authorization may be reissued.

(d) Any modification or addition to the authorized project shall require prior approval from the Division of Coastal Management.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

15A NCAC 07H .1404 GENERAL CONDITIONS

(a) Structures authorized by a general permit in this Section shall be ~~wooden timber, sheetpile,~~ or riprap groins conforming to the standards in this Rule.

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

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

(d) This permit shall not be applicable to proposed construction where the ~~Department~~ Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

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

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

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

15A NCAC 07H .1405 SPECIFIC CONDITIONS

(a) Groins shall be perpendicular to the shoreline and shall not extend more than 25 feet waterward of the normal high water or normal water level.

(b) Riprap groins shall not exceed a base width of 10 feet.

(c) Groins shall be set back at least 15 feet from the ~~adjoining property lines~~ Riparian access dividing line as measured from the closest point of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the ~~permitting agency~~ Division of Coastal Management prior to initiating any development of the groin.

(d) The height of ~~wooden sheetpile~~ groins shall not exceed ~~±~~ one foot above normal high water or the normal water level and the height of riprap groins shall not exceed ~~2~~ two feet above normal high water or the normal water level.

(e) ~~Riprap groins shall be constructed of materials~~ Material used for groin construction shall be free from loose dirt or any other pollutant. It ~~Groin material~~ must be of sufficient size to prevent its movement from the site by wave ~~or current action~~ action or currents.

(f) ~~The riprap material must consist of clean rock or masonry materials such as, but not limited to, granite or broken concrete.~~

(g) ~~No more than two structures shall be allowed per 100 feet of shoreline unless the applicant can provide evidence that more structures are needed for shoreline stabilization.~~

(f) Structure spacing shall be two times the groin length as measured from the centerline of the structure. Spacing may be less than two times the groin length around channels, docking facilities, boat lifts, or boat ramps and when positioned to prevent sedimentation or accretion in a particular area.

(h) ~~(g)~~ "L" and "T" sections shall not be allowed at the end of groins.

(h) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet pile or

other suitable materials approved by the Division of Coastal Management.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

SECTION .2100 - GENERAL PERMIT FOR CONSTRUCTION OF SHEETPILE SILL FOR SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .2101 PURPOSE

A general permit pursuant to this Section shall allow the construction of offshore parallel ~~breakwaters, made sheetpile sills, constructed from wood, plastic lumber, or metal sheet piling-timber, vinyl, or steel sheetpiles~~ for shoreline protection in conjunction with existing or created coastal wetlands. This permit shall only be applicable ~~where a shoreline is experiencing erosion~~ in public trust areas and estuarine waters according to authority provided in 15A NCAC 07J .1100 and according to the procedures and conditions outlined in this subchapter. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in adjoining Ocean Erodible Area.

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

15A NCAC 07H .2102 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and ~~his~~ the applicant's name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. ~~DCM staff~~ The Division of Coastal Management shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If ~~DCM staff~~ the Division of Coastal Management determines that the project exceeds the guidelines established by the General Permit

Process, DCM shall notify the applicant that ~~he must submit~~ an application for a major development ~~permit-permit shall be required.~~

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative so that the proposed ~~breakwater-sill~~ alignment may be ~~appropriately~~ marked. Written authorization to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction of the ~~breakwater sill~~ shall be completed within 120 days of the issuance of the ~~permit or the general authorization or the authorization~~ shall expire and it shall be necessary to re-examine the alignment to determine if the general authorization may be reissued.

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

15A NCAC 07H .2104 GENERAL CONDITIONS

(a) This permit authorizes only the construction of ~~breakwaters sills~~ conforming to the standards herein.

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

~~(c) There shall be no significant interference with navigation or use of the waters by the public by the existence of the breakwater authorized herein.~~

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

(d) This permit ~~will~~ shall not be applicable to proposed construction where the ~~Department~~ Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

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

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

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

15A NCAC 07H .2105 SPECIFIC CONDITIONS

(a) The ~~breakwater-sill~~ shall be positioned no more than 20 feet waterward of the ~~mean-normal~~ mean-normal high water or normal water level ~~contour (whichever is applicable)~~ or 20 feet waterward of the waterward edge of existing wetlands at any point along its alignment. For narrow waterbodies (canals, creeks, etc.) the ~~breakwater-sill~~ alignment shall not be positioned offshore more than one sixth (1/6) the width of the waterbody.

(b) ~~Breakwaters-Sills~~ authorized under this General Permit shall be allowed only in waters that average less than three feet in

depth along the proposed alignment as measured from the ~~mean normal high water or normal water level contour level.~~

(c) Where ~~Department the Division of Coastal Management~~ Staff determine that insufficient wetland habitat exists along the permittee's shoreline to provide adequate shoreline stabilization, the permittee shall be required to plant appropriate wetland species landward of the ~~breakwater-sill~~ structure as directed by ~~Department the Division of Coastal Management~~ Staff.

(d) Construction authorized by this general permit ~~will~~ shall be limited to a maximum length of 500 feet.

(e) The ~~breakwater-sill~~ shall be constructed with an equal gap between each sheathing board totaling at least one inch of open area every linear foot of ~~breakwater_sill~~. The ~~breakwater-sill~~ shall have at least one ~~five-foot-five-foot~~ opening at every 100 feet. The ~~breakwater-sill~~ sections shall be staggered and overlap as long as the ~~five-foot-five-foot~~ separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet.

(f) The height of the ~~breakwater-sill~~ shall not exceed six inches above ~~mean-normal high water or the normal water level.~~

(g) Offshore ~~breakwater-sill~~ sections shall be set back 15 feet from the ~~adjoining property lines and the riparian access dividing line.~~ The line of division of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The set back may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the ~~breakwater-sill~~ begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the ~~breakwater-sill~~.

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

(i) No backfill of the ~~breakwater-sill~~ or any other fill of wetlands, estuarine waters, public trust areas, or highground is authorized by this general permit.

(j) No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.

(k) The ~~breakwater-sill~~ ~~must be constructed of treated wood, plastic lumber, metal sheet piles or materials approved as similar by Department personnel.~~ Shall be constructed of vinyl or steel sheet pile, formed concrete, timber, or other suitable materials approved by the Division of Coastal Management.

(l) Perpendicular sections, return walls, or sections ~~which that~~ would enclose estuarine waters or public trust areas shall not be allowed under this permit.

(m) The permittee will maintain the ~~breakwater-sill~~ in good condition and in conformance with the terms and conditions of this permit or the remaining ~~breakwater-sill~~ structure shall be removed within 90 days of notification from the Division of Coastal Management.

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

**SECTION .2400 – GENERAL PERMIT FOR
PLACEMENT OF RIPRAP REVETMENTS FOR
WETLAND PROTECTION IN ESTUARINE AND PUBLIC
TRUST WATERS**

15A NCAC 07H .2401 PURPOSE

The general permit for placement of riprap revetments for wetland protection in estuarine and public trust waters shall allow the placement of riprap revetments immediately adjacent to and waterward of ~~wetlands.~~ the wetland toe. This permit shall only be applicable ~~where a shoreline is experiencing erosion~~ in public trust areas and estuarine waters according to authority provided in 15A NCAC 07J .1100 and according to the rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those portions of shoreline that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodeable Area.

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

15A NCAC 07H .2402 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and ~~his~~ the applicant's name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. The Division of Coastal Management shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by the General Permit Process, the applicant shall be notified that an application for a major development permit shall be required.

~~(c) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project meets the requirements of the rules in this Section. If DCM staff finds that the comments are worthy of more in depth review, DCM shall notify the applicant that he must submit an application for a major development permit.~~

~~(d)(c)~~ No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative so that the ~~wetland protection structure location~~ may can be appropriately marked. Written authorization to proceed with the proposed development shall be issued ~~if the Division representative finds that the application meets all the requirements of this Subchapter during this visit~~. Construction of the ~~wetland protection structure~~ shall be completed within 120 days of the issuance of the ~~general authorization permit~~ or the general authorization expires and it shall be necessary to re-examine the alignment to determine if the general authorization may be reissued.

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

15A NCAC 07H .2404 GENERAL CONDITIONS

- (a) This permit authorizes only the construction of wetland protection structures conforming to the standards herein.
- (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources ~~(DENR)~~ to make periodic inspections at any time deemed necessary in order to ~~be sure ensure~~ that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.
- ~~(c) There shall be no unreasonable interference with navigation or use of the waters by the public by the existence of the riprap structure authorized herein.~~
- (c) The placement of riprap revetments authorized in this Rule shall not interfere with the established or traditional rights of navigation of the waters by the public.
- (d) This permit shall not be applicable to proposed construction where the ~~Department~~ Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.
- (e) This permit ~~does shall~~ not eliminate the need to obtain any other required state, local, or federal authorization.
- (f) Development carried out under this permit ~~must shall~~ be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

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

15A NCAC 07H .2405 SPECIFIC CONDITIONS

- (a) This general permit shall only be applicable along shorelines possessing wetlands, ~~and~~ which exhibit an identifiable ~~erosion~~ escarpment.
- (b) The structure shall be constructed of granite, marl, riprap, concrete without exposed rebar, or other suitable materials approved by the Division of Coastal Management.
- ~~(b)(c)~~ The height of the erosion escarpment shall not exceed three feet.
- ~~(c)(d)~~ The riprap shall be placed immediately waterward of the erosion escarpment.
- ~~(d)(e)~~ The riprap ~~revetment~~ must shall be positioned so as not to exceed a maximum of ~~five six~~ feet waterward of the erosion

escarpment at any point along its ~~alignment~~ alignment with a slope no flatter than three feet horizontal per one foot vertical and no steeper than one and one half feet horizontal per one foot vertical.

- ~~(e)(f)~~ The riprap ~~must shall~~ be positioned so as not to exceed a maximum of six inches above the elevation of the adjacent wetland ~~substrate~~ substrate or escarpment.
- ~~(f)(g)~~ Where ~~Department staff~~ the Division of Coastal Management ~~determine~~ determines that insufficient ~~wetlands or coastal marsh wetland~~ wetland vegetation exists along the permittee's shoreline to provide adequate shoreline stabilization, the permittee shall be required to plant appropriate ~~coastal marsh or wetland species~~ wetland vegetation landward of the riprap ~~structure~~ revetment as directed by ~~Department staff~~ the Division of Coastal Management.
- ~~(g)(h)~~ Construction authorized by this general permit will be limited to a maximum length of 500 feet.
- ~~(h)(i)~~ No backfill or any other fill of wetlands, submerged aquatic vegetation, estuarine waters, public trust areas, or highground areas is authorized by this general permit.
- ~~(i)(j)~~ No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.
- ~~(j)~~ The riprap must not be placed in such a manner as to impede water flow into or out of any natural channel or stream.
- ~~(k)~~ The riprap Riprap material used for revetment construction must shall be free from loose dirt or any ~~pollutant~~. It must be pollutant and be of a size sufficient to prevent its movement from the site by wave ~~or current~~ action ~~or currents~~.
- ~~(l)~~ Riprap material must consist of clean rock or masonry materials such as marl, granite or broken concrete. Materials such as tires, car bodies, scrap metal, paper products, tree limbs, wood debris, organic material or similar materials are not appropriate riprap for the purposes of this General Permit.
- ~~(m)(l)~~ If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, temporary construction mats shall be utilized for the area(s) to be crossed. The temporary mats shall be removed immediately upon completion of construction of the riprap structure.
- ~~(n)(m)~~ The permittee shall maintain the structure in good condition and in conformance with the terms and conditions of this permit or the remaining riprap ~~structure~~ revetment shall be removed within 90 days of notification from the Division of Coastal Management.

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

SUBCHAPTER 07J - PROCEDURES FOR PROCESSING AND ENFORCEMENT OF MAJOR AND MINOR DEVELOPMENT PERMITS, VARIANCE REQUESTS, APPEALS FROM PERMIT DECISIONS, AND DECLARATORY RULINGS

SECTION .0700 – PROCEDURES FOR CONSIDERING VARIANCE PETITIONS

15 NCAC 07J .0701 VARIANCE PETITIONS

- (a) Any person ~~who has received a final decision of an application for a CAMA major or minor development permit~~

whose application for a CAMA major or minor development permit has been denied or issued with condition(s) that the person does not agree with may petition for a variance from the ~~CRC Commission~~ by means of the procedure described in this ~~Section~~ Section, provided that the person does not wish to challenge the permit decision. A variance is available only when the person acknowledges that the Commission's rule(s) prohibit the development he or she wishes to undertake. If the person contends that the Division of Coastal Management or a Local Permit Officer did not correctly apply the Commission's rule(s) in denying or in placing condition(s) on the permit, the proper avenue for this dispute is a contested case hearing under Rule 07J .0301 *et seq.* Any person who wishes to challenge the permit decision by means of a contested case proceeding must obtain a decision by the Administrative Law Judge and a final decision by the Commission, including all appeals, prior to filing a petition for a variance. ~~In the case of a minor development permit, a decision shall not be considered final until all available local appeals have been exhausted. Before filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the Petitioner and any other person which may make the request for a variance moot.~~

(b) The procedure in this Section shall ~~apply only to petitions for variances, and shall not apply to appeals of major or minor permit decisions. This procedure shall be used for all variance petitions except when:~~

- ~~(1) a petition is combined with an appeal of a major or minor permit decision concerning the same application, in which case the applicant may consolidate both matters for a single hearing as described in Section .0300 of this Subchapter;~~
- ~~(2)(1) the Commission determines that more facts are necessary, in which case the petition may be heard by means of a hearing; or necessary; or~~
- ~~(3)(2) there are controverted facts that are necessary for a decision on the variance petition.~~

(c) Variance petitions shall be submitted on forms provided by the Department of Environment and Natural Resources ~~or CAMA local permit officers or, if not on such forms shall provide the following information: Resources.~~ The following information shall be submitted before a variance petition is considered complete:

- (1) the case name and location of the development as identified on the denied permit application;
- (2) ~~an explanation of why the applicant believes that the Commission should make the following findings, all of which are necessary for a variance to be granted: a copy of the deed to the property on which the proposed development would be located;~~
 - ~~(A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;~~
 - ~~(B) that such hardships result from conditions peculiar to the petitioner's~~

property such as the location, size, or topography of the property;

- ~~(C) that such hardships did not result from actions taken by the petitioner; and~~
- ~~(D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice;~~
- (3) a copy of the permit application and denial for the development in question;
- (4) the date of the petition, and the name, address, and phone number of the petitioner; ~~and petitioner and his or her attorney, if applicable;~~
- (5) a complete description of the proposed development, including a site drawing with topographical and survey ~~information.~~ information;
- (6) a stipulation that the proposed project is inconsistent with the rule from which the petitioner seeks a variance and a waiver of the petitioner's right to seek a contested case hearing to challenge the permit decision;
- (7) ~~notice of the variance petition sent certified mail, return receipt requested to the adjacent property owners and persons who submitted written comments to the Division of Coastal Management or the Local Permit Officer during the permit review process and copies of the documents which indicate that the certified mail notices were received or that deliveries were attempted;~~
- (8) ~~an explanation of why the petitioner believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:~~
 - ~~(A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;~~
 - ~~(B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;~~
 - ~~(C) that such hardships did not result from actions taken by the petitioner; and~~
 - ~~(D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.~~
- (9) a proposed set of stipulated facts, for staff's consideration, containing all of the facts relied upon in the petitioner's explanation as to why he meets the criteria for a variance; and

(10) proposed documents, for the staff's consideration, that the petitioner wants the Commission to consider.

~~(d) In order to have a petition for a variance considered under the procedures set forth in this Rule, a petitioner who has given notice of appeal of the permit decision concerning the development that is the subject of the variance appeal shall agree that the time required to consider the petition shall not be counted in calculating the 180 day time period allowed for disposition of the appeal. The time required to consider the petition shall be calculated from the date on which the petitioner requests to have the petition heard under these procedures until the date on which the petitioner resumes prosecution of the appeal.~~

~~(e)(d)~~ Petitions shall be mailed directly to the Director of the Division of Coastal Management, Department of Environment and Natural Resources, 400 Commerce Avenue, Morehead City NC 28557- 28557 and to Air and Natural Resources Section, Environmental Division, Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001.

~~(f)(e)~~ A variance petition shall be considered by the Commission at a regularly-scheduled meeting. Petitions shall be scheduled ~~no later than the second regularly scheduled meeting following the~~ in chronological order based upon the date of receipt of ~~the petition~~ a complete variance petition by the Division of Coastal Management, ~~Management, except when a later meeting is agreed upon by the petitioner and the Division of Coastal Management.~~ A complete variance petition, as described in Paragraph (c) of this Rule, shall be received by the Division of Coastal Management at least ~~four~~ six weeks in advance of a ~~regularly-scheduled eommission~~ Commission meeting to be considered by the Commission at that meeting. If the petitioner seeks to postpone consideration of his or her variance request, the request shall be treated as though it was filed on the date petitioner requested postponement and scheduled for hearing after all then pending variance requests.

~~(g)(f)~~ Written notice of variance hearings or ~~eommission~~ Commission consideration of variance petition shall be provided to the petitioner and the permit officer making the initial permit decision.

Authority G.S. 113A-120.1; 113A-124.

15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS

(a) The Commission may review the variance petition and staff ~~comments-recommendation~~ and hear ~~any~~ oral presentation by the ~~petitioner~~ petitioner, if any, in full session or may appoint a member or members to do so. In cases where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the Commission.

(b) The Commission or its appointed member or members shall be provided with copies of the ~~petition~~ petition, the Stipulated Facts, and ~~any comments the staff deems necessary-the staff recommendation~~ before considering the petition.

(c) ~~The Commission~~ At the Commission's request, staff shall orally describe the petition to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the

variance. The ~~applicant~~ petitioner shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.

~~(d)~~ The final decision of the ~~eommission~~ Commission may be made at the meeting at which the matter is heard or in no case later than the next ~~regularly~~ scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail at the earliest feasible date after the final decision is reached. certified mail, return receipt requested within 30 days of the meeting at which the Commission reached its decision. In the event that the Commission cannot reach a final decision because it determines that more facts are necessary, it shall remand the matter to staff and the petitioner with instructions for the parties to either agree to the necessary fact(s) or to request a hearing in the Office of Administrative Hearings to determine the necessary facts.

(e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

~~(f)~~ Variancees may only be granted following affirmative findings by the Commission on each of the following points: To grant a variance, the Commission must affirmatively find each of the four factors listed in G.S. 113A-120.1(a).

- ~~(1)~~ that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
- ~~(2)~~ that such hardships result from conditions peculiar to the petitioner's property such as location, size, or topography;
- ~~(3)~~ that such hardships did not result from actions taken by the petitioner; and
- ~~(4)~~ that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

Authority G.S. 113A-120.1.

SUBCHAPTER 07M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0300 - SHOREFRONT ACCESS POLICIES

15A NCAC 07M .0301 DECLARATION OF GENERAL POLICY

(a) The public has traditionally and customarily had access to enjoy and freely use the ocean beaches and estuarine and public trust waters of the coastal region for recreational purposes and the State has a responsibility to provide continuous access to these resources. It is the policy of the State to foster, improve, enhance and ensure optimum access to the public beaches and waters of the 20 county coastal region. Access shall be consistent with rights of private property owners and the concurrent need to protect important coastal natural resources such as sand dunes and coastal marsh vegetation.

(b) The State has created an access program for the purpose of acquiring, improving and maintaining waterfront recreational property at frequent intervals throughout the coastal region for

~~pedestrian—public access~~ to these important public trust resources.

(c) In addition, some properties, due to their location, are subject to severe erosion so that development ~~here~~ is not possible or feasible. In these cases, a valid public purpose may be served by the ~~donation, donation or acquisition and improvement~~ of these properties for public access.

(d) The primary purpose of the public access program is to provide funds to acquire or develop land for public access, including parking as authorized by G.S. 113A-134.3(c). Boating and fishing facilities are eligible for funding under the Public Beach and Coastal Waterfront Access Program provided that pedestrian access is also incorporated in the design of the facility.

Authority G.S. 113A-124; 113A-134.1; 113A-134.3.

15A NCAC 07M .0302 DEFINITIONS

~~The primary purpose of~~ As used in this Section: the Public Beach and Coastal Waterfront Access program is to provide ~~pedestrian—public access~~ to the public trust beaches and waters for in the 20 coastal counties.

- (1) "Ocean Beach Access" ~~is defined to include~~ includes the acquisition and improvement of properties ~~situated along adjacent or proximate~~ to the Atlantic Ocean for parking and public passage to the oceanfront. ~~Beach access facilities may include, but are not limited to, parking areas, restrooms, showers, picnic areas, dressing/shower rooms, concession stands, gazebos, litter receptacles, water fountains, dune crossovers, security lighting, emergency and pay telephones, interpretive and public beach access signs, and other appropriate facilities.~~
- (2) "Coastal Waterfront Access" ~~is defined to include~~ includes the acquisition and improvement of properties located in the 20 county area under the Coastal Area Management Act (CAMA) jurisdiction that are adjacent or proximate to coastal waterways to which the public has rights of access or public trust rights. ~~Coastal Waterfront access facilities may include, but are not limited to parking areas, restrooms, showers, picnic areas, fishing piers, boardwalks, dressing/shower rooms, concession stands, gazebos, litter receptacles, water fountains, security lighting, emergency and pay telephones, interpretive and coastal waterfront access signs, and other appropriate facilities.~~
- (3) "Inlet Beach Access" ~~is defined to include~~ includes the acquisition and improvement of ~~buildable and unbuildable~~ properties situated along the confluence of estuarine and ocean waters for parking and public passage to the beach area located within Inlet Hazard Areas as defined in 15A NCAC 07H .0304(3). ~~The construction of facilities other than parking,~~

~~litter receptacles and public access signs is not encouraged.~~

- (4) "Public Trust Waters" is defined in 15A NCAC 07H .0207(a).
- (5) "Beach" is defined as an area adjacent to the ocean extending landward from the mean low ~~to the mean high water line and beyond this line~~ to a point where either the growth of vegetation occurs or a distinct change in slope or elevation ~~occurs, alters the configuration of the landform, whichever is farther landward,~~ or riparian owners have specifically and legally restricted access above the mean high water line. This definition is intended to describe those shorefront areas customarily freely used by the public.
- (6) "Local Access Sites" ~~are defined to include~~ those public access points which offer minimal or no facilities. ~~They are primarily used by pedestrians who reside within a few hundred yards of the site.~~ Generally, these accessways ~~are a minimum of 10 feet in width and provide~~ only a dune crossover or pier, if needed, litter receptacles and public access signs. Vehicle parking is generally not available at these access sites. However, bicycle racks may be provided.
- (7) "Neighborhood Access Sites" ~~are defined as~~ includes those public access areas offering parking, usually for 5 to 25 vehicles, a dune crossover or pier, litter receptacles and public access signs. ~~Such accessways are typically 40 to 60 feet in width and are primarily used by individuals within the immediate subdivision or vicinity of the site.~~ Restroom facilities may be installed.
- (8) "Regional Access Sites" are of such size and offer such facilities that they serve the public from throughout an island or community including day visitors. These sites normally provide parking for 25 to 80 vehicles, restrooms, a dune crossover, pier, foot showers, litter receptacles and public access signs. ~~Where possible one half acre of open space in addition to all required setback areas should be provided for buffering, day use, nature study or similar purposes.~~
- (9) "Multi-regional Access Sites" are generally larger than regional accessways but smaller than state parks. Such facilities may be undertaken and constructed with the involvement and support of state and local government agencies. Multi-regional accessways provide parking for a minimum of 80 ~~and a maximum of 200 cars, vehicles,~~ restrooms with indoor showers and changing rooms, and concession stands. ~~Where possible two acres of open space in addition to all required setback areas should be provided for~~

- ~~buffering, day use, nature study or similar purposes.~~
- (10) "Urban Waterfront Redevelopment Access Projects" improve public access to deteriorating or under utilized urban waterfronts. Such projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of bulkheads, and the placement or removal of pilings for the purpose of public safety and increased access and use of the urban waterfront.
- (11) "Improvements" are facilities ~~which~~ that are added to promote public access at a designated access site. The most common improvements include dune crossovers, piers, boardwalks, litter receptacles, parking areas, restrooms, gazebos, boat ramps, canoe/kayak launches, bicycle racks and foot showers.
- (12) "Maintenance" is the ~~proper~~ upkeep and repair of public access sites and their facilities in such a manner that public health and safety is ensured. Where the local government uses or has used access funds administered by the North Carolina Coastal Management Program (NCCMP), ~~it shall be~~ the local government's responsibility to provide operation and maintenance of the facility for the useful life of that facility. The useful life of a facility shall be defined in the individual grant contract.
- (13) "Handicapped Accessible" is defined as meeting the standards of the State Building Code ~~and federal guidelines~~ for handicapped accessibility. ~~Any facility constructed with these grant funds must meet State and Federal regulations for handicapped accessibility.~~

Authority G.S. 113A-124; 113A-134.3.

15A NCAC 07M .0303 STANDARDS FOR PUBLIC ACCESS

- ~~(a) Development shall not interfere with the public's right of access to the waterfront where the access has been established through donation, acquisition, express or implied dedication or prescriptive easement.~~
- ~~(b)(a) Public beach nourishment projects funded undertaken by the state and federal government with public funds shall include provisions for adequate public access and parking within the vicinity boundaries of the project based on applicable Coastal Resources Commission rules. To achieve maximum public use and benefit of these areas.~~
- ~~(c) Policies regarding state and federal properties with waterfront areas intended to be used by the public shall provide for public access and parking so as to achieve maximum public use and benefit of these areas consistent with established legislation.~~
- ~~(d) Local governments may participate in the Public Beach and Coastal Waterfront Access Program as authorized by G.S. 113A-~~

- ~~134.1 through 113A 134.3. The access program is intended to serve both year round and seasonal users. In determining parking needs for access, local governments may use the current and projected seasonal population estimates provided in their land use plan as set out in 07B .0702(c)(1)(A)(ii) and (D).~~
- ~~(e)(b) Public access projects funded under this through the Public Beach and Coastal Waterfront Access Program shall be consistent with public access policies contained in the local government's land use plan as required in 15A NCAC 07B .0702(d)(3)(A) (ii) and (iii) or in and its local waterfront access plan. If a local access plan does not exist, plan, or a local recreation plan that addresses public access may provide guidance as to local needs, access.~~
- ~~(f)(c) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113-134.3 may charge user fees as long as those fees are used exclusively for operation and maintenance of the access facility. Other regulations, including schedules of operation, may also be established, maintenance, or provision of new public access. Local governments shall include biannual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites. Biannual accounting reports shall be submitted to the Director of the Division of Coastal Management by June 30 of the year in which it is due. Accounting reports may be included in Biannual LUP Implementation Status Reports under 15A NCAC 07L .0511.~~
- ~~(d) Land acquired with Public Beach and Coastal Waterfront Access grant funds shall be dedicated in perpetuity for public access and benefit of the general public. The dedication shall be recorded in the property records by the grantee. Any lease or easement agreement shall extend at least 25 years. If land acquired or improved with access grant funds is sold or otherwise disposed of, the local government shall reimburse the State at a percentage equal to the proportion of access grant funds provided for the original purchase at current market value at the time of sale.~~
- ~~(g) Local governments have lead responsibility for the selection of public access sites within their jurisdiction. Access shall be based on identified needs as stated in land use plans approved pursuant to 15A NCAC 07B .0800 and local waterfront access plans. The Division of Coastal Management may provide assistance in determining the location of regional and multi-regional sites.~~
- ~~(h) The primary purpose of the public access program is to provide funds to acquire or develop land for pedestrian access, including parking as authorized by G.S. 113A 134.3(e). Boating and fishing facilities may be funded, provided pedestrian access is the primary objective of the proposed project.~~
- ~~(i) Local governments may plan for and develop ocean access areas that provide convenient access opportunities along the entire length of the shoreline within its jurisdiction. In preparing land use plan policies on public beach access pursuant to 15A NCAC 07B .0702(d)(3)(A)(ii) and (iii), local governments may consider the following guidelines:~~
- ~~(1) Local/Neighborhood Access Sites one per block in the community;~~
 - ~~(2) Regional Access Sites one per locality or one per four miles, whichever yields the most public access;~~

~~(3) Multi regional Access Sites one per barrier island or one per 10 miles whichever yields the most public access.~~

~~(j) In preparing land use plan policies on public waterfront access pursuant to 15A NCAC 07B .0702(d)3(A)(ii) and (iii), local governments may consider the following guidelines:~~

- ~~(1) Local Access Sites one per block;~~
- ~~(2) Neighborhood Access Sites one per 50 dwelling units;~~
- ~~(3) Regional Access Sites one per local government jurisdiction;~~
- ~~(4) Multi regional Access Sites one per coastal county. Parking facilities for these projects shall be based on current and projected seasonal population estimates.~~

~~(k) Pursuant to G.S. 113A-134.3(a), local governments shall give priority to the acquisition of unbuildable lots for public access purposes.~~

Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-227(a); 160A-314(a); 16 U.S.C. Sec. 1453.

15A NCAC 07M .0306 LOCAL GOVERNMENT AND STATE INVOLVEMENT IN ACCESS

(a) Coastal Waterfront access in the 20-county coastal area is a concern of local, state, regional and national importance. Local governments have lead responsibility for the selection of public access sites within their jurisdiction. Access shall be based on identified needs as stated in land use plans pursuant to 15A NCAC 07B .0702(d)3(A) and local waterfront access plans. The Division of Coastal Management may provide guidance as to location of facilities that are of multi regional and regional significance. The local government, however, has the primary responsibility for identifying local, neighborhood and regional accessways through its land use plan policies and local access plan. take the lead in acquiring and improving access sites as such opportunities arise.

(b) A local policy in a land use plan sets the community objectives for access. A local government ~~may determine that public access is not a pressing issue and thus develop a policy of private sector access provision and no public involvement. Similarly local governments may: may, through its land use plan:~~

- (1) identify ~~numerous~~ access needs and develop local policy to pursue access funding;
- (2) develop a local access plan; and
- (3) solicit access sites through corporate assistance.

(c) ~~A local access plan shall identify needs and opportunities, determine access and facility requirements, establish local standards, and develop specific project design plans or guidelines by appropriate site. A local An access plan shall consider both financial resource availability (such as grants, impact fees or hotel/motel tax revenues) and construction timing. It shall establish local priorities and devise a system for annual evaluation of the plan.~~

(d) Local governments may also include provisions in local subdivision ordinances that require access for waterfront

developments or require payment in lieu of access for non-water dependent subdivisions.

(e) Dedicated street ~~stub outs ends~~ may be acceptable for accessways.

(f) The Division of Coastal Management has primary responsibility for administering the Public Beach and Coastal Waterfront Access Program. The Subject to the availability of funds, the Division of Coastal Management (DCM) shall annually solicit for pre-application proposals from local governments and will shall select competitive projects for full application submittal. Projects from these final applications shall be selected for funding based on criteria in Rule .0307 of this Section and anticipated fund availability. Section.

(g) The Division of Coastal Management may use available funds on a non-competitive basis to plan for and provide public access through acquisition of improvements. Prior to expending funds, the Division of Coastal Management shall hold a public meeting or hearing to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission for a minimum of sixty days prior to the expenditure of non-competitive money by the Division of Coastal Management.

~~(g)(h)~~ The Division of Coastal Management shall ensure all projects funded through the Public Beach and Coastal Waterfront Access Program are making progress throughout project implementation and ensure that completed projects are operated and maintained for access purposes.

Authority G.S. 113A-124; 113A-134.3.

15A NCAC 07M .0307 ELIGIBILITY, SELECTION CRITERIA AND MATCHING REQUIREMENTS

(a) Any local government in the 20 coastal county region having ocean beaches, or estuarine or public trust waters within its jurisdiction may apply for access funds. Funds for the development of beach or coastal waterfront access facilities with associated improvements. Boat ramps, canoe/kayak launch areas may also be developed provided that the access facilities incorporate pedestrian access to coastal waters.

(b) Eligible projects include:

- (1) Land acquisition, including acquisition of unbuildable lots;
- (2) Local Access Sites;
- (3) Neighborhood Access Sites; ~~Sites or improvements;~~
- (4) Regional Access Sites; ~~Sites or improvements;~~
- (5) Multi-regional Access Sites; ~~Sites or improvements;~~
- (6) Urban waterfront development access projects;
- (7) Reconstruction or relocation of existing, damaged facilities; ~~and~~
- (8) Reconstruction or replacement of aging ~~facilities. facilities; and~~
- (9) Offsite parking areas servicing access sites within the local government's jurisdiction.

(c) The following criteria shall be used to select projects that may receive financial assistance:

- (1) Applicant demonstrates a need for the project due to a high demand for public access and limited ~~opportunities; availability;~~
- (2) Project is identified in ~~a the local beach or waterfront land use plan or local access plan;~~
- (3) Applicant has not received previous assistance from this grant program or the applicant has received assistance and demonstrated its ability to complete previous projects successfully with funds from this grant program;
- (4) Applicant's commitment of matching funds exceeds the required local share of the total project cost provided in Paragraphs (d) and (e) of this Rule;
- (5) Project proposal includes multiple funding sources;
- (6) The project location includes donated land deemed unbuildable due to regulations or physical limitations;
- (7) ~~Applicant has demonstrated its ability to complete previous projects successfully with funds from this grant program.~~

(d) The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3) shall be used to determine the economic status of counties. Land acquisition, including acquisition of unbuildable lots, shall include a local government contribution of at least 15 percent of the acquisition cost, except for Tier 1 and Tier 2 counties as designated by the N.C. Department of Commerce, and their respective municipalities which shall have a contribution of at least 10 percent. At least one half of the local contribution shall be cash match, the remainder may be in-kind match.

(e) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 and Tier 2 designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.

(f) Federal and other State funds may be used as the local government cash contribution, provided such funds are not already being used as matching funds for other state programs.

(g) Multi-phase projects and previous contingency projects shall be considered on their own merits within the pool of applications being reviewed in any year.

Authority G.S. 113A-124; 113A-134.3.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Physical Therapy Examiners intends to adopt

the rules cited as 21 NCAC 48G .0105 - .0112 and amend the rule cited as 21 NCAC 48G .0203.

Proposed Effective Date: *January 1, 2009*

Public Hearing:

Date: *August 28, 2008*

Time: *11:00 a.m.*

Location: *Siena Hotel, 1505 E. Franklin Street, Chapel Hill, NC 27514*

Reason for Proposed Action: *In July, 2006, the NC General Assembly adopted legislation that gave the NC Board of PT Examiners (Board) the statutory authority to require Continuing Competence for licensure renewal. On September 19, 2006, the Board appointed a 7-member Advisory Panel on Continuing Competence (Panel) to study the various options available for Continuing Competence and make recommendations to the Board regarding proposed rules for implementation. These rules outline the criteria that will be required for the renewal of licenses, the accreditation process for courses and they set the standards and provisions of continuing competence activities.*

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: Mr. Ben Massey, Jr., PT, MA, Executive Director, NC Board of Physical Therapy Examiners, 18 West Colony Place Suite 140, Durham, NC 27705, phone (919) 490-6393/ 800-800-8982, email benmassey@ncptboard.org. Written comments will be accepted through October 1, 2008. Oral comments may be made during the public hearing. The Board Chair may impose time limits for oral remarks.*

Comments may be submitted to: *Ben Massey, Jr., 18 West Colony Place, Suite 140, Durham, NC 27705, phone (919) 490-6393, fax (919) 490-5106, email benmassey@ncptboard.org.*

Comment period ends: *October 1, 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: *A copy of the fiscal note can be obtained from the agency.*

State

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

SUBCHAPTER 48G - RETENTION OF LICENSE

SECTION .0100 – LICENSURE RENEWAL;
CONTINUING COMPETENCE

21 NCAC 48G .0105 DEFINITIONS

As used in this Subchapter, the following definitions shall apply:

- (1) "Approved provider" means an entity that been approved by the Board to provide continuing competence activities for licensees as provided in these Rules.
- (2) "Clinical Practice" means physical therapy patient care/client management or the direct supervision thereof.
- (3) "Contact Hour" means at least 50 consecutive minutes of engagement in a continuing competence activity. Two segments of at least 25 consecutive minutes each is equivalent to one contact hour. Breaks and meals are not included in contact hours.
- (4) "Continuing Competence" means the licensee's ongoing activities to augment knowledge, skills, behaviors, and abilities related to the practice of physical therapy.
- (5) "Continuing Education" means courses of study designed to provide learning experiences for physical therapy licensees.
- (6) "Documentation" means evidence of completion of continuing competence activities.
- (7) "Jurisprudence Exercise" is an online set of questions concerning the Physical Therapy Practice Act, Board rules and Position Statements.
- (8) "Licensee" means a physical therapist or physical therapist assistant licensed in North Carolina.
- (9) "Peer-reviewed" means judged by an independent panel of experts having special knowledge or skills in a particular field of study.
- (10) "Point" means a unit of continuing competence.
- (11) "Registered" means enrollment in a continuing competence activity.
- (12) "Reporting period" means a two-year period commencing on January 1 during which the licensee must complete all continuing competence requirements.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0106 CONTINUING COMPETENCE REQUIREMENT

- (a) For individuals licensed prior to January 1, 2009, during each reporting period thereafter, each physical therapist must accumulate 30 points, and each physical therapist assistant must accumulate 20 points of continuing competence activities to be eligible for license renewal.
- (b) For individuals whose date of initial licensure is after January 1, 2009, commencing on January 1 following the date of initial licensure, each physical therapist must accumulate 30 points and each physical therapist assistant must accumulate 20 points of continuing competence during the reporting period to be eligible for license renewal.
- (c) Up to 10 points earned during one reporting period may be carried over to the next reporting period.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0107 STANDARDS FOR CONTINUING COMPETENCE ACTIVITIES

The Board shall approve continuing competence activities which meet the following standards and provisions:

- (1) They have intellectual or practical content based on best available scientific evidence and the primary objective is to increase the participant's professional competence and proficiency as a licensee;
- (2) They constitute an organized program of learning dealing with matters directly related to the practice of physical therapy or patient welfare;
- (3) Live instruction, mechanically or electronically recorded, reproduced or transmitted material, other electronic media, or a computer website accessed via the Internet may be used;
- (4) Continuing competence materials are to be prepared, and activities conducted, by an individual or group qualified by practical or academic experience in a setting physically suitable to the educational activity of the program or laboratory experience and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes;
- (5) Written materials are distributed to all attendees at or before the time the course is presented. These may include scientific materials based on written references printed from a computer presentation, computer website, or other electronic media. A written agenda or outline for a presentation satisfies this requirement when written reference materials are not suitable or readily available for a particular subject;
- (6) The provider remits costs as required by these Rules and keep and maintain attendance records of each continuing competence program sponsored by it in North Carolina; and

- (7) For activities that are directed to more than one discipline, or are directed primarily to another health care discipline, the Board is satisfied that the content of the activity would enhance physical therapy skills or aid in the practice of physical therapy.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0108 APPROVAL OF PROVIDERS AND ACTIVITIES

(a) An organization desiring approval as an approved provider of courses, programs, or other continuing competence activities may apply to the Board for approved provider status. The Board shall approve a provider if it is satisfied that the provider's programs have met the standards set forth in Rule .0107 of this Section.

(b) Once a provider is approved, the continuing competence activities sponsored by that organization are approved for credit and no application must be made to the Board for approval.

(c) The following organizations are approved providers:

- (1) Any agency or board responsible for licensing individuals to practice physical therapy in the United States or Canada;
- (2) The American Physical Therapy Association (APTA), including any Sections, credentialed residencies and fellowships and its accrediting subsidiary;
- (3) State Chapters of APTA;
- (4) The Federation of State Boards of Physical Therapy (FSBPT), and any accrediting subsidiary;
- (5) Any providers approved or accredited by the agencies or organizations listed in Subparagraphs (1) through (4) of this Paragraph;
- (6) Physical therapist and physical therapist assistant programs approved by an agency recognized by either the U.S. Office of Education or the Council on Postsecondary Accreditation; and
- (7) The North Carolina Department of Public Instruction and North Carolina Area Health Education Centers with regard to activities directly related to physical therapy.

(d) The Board may at any time revoke the approval of provider for failure to satisfy the requirements of Rule .0107 of this Section. The Board may evaluate an activity presented by an approved provider and, upon a determination that the activity does not satisfy the requirements of Rule .0107 of this Section, notify the approved provider that any presentation of the same activity is not approved for credit. Such notice shall be sent by the Board to the approved provider within 30 days after receipt of the notification. The approved provider may request reconsideration of such a decision by submitting a letter of appeal to the Board's Executive Director within 15 days of receipt of the notice of disapproval.

(e) Any organization not approved as a provider that desires approval of a course or activity to be offered in North Carolina

shall apply to the Board at least 60 days prior to the date the activity is scheduled. Required information shall include the name and address of the activity provider, the date, location and schedule for the activity, a description of the qualifications of the presenters and the content of the activity, including written materials. An activity shall be approved if notice of denial is not furnished to the organization within 30 days of the scheduled activity. An applicant denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the Board's Executive Director within 15 days of receipt of the notice of disapproval.

(f) A licensee desiring approval of a course or activity that has not otherwise been approved shall apply to the Board at least 30 days prior to the date the activity is scheduled. The licensee shall furnish the name and address of the activity provider, the date and location of the activity and a description of the qualifications of the presenters and the content of the activity, including written materials. An activity shall be approved if notice of denial is not furnished to the licensee within 10 days of the scheduled activity. An applicant denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the Board's Executive Director within 15 days of receipt of the notice of disapproval.

(g) For continuing competence activities offered for credit in this State, the providers shall furnish to the Board the assigned activity code number assigned by the Board and a list of all licenses completing the activity, including full name and license number, within 30 days of the completion of the approved activity.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0109 CONTINUING COMPETENCE ACTIVITIES

(a) Continuing Education activities are eligible for points as follows:

- (1) Registered attendee at courses or conferences offered by Approved Providers earns one point for each contact hour, and the maximum number of points allowed during any reporting period is 29. Credit shall not be given for the same course or conference more than once during any reporting period. The licensee shall submit the Certificate of Attendance issued by the Approved Provider.
- (2) For registered participation in an academic course related to physical therapy offered for credit in a post-baccalaureate program unless the course is required for licensure, one class hour earns one point, and the maximum number of points allowed during any reporting period is 29. The licensee must obtain a letter grade of "C" or better or "P" if offered on a Pass/Fail basis. Credit shall not be given for the same course more than one time. The licensee shall submit the course description published by the Approved Provider.
- (3) For attendance or participation in an activity related to physical therapy for which no

assessment is received, two contact hours earns one point, and the maximum number of points allowed during any reporting period is five. Credit will not be given for the same activity more than one time. The licensee shall submit a certificate of completion, or if that is not available, a summary of the objectives of the activity and the time spent in the activity.

(4) For registered participation in a course offered by an Approved Provider by videotape, satellite transmission, webcast, DVD or other electronic media for which an assessment is received, one hour of participation earns one point, and the maximum number of points allowed during any reporting period is 10. Credit shall not be given for the same course more than once during a reporting period. The licensee shall submit a certificate of completion and assessment results furnished by the Approved Provider.

(5) For participation in a study group consisting of at least three licensees involved whose purpose is to advance the knowledge and skills of the participants related to the practice of physical therapy, two hours of participation in the study group earns one point, and the maximum number of points allowed during any reporting period is five. The licensee shall submit a biography of each participant, a statement of the goals of the study group, attendance records for each participant, assignments for each participant and an analysis by each participant specifying the knowledge and skills enhanced by participating in the study group.

(6) For participation in a home study program designed to advance the knowledge and skill of the participant related to the practice of physical therapy, three hours of home study earns one point, and the maximum number of points allowed for home study during any reporting period is five. The licensee shall submit a description of the plans and objectives of the home study, an analysis of the manner in which the plans and objectives were met, and a certification of the time spent on the project.

(7) For participation in continuing education required by credentialed residencies and fellowships, one point is granted for each contact hour and the maximum number of points for each reporting period is 29. The licensee shall submit the certificate of attendance issued by the credentialed residency or fellowship.

(b) Points are awarded for Advanced Training as follows:

(1) For fellowships conferred by organizations credentialed by the American Physical Therapy Association ("APTA") in a specialty

area of the practice of physical therapy, 10 points are awarded for each full year of clinical participation, up to a maximum of 20 points for this activity. The licensee shall submit the certificate conferred on the licensee.

(2) For completion of a residency program in physical therapy offered by an APTA credentialed organization, 10 points are awarded for each full year of clinical participation, up to a maximum of 20 points for this activity. The licensee shall submit evidence that all requirements of the residency program have been met.

(3) For specialty certification or specialty recertification by the American Board of Physical Therapy Specialization ("ABPTS"), or its successor organization, 20 points are awarded upon receipt of such certification or recertification during any reporting period. The licensee shall submit evidence from ABPTS that the certification or recertification has been granted.

(4) For a physical therapist assistant, Advanced Proficiency designation by the APTA for the PTA earns 19 points. The licensee shall submit evidence from APTA the designation has been awarded.

(c) Completion of the FSBPT's Practice Review Tool earns 10 points. The licensee shall submit the certificate of completion and performance report. Points will be awarded only one time for any specialty practice area.

(d) Clinical Education Activities will be eligible for points as follows:

(1) For completion of a course offered by an Approved Provider for a licensee to become a Credentialed Clinical Instructor recognized by APTA, one course hour earns one point, and the maximum number of points awarded during any reporting period is 29. The licensee shall submit a credential certificate issued by the Approved Provider. Credit for completing the same course will be given only one time.

(2) For enrollment in a course offered by APTA for a licensee to become a Credentialed Clinical Instructor Trainer, one course hour earns one point, and the maximum number of points awarded during any reporting period is 29. The licensee shall submit a Trainer certificate issued by APTA. Credit for completing the same course will be given only one time.

(3) For serving as a Clinical Instructor for a physical therapist or physical therapist assistant student, resident or fellow for a period of at least 160 hours, 80 hours of direct supervision earns one point, and a maximum credit of eight points is allowed during any

reporting period. The licensee shall submit verification of the clinical supervision agreement with the accredited educational program for the student supervised and a log showing the number of hours spent supervising the student.

(e) Presenting or teaching at an accredited physical therapy educational program, an accredited program for health care practitioners licensed under the provisions of Chapter 90 of the North Carolina General Statutes or a state, national or international workshop, seminar or professional health care conference earns two points for each hour of presentation or teaching. The licensee shall submit written materials advertising the presentation or teaching or other evidence of the date, subject and goals and objectives of the presentation and any written materials prepared by the licensee. A maximum of six points is allowed during any reporting period, and credit shall not be given for teaching or presenting the same subject matter more than one time.

(f) Research and published books or articles shall be eligible to accumulate up to a maximum of 15 points as follows:

- (1) Submission of a request to a funding agency for a research grant as a Principal or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant, which must include the title, an abstract, the funding agency and the grant period. Points will be awarded only one time during any reporting period.
- (2) Having a research grant funded as a Principal Investigator or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant, including the dates of service, the agency for whom the review was performed and the hours spent on the grant review. Points will be awarded only one time during a reporting period.
- (3) Service as a Grants Reviewer earns one point for each two hours of grant review and a maximum of five points can be earned. The licensee shall submit a description of all grants reviewed and any reports generated in connection with the reviews, including the dates of service, the agency for whom the review was performed and the hours spent on the grant review. Points shall be awarded only one time during any reporting period.
- (4) The author or editor of a book dealing with a subject related to the practice of physical therapy earns 10 points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (5) The author or editor of a chapter in a book dealing with a subject related to the practice of physical therapy earns five points. The licensee shall submit a copy of the published book and a list of consulted resources. Points

shall be awarded only one time during any reporting period.

(6) The author of a published peer-reviewed article relating to the practice of physical therapy earns 10 points. The licensee shall submit the article, names and employers of the reviewers and a list of consulted resources. Points shall be awarded only one time during any reporting period.

(7) The author of a published non peer-reviewed article relating to the practice of physical therapy earns three points. The licensee shall submit the article and a list of consulted resources. Points will be awarded only one time during any reporting period.

(8) The author of a peer-reviewed abstract for a poster or presentation related to the practice of physical therapy to a professional health care group earns a maximum of five points for a presentation, up to a maximum of 15 points during any reporting period, and credit for the same poster or presentation shall not be awarded more than one time. The licensee shall submit a copy of the poster or presentation and a list of consulted resources.

(g) Clinical practice shall be eligible for points as follows:

(1) For each year that a licensee is engaged in full-time clinical practice, three points shall be awarded. The licensee shall submit certification from the licensee's employer(s) or documentation of practice hours as owner of a practice that clinical practice during the year reached or exceeded 1750 hours.

(2) For each year that a licensee is engaged in part-time clinical practice, two points shall be awarded. The licensee shall submit a certification from the licensee's employer(s) or documentation of practice hours as owner of a practice that clinical practice during the year reached or exceeded 1000 hours.

(3) For each year that a licensee is engaged in clinical practice for at least 200 hours, one point shall be awarded. The licensee shall submit a certification from the employer(s) for whom the services were performed or documentation of practice hours as owner of a practice.

(h) Professional Self-Assessment earns five points for completion of an approved Reflective Practice Exercise. This exercise shall be approved if it is a process for a licensee to evaluate current clinical abilities, to establish goals to improve clinical abilities, to develop a plan to meet those goals and documentation that the objectives are being accomplished. The licensee shall submit evidence of completion of all elements of the Reflective Practice Exercise. Points shall be awarded only one time during any reporting period.

(i) Workplace Education is eligible for points as follows:

(1) Presentation or attendance at an in-service session related to the practice of physical

therapy, including health care issues related to the practice of physical therapy, is allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two hours of in-service earns one point. A maximum of two points may be earned during any reporting period. Credit for the same in-service shall not be granted more than one time.

(2) Presentation or attendance at an in-service session devoted to general patient safety, emergency procedures or governmental regulatory requirements is allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two hours of in-service are equivalent to one point, which is the maximum credit that can be granted during any reporting period. Credit for the same in-service shall not be granted more than one time during any reporting period.

(j) Professional Service is eligible for points as follows:

(1) Participation in a national physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee or physical therapy services task force member for at least one year earns five points for each full year of participation, up to a maximum of 10 points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position and a summary of the activities of the licensee.

(2) Participation in a state physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee for at least one year earns four points for each full year of participation, up to a maximum of eight points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position and a summary of the activities of the licensee.

(3) Participation in a local or regional physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy service committee for at least one year earns two points for each full year of participation, up to a maximum of four points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position and a summary of the activities of the licensee.

(4) Participation as a member of a physical therapy professional organization committee involved with physical therapy services for at

least one year earns one point for each full year of participation, up to a maximum of two points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the committee and a summary of the work of the committee.

(5) Participation in unpaid volunteer service to the general public related to physical therapy earns one point for at least 20 hours spent on service activities during each year, up to a maximum of two points during any reporting period. The licensee shall submit published materials describing the service activity.

(6) Membership in the APTA for one year earns one point. A point may be earned for each year of membership. The licensee shall submit proof of membership in the APTA.

(7) Membership in an APTA Section for one year earns one-half point. The licensee shall submit proof of membership in the APTA Section. Points shall not be awarded for membership in more than one Section.

(k) During each reporting period, a licensee may complete an ethics exercise as directed by the Board. A certificate of completion shall be issued to a licensee at the conclusion of the exercise, at which time one point shall be awarded to the licensee.

(l) During each reporting period, every licensee must complete a jurisprudence exercise provided by the Board. The jurisprudence exercise shall be available online at the Board's website, and a certificate of completion shall be issued to a licensee at the conclusion of the exercise, at which time one point shall be awarded to the licensee.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0110 EVIDENCE OF COMPLIANCE

(a) Each licensee shall submit a completed Continuing Competence Compliance Form with an application for license renewal.

(b) Licensees shall to retain evidence of compliance with continuing competence requirements for a period of four years following the end of the reporting period for which credit is sought for an activity.

(c) Documentary evidence for Continuing Education activities shall include the following for each activity:

- (1) Name of approved sponsor;
- (2) Name of accrediting organization;
- (3) Title;
- (4) Summary of content;
- (5) Schedule;
- (6) Location;
- (7) Name and qualifications of each presenter;
- (8) Date;
- (9) Hours for presentation;
- (10) Record of attendance or participation by sponsor; and

(11) Other information demonstrating completion of the activity.

(d) The Board shall conduct random audits to ensure continuing competence compliance. Within 30 days from receipt of an Audit Notice from the Board, the licensee must furnish the Board with the documentary evidence required by the rules in this Subchapter showing completion of the points required for the audited reporting period.

(e) Requests for extensions of time for up to an additional 30 days to respond to the Audit Notice shall be granted by the Board's Executive Director. For circumstances beyond the control of the licensee or for personal hardship, the Board may grant an additional period of time to respond to the Audit Notice.

(f) If the results of the audit show a licensee has not completed the required points, and the number of additional points needed by the licensee is 10 or less, the licensee shall be required to complete the remaining points within 90 days from the date the Board notifies the licensee by certified mail of the deficiency. For circumstances beyond the control of the licensee or for personal hardship, the Board may grant an additional period of time to respond to the Audit Notice.

(g) Failure to respond to the Board's Audit Notice in a timely fashion, or failure to provide the necessary documentary evidence of compliance pursuant to this Rule shall subject the licensee to disciplinary action pursuant to 21 NCAC 48G .0601(a)(10).

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0111 EXEMPTIONS AND DEFERMENTS

(a) To qualify for an exemption or deferment from the rules in this Subchapter, a licensee must furnish the applicable information required on the Continuing Competence Compliance Form.

(b) A member of the United States Armed Services is exempt from compliance if on active duty for a period of at least 120 consecutive days. The reporting period shall commence on January 1 following the licensee's discharge from active duty.

(c) The Board may grant an exemption from completing applicable continuing competence requirements for up to two years to any licensee who becomes disabled or sustains a personal hardship that makes completion of continuing competence requirements impractical.

(d) In cases of personal or family emergencies, the Board may allow the licensee up to an additional one year to complete the applicable continuing competence requirements.

(e) Any licensee who is 65 years of age or older and is not engaged in practice or patient treatment may apply to the Board for an exemption of up to two years from completing continuing competence requirements.

(f) Other requests for partial exemptions or deferments for hardships or extenuating circumstances may be granted by the Board upon written application of the licensee.

(g) A licensee seeking an exemption or deferment pursuant to this Rule shall provide written documentation to the Board to support the exemption or deferment.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0112 COSTS

(a) There is no cost for approval of continuing competence activities offered by approved sponsors.

(b) For a non-Approved provider seeking approval of a continuing competence activity offered to licensees in this State, the cost is one hundred fifty dollars (\$150.00) per activity.

(c) For a licensee seeking approval of a continuing competence activity that is not offered by an approved sponsor, the cost is twenty-five dollars (\$25.00).

Authority G.S. 90-270.26(7).

SECTION .0200 - LAPSED LICENSES

21 NCAC 48G .0203 REVIVAL OF LAPSED LICENSE

The following methods may be used to revive a license:

~~(1)~~(a) A licensee that has been lapsed less than one year~~five years~~ may be reviewed by payment of the revival of lapsed license fee and the current year's renewal fee and by completion of the revival form.

~~(2)~~(b) A license that has lapsed more than one year~~five years~~ but less than five years may be revived by completion of the revival form, and:

(1) completing 30 units (if reviving a physical therapist license) or 20 units (if reviving a physical therapist assistant license) of continuing competence as provided in these Rules, and

(2) payment of the revival of lapsed license fee, and

(3) payment of the current year's renewal fee.

~~(3)~~(c) A license that has lapsed more than five years may be revived by completion of the application forms; and

~~(a)~~(1) passing the "PT exam" (if trained as a physical therapist) or the "PTA exam" (if trained as a physical therapist assistant); or

~~(b)~~(2) satisfactorily compiling at least 500 hours within the period of one year in the following manner: between 50 and 200 class hours of course work (ie, refresher course, continuing education, pertinent college courses) approved by the Board as designed to demonstrate proficiency in current physical therapy theory and practice and the remaining hours working as an aide under the supervision of a licensed physical therapist, providing the Board shall authorize the training under the supervision of a licensed physical therapist and the supervising physical therapist accounts for the clinical hours; or

~~(c)~~(3) endorsement of a current license in another state as provided by 21 NCAC 48B .0102.

Authority G.S. 90-270.26; 90-270.32; 90-270.33.

CHAPTER 63 – SOCIAL WORK CERTIFICATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Social Work Certification and Licensure Board intends to adopt the rules cited as 21 NCAC 63 .0901 - .0903 and amend the rules cited as 21 NCAC 63 .0102, .0204, .0211, .0213, .0302, .0401, .0403, .0509.

Proposed Effective Date: December 1, 2008

Public Hearing:

Date: October 3, 2008

Time: 2:00 p.m.

Location: NCSWCLB Office, 1207 S. Cox Street, Suite F, Asheboro, NC 27203

Reason for Proposed Action:

21 NCAC 63 .0102 – Clarify the 2 years of post MSW supervised practice "experience" needs to be direct practice & needs to include experience within the full scope of the definition of "clinical social work practice" to insure public protection by insuring that those granted the LCSW license are adequately prepared for independent (unsupervised) practice.

21 NCAC 63 .0204 – Balance the application process across the board by requiring references for all credential levels & to insure that applicants are not using clients to provide references.

21 NCAC 63 .0211 – Insure that provisional licensees are supervised by competent LCSW licensees by requiring individual's who are under disciplinary restrictions seek Board approval before providing supervision to P-LCSW licensees; & clarify the supervisor's role in overseeing the provisional licensees' clinical practice experience.

21 NCAC 63 .0213 – Extend the length of a temporary license in the event of a public health crisis for adequate practice protection.

21 NCAC 63 .0302 – Clean up the language so that it is consistent with the examining body used by the Board; & to move toward a pass/fail system of score reporting.

21 NCAC 63 .0401 – Remove expired information & reorganizes the language into a less confusing format.

21 NCAC 63 .0403 – Remove expired information.

21 NCAC 63 .0509 - To support statutory provision G.S. 90B-15, which requires a social worker who is certified or license under Chapter 90B to "conspicuously display" the license or certificate issued by the Board.

21 NCAC 63 .0901 - .0903 – Provide guidelines & fees for Certificate of Registration application & renewal process as required under G.S. 55B.

Procedure by which a person can object to the agency on a proposed rule: State the objection and reasons for the objection. Specify the text of the rule to which the objection pertains. Submit the objection in writing to the Rule Making Coordinator, Micki Lilly, Executive Director, NCSWCLB, P.O. Box 1043, Asheboro, NC 27204.

Comments may be submitted to: NCSWCLB Secretary, Jerry Rhodes, P.O. Box 1043, Asheboro, NC 27204

Comment period ends: October 3, 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 .0100 - GENERAL

21 NCAC 63 .0102 DEFINITIONS

Whenever used in this Chapter, the definitions set forth in G.S. 90B-3 are herein incorporated by reference. The following definitions apply in this Chapter:

- (1) NCSWCLB - this designation represents the North Carolina Social Work Certification and Licensure Board.
(2) CSW - this designation represents the certified social worker level of certification.
(3) CMSW - this designation represents the certified master social worker level of certification.
(4) CSWM - this designation represents the certified social work manager level of certification.
(5) LCSW - this designation represents the licensed clinical social worker level of certification.
(6) P-LCSW - this designation represents the provisionally licensed clinical social worker level of certification.
(7) Reprimand. Reprimand is a public rebuke and sanction by the Board for practice misconduct. A reprimand typically is given for less severe offenses and may require specific follow-up actions by the social worker.
(8) Censure. Censure is an act involving severe condemnation and a sanction by the Board for practice misconduct. Censuring is typically for severe offenses and may require specific follow-up actions by the social worker.
(9) Probation. Probation is a stay of revocation or suspension allowing limited practice within preconditions established by the Board.

Violations of these conditions may result in revocation.

- (10) Suspension. Suspension is the withdrawal of privilege to practice for a specific period of time.
- (11) Revocation. Revocation is the withdrawal of privilege to practice as a certified or licensed social worker in the State of North Carolina.
- (12) Clinical Social Work Experience. As it relates to the work experience required for LCSW licensure, two years of clinical social work experience in direct practice shall mean the professional application of master or doctoral social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial function. Clinical social work experience requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of one or more of the following disorders or conditions: mental, emotional, addictive, or behavioral disorders and conditions. In addition, the clinical social work experience may also include clinical case management, information and referral, mediation, client education, clinical supervision and clinical consultation that is directly related to the treatment plan or personal care plan of a client/consumer.
- (13) Diagnosis. In the context of licensed clinical social work practice is the process of distinguishing, beyond the general social work assessment, between similar mental, emotional, behavioral, developmental and addictive disorders, impairments and disabilities within a psychosocial framework on the basis of their similar and unique characteristics consistent with accepted classifications systems.
- (14) Clinical Case Management. A comprehensive approach to care integrating a broad array of interventions; to include planning, implementation and management of care for clients with mental or emotional problems. Interventions by the clinical case manager shall involve face-to-face contact with the client on a regular basis, shall be grounded in clinical social work theory, and guided by the client's treatment plan or personal care plan.
- (15) Treatment- Clinical social work intervention, including individual, couples, family, or group psychotherapy, that is empirically grounded and used to help resolve symptoms of mental disorders, psychosocial stressors, relationship problems, and difficulties coping with the social environment.

Authority G.S. 90B-3; 90B-6.

SECTION .0200 - CERTIFICATION

21 NCAC 63 .0204 REFERENCES

- (a) Applicants for the LCSW and CSWM classifications shall have a minimum of three references related to the applicant's experience, as required by G.S. 90B-7(d) and (e). Applicants for other classifications shall have a minimum of three references. Relatives of applicants, clients, or subordinates of applicants may not submit references for applicants. A current Board member shall not submit a reference for an applicant unless he/she is the applicant's current or only social work supervisor. In such a case the Board member may submit a reference, but he/she shall excuse himself/herself from review of that particular applicant.
- (b) All references must come from individuals who have been closely associated with the applicant in the practice of social work.
- (c) One reference must be from one who has been or is currently a supervisor in a social work setting.

Authority G.S. 90B-6; 90B-7.

21 NCAC 63 .0211 WORK EXPERIENCE

- (a) For the Licensed Clinical Social Worker credential:
 - (1) Two years of post-MSW clinical social work experience shall mean 3,000 clock hours of work or employment for a fee or salary while engaged in the practice of clinical social work. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six ~~years, years with no more than 1500 hours accumulated in any one year.~~ Practicum or internship experience gained as part of any educational program shall not be included.
 - (2) Appropriate supervision shall mean supervision in person by an MSW who is also a Licensed Clinical Social Worker and who is in good standing with the Board. A supervisor formally disciplined by any professional credentialing body or professional organization, or who has violated the provisions of an occupational licensing Board may not provide supervision to a provisional licensee without the explicit written permission of the Board. ~~of an applicant during the applicant's two years of post MSW clinical social work experience.~~ The Provisional Licensed Clinical Social Worker's (P-LCSW) clinical social work supervisor shall have an additional two years of clinical social work experience post LCSW licensure.
 - (3) Appropriate supervision shall be that which is provided on a regular basis ~~throughout the applicant's two years of experience~~ with at least one hour of supervision during every 30 hours of experience. A minimum of 100 hours of supervision is required. It is the professional responsibility of the clinical

supervisor to make the initial determination whether or not the applicant's work experience meets the definition of clinical social work practice. The Board shall make the final determination whether or not the applicant's work experience meets the definition of clinical social work practice. Appropriate supervision may be individual or group supervision. Individual supervision is defined as shall mean one on one, in person, supervision by an MSW who is also an LCSW where the supervisor reviews and discusses clinical social work cases and provides evaluative comments and direction to the P-LCSW. Group supervision shall mean supervision provided by an MSW who is also an LCSW in a group setting, during which the supervisor reviews and discusses clinical social work cases and provides feedback and direction to each P-LCSW in the group. A maximum of 25 hours of group supervision may be applied toward meeting the supervision requirements for the LCSW.

(b) For the Certified Social Work Manager credential:

- (1) Two years of post social work degree experience shall mean 3,000 clock hours of employment for a salary while engaged in administrative social work duties including, policy and budgetary development and implementation, supervision and management, program evaluation, planning, and staff development. Such duties shall be carried out in an administrative setting where social work or other mental health services are delivered. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six years, years with no more than 1500 hours accumulated in any one year. Practicum or internship experience gained as part of any educational program shall not be included.
- (2) Appropriate supervision shall mean supervision in person by a social work administrator certified by the Board on at least one level who has a minimum of five years of administrative experience in a social work or mental health setting. Appropriate supervision shall be that which is provided on a regular basis throughout the applicant's two years of administrative social work experience. A minimum of 100 hours of supervision is required. A maximum of 50 hours of group supervision may be applied toward meeting the supervision requirements for the CSWM.

Authority G.S. 90B-6; 90B-7.

21 NCAC 63 .0213 TEMPORARY LICENSES

The Board may issue a non-renewable temporary reciprocal license pursuant to G.S. 90B-8(b), that is valid for no more than ~~30 days, six months,~~ upon receipt of a twenty five dollar (\$25.00) fee.

Authority G.S. 90B-6; 90B-6.2; 90B-8.

SECTION .0300 - EXAMINATIONS

21 NCAC 63 .0302 REPORTING OF SCORES

Each applicant for certification or licensure shall be informed in writing whether he/she has passed the examination. If an applicant fails the examination, ~~he/she shall receive his/her numerical score. If his/her failing score is within three points below the passing score~~ he/she may have his/her test hand-scored provided that a written request is received by the Board within five days of the date of the examination. The fee for rescoring or rechecking the examination results shall be paid by the requesting candidate.

Authority G.S. 90B-6; 90B-8.

SECTION .0400 - RENEWAL OF CERTIFICATION

21 NCAC 63 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Continuing education for certification or licensure renewal is required to maintain professional knowledge and technical competency. Renewal of certification or licensure requires 40 hours of continuing education credits approved by the Board within each two year renewal cycle. However, if a certification or licensure is for less than a full two-year period, then 30 hours of continuing education credits are required. One unit of credit is equal to one contact hour. One academic course semester-hour of credit is equal to 15 clock hours. Credit for auditing an academic course shall be for actual clock hours attended during which instruction was given. ~~The following activities are approved for continuing education:~~

- ~~(1) academic social work courses taken for credit or audit;~~
- ~~(2) agency based staff development, seminars, institutes, workshops, mini courses or conferences oriented to social work practice, values, skills, and knowledge;~~
- ~~(3) cross disciplinary offerings from medicine, law and the behavioral/social sciences or other disciplines, if such offerings are related to social work practice, values, skills and knowledge;~~
- ~~(4) self directed learning projects with prior approval by the Board. Approval shall be based on the applicability of the learning project to the social worker's field of specialization and shall have stated learning objectives. The maximum continuing education credit granted for such projects is 20 clock hours per renewal period. Credit shall not be granted for:~~

- (A) ~~identical programs completed within the same renewal period;~~
- (B) ~~job orientation;~~
- (C) ~~on the job training; or~~
- (D) ~~supervision and case consultation;~~
- (5) ~~study groups focusing on social work practice if the following can be documented:~~
 - (A) ~~study topic;~~
 - (B) ~~study material;~~
 - (C) ~~facilitator; and~~
 - (D) ~~date and hours of attendance.~~

(b) During each renewal period all certified and licensed social workers shall engage in a minimum of four hours of continuing education focused on ethics related to social work practice and ethical decision-making.

(c) The following activities may be approved for continuing education:

- (1) academic social work courses taken for credit or audit;
- (2) agency-based staff development, seminars, institutes, workshops, mini courses or conferences oriented to social work practice, values, skills and knowledge;
- (3) cross-disciplinary offerings from medicine, law and the behavioral/social sciences or other disciplines, if such offerings are related to social work practice, values, skills and knowledge;
- (4) distance learning activities including online courses and home study courses which have been pre-approved by the Association of Social Work Boards (ASWB) or the North Carolina Chapter of the National Association of Social Workers (NASW-NC). The maximum continuing education credit granted for distance learning activities is one half of the required hours, up to a maximum of 20 clock hours per renewal period;
- (5) study groups focusing on social work practice if the following can be documented:
 - (A) study topic;
 - (B) study material;
 - (C) facilitator; and
 - (D) date and hours of attendance.

(d) Credit shall not be granted for:

- (1) identical programs completed within the same renewal period;
- (2) job orientation;
- (3) on the job training; or
- (4) supervision and case consultation.

Authority G.S. 90B-6; 90B-9.

21 NCAC 63 .0403 RENEWAL FEES

~~(a) Fees for renewal of certificates or licenses which are due for renewal on or before June 30, 2000 shall be as follows:~~

- (1) ~~For Certified Social Workers (CSW's) the renewal fee shall be fifty five dollars (\$55.00).~~

- (2) ~~For Certified Master Social Workers (CMSW's) the renewal fee shall be sixty five dollars(\$65.00).~~
- (3) ~~For Licensed Clinical Social Workers (LCSW's) the renewal fee shall be one hundred dollars (\$100.00).~~
- (4) ~~For Certified Social Work Managers (CSWM's) the renewal fee shall be one hundred dollars (\$100.00)~~

~~(b)(a) Fees for renewal of certificates or licenses/licenses which are due for renewal after June 30, 2000 shall be as follows:~~

- (1) For Certified Social Workers (CSW's) the renewal fee shall be sixty dollars (\$60.00).
- (2) For Certified Master Social Workers (CMSW's) the renewal fee shall be seventy-five dollars (\$75.00)
- (3) For Licensed Clinical Social Workers (LCSW's) the renewal fee shall be one hundred twenty-five dollars (\$125.00).
- (4) For Certified Social Work Managers (CSWM's) the renewal fee shall be one hundred twenty-five dollars (\$125.00).

~~(e)(b) Persons whose applications for renewal are received by the Board after the renewal date of their certificate or license, but no later than 60 days after the renewal date, shall be assessed a late renewal fee of fifty dollars (\$50.00) in addition to any other applicable fees.~~

Authority G.S. 90B-6; 90B-6.2; 90B-9(b).

SECTION .0500 - ETHICAL GUIDELINES

21 NCAC 63 .0509 PUBLIC STATEMENTS

(a) Public statements, announcements of services and promotional activities of social workers serve the purpose of providing sufficient information to aid consumers in making informed judgments and choices. Social workers shall state accurately, objectively and without misrepresentation their professional qualifications, affiliations and functions as well as those of the institutions or organizations with which they or their statement may be associated. They shall correct misrepresentations by others with respect to these matters.

(b) In announcing availability for professional services, a social worker shall use his or her name, type and level(s) of certification and licensure; and may use highest relevant academic degree from an accredited institution; specialized post-graduate training; address and telephone number; office hours; type of services provided; appropriate fee information; foreign languages spoken; and policy with regard to third-party payments.

(c) Social workers shall not offer to perform any service beyond the scope permitted by law or beyond the scope of their competence. They shall not engage in any form of advertising which is false, fraudulent, deceptive, or misleading. They shall neither solicit nor use recommendations or testimonials from clients.

(d) Social workers shall respect the rights and reputations of professional organizations with which they are affiliated. They shall not falsely imply sponsorship or certification by such

organizations. When making public statements, the social worker shall make clear which are personal opinions and which are authorized statements on behalf of an organization.

(e) A social worker shall display his or her license or certificate at the social worker's primary place of practice as required by G.S. 90B-15.

Authority G.S. 90B-6; 90B-11.

SECTION .0900 - PROFESSIONAL CORPORATION OR LIMITED LIABILITY COMPANY

21 NCAC 63 .0901 APPLICATIONS FOR A CERTIFICATE OF REGISTRATION

Social Work Licensees who wish to form a Professional Corporation or Limited Liability Company must apply to the North Carolina Social Work Certification and Licensure Board for a Certificate of Registration, pursuant to Chapter 55B of the North Carolina General Statutes. The following fees apply:

- (1) Fifty dollars (\$50.00) – application fee for a certificate of registration for a professional corporation or limited liability company;
- (2) Twenty-five dollars (\$25.00) – annual renewal fee for the certificate of registration for a professional corporation or limited liability company; and
- (3) Twenty-five (\$25.00) – fee for amendments(s) to the certificate of registration for a professional corporation or limited liability company. An amendment to the Certificate of Registration shall be required for a change in name, address, or professional services

provided; changes to the articles of organization or incorporation; change in ownership or members. The Board shall be informed of other changes in writing at no additional cost.

Authority G.S. 55B-10; 55B-11; 57C-2-01(c); 90B.6.2; 90B-11.

21 NCAC 63 .0902 RENEWAL OF CERTIFICATE OF REGISTRATION

(a) A Certificate of Registration issued by the Board shall be renewed annually prior to the expirations date printed on the certificate.

(b) A Certificate of Registration will be suspended for failure to renew within 30 days after the expiration date and will be reported to the Office of the Secretary of State.

(c) The Board may reinstate a Certificate of Registration suspended under this subsection within the calendar year upon payment of the required renewal fee plus an additional fee for late renewal as provided in G.S. 55B-11.

Authority G.S. 55B-11; 57C-2-01(c); 90B-6; 90B-6.2; 90B-11.

21 NCAC 63 .0903 DISOLVING THE PROFESSIONAL ENTITY

Professional entities registered with the Board and who dissolve, shall provide written notice to the Board within 30 days of the effective date the entity dissolved.

Authority G.S. 55B-10; 57C-2-01(c); 90B.6; 90B-11.

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on June 19, 2008.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

GASOLINE AND OIL INSPECTION BOARD

<u>Definitions</u>	02	NCAC	42	.0102*	22:14 NCR
<u>Standard Specifications</u>	02	NCAC	42	.0201*	22:14 NCR
<u>Gasoline Sold Under Label Name or Brand</u>	02	NCAC	42	.0301*	22:14 NCR
<u>Labeling of Dispensing Devices</u>	02	NCAC	42	.0401*	22:14 NCR
<u>Branding and Registration of Motor Fuels</u>	02	NCAC	42	.0501*	22:14 NCR
<u>Purpose and Applicability</u>	02	NCAC	42	.0801	22:14 NCR
<u>Oxygen Content</u>	02	NCAC	42	.0802	22:14 NCR
<u>Record Keeping and Transfer Requirements</u>	02	NCAC	42	.0803	22:14 NCR
<u>Gasoline Dispenser Labeling</u>	02	NCAC	42	.0804	22:14 NCR
<u>Sampling, Testing, and Oxygen Content Calculations</u>	02	NCAC	42	.0805	22:14 NCR
<u>Compliance and Enforcement</u>	02	NCAC	42	.0806	22:14 NCR

CHILD CARE COMMISSION

<u>Special Training Requirements</u>	10A	NCAC	09	.0705*	22:14 NCR
<u>Health and Training Requirements for Family Child Care Ho...</u>	10A	NCAC	09	.1705*	22:14 NCR
<u>Requirements for Records</u>	10A	NCAC	09	.1721*	22:14 NCR
<u>Retention of Forms and Reports by an Operator</u>	10A	NCAC	09	.2318*	22:14 NCR
<u>Other Staff Requirements</u>	10A	NCAC	09	.2511	22:14 NCR

HEALTH SERVICE REGULATION, DIVISION OF

<u>Filing Applications</u>	10A	NCAC	14C	.0203*	22:18 NCR
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MENTAL HEALTH, COMMISSION FOR

<u>Disclosure of Financial Interest of Providers of MH/DD/SA...</u>	10A	NCAC	27G	.0212*	22:09 NCR
<u>Letter of Support Required for Licensure of Residential F...</u>	10A	NCAC	27G	.0406*	22:10 NCR

HHS - MENTAL HEALTH

<u>Scope</u>	10A	NCAC	27G	.7001	22:10 NCR
<u>Local Management Entity Requirements Concerning Complaints</u>	10A	NCAC	27G	.7002*	22:10 NCR
<u>Requirements for Local Management Entity Complaint Invest...</u>	10A	NCAC	27G	.7003*	22:10 NCR
<u>Appeals Regarding Utilization Review Decisions for</u>	10A	NCAC	27G	.7004*	22:10 NCR

APPROVED RULES

Non-Me...

<u>Scope</u>	10A	NCAC	27I	.0401	22:10	NCR
<u>Definitions</u>	10A	NCAC	27I	.0402	22:10	NCR
<u>Information Included in Request</u>	10A	NCAC	27I	.0403*	22:10	NCR
<u>Process</u>	10A	NCAC	27I	.0404	22:10	NCR
<u>Scope</u>	10A	NCAC	27I	.0501*	22:10	NCR
<u>LME Business Plan Content and Format Requirements</u>	10A	NCAC	27I	.0502*	22:10	NCR
<u>LME Business Plan Signature Requirements</u>	10A	NCAC	27I	.0503*	22:10	NCR
<u>Plan of Correction</u>	10A	NCAC	27I	.0504*	22:10	NCR

INSURANCE, DEPARTMENT OF

<u>Weighted Average; Mental Illness Benefits Coverage</u>	11	NCAC	12	.0563*	22:18	NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>General Provisions on Test Methods and Procedures</u>	15A	NCAC	02D	.2602*	22:08	NCR
<u>Testing Protocol</u>	15A	NCAC	02D	.2603*	22:08	NCR

MARINE FISHERIES COMMISSION

<u>Electrical Fishing Device</u>	15A	NCAC	03J	.0304*	22:15	NCR
<u>Season, Size and Harvest Limit: Internal Coastal Waters</u>	15A	NCAC	03M	.0202*	22:15	NCR
<u>Procedures and Requirements to Obtain Licenses, Endorseme...</u>	15A	NCAC	03O	.0101	22:15	NCR
<u>For Hire Coastal Recreational Fishing</u>	15A	NCAC	03O	.0112*	22:15	NCR
<u>Procedures and Requirements to Obtain Permits</u>	15A	NCAC	03O	.0501	22:15	NCR
<u>Permit Conditions: Specific</u>	15A	NCAC	03O	.0503*	22:15	NCR
<u>Special Regulations: Joint Waters</u>	15A	NCAC	03Q	.0107*	22:15	NCR

WILDLIFE RESOURCES COMMISSION

<u>Release of Mute Swans</u>	15A	NCAC	10B	.0125*	22:11	NCR
<u>Special Regulations: Joint Waters</u>	15A	NCAC	10C	.0107*	22:11	NCR
<u>Open Seasons: Creel and Size Limits</u>	15A	NCAC	10C	.0305*	n/a	G.S. 150B-21.5(a)(5)
<u>McDowell County</u>	15A	NCAC	10F	.0339*	22:16	NCR

GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>Filing Deadline/App Seeking Qual/Emp/Another</u>	21	NCAC	12	.0205	22:16	NCR
<u>Granting or Denying Hearing Request</u>	21	NCAC	12	.0819*	22:16	NCR
<u>Proposals for Decisions</u>	21	NCAC	12	.0830*	22:16	NCR
<u>Definitions</u>	21	NCAC	12	.0901*	22:16	NCR

PSYCHOLOGY BOARD

<u>Foreign Degree Application Policy</u>	21	NCAC	54	.1702*	22:16	NCR
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APPRAISAL BOARD

<u>Form</u>	21	NCAC	57A	.0101*	22:18	NCR
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APPROVED RULES

<u>Filing and Fees</u>	21	NCAC	57A	.0102*	22:18	NCR
<u>Qualifications for Trainee Registration and Appraiser Cer...</u>	21	NCAC	57A	.0201*	22:18	NCR
<u>Expired Registration, License or Certificate</u>	21	NCAC	57A	.0206*	22:18	NCR
<u>Temporary Practice</u>	21	NCAC	57A	.0210*	22:18	NCR
<u>Time and Place</u>	21	NCAC	57A	.0301*	22:18	NCR
<u>Subject Matter and Passing Scores</u>	21	NCAC	57A	.0302*	22:18	NCR
<u>Re-examination</u>	21	NCAC	57A	.0303	22:18	NCR
<u>Appraisal Reports</u>	21	NCAC	57A	.0405*	22:18	NCR
<u>Supervision of Trainees</u>	21	NCAC	57A	.0407*	22:18	NCR
<u>Registered Trainee Course Requirements</u>	21	NCAC	57B	.0101*	22:18	NCR
<u>Certified Residential Real Estate Appraiser Course Requir...</u>	21	NCAC	57B	.0102	22:18	NCR
<u>Certified General Real Estate Appraiser Course Requirements</u>	21	NCAC	57B	.0103*	22:18	NCR
<u>Purpose and Applicability</u>	21	NCAC	57B	.0201	22:18	NCR
<u>Application for Approval</u>	21	NCAC	57B	.0202	22:18	NCR
<u>Criteria for Approval</u>	21	NCAC	57B	.0203	22:18	NCR
<u>Administration</u>	21	NCAC	57B	.0207	22:18	NCR
<u>Accommodations for Persons With Disabilities</u>	21	NCAC	57B	.0208	22:18	NCR
<u>Certificate of Course Completion</u>	21	NCAC	57B	.0209*	22:18	NCR
<u>Purpose</u>	21	NCAC	57B	.0301	22:18	NCR
<u>Course Content</u>	21	NCAC	57B	.0302	22:18	NCR
<u>Course Completion Standards</u>	21	NCAC	57B	.0303*	22:18	NCR
<u>Instructor Requirements</u>	21	NCAC	57B	.0306	22:18	NCR
<u>Criteria for Course Recognition</u>	21	NCAC	57B	.0307	22:18	NCR
<u>Applicability</u>	21	NCAC	57B	.0401	22:18	NCR
<u>Precertification Courses</u>	21	NCAC	57B	.0604	22:18	NCR
<u>Payment of Fee Required by G.S. 93e-1-7(c)</u>	21	NCAC	57B	.0613	22:18	NCR

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

<u>Multitunit Buildings</u>	21	NCAC	12	.0211	22:16	NCR
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TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 42 .0102 DEFINITIONS

Except as otherwise defined in Chapter 119, North Carolina General Statutes, the definitions applicable in this Chapter are as follows:

- (1) "ASTM" means ASTM International.
- (2) "Approved lead substitute" means an EPA registered gasoline additive formulated to reduce valve seat recession in engines designed to operate on leaded gasoline.
- (3) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated

- (4) B100, and meeting the requirements of ASTM D 6751.
- (5) "Biodiesel Blend" means a blend of biodiesel meeting ASTM D 6751 with petroleum-based diesel fuel meeting ASTM D 975 or fuel oil meeting ASTM D 396 and designated BXX, where XX represents the volume percentage of biodiesel in the blend.
- (6) "Board" means the Gasoline and Oil Inspection Board.
- (7) "Cetane number" means the relative ignition quality of diesel fuels by the ASTM Cetane Method D 613.
- (8) "Denatured fuel ethanol" means ethanol meeting the provisions of ASTM D 4806,

- "Standard Specification for Denatured Fuel Ethanol to be Blended with Gasolines for Use as an Automotive Spark-Ignition Engine Fuel."
- (8) "Director" means the Director of the Standards Division of the North Carolina Department of Agriculture and Consumer Services.
- (9) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.
- (10) "E85" means a petroleum product that is a blend of denatured ethanol and gasoline or natural gasoline of which the ethanol portion is nominally 70 to 85 percent ethanol by volume and meeting the requirements of ASTM D 5798.
- (11) "EPA" means the United States Environmental Protection Agency.
- (12) "Leaded" means any gasoline or gasoline-oxygenate blend which contains more than 0.05 gram lead per U.S. gallon (0.013 gram lead per liter) or contains an approved lead substitute which provides a lead equivalency of at least 0.10 gram lead per U.S. gallon (0.026 gram per liter).
- (13) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons or mixtures of same: propane, propylene, butanes (normal or iso-butane), and butylenes.
- (14) "Motor Octane Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Motor Method (D 2700).
- (15) "NCWM" means the National Conference on Weights and Measures.
- (16) "NIST" means the National Institute of Standards and Technology.
- (17) "Octane Index" means the number obtained by adding the research octane number and the motor octane number and dividing the sum by two.
- (18) "Oxygenate" means any substance which, when added to gasoline, increases the amount of oxygen in that gasoline, and which has been approved by EPA for use in gasoline.
- (19) "Premium Diesel" means a refined middle distillate petroleum product that meets the specifications of ASTM D 975 and NIST Handbook 130, Uniform Engine Fuels, Petroleum Products and Automotive Lubricants Regulation, section 2.2.1.
- (20) "Qualitative word or term" means any word or term used in a brand name which by definition or customary usage indicates a level of quality, classification, grade, or designation.
- (21) "Regular" when used as part of a brand name or as a grade designation for gasoline or gasoline-oxygenate blend shall be construed to mean an unleaded regular grade commercial automotive gasoline or gasoline-oxygenate blend.
- (22) "Renewable Diesel Fuel" means a fuel which is not a mono-alkyl ester; meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of the Clean Air Act; is intended for use in engines that are designed to run on conventional, petroleum derived diesel fuel; is derived from nonpetroleum renewable resources including, but not limited to, vegetable oil, animal wastes, including poultry fats and poultry wastes, and other waste materials, or municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater; and meets the latest version of ASTM specification D 975.
- (23) "Research Octane Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Research Method (D 2699).
- (24) "Retail" means the sale or offering for sale of gasoline to the ultimate consumer for use in a motor vehicle.
- (25) "Substantially Similar" rule means the United States Environmental Protection Agency's "Substantially Similar" rule, Section 211 (f) (1) of the Clean Air Act [42 U.S.C. 7545 (f) (1)].
- (26) "Terminal" means a facility at which gasoline is dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities.
- (27) "Unleaded" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.05 gram lead per U.S. gallon (0.013 gram lead per liter) and not more than 0.005 gram phosphorus per U.S. gallon (0.0013 gram phosphorus per liter).

History Note: Authority G.S. 119-26; 119-26.1; Eff. December 1, 1981; Amended Eff. July 1, 2008; September 1, 1992; May 1, 1990; April 1, 1989; June 1, 1987.

02 NCAC 42 .0201 STANDARD SPECIFICATIONS
 (a) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for gasoline with the following modifications:

- (1) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the Director. Said applications shall contain evidence that outlets marketing gasoline in North Carolina cannot be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the Board at which time the Board shall establish the duration of the exception;
 - (2) The minimum lead content for gasoline registered or labeled as "leaded" shall be as defined in 02 NCAC 42 .0102;
 - (3) Vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification.
- (b) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for alcohol blends with the following modifications:
- (1) A vapor pressure tolerance not exceeding one pound per square inch for ethanol blends of up to 10 percent;
 - (2) Vapor pressure seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;
 - (3) Applications for temporary exceptions to vapor pressure specifications as provided in this Subparagraph may be made to the Director. Said applications shall contain evidence that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the Board at which time the Board shall establish the duration of the exception;
 - (4) The minimum temperature at 50 percent evaporated shall be 150 degrees F (66 degrees C) as determined by ASTM Test Method D 86 for ethanol blends of up to 10 percent;
 - (5) The minimum lead content for gasoline and alcohol blends registered or labeled as "leaded" shall be as defined in 02 NCAC 42 .0102;
 - (6) Octane rating shall not be less than the octane index certified on the brand name registration as required by 02 NCAC 42 .0500;
 - (7) All blends, both leaded and unleaded, shall be blended according to the EPA "Substantially Similar" rule or an EPA waiver for unleaded fuel;
 - (8) Water tolerance shall be such that no phase separation occurs when subjected to a temperature equal to the temperatures specified in the table for "Maximum Temperature for Phase Separation, °C," ASTM D 4814;
 - (9) The vapor/liquid ratio specification shall be waived for ethanol blends of up to 10 percent.
- (c) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 975, "Standard Specification for Diesel Fuel Oils" as standard specification for diesel motor fuels and renewable diesel fuels with the following modification: For diesel motor fuel grade 2-D, the minimum flash point as determined by ASTM Test Method D 56 shall be 115 degrees F (46 degrees C).
- (d) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 396, "Standard Specification for Fuel Oils" as standard specification for fuel oils and blends of biodiesel and fuel oil.
- (e) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 3699, "Standard Specification for Kerosene" as standard specification for kerosenes with the following modification: For grade 2-K, the presence or absence of coloring matter shall in no way be determinative of whether a substance meets the requirements of this grade of kerosene.
- (f) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 6751, "Standard Specification for Biodiesel (B100) Blend Stock for Distillate Fuels" as standard specification for biodiesel (B100) and for B99 (a blend of 99 percent biodiesel and one percent petroleum diesel).
- (g) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 5798, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines" as standard specification for E85 fuel ethanol.
- (h) The Board hereby adopts by reference, including subsequent amendments and editions, NIST Handbook 130, "Uniform Engine Fuels, Petroleum Products and Automotive Lubricants Regulation," section 2.2.1 "Premium Diesel Fuel" as the standard specification of premium diesel fuels in addition to ASTM D 975. Copies of this document may be obtained at no

cost from the NIST Web site - <http://ts.nist.gov/WeightsandMeasures/>.

(i) In addition to meeting all specification requirements as set forth in this Rule, each fuel must be suitable for the intended use. Motor fuels shall not contain concentrations of methyl tertiary butyl ether (MTBE) in violation of G.S. 119-26.3.

(j) ASTM documents adopted by reference herein are available for inspection in the office of the Director of the Standards Division and may be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 or their Web site - www.astm.org, at the following cost for each document: D 396, thirty-five dollars (\$35.00); D 975, forty-one dollars (\$41.00); D 3699, thirty dollars (\$30.00); D 4814, forty-seven dollars (\$47.00); D 5798, thirty-five dollars (\$35.00); and D 6571, thirty-five dollars (\$35.00).

History Note: Authority G.S. 119-26; 119-26.1; 150B-14; Eff. December 1, 1981; Amended Eff. September 1, 1992; May 1, 1990; March 1, 1989; June 1, 1987; Temporary Amendment Eff. March 14, 2008; Amended Eff. July 1, 2008.

02 NCAC 42 .0301 GASOLINE SOLD UNDER LABEL NAME OR BRAND

(a) All gasoline sold at wholesale or retail in North Carolina shall be sold under the label, name, or brand name under which the gasoline was first purchased for resale in North Carolina, except as provided in Paragraph (b) of this Rule.

(b) The owner of any gasoline purchased for resale in North Carolina may sell such gasoline under a label, name, or brand other than that under which the gasoline was purchased provided that a Motor Fuel Brand Name Registration form is filed with the Director.

History Note: Authority G.S. 119-26; Eff. December 1, 1981; Amended Eff. July 1, 2008.

02 NCAC 42 .0401 LABELING OF DISPENSING DEVICES

(a) For the purpose of product identity, each dispensing device used in the retailing of any motor fuel shall be plainly and conspicuously labeled with the following:

- (1) For gasoline and gasoline-alcohol blends of up to 10 percent ethanol, the registered brand name;
- (2) For diesel fuel, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type or grade of product;
- (3) For biodiesel and biodiesel blends, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type or grade of product;
- (4) For gasoline-oxygenate blends containing at least one percent by volume of methanol, the registered brand name plus an additional label

which states that the blend "contains methanol." The label shall be composed of letters at least one inch in height, minimum one-eighth inch stroke, which contrast distinctly with the label background and shall be affixed to the dispenser front panel in a position clear and conspicuous from the driver's position. Exceptions to this Rule are:

- (A) For fuels not covered by an EPA waiver, the additional label shall identify the percent by volume of ethanol or methanol in the blend; and
 - (B) For fuels meeting the EPA's "Substantially Similar" rule and which do not contain methanol, no additional label is required;
- (5) For E85 fuel ethanol, the registered brand name.

(b) Each dispensing device used in the retailing of products other than motor fuel shall be plainly and conspicuously labeled as follows:

- (1) Kerosene shall be labeled as either 1-K Kerosene or 2-K Kerosene. In addition, each dispenser shall contain one of the following legends as appropriate:
 - (A) On 1-K kerosene dispensers, the legend "Suitable For Use In Unvented Heaters"; or
 - (B) On 2-K kerosene dispensers, the legend "May Not Be Suitable For Use In Unvented Heaters";
- (2) Other products shall be labeled with either the applicable generic name or a brand name which identifies the type of product.

(c) Whenever a motor fuel or other product provided for in this Section is offered for sale, sold, or delivered at retail in barrels, casks, cans, or other containers, each container shall be labeled in accordance with this Section and in accordance with 15 U.S.C. 1451 et. seq., the Fair Packaging and Labeling Act.

(d) If a dispenser is so designed that one or more hoses connected to a common housing dispense more than one type or grade of product, means shall be provided to indicate the identity of the product being dispensed from the hose.

History Note: Authority G.S. 119-27; Eff. December 1, 1981; Amended Eff. July 1, 2008; August 1, 2002; June 1, 1987; December 1, 1985; November 1, 1983.

02 NCAC 42 .0501 BRANDING AND REGISTRATION OF MOTOR FUELS

(a) All motor fuels offered for sale, sold, or delivered to a purchaser in this State shall be branded, and each and every brand name shall be registered with the Director on forms provided by the Director. The Director:

- (1) may require proof of compliance for any motor fuel which is subject to Federal waiver requirements or other applicable laws or regulations; and

- (2) may require any person desiring to register a motor fuel for which there exists no generally recognized classification, basic quality standards, or performance record, to submit, in writing, the following:
- (A) certified test data and performance evaluations; and
 - (B) chemical and physical characteristics.

This information shall be submitted before an application for registration will be considered.

(b) Any brand name registration under this Section shall not supersede Federal or state trademark law or state brand name law.

History Note: Authority G.S. 119-26; Eff. December 1, 1981; Amended Eff. July 1, 2008; November 1, 1984; November 1, 1983.

- 02 NCAC 42 .0801 PURPOSE AND APPLICABILITY**
- 02 NCAC 42 .0802 OXYGEN CONTENT**
- 02 NCAC 42 .0803 RECORD KEEPING AND TRANSFER REQUIREMENTS**
- 02 NCAC 42 .0804 GASOLINE DISPENSER LABELING**
- 02 NCAC 42 .0805 SAMPLING, TESTING AND OXYGEN CONTENT CALCULATIONS**
- 02 NCAC 42 .0806 COMPLIANCE AND ENFORCEMENT**

History Note: Authority G.S. 119-26; 119-26.1; 119-27; 143-215.107; Eff. September 1, 1992; Repealed Eff. July 1, 2008.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .0705 SPECIAL TRAINING REQUIREMENTS

- (a) At least one staff member shall be knowledgeable of and able to recognize common symptoms of illness.
- (b) Staff who have completed a course in basic first aid, shall be present at all times children are present. First aid training shall be renewed on or before expiration of the certification or every three years, whichever is less. The number of staff required to complete the course is based on the number of children present as shown in the following chart:

Number of children present	Number of staff trained in first aid required
1-29	1 staff
30-79	2 staff
80 and above	3 staff

Verification of each required staff person's completion of this course shall be maintained in the person's individual personnel

file in the center. The basic first aid course shall address principles for responding to emergencies, and techniques for handling common childhood injuries, accidents and illnesses such as choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.

(c) A first aid information sheet shall be posted in a prominent place for quick referral. An acceptable form may be requested free of charge from the North Carolina Child Care Health and Safety Resource Center.

(d) Each child care center shall have at least one person on the premises at all times, and at least one person who accompanies the children whenever they are off the premises, who has successfully completed certification in a cardiopulmonary resuscitation (CPR) course provided by either the American Heart Association or the American Red Cross or other organizations approved by the Division. Other organizations shall be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. CPR training shall be renewed on or before the expiration of the certification or every two years, whichever is less. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. The course shall provide training in CPR appropriate for the ages of children in care. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the center.

(e) Staff shall complete at least four clock hours of training in safety. This training shall address playground safety hazards, playground supervision, maintenance and general upkeep of the outdoor area, and age and developmentally appropriate playground equipment. Staff counted to comply with this Rule shall have six months from the date of employment, or from the date a vacancy occurs, to complete the required safety training. The number of staff required to complete this training shall be as follows:

- (1) In centers with a licensed capacity of less than 30 children, at least one staff person shall complete this training.
- (2) In centers with a licensed capacity of 30 or more children, at least two staff, including the administrator, shall complete this training.

(f) In centers that are licensed to care for infants ages 12 months and younger, the center director and any child care provider scheduled to work in the infant room, including volunteers counted in staff/child ratios, shall complete ITS-SIDS training. ITS-SIDS training shall be completed within four months of the individual assuming responsibilities in the infant room or as an administrator, and shall be completed again every three years from the completion of previous ITS-SIDS training. Completion of ITS-SIDS training may be included once every three years in the number of hours needed to meet annual in-service training requirements in Section .0700 of this Chapter. Prior to an individual assuming responsibility for the care of an infant, the center's safe sleep policy for infants shall be reviewed with the individual as required by Rule .0707(a) of this Section.

History Note: Authority G.S. 110-85; 110-91(1),(8); 143B-168.3; Eff. January 1, 1986; Amended Eff. January 1, 1996; January 1, 1992; January 1, 1991; January 1, 1987; Temporary Amendment Eff. October 1, 1997; Amended Eff. July 1, 2008; November 1, 2005; May 1, 2004; July 1, 1998.

10A NCAC 09 .1705 HEALTH AND TRAINING REQUIREMENTS FOR FAMILY CHILD CARE HOME OPERATORS

(a) Prior to receiving a license, each family child care home operator shall:

- (1) Complete and keep on file a health questionnaire which attests to the operator's physical and emotional ability to care for children. The Division may require a written statement or medical examination report signed by a licensed physician or other authorized health professional if there is reason to believe that the operator's health may adversely affect the care of the children.
- (2) Obtain written proof that he or she is free of active tuberculosis. The results indicating the individual is free of active tuberculosis shall be obtained within 12 months prior to applying for a license.
- (3) Complete within 12 months prior to applying for a license a basic first aid course that shall address principles for responding to emergencies, and techniques for handling common childhood injuries, accidents and illnesses such as choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.
- (4) Successfully complete within 12 months prior to applying for a license a course by the American Heart Association or the American Red Cross or other organizations approved by the Division in cardiopulmonary resuscitation (CPR) appropriate for the ages of children in care. Other organizations shall be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the home.

(b) After receiving a license, an operator shall:

- (1) Update the health questionnaire referenced in Paragraph (a) of this Rule annually. The

Division may require the operator to obtain written proof that he or she is free of active tuberculosis.

- (2) Complete a first aid course as referenced in Paragraph (a) of this Rule. First aid training shall be renewed on or before expiration of the certification or every three years, whichever is less.
- (3) Successfully complete a CPR course as referenced in Paragraph (a) of this Rule. CPR training shall be renewed on or before the expiration of the certification, or every two years, whichever is less.
- (4) If licensed to care for infants ages 12 months and younger, complete ITS-SIDS training within four months of receiving the license, and complete it again every three years from the completion of previous ITS-SIDS training. Completion of ITS-SIDS training may be included once every three years in the number of hours needed to meet the annual in-service training requirement in Paragraph (b)(5) of this Rule.
- (5) Complete 12 clock hours of annual in-service training in the topic areas required by G.S. 110-91(11), except that persons with at least 10 years work experience as a caregiver in a child care arrangement regulated by the Division of Child Development shall complete eight clock hours of annual in-service training. Only training which has been approved by the Division as referenced in Rule .0708 of this Chapter shall count toward the required hours of annual in-service training. The operator shall maintain a record of annual in-service training activities in which he or she has participated. The record shall include the subject matter, the topic area in G.S. 110-91(11) covered, the name of the training provider or organization, the date training was provided and the number of hours of training completed. First aid training may be counted no more than once every three years.

History Note: Authority G.S. 110-85; 110-88; 110-91; 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2008; May 1, 2004; July 1, 1998; November 1, 1989; January 1, 1987.

10A NCAC 09 .1721 REQUIREMENTS FOR RECORDS

(a) The operator shall maintain the following health records for each child who attends on a regular basis, including his or her own preschool child(ren):

- (1) a copy of the child's health assessment as required by G.S. 110-91(1);
- (2) a copy of the child's immunization record;

- (3) a health and emergency information form provided by the Division that is completed and signed by a child's parent. The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:
 - (A) the child's name, address, and date of birth;
 - (B) the names of individuals to whom the child may be released;
 - (C) the general status of the child's health;
 - (D) any allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
 - (E) the names and phone numbers of persons to be contacted in an emergency situation;
 - (F) the name and phone number of the child's physician and preferred hospital; and
 - (G) authorization for the operator to seek emergency medical care in the parent's absence;
- (4) when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.

(b) The operator shall complete and maintain other records which include:

- (1) documentation of the operator's procedures in emergency situations, on a form which is provided by the Division;
- (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature;
- (3) incident reports that are completed each time a child receives medical treatment by a physician, nurse, physician's assistant, nurse practitioner, community clinic, or local health department, as a result of an incident occurring while the child is in the family child care home. Each incident shall be reported on a form provided by the Division, signed by the operator and the parent, and maintained in the child's file. A copy shall be mailed to a representative of the Division within seven calendar days after the incident occurs;
- (4) an incident log which is filled out any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form supplied by the Division;

- (5) documentation that a monthly check for hazards on the outdoor play area is completed. This form shall be supplied by the Division and shall be maintained in the family child care home for review by a representative of the Division; and
- (6) Accurate daily attendance records for all children in care, including the operator's own preschool children. The attendance record shall indicate the date and time of arrival and departure for each child.

(c) Written records shall be maintained as follows:

- (1) All children's records as required in this Chapter, except medication permission slips as required in Rule .1720(c)(13) of this Section, must be kept on file one year from the date the child is no longer enrolled.
- (2) Additional caregiver records as required in this Chapter shall be maintained on file one year from the employee's last date of employment.
- (3) Current program records as required in this Chapter shall be maintained on file for as long as the license remains. Prior versions shall be maintained based on the time frame in the following charts:
 - (A) A minimum of 30 days from the revision or replacement date:

Record	Rule
Daily Schedule	.1718(13)
Infant Feeding Schedule	.1718(6)
SIDS Sleep Chart/Visual Check	.1724(8)

- (B) A minimum of one year from the revision or replacement date:

Record	Rule
Attendance	.1721 (b)(6)
Emergency Numbers	.1720(a)(8)
Emergency Procedures Form	.1721(b)(1)
Field Trip/Transportation Permission	.1723(1)
Fire Drill Log	.1721(b)(2)
Incident Log	.1721(b)(4)
Playground Inspection	.1721(b)(5)
Pet Vaccinations	.1720(d)(10)

- (4) Well-water analysis, pool inspection and inspections for local ordinances as referenced in Rules .1720(d)(1), .1719(7), and .1702(d) of this Section shall remain on file at the family child care home for as long as the license remains valid.
- (5) Records may be maintained in a paper format or electronically, except that records that

require a signature of a staff person or parent shall be maintained in a paper format.

- (6) All records required in this Chapter shall be available for review by a representative of the Division.

History Note: Authority G.S. 110-85; 110-88; 110-91(1), (9); Eff. July 1, 1998; Amended Eff. July 1, 2008; April 1, 2003; April 1, 2001.

10A NCAC 09 .2318 RETENTION OF FORMS AND REPORTS BY A CHILD CARE OPERATOR

Each child care center operator must retain records as specified in Items (1) through (6) of this Rule.

- (1) All children's records as required in this Chapter, except the Medication Permission Slip as referenced in Rule .0803(13) of this Chapter, shall be maintained on file for at least one year from the date the child is no longer enrolled in the center.
- (2) All personnel records as required in this Chapter shall be maintained on file at least one year from the date the employee is no longer employed.
- (3) Current program records shall be maintained on file for as long as the license remains valid. Prior versions shall be maintained based on the time frame in the following charts:

- (a) A minimum of 30 days from the revision or replacement date:

Record	Rule
Activity Plan	.0508 (a)
Allergy Postings	.0901(e)
Feeding Schedule	.0902
Menu	.0901(b)
SIDS Sleep Chart/Visual Check	.0606(a)(7)

- (b) A minimum of one year from the revision or replacement date:

Record	Rule
Attendance	.0302(d)(3) and .1504
Daily Schedule	.0508(a)
Emergency Medical Care Plan	.0802(a)
Fire Drill Log	.0302(d)(4)
Incident Log	.0802(e)
Playground Inspection	.0604(q)
Safe Arrival and Departure Procedures	.1003(b)

- (4) All building, fire, sanitation and pool inspections as referenced in G.S. 110-91, and Rules .0302 and .1403 of this Chapter shall

remain on file at the center for as long as the license remains valid.

- (5) Records may be maintained in a paper format or electronically, except that records that require a signature of a staff person or parent shall be maintained in a paper format.
- (6) All records required in this Chapter shall be available for review by a representative of the Division.

History Note: Authority G.S. 110-85; 110-91(9); 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2008.

10A NCAC 09 .2511 OTHER STAFF REQUIREMENTS

History Note: Authority G.S. 110-91(8),(11); 143B-168.3; Eff. September 1, 1990; Repealed Eff. July 1, 2008.

10A NCAC 14C .0203 FILING APPLICATIONS

(a) A certificate of need application shall not be reviewed by the Certificate of Need Section until it is filed in accordance with this Rule.

(b) An original and a copy of the application shall be file-stamped as received by the agency no later than 5:30 p.m. on the 15th day of the month preceding the scheduled review period. In instances when the 15th of the month falls on a weekend or holiday, the filing deadline is 5:30 p.m. on the next business day. An application shall not be included in a scheduled review if it is not received by the agency by this deadline. Each applicant shall transmit, with the application, a fee to be determined according to the formula as stated in G.S. 131E-182(c).

(c) After an application is filed, the agency shall determine whether it is complete for review. An application shall not be considered complete if:

- (1) the requisite fee has not been received by the agency; or
- (2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.

(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.

(e) Information requested by the agency to complete the application must be received by the agency no later than 5:30 p.m. on the last working day before the first day of the scheduled review period. The review of an application shall commence in the next applicable review period that commences after the application has been determined to be complete.

History Note: Authority G.S. 131E-177; 131E-182; Eff. October 1, 1981; Temporary Amendment Eff. July 15, 1983, for a Period of 118 Days, to Expire on November 10, 1983; Amended Eff. November 1, 1990: January 1, 1990; Temporary Amendment Eff. August 11, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. December 1, 1994; January 4, 1994; Temporary Amendment Eff. August 12, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Temporary Amendment Eff. January 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. February 16, 2004; Amended Eff. August 1, 2004; Temporary Amendment Eff. February 1, 2006; Amended Eff. November 1, 2006; Temporary Amendment Eff. January 1, 2008; Amended Eff. July 1, 2008.

10A NCAC 27G .0212 DISCLOSURE OF FINANCIAL INTEREST OF PROVIDERS OF MH/DD/SA SERVICES TO POTENTIAL CLIENTS

(a) When a provider refers a potential client to another provider in which the referring provider holds a financial interest, the referring provider shall disclose and document the disclosure of the financial interest to the potential client prior to or at the time of referral.
(b) A referring provider shall be considered to have a financial interest when the referring provider is an owner, principal, employee, a potential employee of the provider who is in the hiring process, immediate family member of an owner, principal employee or an affiliate of the provider that the potential client is referred to.
(c) For purposes of this Rule, a "referring provider entity" includes:
(1) an agency;
(2) an organization;
(3) a local management entity (LME) as set forth in G.S. 122C-3(20b); or
(4) an individual employee or contractor of an agency, organization or LME.
(d) For purposes of this Rule, "immediate family member of an employee" means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.
(e) For the purposes of this Rule, "affiliate" means any person or organization that controls or did control a provider agency or any person or organization who is controlled by a person or organization who controls or did control a provider agency. Two or more providers who are under common control are affiliates.

History Note: Authority G.S. 122C-3(20b); 122C-26(5)(e);

Eff. July 1, 2008.

10A NCAC 27G .0406 LETTER OF SUPPORT REQUIRED FOR LICENSURE OF RESIDENTIAL FACILITIES

(a) An applicant for licensure of a residential facility shall submit with the application a letter of support obtained from the local management entity (LME) in the catchment area where the residential facility is located. For purposes of this Rule, residential facility shall mean the same as defined in G.S. 122C-3(14)e, that is not subject to Certificate of Need requirements under Article 9 of Chapter 131E.
(b) An applicant shall submit a request for a letter of support in writing to the LME using a format provided by the Secretary. The request shall include the following information:
(1) type of license requested;
(2) the capacity of the facility;
(3) the service(s) to be provided;
(4) the location of the facility;
(5) a description of the program;
(6) the population to be served, indicating if this is a specialized or underserved population for the catchment area; and
(7) a designated point of contact including:
(A) name;
(B) position title;
(C) phone number;
(D) email address; and
(E) fax number.
(c) The LME shall determine the need for additional intensive residential treatment, psychiatric residential treatment facility (PRTF) and supervised living beds licensed pursuant to 10A NCAC 27G .1800; .1900 and .5600 by identifying whether there is a local need. If no local need is identified, the LME shall consult with the DMH/DD/SAS to determine whether there is a regional or statewide need for additional beds. The decision to issue a letter of support shall be based on whether a local, regional or statewide need is identified.
(d) The LME shall determine the need for additional residential treatment beds licensed pursuant to 10A NCAC 27G .1300 and .1700 in its catchment area prior to making a decision regarding support for these facilities. The decision to issue a letter of support shall be made by using the process stated as follows:
(1) the LME shall identify the current number of facilities in the catchment area licensed for the category requested, including the number of beds;
(2) the LME shall identify the average number of clients from the catchment area served in the previous year for each licensure category, regardless of where the service was delivered and multiply by 110 percent,
(3) the LME shall compare Subparagraphs (d)(1) and (d)(2) of this Rule. The difference shall be an indicator of additional beds needed or excess available in the catchment area; and
(4) if the facility plans to serve a specialized or underserved population, the LME shall

identify the local need for the service for that specialized or underserved population.

(e) The LME shall respond to the applicant's request within five business days. The response shall state whether there is a need for additional beds for the residential facility licensure category requested. The LME shall issue a letter of support to an applicant for licensure of a residential facility that meets the requirements as set forth in this Rule. The letter shall be issued by the LME using a format provided by the Secretary.

(f) The format shall contain information including the following:

- (1) identification information for the applicant and facility;
- (2) a statement of the statutory requirement as set forth in G.S. 122C-23.1 regarding issuance of a letter of support for residential facilities;
- (3) the number of existing beds in the catchment area for the category of licensure the applicant is requesting;
- (4) the number of additional beds needed in the catchment area for the licensure category the applicant is requesting; and
- (5) a statement of whether there is a need for additional beds for the licensure category the applicant is requesting.

(g) The request from the applicant and the letter issued by the LME, shall be forwarded to the DMH/DD/SAS and the DHSR.

History Note: Authority G.S. 122C-23.1; 122C-26(5); 143B-147(a)(2); Eff. July 1, 2008.

10A NCAC 27G .7001 SCOPE

(a) The rules in this Section govern the Local Management Entity responses to complaints received concerning the provision of public services pertaining to all provider categories in its catchment area.

(b) The rules in this Section also govern the procedures for Local Management Entities when investigating providers according to 10A NCAC 27G .0606.

History Note: Authority G.S. 122.C-112.1(a)(29); Eff. July 1, 2008.

10A NCAC 27G .7002 LOCAL MANAGEMENT ENTITY REQUIREMENTS CONCERNING COMPLAINTS

(a) A Local Management Entity shall respond to complaints received concerning the provision of public services pertaining to all provider categories, as defined in 10A NCAC 27G .0602(10), in its catchment area. This Rule does not govern complaints pertaining to utilization review decisions.

(b) The Local Management Entity shall:

- (1) establish a written notification procedure to inform each client of the complaint process concerning the provision of public services. The procedure shall include the provision of written information explaining the client's right to contact the Local Management Entity,

the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, the Division of Health Service Regulation, the Division of Social Services and The North Carolina Protection and Advocacy system known as Disability Rights North Carolina;

- (2) seek to resolve issues of concern through informal agreement between the client and the provider and document the attempts at resolution;
- (3) develop and implement written policies including those safeguards and procedures listed below:
 - (A) safeguards for protecting the identity of the complainant;
 - (B) safeguards for protecting the complainant and any staff person from harassment or retaliation;
 - (C) procedures to receive and track complaints;
 - (D) procedures to assist a client in initiating the complaint process;
 - (E) procedures for encouraging the complainant to communicate with the provider to allow for resolution of the issue;
 - (F) methods to be used in investigating a complaint;
 - (G) procedures for responding to complaints and options to be considered in resolving a complaint, including corrective action and referral to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, the Division of Health Service Regulation, the Division of Social Services or other agencies as required;
 - (H) procedures governing complaints and appeals made by a provider and a complainant;
 - (I) procedures for notifying the home Local Management Entity, if different, of the complaint and actions taken; and
 - (J) procedures for the Local Management Entity Director to convene an ad hoc appeal review committee to review client and provider appeals. The client rights committee, as defined in 10A NCAC 27G .0504, shall approve policy and procedures regarding the formation of the appeal review committee including assurance of the review committee's lack of conflict of interest, composition, disability affiliation(s) and other experience or qualifications relevant to the issue(s)

in the complaint. The committee's recommendations shall be by majority vote;

- (4) review the complaint and communicate to the complainant within five working days of receipt whether the complaint will be addressed informally or by conducting an investigation; and
- (5) notify the complainant in writing of the results of the informal process in a letter dated within 15 working days from receipt of the complaint. If the need for an investigation is revealed during the informal process, the Local Management Entity shall begin the investigation or refer the matter to the appropriate State or local government agency. If the complainant is not satisfied with the informal process, the complainant may file an appeal in writing to the Local Management Entity Director. The appeal must be received within 15 working days from the date of the informal resolution letter. The Local Management Entity Director shall:
 - (A) convene an appeal review committee according to Part (b)(3)(J) of this Rule; and
 - (B) issue an independent decision after reviewing the appeal review committee's recommendation. The decision shall be dated and mailed to the appellant by the Local Management Entity within 20 working days from receipt of the appeal.

(c) When the Local Management Entity refers the complaint to the State or local government agency responsible for the regulation and oversight of the provider, the Local Management Entity shall send a letter to the complainant informing him or her of the referral and the contact person at the agency where the referral was made. The Local Management Entity shall contact the State or local government agency where the referral was made within 80 working days of the date the Local Management Entity received the complaint to determine the actions the State or local government agency has taken in response to the complaint. The Local Management Entity shall communicate the status of the State or local government agency's response to the complainant and to the client's home Local Management Entity, if different.

History Note: Authority G.S. 122C-112.1(a)(29); Eff. July 1, 2008.

10A NCAC 27G .7003 REQUIREMENTS FOR LOCAL MANAGEMENT ENTITY COMPLAINT INVESTIGATIONS

(a) The Local Management Entity shall follow these procedures when investigating providers according to 10A NCAC 27G .0606:

- (1) The Local Management Entity shall make contact with the provider when investigating a complaint. The Local Management Entity shall state the purpose of the contact and inform the provider that the Local Management Entity is in receipt of a complaint concerning the provider and the general nature of the complaint.
- (2) The Local Management Entity shall complete the complaint investigation within 30 calendar days of the date of the receipt of the complaint.
- (3) Upon completion of the complaint investigation, the Local Management Entity shall submit a report of investigation findings to the complainant, the provider and client's home Local Management Entity, if different. The report shall be submitted within 15 calendar days of the date of completion of the investigation. The complaint investigation report shall include:
 - (A) statements of the allegations or complaints lodged;
 - (B) steps taken and information reviewed to reach conclusions about each allegation or complaint;
 - (C) conclusions reached regarding each allegation or complaint;
 - (D) citations of statutes and rules pertinent to each allegation or complaint; and
 - (E) required action regarding each allegation or complaint.
- (4) The provider shall submit a plan of correction to the Local Management Entity for each issue requiring correction identified in the report in a letter dated 15 calendar days from the date the provider receives the complaint investigation report.
- (5) The Local Management Entity shall review and respond in writing to the provider's plan of correction with approval or a description of additional required information. The Local Management Entity shall respond to the provider in a letter dated 15 calendar days of receipt of the plan of correction.
- (6) The provider shall implement a plan of correction within 60 calendar days from the date of the complaint investigation report.
- (7) The complainant or provider who disagrees with the results of the Local Management Entity actions may file an appeal regarding the investigation that is received by the Local Management Entity within 21 calendar days from the receipt of the Local Management Entity investigation report. The Local Management Entity shall provide notification of the appeal to the complainant or provider to inform them of this appeal. The appeal is

- limited to items identified in the original complaint record and the investigation report.
- (8) The Local Management Entity shall convene a review committee to review the appeal as specified in 10A NCAC 27G .7002(b)(3)(J).
 - (9) The Local Management Entity Director shall issue a written decision based on the appeal committee's decision to uphold or overturn the findings of the investigation. The decision letter shall be dated within 28 calendar days from receipt of the appeal.
 - (10) The Local Management Entity shall follow-up on issues requiring correction in the investigation report no later than 60 calendar days from the date the plan of correction is approved.
 - (11) When a complaint investigation involving a category B provider identifies an issue which if substantiated by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services could result in a revocation or suspension of the provider's funding pursuant to 10A NCAC 26C .0501 through .0504, the LME shall document the issue or issues creating the concern and notify the Division of Mental Health, Developmental Disabilities and Substance Abuse Services of the issue within 24 hours. The Division of Mental Health, Developmental Disabilities and Substance Abuse Services shall consult with the Local Management Entity and then shall determine which agency will lead the investigation and which agencies need to be involved. Separate complaint investigations shall not be performed.
 - (12) Local Management Entity shall provide information regarding the disposition of the complaint to the complainant and the client's home Local Management Entity, if different, as soon as the investigation is concluded.

(b) The Local Management Entity shall maintain copies of complaint investigations, resolutions and follow-up reports for providers for review by the Department of Health and Human Services.

History Note: Authority G.S. 122C-112.1(a)(29); Eff. July 1, 2008.

10A NCAC 27G .7004 APPEALS REGARDING UTILIZATION REVIEW DECISIONS FOR NON-MEDICAID SERVICES

- (a) This Rule governs appeals made to the Local Management Entity Director of utilization review decisions made by the Local Management Entity to deny, reduce, suspend or terminate a client's non-Medicaid funded services.
- (b) A client may appeal to the Local Management Entity Director the utilization review decision of a Local Management Entity to deny, reduce suspend, or terminate a non-Medicaid state funded service.

- (c) The Local Management Entity shall send to the client or legal representative(s) notification letters regarding utilization review decisions for non-Medicaid funded services. The letter shall be dated and mailed no later than the next work day following the review decision to deny, reduce, suspend, or terminate a non-Medicaid state funded service. The Local Management Entity shall separately notify the provider regarding the service authorization.
- (d) The letter shall include information regarding the reason for the decision and any available options or considerations while the appeal is under review.
- (e) An appeal regarding a non-Medicaid services utilization review decision must be filed only by a client or legal representative. The appeal must be received in writing by the Local Management Entity within 15 working days of the date of the notification letter. The Local Management Entity shall provide help to an appellant who requests assistance in filing the appeal.
- (f) The Local Management Entity shall acknowledge receipt of the appeal in writing in a letter to the appellant dated the next working day after receipt of the appeal.
- (g) The Local Management Entity may authorize interim services until the final review decision, as set forth in 10A NCAC 27I .0609, is reached.
- (h) The clinical review shall be conducted by an employee(s) or contractor(s) of the Local Management Entity not involved in the utilization review decision that is the subject of the appeal. The clinical reviewer(s) clinical credentials shall be at least comparable to those of the person who rendered the initial utilization review decision.
- (i) The clinical reviewer(s) shall complete a clinical review of the appeal and shall uphold or overturn the original decision.
- (j) The Local Management Entity shall notify the appellant in writing of the clinical review decision in a letter dated and mailed within seven working days from receipt of the appeal request and shall separately notify the provider regarding the service authorization.
- (k) If the clinical review overturns the initial utilization review decision, the decision letter shall state the date on which the denied service shall be authorized or the date on which the suspended, reduced or terminated service shall be reinstated.
- (l) In cases in which the decision upholds the previous decision, the Local Management Entity shall inform appellants in writing of the opportunity to appeal a decision regarding a non-Medicaid service to the State Division of Mental Health, Developmental Disabilities and Substance Abuse Services Non-Medicaid Appeals Panel according to 10A NCAC 27I .0600 and G.S. 143B-147(a)(9).

History Note: Authority G.S. 122C-112.1(a)(29); Eff. July 1, 2008.

10A NCAC 27I .0401 SCOPE

- (a) This Section governs the procedures for Local Management Entities (LME) to seek approval from the Secretary to directly deliver mental health, developmental disabilities and substance abuse services.
- (b) These Rules are applicable to all LMEs seeking approval to directly deliver any of the services set forth in the Division of

Medical Assistance (DMA) Clinical Policy Numbers 8A, 8C, 8D1 and 8D2 including subsequent amendments and editions, services under the CAP-MR/DD waiver as approved by the Centers for Medicare and Medicaid Services, and state funded only services. Copies of Clinical Policy Numbers 8A, 8C, 8D1 and 8D2 are available at no cost from the DMA website at <http://www.ncdhhs.gov/dma/>. Copies of the CAP-MR/DD waiver and the service definitions for state funded only services are available at no cost from the Division of Mental Health, Developmental Disabilities and Substance Abuse Services website at <http://www.ncdhhs.gov/dmhddsas/>.

History Note: Authority G.S. 122C-112.1(a)(26); Eff. July 1, 2008.

10A NCAC 27I .0402 DEFINITIONS

As used in the rules of this Section, the following terms have the meanings specified:

- (1) "Local Management Entity (LME)" means the same as defined in G.S. 122C-3(20b).
- (2) "Request for Application (RFA)" means a procurement strategy through which a LME solicits applications from public and private providers of mental health, developmental disabilities, and substance abuse services to provide one or more specific service(s) to clients in the LME's catchment area.
- (3) "Request for Information (RFI)" means a procurement strategy through which a LME solicits information from public and private providers of mental health, developmental disabilities and substance abuse services regarding the providers' interest in providing one or more specific services to clients in the LME's catchment area.
- (4) "Request for Proposal (RFP)" means a procurement strategy through which a LME solicits proposals from public and private providers of mental health, developmental disabilities and substance abuse services interested in providing one or more specific services to clients in the LME's catchment area.

History Note: Authority G.S. 122C-112.1(a)(26); Eff. July 1, 2008.

10A NCAC 27I .0403 INFORMATION INCLUDED IN REQUEST

A LME seeking approval from the Secretary to directly deliver services in accordance with the rules of this section shall submit the following information:

- (1) the name(s) of the service(s) for which approval is sought;
- (2) the period of time for which approval is sought;
- (3) the number of existing providers in the catchment area, by service, and the number of clients existing providers have the capacity to

- (4) serve, for any service for which approval is sought;
- (4) the estimated number of clients in the catchment area or relevant geographic territory, if the LME is requesting to deliver services in only a portion of the catchment area, in need of the service for which approval is sought and the estimated number of clients to be served directly by the LME and the estimated number of clients to be served by the providers;
- (5) information on the actions the LME has taken to seek to attract sufficient numbers of providers for the service for which approval is sought to the catchment area such that it is not necessary for the LME to directly deliver services, including copies of Request for Application (RFA), Request for Information (RFI) and Request for Proposals (RFP), copies of all applications, information and proposals received in response to such activities, and the number of providers attracted through such efforts;
- (6) a description of the LME's organizational structure detailing how service delivery staff and staff performing LME functions are separately managed;
- (7) a description of how clients will be given a choice of service provider for the service(s) for which approval is sought;
- (8) documentation that the LME Board has approved the LME's request to deliver services; and
- (9) documentation that the local Consumer and Family Advisory Committee (CFAC) has approved the LME's request to deliver services.

History Note: Authority G.S. 122C-112.1(a)(26); Eff. July 1, 2008.

10A NCAC 27I .0404 PROCESS

- (a) A LME seeking approval to directly deliver services shall submit a request in writing containing all required information at least 60 days in advance of the date on which the LME wishes to begin service delivery or the expiration date of a previous approval if the LME wishes to continue service delivery.
- (b) The request shall be submitted to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), 3001 Mail Service Center, Raleigh, NC 27699-3001.
- (c) The Director of DMH/DD/SAS or designee shall review the submitted documentation and request additional information, if necessary. If the service the LME wishes to deliver is a Medicaid payable service, DMH/DD/SAS shall also consult with the Division of Medical Assistance.
- (d) The Secretary shall make a decision regarding the request within 15 business days of receipt of the recommendation from the Director of DMH/DD/SAS or designee.

- (e) The Secretary's decision shall be based upon the following:
- (1) access;
 - (2) availability of qualified public or private providers;
 - (3) client choice; and
 - (4) fair competition.
- (f) The Director of DMH/DD/SAS or his designee shall communicate the Secretary's decision to the LME in writing within 15 business days of the decision.
- (g) In the event that a LME requests to deliver services on a temporary basis as a result of an unanticipated closure of a private or public provider in the LME catchment area, the LME may request an expedited review of its service delivery request.

History Note: Authority G.S. 122C-112.1(a)(26); Eff. July 1, 2008.

10A NCAC 27I .0501 SCOPE

- (a) The requirements of this Section shall govern the content, format, submission, review and approval of an LME business plan as set forth in G.S. 122C-115.2.
- (b) The LME business plan shall be in effect for at least three State fiscal years.

History Note: Authority G.S. 122C-112.1(a)(4)(5); 122C-115.2; Eff. July 1, 2008.

10A NCAC 27I .0502 LME BUSINESS PLAN CONTENT AND FORMAT REQUIREMENTS

- (a) The plan shall be divided into chapters that correspond to the administrative functions carried out by the LME. The chapters shall address administrative functions including:
- (1) governance or administration;
 - (2) provider relations;
 - (3) service management;
 - (4) quality management;
 - (5) consumer affairs; and
 - (6) business and information management.
- (b) A LME that has organized itself using different administrative function titles may use substitute title names and may expand or reduce the number of chapters. Each LME shall address all of the administrative functions as set forth in G.S. 122C-115.2(b) and 122C-115.4(b) unless a function has been removed pursuant to G.S. 122C-115.4(d).
- (c) The LME business plan shall be submitted in a template provided by the Secretary.
- (d) Each chapter shall address the following elements:
- (1) **Mission Statement.** The LME shall develop a mission statement to identify what the LME plans to accomplish for the administrative function addressed in each chapter.
 - (2) **Current Operations.** The LME shall address the organizational structure used to fulfill all activities associated with the administrative function addressed in each chapter. The current operations element shall include an organizational chart for the administrative

function addressed in each chapter of the LME business plan.

- (3) **Strategic Objective.** The LME shall provide a narrative identifying the planned improvements in operations for the administrative function addressed in each chapter for each of the next three State fiscal years.
- (4) **Resource Allocation.** The LME shall compare the current operational costs associated with the administrative function addressed in each chapter to the administrative allocation and provide an explanation for deviation from that norm.
- (5) **Business Rules.** The LME shall list the business rules for each administrative function that enhances or inhibits the efficiency and effectiveness of the organization.

History Note: Authority G.S. 122C-112.1(a)(4)(5); 122C-115.2; Eff. July 1, 2008.

10A NCAC 27I .0503 LME BUSINESS PLAN SIGNATURE REQUIREMENTS

- (a) Each LME business plan shall include the signatures of the individuals named as follows:
- (1) director of the area authority or county program;
 - (2) board chairman indicating approval by the area authority or county program board of directors;
 - (3) chairperson(s) of each board of county commissioners in the catchment area of the area authority or county programs; and
 - (4) chairperson of the area authority or county program consumer and family advisory committee (CFAC).
- (b) The signatures required in Paragraph (a) of this Rule may be either on the cover letter accompanying the LME business plan or via separate correspondence.

History Note: Authority G.S. 122C-112.1(a)(4)(5); 122C-115.2; Eff. July 1, 2008.

10A NCAC 27I .0504 PLAN OF CORRECTION

- (a) When a LME fails to meet the requirements as set forth in this Section, the LME shall submit a plan of correction to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services. The Department of Health and Human Services may withhold administrative funding from an LME that does not submit a plan of correction.
- (b) The Division of Mental Health, Developmental Disabilities and Substance Abuse Services shall conduct the following activities:
- (1) review the plan of correction;
 - (2) evaluate the information submitted; and

- (3) conduct follow-up onsite reviews when required to verify information submitted by a LME.

(c) The Division of Mental Health, Developmental Disabilities and Substance Abuse Services shall respond in writing to the LME's plan of correction within 30 calendar days of the receipt of the plan of correction with approval or denial of the plan of correction.

(d) The LME shall submit a revised plan of correction within 30 calendar days if the original plan of correction is denied. Upon receipt of the second plan of correction the Division of Mental Health, Developmental Disabilities and Substance Abuse Services shall conduct the following activities:

- (1) review the second plan of correction;
- (2) evaluate information; and
- (3) provide assistance needed to resolve outstanding issues so that the LME business plan may be certified as set forth in G.S. 122C-115.2(c).

(e) The Division of Mental Health, Developmental Disabilities and Substance Abuse Services shall share Plans of correction with the LME Board of Directors and the Consumer and Family Advocacy Committee.

History Note: Authority G.S. 122C-112.1(a)(4)(5); 122C-115.2; Eff. July 1, 2008.

TITLE 11 – DEPARTMENT OF INSURANCE

**11 NCAC 12 .0563 WEIGHTED AVERAGE:
MENTAL ILLNESS BENEFITS COVERAGE**

(a) The definitions contained in G.S. 58-3-220(h) are incorporated into this rule by reference.

(b) To exercise the option under G.S. 58-3-220(f), at the time of submission for approval of a group health benefit plan policy form, certificate, or rider containing mental illness benefits, the insurer shall include in the submission a certification of compliance with this rule signed by a qualified actuary, as defined in 11 NCAC 16 .0401(17). The certification of compliance shall include a statement that:

- (1) No more than 70 percent of the entire plan's actuarial value is contained in the selected physical illness and injury benefits that are subject to any limit.
- (2) The weighted average calculation was performed and calculated as prescribed in paragraph (c) of this rule.

(c) The weighted average calculation shall be performed on a benefit-by-benefit basis. The weighted average for a limit shall be calculated by summing the product of the expected value of each physical illness and injury benefit and its applicable limit, and then dividing that summation by the sum of the expected values of each physical illness and injury benefit.

(d) An insurer shall make the information, documentation, and actuarial calculations described in this rule available to the Commissioner upon request.

History Note: Authority G.S. 58-2-40; 58-3-220; Eff. July 1, 2008.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES**

**15A NCAC 02D .2602 GENERAL PROVISIONS ON
TEST METHODS AND PROCEDURES**

(a) The owner or operator of a source shall perform any required test at his own expense.

(b) The final test report shall describe the training and air testing experience of the person directing the air test.

(c) The owner or operator of the source shall arrange for air emission testing protocols to be provided to the Director prior to air pollution testing. Testing protocols are not required to be pre-approved by the Director prior to air pollution testing. The Director shall review air emission testing protocols for pre-approval prior to testing if requested by the owner or operator at least 45 days before conducting the test.

(d) Any person proposing to conduct an emissions test to demonstrate compliance with an applicable standard shall notify the Director at least 15 days before beginning the test so that the Director may at his option observe the test.

(e) For compliance determination, the owner and operator of the source shall provide:

- (1) sampling ports, pipes, lines, or appurtenances for the collection of samples and data required by the test procedure;
- (2) scaffolding and safe access to the sample and data collection locations; and
- (3) light, electricity, and other utilities required for sample and data collection.

(f) Unless otherwise specified in the applicable permit or during the course of the protocol review, the results of the tests shall be expressed in the same units as the emission limits given in the rule for which compliance is being determined.

(g) The owner or operator of the source shall arrange for controlling and measuring the production rates during the period of air testing. The owner or operator of the source shall ensure that the equipment or process being tested is operated at the production rate that best fulfills the purpose of the test. The individual conducting the emission test shall describe the procedures used to obtain accurate process data and include in the test report the average production rates determined during each testing period.

(h) The final air emission test report shall be submitted to the Director not later than 30 days after sample collection. The owner or operator may request an extension to submit the final test report. The Director shall approve an extension request if he finds that the extension request is a result of actions beyond the control of the owner or operator.

(i) The Director shall make the final determination regarding any testing procedure deviation and the validity of the compliance test. The Director may:

- (1) Allow deviations from a method specified under a rule in this Section if the owner or operator of the source being tested

demonstrates to the satisfaction of the Director that the specified method is inappropriate for the source being tested.

- (2) Prescribe alternate test procedures on an individual basis when he finds that the alternative method is necessary to secure more reliable test data.
(3) Prescribe or approve methods on an individual basis for sources or pollutants for which no test method is specified in this Section if the methods can be demonstrated to determine compliance of permitted emission sources or pollutants.

(j) The Director may authorize the Division of Air Quality to conduct independent tests of any source subject to a rule in this Subchapter to determine the compliance status of that source or to verify any test data submitted relating to that source. Any test conducted by the Division of Air Quality using the appropriate testing procedures described in this Section has precedence over all other tests.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); Eff. July 1, 2008.

15A NCAC 02D .2603 TESTING PROTOCOL

(a) Testing protocols shall include:

- (1) an introduction explaining the purpose of the proposed test, including identification of the regulations and permit requirements for which compliance is being demonstrated and the allowable emission limits;
(2) a description of the facility and the source to be tested;
(3) a description of the test procedures (sampling equipment, analytical procedures, sampling locations, reporting and data reduction requirements, and internal quality assurance and quality control activities);
(4) any modifications made to the test methods referenced in the protocol; and
(5) a description of how production or process data will be documented during testing.

(b) The tester shall not deviate from the protocol unless the tester documents the deviation.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); Eff. July 1, 2008.

15A NCAC 03J .0304 ELECTRICAL FISHING DEVICE

It is unlawful to take catfish by the use of a hand-operated device generating pulsating electrical current in the Cape Fear River except from 800 feet downstream of Lock and Dam No. 1 in Bladen County to where the Black River joins the Cape Fear River from July 1 through the last day of February.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 2008.

15A NCAC 03M .0202 SEASON, SIZE AND HARVEST LIMIT: INTERNAL COASTAL WATERS

(a) It is unlawful to possess striped bass from the coastal fishing waters of the Cape Fear River and its tributaries.

(b) The Fisheries Director may, by proclamation, impose any or all the following restrictions on the taking of striped bass in a commercial fishing operation or for recreational purposes in internal coastal waters during the period from October 1 through April 30:

- (1) Specify fishing days and times,
(2) Specify areas,
(3) Specify quantity, except possession for recreational purposes shall not exceed:
(A) more than three fish in any one day in the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201, and
(B) more than two fish in any one day in the joint and coastal fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
(4) Specify means/methods,
(5) Specify size, but the minimum size specified shall not be less than 18 inches total length, and
(6) Require submission of statistical and biological data.

Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1996; November 1, 1991; Temporary Amendment Eff. September 1, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2008; August 1, 2000.

15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS AND COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) To obtain any Marine Fisheries licenses, endorsements, commercial fishing vessel registrations except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the licensee on the application. If the licensee is not

- appearing before a license agent or a representative of the Division, the licensee's signature on the application shall be notarized;
- (2) Current picture identification of licensee or responsible party; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if purchased by mail, a copy thereof;
 - (3) Certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years, except Blanket Coastal Recreational Fishing Licenses;
 - (4) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
 - (5) Current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the master of that vessel shall also be specified. It is unlawful to fail to notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel;
 - (6) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement or commercial fishing vessel registration in a partnership name;
 - (7) For nonresidents, certification of the state of residency;
 - (8) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
 - (9) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
 - (10) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
 - (11) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the applicant shall provide valid certification as a North Carolina certified shellfish dealer;
 - (12) In addition, for the Ocean Fishing Pier Blanket Coastal Recreation Fishing License, a valid Ocean Fishing Pier License issued in the name of the applicant or copy thereof.
 - (13) In addition, for the For Hire Blanket Coastal Recreational Fishing License, the applicant shall provide:
 - (A) A valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers; and
 - (B) Valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.
- (b) License to Land Flounder from the Atlantic Ocean.
- (1) To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
 - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
 - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
 - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
 - (2) It is lawful for a person to hold Licenses to Land Flounder from the Atlantic Ocean equal to the number of vessels that he owns that individually met the eligibility requirements of Parts (b)(1)(A) and (b)(1)(B) of this Rule.
 - (3) The License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
 - (4) At the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.
 - (5) Applicants for a License to Land Flounder from the Atlantic Ocean shall complete an application form provided by the Division of Marine Fisheries and submit it to the Morehead City Office of the Division of Marine Fisheries for processing.
 - (6) It is unlawful for the holder of the License to Land Flounder from the Atlantic Ocean to fail to notify the Morehead Office of the Division of Marine Fisheries within five days of change as to the master identified on the license.

(7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30.

(c) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required information:

- (1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall be notarized on the application.
- (2) Current picture identification of tournament organizer; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport, or if purchased by mail, a copy thereof.

(d) To obtain a Land or Sell License, the following information is required for a proper application:

- (1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall be notarized on the application;
- (2) Current picture identification of responsible party or master; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport or if applying by mail, a copy thereof;
- (3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered.

(e) Proof of residency in North Carolina for:

- (1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall require a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and
 - (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident; or
 - (B) a notarized certification that the applicant was not required to file a

North Carolina State Income Tax Return for the previous calendar or tax year; or

(C) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(2) All other types of licenses:

- (A) North Carolina voter registration card; or
- (B) Current North Carolina Driver's License; or
- (C) Current North Carolina Certificate of Domicile; or
- (D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
- (E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(f) Applications submitted without complete and required information shall be deemed incomplete and shall not be considered further until resubmitted with all required information.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of address.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party or person holding a power of attorney;

- (1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement or commercial fishing vessel registration.
- (2) Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.
- (3) Current and valid state driver's license or state identification picture identification numbers and expiration dates shall be verified on mail license renewal applications or any other electronic license renewal process, otherwise

the licensee shall provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.

- (4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.
- (5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.
- (6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.
- (7) Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.

History Note: Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 113-174.4; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1997; March 1, 1994; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. April 1, 2001; Amended Eff. July 1, 2008; December 1, 2006; August 1, 2004; August 1, 2002.

15A NCAC 030 .0112 FOR HIRE COASTAL RECREATIONAL FISHING

(a) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel or a Division of Marine Fisheries For Hire Fishing Permit for the vessel as provided in 15A NCAC 030 .0503(k).

(b) It is unlawful for a For Hire Vessel operator to operate under the For Hire Blanket CRFL without:

- (1) Holding the USCG certification required in 15A NCAC 030 .0101(a)(13);
- (2) Having the For Hire Blanket CRFL for the vessel or copy thereof in possession and ready at hand for inspection; and
- (3) Having current picture identification in possession and ready at hand for inspection.

(c) It is unlawful for the holder of the For Hire Blanket CRFL to fail to participate in and provide accurate information as

requested by the Division for biological sampling and survey programs.

(d) It is unlawful to fail to display a current For Hire Blanket CRFL decal mounted on an exterior surface of the vessel so as to be visible when viewed from the port side while engaged in for-hire recreational fishing.

History Note: Authority G.S. 113-134; 113-174.3; 143B-289.52; Eff. July 1, 2008.

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application shall be notarized;
- (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, current North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities, the following documentation is required:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;

- (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.
- (6) Additional information as required for specific permits.
- (b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
- (1) Pound Net Permit;
 - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean; or
 - (3) Atlantic Ocean Striped Bass Commercial Gear Permit.
- (c) A permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
 - (2) Permit to Transplant Oysters from Seed Management Areas;
 - (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
 - (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
 - (5) Depuration Permit.
- (d) A permittee shall hold a valid:
- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
 - (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.
- (e) Aquaculture Operations/Collection Permits:
- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
 - (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.
- (f) Atlantic Ocean Striped Bass Commercial Gear Permit:
- (1) Application for an Atlantic Ocean Striped Bass Commercial Gear Permit must be made prior to November 1 of each year. A person shall declare one of the following gears for an initial Atlantic Ocean Striped Bass Commercial Gear Permit and at intervals of three consecutive license years thereafter:
 - (A) gill net;
 - (B) trawl; or
 - (C) beach seine.
- For the purpose of this Rule, a beach seine is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place. Gear declarations are binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.
- (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses or assignments held by the person.
 - (3) The annual, nonrefundable permit fee is ten dollars (\$10.00).
- (g) For Hire Fishing Permit:
- (1) The permittee shall hold a valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers;
 - (2) The permittee shall provide valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.
- (h) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.
- (i) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC 03J .0107, 03K .0103, 03K .0104, 03K .0107, 03K .0206, 03K .0303, 03K .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.
- (j) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:
- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
 - (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
 - (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.
- (k) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

(l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

(m) To renew a permit, the permittee shall file a certification that the information in the original application is still valid, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.

(n) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.

(o) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.

(p) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

(q) Permit applications shall be available at all Division Offices.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52; Temporary Adoption Eff. September 1, 2000; May 1, 2000; Eff. April 1, 2001; Temporary Amendment Eff. October 1, 2001; Amended Eff. July 1, 2008; December 1, 2007; September 1, 2005; April 1, 2003; August 1, 2002.

**15A NCAC 030 .0503 PERMIT CONDITIONS;
SPECIFIC**

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine

Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries' Morehead City Office.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

(1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:

- (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit but shall maintain a log furnished by the Division;
- (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) Maintain faxes and other related documentation in accordance with 15A NCAC 031 .0114;
- (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Striped Bass Dealer Permit:

- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
 - (iii) The joint and coastal fishing waters of the Central/Southern Management Area as

designated in 15A NCAC
03R .0201.

(B) No permittee shall possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.

(3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined in 15A NCAC 03J .0209.

(4) Atlantic Ocean Flounder Dealer Permit:

(A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.

(B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.

(c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

(1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.

(2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.

(3) It is unlawful to fail to empty the contents of each net at the end of each tow.

(4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.

(5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are set forth in 15A NCAC 03J .0107.

(f) Aquaculture Operations/Collection Permits:

(1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.

(2) It is unlawful:
(A) To take marine and estuarine resources from coastal fishing waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.

(B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.

(C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and

- estuarine resources collected under authority of this permit.
- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
 - (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
 - (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who will be acting under an Aquaculture Collection Permit at the time of application.
- (g) Scientific or Educational Collection Permit:
- (1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.
 - (2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.
 - (3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
 - (A) without the required license(s) for such sale;
 - (B) to anyone other than a licensed North Carolina fish dealer; and
 - (C) without authorization stated on the permit for such sale.
 - (4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who will be acting under Scientific or Educational Collection Permits at the time of application.
 - (5) The permittee or designees utilizing the permit shall call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.
- (h) Under Dock Oyster Culture Permit:
- (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
 - (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
- (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.
 - (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in coastal fishing waters shall result in permit revocation.
- (i) Atlantic Ocean Striped Bass Commercial Gear Permit:
- (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
 - (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.
- (j) Coastal Recreational Fishing License Exemption Permit:
- (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in coastal or joint fishing waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
 - (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
 - (A) Individuals with physical or mental limitations;
 - (B) Members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
 - (C) Individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal agencies, or instructors affiliated with educational institutions; and
 - (D) Disadvantaged youths.

- (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 030 .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:
 - (A) The name, date(s), time and physical location of the event;
 - (B) Documentation that substantiates local, state or federal involvement in the organized fishing event, if applicable;
 - (C) The cost or requirements, if any, for an individual to participate in the event; and
 - (D) An estimate of the number of participants.

*Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000;
Eff. April 1, 2001;
Amended Eff. July 1, 2008; January 1, 2008; September 1, 2005;
October 1, 2004; August 1, 2004; August 1, 2002.*

**15A NCAC 03Q .0107 SPECIAL REGULATIONS:
JOINT WATERS**

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 03Q .0106:

(1) Striped Bass

- (a) It is unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches long (total length).
- (b) It is unlawful to possess striped bass or striped bass hybrids between the lengths of 22 and 27 inches (total length) in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
- (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
- (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.
- (e) It is unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate, per person per day, regardless of the number of management areas fished.
- (f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
- (g) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as authorized by rules of the Marine Fisheries Commission.

(2) Lake Mattamuskeet:

(k) For Hire Fishing Permit:

- (1) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel as provided in 15A NCAC 030 .0112 or a Division of Marine Fisheries For Hire Fishing Permit for the vessel.
- (2) It is unlawful for a For Hire vessel operator to operate under the For Hire Fishing Permit without:
 - (A) Holding the USCG certification required in 15A NCAC 030 .0501(g)(1);
 - (B) Having the For Hire Fishing Permit for the vessel or copy thereof in possession and ready at hand for inspection;
 - (C) Having current picture identification in possession and ready at hand for inspection.
- (3) It is unlawful for the permittee to fail to notify the Division within five days of any changes to information provided on the permit.
- (4) It is unlawful to fail to display a current For Hire Fishing Permit decal mounted on an exterior surface of the vessel so as to be plainly visible when viewed from the port side while engaged in for-hire recreational fishing.
- (5) The For Hire Fishing Permit is valid for one year from the date of issuance.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52;

- (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
- (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any net, net stakes or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.
- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

History Note: Authority G.S. 113-132; 113-134; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1993; November 1, 1991; Temporary Amendment Eff. May 1, 2000; Amended Eff. July 1, 2008; September 1, 2005; April 1, 2001; August 1, 2000.

15A NCAC 10B .0125 RELEASE OF MUTE SWANS

It is unlawful for any individual to release any mute swan (*Cygnus olor*) into the public waters of North Carolina. Any individual who releases a mute swan to privately controlled waters must ensure that the animal has been pinioned. Individuals who currently possess or confine mute swans on their property must pinion all mute swans on their property by January 1, 2009. For the purposes of this Rule privately controlled waters is defined as: a body of water lying wholly upon a single tract of privately owned land or a body of water lying entirely within private property, even if that property is comprised of multiple tracts owned by one or multiple individuals. In addition, privately controlled waters are waters to which the public does not have access without permission of one or more of the private landowners surrounding the water(s).

History Note: Authority G.S. 113-292(d); Eff. July 1, 2008.

15A NCAC 10C .0107 SPECIAL REGULATIONS: JOINT WATERS

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 10C .0106:

- (1) Striped Bass

- (a) It is unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches long (total length).
- (b) It is unlawful to possess striped bass or striped bass hybrids between the lengths of 22 and 27 inches (total length) in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
- (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
- (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.
- (e) It is unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate, per person per day, regardless of the number of management areas fished.
- (f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
- (g) It is unlawful to engage in net fishing for striped bass or their hybrids in joint waters except as authorized by rules of the Marine Fisheries Commission.
- (2) Lake Mattamuskeet
 - (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
 - (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any net, net stakes or electrical fishing device within 800 feet of the dam at Lock No. 1 on the Cape Fear River.
- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

History Note: Authority G.S. 113-132; 113-134; 113-138; 113-292; Eff. January 1, 1977; Amended Eff. July 1, 2008; May 1, 2005; August 1, 2000; July 1, 1993; November 1, 1991; January 1, 1991; August 1, 1985.

15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. (3))
Hatchery Supported Trout Waters and undesignated waters	7 (exc. (3))	None (exc. (3))	All year, except March 1 to 7:00 a.m. on first Saturday in April (exc. (3))
Muskellunge	2 (exc. (21))	30 in. (exc. (21))	ALL YEAR
Pickerel: chain (Jack) and redfin	None	None	ALL YEAR
Walleye	8 (exc. (9))	None (exc. (9))	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. (excs. (8&10))	ALL YEAR (exc. (17))
Smallmouth and Spotted	5 (exc. (22))	12 in. (excs (8,10&22))	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	8	14 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	1	18 in. (exc. (19))	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1,2,5,6,11,&13)	16 in. (excs.1,2,5,6,11&13)	ALL YEAR (excs. 6,13&15)
Shad: (American and hickory)	10 aggregate (exc. (23))	None	ALL YEAR (exc. (18))
Kokanee Salmon	7	None	ALL YEAR
Crappie and sunfish	None (excs. 4,12&16)	None (exc. (12))	ALL YEAR (exc. (4))
NONGAME FISHES	None (excs. 14,20&24)	None (excs. 20&24)	ALL YEAR (exc. (7))

(b) Exceptions

(1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam and in John H. Kerr Reservoir the creel limit on striped bass and Morone hybrids is two in the aggregate and the minimum size limit is 26 inches from October 1 through May 31. From June 1 through September 30 the daily creel limit on striped bass and Morone hybrids is four in aggregate with no minimum size limit.

(2) In the Cape Fear River upstream of Buckhorn Dam and the Deep and Haw rivers to the first impoundment and in Gaston, Roanoke Rapids and B. Everett Jordan reservoirs the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches. In Lake Norman the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit is 16 inches from October 1 through May 31 and no

- minimum size limit from June 1 through September 30.
- (3) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, Linville River within Linville Gorge Wilderness Area (including tributaries), Catawba River from Muddy Creek to the City of Morganton water intake dam, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Lure the daily creel limit for trout is five fish and minimum size limit for trout is 15 inches.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Neuse, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95, subject to the exceptions listed in this Paragraph, the daily creel limit for striped bass and their hybrids is two fish in aggregate. The minimum length limit is 18 inches and no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches may be possessed. In these waters, the season for taking and possessing striped bass is closed from May 1 through September 30. In the inland fishing waters of the Cape Fear River and its tributaries, the season for taking and possessing striped bass is closed year-round. In the Pee Dee River and its tributaries from the South Carolina line upstream to Blewett Falls Dam, the season for taking and possessing striped bass and their hybrids is open year-round, the daily creel limit is three fish in aggregate and the minimum length limit is 18 inches.
- (6) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, Lake Raleigh in Wake County, Randleman Reservoir in Randolph and Guilford counties, Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95 (except Tar River Reservoir in Nash County), South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir, in Falls of the Neuse Reservoir to Lake Michie Dam on the Flat River and to the mouth of Cub Creek on Eno River, Cane Creek Lake in Union County, Lake Lure, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Lure the minimum size limit for smallmouth bass is 14 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed.
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in Lake Thom-A-Lex in Davidson County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (4), the daily creel limit of striped bass and their hybrids may include not

- more than two fish of smaller size than the minimum size limit.
- (12) A daily creel limit of 20 fish and a minimum size limit of 10 inches apply to crappie in B. Everett Jordan Reservoir. A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: all public waters west of Interstate 77, South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hyco, Lake Ramseur, Cane Creek Lake, Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County and Sutton Lake in New Hanover County. In Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (14) The daily creel limits for channel, white, and blue catfish in designated urban lakes are stated in 15A NCAC 10C .0401(e).
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
- (17) In Sutton Lake, no largemouth bass shall be retained from December 1 through March 31.
- (18) The season for taking American and hickory shad with bow nets is March 1 through April 30.
- (19) No red drum greater than 27 inches in length may be retained.
- (20) No person shall take or possess herring (alewife and blueback) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other inland fishing waters east of Interstate 95.
- (21) On the French Broad River between the Wilson Road bridge (SR 1540) at Pisgah Forest and the US 64 bridge near Etowah, a daily creel limit of one fish and a minimum size limit of 46 inches apply to muskellunge.
- (22) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) no smallmouth bass between 14 and 20 inches in length shall be possessed and only one smallmouth bass greater than 20 inches may be possessed in the daily creel limit. No minimum size limit shall apply to smallmouth bass less than 14 inches in length in this section of New River.
- (23) In the inland waters of Roanoke River and its tributaries, the daily creel limit for American and hickory shad is 10 in aggregate, only one of which may be an American shad.
- (24) In Lake Norman and Badin Lake the daily creel limit for blue catfish greater than 32 inches in length is one fish.

History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305;
Eff. February 1, 1976;
Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990;
Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990;
Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991;
Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992;

Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995;

Temporary Amendment Eff. November 1, 1998;

Amended Eff. April 1, 1999;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2001;

Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002 and approved by RRC in May 2001];

Amended Eff. August 1, 2002 (approved by RRC in April 2002);

Temporary Amendment Eff. June 1, 2003;

Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. July 1, 2008; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10F .0339 MCDOWELL COUNTY

(a) Regulated Areas. This Rule applies to the following waters located on Lake James in McDowell County, as designated by the United States Aids to Navigation system:

- (1) that area adjacent to the shoreline of the McDowell Wildlife Club property;
- (2) that area adjacent to the shoreline of the Marion Moose Club property;
- (3) that area known as Morgan Cove;
- (4) that area within 50 yards of the shoreline at the New Manna Baptist Youth Camp;
- (5) that area within 50 yards of the shoreline at Burnett's Landing;
- (6) the cove area adjacent to the State Park swimming area;
- (7) the cove area adjacent to the State Park picnic area and dock;
- (8) that area within 50 yards of camping areas in the Lake James State Park;
- (9) that area within 50 yards of the boat launching ramp at the Marion Lake Club;
- (10) that area within 50 yards in either direction from the marina docks in Plantation Point Cove;
- (11) that area of Goodman's Landing Cove within 50 yards of the swimming area and boat docks of Goodman's Campground;
- (12) that area beginning at the rock shoals located at Deerfield Campground downstream for a distance of approximately 200 yards;
- (13) that area along the shoreline of the development known as Lakeview Pointe;
- (14) that area at the Waterylyn Subdivision Cove;
- (15) that area along the shoreline of the Lakeview Shoes Subdivision;
- (16) that area at the North Fork of the Catawba River where it enters Lake James; and
- (17) that area within 50 yards of the Bear Creek Marina.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Restricted Swimming Areas. No person operating or responsible for the operation of any vessel, surfboard or waterskis shall permit the same to enter any marked swimming area located on the regulated area.

(d) Placement and Maintenance of Markers. The Board of Commissioners of McDowell County is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15;

Eff. August 23, 1981;

Amended Eff. February 1, 1996; December 1, 1993; March 1, 1992; April 1, 1991;

Temporary Amendment Eff. February 1, 1998;

Amended Eff. July 1, 1998;

Temporary Amendment Eff. February 4, 2000; April 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. May 1, 2001;

Amended Eff. July 1, 2008; July 18, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0205 FILING DEADLINE/APP SEEKING QUAL/EMP/ANOTHER

(a) Any application made pursuant to G.S. 87-10 for a new applicant seeking qualifications by employment of a person who has already passed an examination shall be completed and filed at least 30 days before any regular or special meeting of the Board. At such meeting, the Board shall consider the application. The regular meetings of the Board are in January, April, July and October of each year.

(b) The qualifier for the applicant shall be a responsible managing employee, officer or member of the personnel of the applicant, as described in G.S. 87-10 and Rule .0408(a) of this Chapter. A person may serve as a qualifier for no more than two licenses. A person may not serve as a qualifier under this Rule if such person has not served as a qualifier for a license of the appropriate classification for more than two years prior to the filing of the application found to be in complete order. Subject to the provisions of G.S. 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as a qualifier for a licensee which has been disciplined by the Board.

(c) The holder of a general contractors license shall notify the Board immediately in writing as to the termination date in the event the qualifying individual or individuals cease to be connected with the licensee. After such notice is filed with the Board, or the Board determines that the qualifying individual or individuals are no longer connected with the licensee, the license

shall remain in full force and effect for a period of 90 days from the termination date, and then be cancelled, as provided by G.S. 87-10. Holders of a general contractors license are entitled to reexamination or replacement of the qualifying individual's credentials in accordance with G.S. 87-10, but may not engage in the practice of general contracting for any project whose cost exceeds the monetary threshold set forth in G.S. 87-1 after the license has been cancelled, until another qualifying individual has passed a required examination.

History Note: Authority G.S. 87-1; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. July 1, 2008; April 1, 2006; August 1, 2000; June 1, 1994; June 1, 1992; May 1, 1989; July 1, 1987.

21 NCAC 12 .0211 MULTIUNIT BUILDINGS

For the purposes of determining whether or not the cost of the undertaking is thirty thousand dollars (\$30,000) or more under G.S. 87-1, and whether or not the value of any single project falls within the license limitations established by G.S. 87-10(a), if a project consists of the construction or alteration of one or more buildings comprised of two or more units within each building, including apartments, condominiums, and townhomes, then all such buildings shall be considered in determining the cost of the undertaking under G.S. 87-1 and the value of the project under G.S. 87-10(a).

History Note: Authority G.S. 87-1; 87-10; Eff. Pending Legislative Review.

21 NCAC 12 .0819 GRANTING OR DENYING HEARING REQUEST

- (a) The Board shall decide whether to grant a request for a hearing.
- (b) The denial of request for a hearing shall be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the Board to deny the request.
- (c) Approval of a request for a hearing shall be signified by the issuing of a notice as required by G.S. 150B-38(b).

History Note: Authority G.S. 87-11(b); 150B-38; Eff. September 1, 1988; Amended Eff. July 1, 2008.

21 NCAC 12 .0830 PROPOSALS FOR DECISIONS

- (a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the Rules of the Office of Administrative Hearings, 26 NCAC 03 .0127. Any party may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be received within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.
- (b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings

on evidence, or any other matter, must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within ten days of the receipt of the proposal for decision. The written exceptions shall bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of case).

- (c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.
- (d) Upon receipt of request for further oral argument, Board staff shall issue notice to all parties designating time and place for such oral argument.
- (e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days of the next regularly scheduled board meeting following receipt of the written exceptions.

History Note: Authority G.S. 87-11(b); 150B-38; 150B-40; Eff. September 1, 1988; Amended Eff. July 1, 2008.

21 NCAC 12 .0901 DEFINITIONS

The following definitions apply to the Board's administration of the Homeowners Recovery Fund established pursuant to Article 1A, Chapter 87 of the General Statutes:

- (1) "Constructing or altering" includes contracting for the construction or alteration of a single-family residential dwelling unit.
- (2) "Dishonest conduct" does not include a mere breach of a contract.
- (3) "Incompetent conduct" is conduct which demonstrates a lack of ability or fitness to discharge a duty associated with undertaking to construct or alter a single-family residential dwelling or the supervision of such construction or alteration.
- (4) "Owner or former owner" includes a person who contracted with a general contractor for the construction or purchase of a single-family residential dwelling unit. "Owner or former owner" does not include a person who is a spouse, child, parent, grandparent, sibling, partner, associate, officer, or employee of a general contractor whose conduct caused a reimbursable loss. In addition, the term does not include general contractors or any financial or lending institution, or any owner or former owner of a single-family residential dwelling unit which has been the subject of an award from the Homeowners Recovery Fund

resulting from the same dishonest or incompetent conduct. "Owner or former owner" does not include the owner of real property who constructed, altered, or contracted for construction or alteration of a single-family residential dwelling unit without intending to occupy the single-family residential dwelling unit.

- (5) "Substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof whereupon the owner can use the same for its intended use.
- (6) "Separately owned residence" means a building whose construction is governed by Volume VII of the North Carolina State Building Code.

History Note: Authority G.S. 87-15.6; Eff. January 4, 1993; Amended Eff. July 1, 2008; April 1, 2007; April 1, 2001; August 1, 2000; August 1, 1998.

CHAPTER 54 – PSYCHOLOGY BOARD

21 NCAC 54 .1702 FOREIGN DEGREE APPLICATION POLICY

(a) Applicants applying for licensure on the basis of a foreign degree shall provide documentation, in addition to the information required in 21 NCAC 54 .1701, which establishes the following:

- (1) the existence of the degree granting institution;
- (2) the authenticity of the degree, transcripts, and any supporting documents;
- (3) the equivalence of the degree in terms of level of training, content of curriculum, and course credits; and
- (4) the equivalence of any supervised experience obtained in the foreign country.

Documentation shall be in the form of a course-by-course evaluation of credentials submitted directly to the Board from an evaluation service that is a member of the National Association of Credentials Evaluation Services, Inc.

(b) Except as described in Paragraph (c) of this Rule, only official documents shall be submitted in support of the application and shall be received directly from the institution(s) or individual(s) involved.

(c) When an official document cannot be provided directly by the institution or individual involved, an original document possessed by the applicant may be reviewed and copied by a Board member or designee.

(d) Any document which is in a language other than English shall be accompanied by a translation with notarized verification of the translation's accuracy and completeness. This translation shall be completed by an individual, other than the applicant, who is approved by the Board and demonstrates no conflict of

interest. Such individuals include college or university language faculty, a translation service, or an American consul.

(e) An applicant's references shall include individuals from member jurisdictions of the Association of State and Provincial Psychology Boards, including a doctoral level psychologist familiar with the applicant's professional practice of psychology.

History Note: Authority G.S. 90-270.9; 90-270.11(c); Legislative Objection Lodged Eff. August 26, 1982; Eff. September 1, 1982; Curative Amended Eff. September 28, 1982; Amended Eff. July 1, 2008; October 1, 1995; March 1, 1989; June 1, 1988.

CHAPTER 57 – APPRAISAL BOARD

21 NCAC 57A .0101 FORM

A person who wishes to file an application for a real estate trainee registration or an appraiser certificate may obtain the required form upon request to the Board. The form calls for information such as the applicant's name and address, the applicant's social security number, a passport size photograph of the applicant, places of residence and employment, education, and such other information as may be necessary to identify the applicant and determine his qualifications and fitness for registration or certification.

History Note: Authority G.S. 93E-1-6(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; April 1, 1999.

21 NCAC 57A .0102 FILING AND FEES

(a) Each application for registration or certification shall be accompanied by the required application fee. An additional fee may be charged to defray the cost of any competency examination administered by a private testing service. This additional fee shall be no more than the fee set by the private testing agency. The Board may reject and return to the applicant any application which is incomplete or not accompanied by the required fee or fees. Application fees accompanying complete applications are not refundable.

(b) The application fee shall be that prescribed in G.S. 93E-1-6(b).

(c) Payment of application fees shall be made by certified check, bank check or money order payable to the North Carolina Appraisal Board.

History Note: Authority G. S. 93E-1-6; 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; August 1, 2002; April 1, 1999.

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

(a) Applicants for trainee registration and for certification as a certified real estate appraiser must satisfy the qualification

requirements stated in G.S. 93E-1-6 and in this Section. All precertification education required by 21 NCAC 57B .0101, .0102, and .0103 must have been obtained in a classroom setting. No credit will be given for these courses taken by any other method, such as correspondence school courses or computer based courses.

(b) Applicants for trainee registration shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education as set forth in 21 NCAC 57B .0101 or education found by the Board to be equivalent to such courses. Applicants for trainee registration must possess a high school diploma or a GED.

(c) Applicants for certification as a certified residential real estate appraiser shall have completed, within the five-year period immediately preceding the date application is made, 200 hours of education as set forth in 21 NCAC 57B .0102 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified residential real estate appraiser must hold an Associate's degree, or higher, from an accredited college, junior college, community college, or university. In lieu of the Associate's degree requirements, applicants shall have successfully completed 21 semester credit hours in the following collegiate subject matter courses from an accredited college or university: English composition, principles of economics (macro or micro), finance, algebra, geometry or higher mathematics, statistics, introduction of computers, including word processing and spreadsheets, and business or real estate law. Applicants shall have obtained at least 2,500 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two calendar years. Applicants must have been engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

(d) Applicants for certification as a certified general real estate appraiser shall have completed 300 hours of education as set forth in 21 NCAC 57B .0103 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified general estate appraiser must hold a Bachelor's, or higher, from an accredited college or university. In lieu of the Bachelor's degree requirements, applicants shall have successfully completed 30 semester credit hours in the following collegiate subject matter courses from an accredited college university: English composition, micro economics, macro economics, finance, algebra, geometry or higher mathematics, statistics, introduction of computers, including word processing and spreadsheets, business or real estate law, and two elective courses in accounting, geography, business management or real estate. Applicants shall have obtained at least 3,000 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate. Applicants must have been engaged in real estate appraising for at least two and one-half calendar years prior to the date application is made. At least 50 percent of the non-residential appraisal experience must have been of

special use properties such as schools, churches, or hospitals in which the income approach is not applicable or of improved properties in which the income approach was utilized in the appraisal process.

(e) Applicants for certification who are currently registered trainees must submit a complete copy of their complete appraisal log. Applicants for certification who are currently licensed or certified appraisers must submit an appraisal log showing that they possess the requisite amount and length of experience as set forth in Paragraphs (c) and (d) of this Rule. All applicants shall provide to the Board copies of appraisal reports in support of experience credit. In order for an appraisal to be given experience credit, it must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and with any applicable state statutes or rules.

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

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

(h) An applicant may request that his or her application be withdrawn at any time before final action is taken by the Appraisal Board on the application.

(i) If an application is withdrawn, cancelled or denied, the applicant must wait six months from the date the application is withdrawn, cancelled or denied to file a new application.

(j) If an applicant has a current open complaint before the North Carolina Appraisal Board or an appraiser licensing board from any other state, or if the applicant has pending criminal charges in this or any state, the application shall be accepted but no further action shall be taken on the application until the complaint or criminal charges are resolved. For the purposes of this Section, criminal charges do not include speeding tickets or traffic infractions.

History Note: Authority G.S. 93E-1-6(a); 93E-1-10;

Eff. July 1, 1994;

Amended Eff. September 1, 2008; January 1, 2008; March 1, 2007; April 1, 2006, July 1, 2005; August 1, 2002; April 1, 1999.

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

(a) Expired registrations, licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Board of the renewal and late filing fees as set out in G.S. 93E-1-7 and provision of proof of having obtained the continuing education that would have been required

had the registration, license or certificate been continuously renewed.

(b) If a registration or certificate has been expired for more than 12 months, but less than 24 months, an applicant may apply for reinstatement. In order to be considered for reinstatement, the applicant must pay the filing fee as set out in G.S. 93E-1-7 and include in the application proof that the applicant has obtained the continuing education that would have been required had the registration or certificate been continuously renewed. In addition, the Board may consider whether the applicant for reinstatement has any prior or current disciplinary actions, and may examine the applicant's fitness for registration or certification before granting the request for reinstatement.

(c) An application for reinstatement shall not be granted if the registration or certificate has been expired for more than 24 months.

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

(e) A trainee or appraiser whose registration or certification has expired and who is returning from active military duty may renew his or her registration or certificate when the trainee or appraiser returns from active duty without payment of a late filing fee as long as the trainee or certificate holder renews the registration or certificate within 180 days of when the trainee or certificate holder returns from active duty.

(f) A license holder whose license has been expired for more than 12 months may not apply for reinstatement.

History Note Authority G.S. 93E-1-6(b); 93E-1-7; 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; March 1, 2007; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0210 TEMPORARY PRACTICE

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

(b) Upon filing a completed application accompanied by the fee prescribed in G.S. 93E-1-9(c) and otherwise satisfying the Appraisal Board as to his or her qualifications and eligibility for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. The fee must be paid by money order, certified check or cashier's check. The Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other state, and may consider all other information outlined in Rule .0202 of this Section.

(c) Privileges granted under the provisions of this Rule shall expire upon the expiration date set forth in the temporary practice permit. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the

permittee's attention to the appraisal assignment, additional time is needed to complete the assignment, the Board shall extend the temporary practice privileges granted under the permittee's temporary practice permit to afford him additional time to complete the appraisal assignment. Such request for extension must be received before the original temporary practice permit expires or it shall not be granted.

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

(e) A trainee may apply for a temporary practice permit and the provisions of Sections (a), (b), (c) and (d) above apply. The supervising appraiser for the trainee must be a North Carolina licensed or certified appraiser. If not, the supervising appraiser must be licensed or certified as a real estate appraiser in another state and must also receive a temporary practice permit for the same assignment as the trainee. The term "trainee" shall include apprentices and others who are licensed and regulated by a state agency to perform real estate appraisals under the supervision of a licensed or certified appraiser. The supervisor is not required to comply with the provisions of 21 NCAC 57A .0407 in order to supervise a trainee who is appraising in this state pursuant to the temporary practice permit. The supervisor shall actively and personally supervise the trainee on the assignment, and must accompany the trainee on all inspections of property located in this state for the assignment.

(f) An applicant for a temporary practice permit shall not begin performing any appraisal work in this State until the temporary practice permit has been issued by the Board. If an applicant does begin work before the permit is issued, the temporary practice permit shall be denied.

History Note: Authority G.S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a); Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; March 1, 2007; July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999.

21 NCAC 57A .0301 TIME AND PLACE

(a) Applicants who have completed the education and experience requirements as set forth in 21 NCAC 57A .0201 shall be issued an examination approval form. The examination approval form is valid for three attempts at the examination or for one year from date of issuance, whichever comes first.

(b) Examinations for real estate trainee registrations and appraiser certificates shall be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants for the examination shall be scheduled for examination based on their successful completion of appraiser educational qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. Violation of examination procedures and instructions is grounds for denial, suspension or revocation of a registration or certificate.

(c) Examination results are valid for 24 months from the date the examination is successfully completed.

History Note: Authority G.S. 93E-1-6(c); 93E-1-10 Eff. July 1, 1994

Amended Eff. September 1, 2008; January 1, 2008; April 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0302 SUBJECT MATTER AND PASSING SCORES

(a) The examination for trainee registration and for certification as a certified residential real estate appraiser shall test applicants on the following subject areas:

- (1) Influences on Real Estate Value;
- (2) Legal Considerations in Appraisal;
- (3) Types of Value;
- (4) Economic Principles;
- (5) Real Estate Markets and Analysis;
- (6) Valuation Process;
- (7) Property Description;
- (8) Highest and Best Use Analysis;
- (9) Appraisal Statistical Concepts;
- (10) Sales Comparison approach;
- (11) Site Value;
- (12) Cost Approach;
- (13) Income Approach (Gross Rent Multipliers, Estimation of Income and Expenses, Operating Expense ratios);
- (14) Valuation of Partial Interests; and
- (15) Appraisal Standards and Ethics.

(b) In addition to the subject areas listed in Paragraph (a) of this Rule, the examination for certification as a certified general real estate appraiser shall test applicants on the following subject areas:

- (1) Direct Capitalization;
- (2) Cash Flow Estimates;
- (3) Measures of Cash Flow; and
- (4) Discounted Cash Flow Analysis.

(c) The testing service shall inform applicants whether they have passed the examination, and shall inform them of their actual score only if they fail the examination.

History Note: Authority G.S. 93E-1-6(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; March 1, 2007; April 1, 1999.

21 NCAC 57A .0303 RE-EXAMINATION

(a) Applicants for a trainee registration or an appraiser certificate who fail to pass or appear for any examination for which the applicant has been scheduled by the Board-approved private testing service, may schedule a subsequent examination and shall pay the prescribed examination testing fees to the Board-approved private testing service.

(b) Applicants may take the examination no more than three times per application. If an applicant fails the examination, the applicant must wait a minimum of 30 days before retaking the examination. If the applicant does not pass the examination by the third attempt at the examination or within one year of the date of issuance of the examination approval form, the application is cancelled. If the application is cancelled, the applicant must wait six months before filing a new application for registration or certification and must meet all the qualification requirements for original approval.

History Note: Authority G.S. 93E-1-6; 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0405 APPRAISAL REPORTS

(a) Each written appraisal report prepared by or under the supervision of a licensed or certified real estate appraiser shall bear the signature of the licensed or certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "licensed residential real estate appraiser," "certified residential real estate appraiser," or "certified general real estate appraiser," as applicable. Each such appraisal report shall also indicate whether or not the licensed or certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance. Appraisers shall personally affix their signature to their appraisal reports and shall not allow any other person or entity to affix their signature. Trainees are not required to affix their signatures to appraisal reports, but if they do so, they must personally affix their signature and shall not allow any other person or entity to affix their signature. Trainees and appraisers shall sign their reports with the same name and in the same manner as it printed on their pocket cards.

(b) Every licensed and certified real estate appraiser shall affix or stamp to all appraisal reports a seal which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "licensed residential real estate appraiser", a "certified residential real estate appraiser", or as a "certified general real estate appraiser", as applicable. The seal must be legible, must conform to the seal authorized by the Board at time of initial licensure or certification, and must be a minimum of 1 inch in diameter. Appraisers shall personally affix their seal to their appraisal reports and shall not allow any other person or entity to affix their seal. Registered trainees are prohibited from using a seal on appraisal reports.

(c) A licensed or certified real estate appraiser who signs an appraisal report prepared by another person, in any capacity, is responsible for the content and conclusions of the report.

(d) A written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions as defined in 12 U.S.C. 3350(4).

(e) Appraisers shall keep a log of all appraisals performed. The log shall, contain the appraiser's license or certificate number, the street address of the subject property, the date the report was signed, the name of anyone assisting in the preparation of the report and the name of the client. These logs shall be updated at least every 30 days.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2003; August 1, 2002; April 1, 1999.

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

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

- (1) has been licensed or certified for at least two years;
- (2) has no more than one trainee working under his or her supervision at any one time, if the supervisor is a licensed real estate appraiser. A certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50 percent of the required appraisal experience to upgrade, a certified residential appraiser may add another trainee. At no time may a certified residential appraiser have more than three trainees working under his or her supervision. A certified general may have three trainees working under his or her supervision. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee. The supervisor must also inform the Board when a trainee is no longer working under his or her supervision;
- (3) actively and personally supervises the trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized, and assures that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) prepares and furnishes to each trainee, whose services were utilized in connection with the appraisal, a report describing the nature and extent of assistance rendered by the trainee in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal within 30 days of the date the appraisal report was signed. In addition, the supervisor must make available to the trainee a copy of every appraisal report where the trainee performs more than 75 percent of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or

certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means an active suspension or a revocation.

- (b) Active and personal supervision includes direction, guidance, and support from the supervisor. The supervising appraiser shall have input into and full knowledge of the appraisal report prior to its completion, and shall make any necessary and appropriate changes to the report before it is transmitted to the client. In addition, the supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments for which the trainee will perform more than 75 percent of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location.
- (c) The trainee must maintain a log on a form prescribed by the Board that includes each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the points claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject. The log must show all appraisals performed by the trainee and must be updated at least every 30 days.
- (d) An appraiser who wishes to supervise a trainee must attend an education program offered by the Appraisal Board regarding the role of a supervisor either before such supervision begins, or within 90 days after such supervision begins. If the supervisor does not take the class within 90 days after the supervision begins, the trainee may no longer work under the supervision of that supervisor until the class is taken, and the supervisor must take the course before he can begin supervising a trainee.
- (e) Trainees must assure that the supervisor has completed and sent the Supervisor Declaration Form to the Appraisal Board on or before the day the trainee begins assisting the supervising appraiser. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Paragraph.
- (f) Supervising appraisers shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

History Note: Authority G.S. 93E-1.6.1; 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57B .0101 REGISTERED TRAINEE COURSE REQUIREMENTS

(a) Each applicant for registration as a trainee shall complete a minimum of 90 hours of precertification education, consisting of the following;

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 15 hours in Residential Market Analysis and Highest and Best Use; and
- (4) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).

(b) Credit for these courses must be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with the rules in this Subchapter. These courses must be completed within the five-year period immediately preceding the date when application for registration is made to the Board.

(c) Basic Appraisal Principles shall be a prerequisite to taking Basic Appraisal Procedures, and Basic Appraisal Procedures shall be a prerequisite to taking Residential Market Analysis and Highest and Best Use. The 15 hour USPAP course may be taken any time after the successful completion of Basic Appraisal Procedures.

History Note: Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; July 1, 2005; July 1, 2003; August 1, 2002.

21 NCAC 57B .0102 CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) Each applicant for certification as a certified residential real estate appraiser shall complete a minimum of 200 hours of precertification education, consisting of the following:

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 15 hours in Residential Market Analysis and Highest and Best Use;
- (4) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 30 Hours in Residential Sales Comparison and Income Approaches;
- (6) A minimum of 15 hours in Residential Report Writing and Case Studies; and
- (7) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).
- (8) A minimum of 15 hours in Statistics, Modeling and Finance;
- (9) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (10) A minimum of 20 hours of appraisal subject matter electives.

Credit for these courses must be earned from a Board-approved course sponsor or school.

(b) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed by the Board as a

licensed residential real estate appraiser must have completed all required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is currently registered by the Board as a trainee or who is currently licensed by the Board as a licensed residential real estate appraiser must have completed all courses required beyond those required for his current registration, licensure or certification within the five-year period immediately preceding the date application is made to the Board.

History Note: Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; March 1, 2007; July 1, 2003; August 1, 2002.

21 NCAC 57B .0103 CERTIFIED GENERAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) An applicant for certification as a certified general real estate appraiser shall complete the following precertification courses;

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 30 hours in General Appraiser Market Analysis and Highest and Best Use;
- (4) A minimum of 15 hours in Statistics, Modeling and Finance;
- (5) A minimum of 30 hours in General Appraiser Sales Comparison Approach;
- (6) A minimum of 30 hours in General Appraiser Site Valuation and Cost Approach;
- (7) A minimum of 60 hours in General Appraiser Income Approach;
- (8) A minimum of 30 hours in General Appraiser Report Writing and Case Studies;
- (9) A minimum of 30 hours of appraisal subject matter electives; and
- (10) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).

Credit for all courses must be earned from a Board-approved course sponsor or school, and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter.

(b) An applicant who is currently registered with the Board as a trainee may satisfy the educational requirements to become a general real estate appraiser by completing the following education:

- (1) A minimum of 30 hours in General Appraiser Market Analysis and Highest and Best Use;
- (2) A minimum of 15 hours in Statistics, Modeling and Finance;
- (3) A minimum of 30 hours in General Appraiser Sales Comparison Approach;
- (4) A minimum of 30 hours in General Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 60 hours in General Appraiser Income Approach; and

- (6) A minimum of 30 hours in General Appraiser Report Writing and Case Studies; and
- (7) A minimum of 30 hours of appraisal subject matter electives.

(c) An applicant who is currently licensed with the Board as a licensed residential real estate appraiser may satisfy the educational requirements to become a general real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in General Appraiser Market Analysis and Highest and Best Use;
- (2) A minimum of 15 hours in Statistics, Modeling and Finance;
- (3) A minimum of 15 hours in General Appraiser Sales Comparison Approach;
- (4) A minimum of 15 hours in General Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 45 hours in General Appraiser Income Approach;
- (6) A minimum of 15 hours in General Appraiser Report Writing and Case Studies; and
- (7) A minimum of 30 hours of appraisal subject matter electives.

(d) An applicant who is currently certified with the Board as a certified residential real estate appraiser may satisfy the educational requirements to become a general real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in General Appraiser Market Analysis and Highest and Best Use;
- (2) A minimum of 15 hours in General Appraiser Sales Comparison Approach;
- (3) A minimum of 15 hours in General Appraiser Site Valuation and Cost Approach;
- (4) A minimum of 45 hours in General Appraiser Income Approach; and
- (5) A minimum of 10 hours in General Appraiser Report Writing and Case Studies.

(e) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed or certified by the Board as a licensed residential or certified residential real estate appraiser must have completed all the required courses within the five-year period immediately preceding the date application is made to the Board.

(f) An applicant who is currently registered by the Board as a trainee or who is not currently licensed or certified by the Board as a licensed residential or certified residential real estate appraiser must have completed all courses required beyond those required for his current registration, licensure or certification within the five-year period immediately preceding the date application is made to the Board.

History Note: Authority G.S. 93E-1-6(c); 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; March 1, 2007; July 1, 2003; August 1, 2002.

21 NCAC 57B .0201 PURPOSE AND APPLICABILITY
This Section establishes criteria for approval and operational requirements for all real estate appraisal precertification course

sponsors and schools. These standards shall be satisfied in order for course sponsors and schools to obtain and maintain approval of their courses for appraiser precertification education credit. Schools and course sponsors shall obtain course approval from the Board prior to conducting precertification courses and prior to advertising or otherwise representing that a course is or may be approved for credit in North Carolina.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008.

21 NCAC 57B .0202 APPLICATION FOR APPROVAL
Schools and other course sponsors seeking approval to conduct real estate appraisal precertification courses shall make written application to the Board.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008.

21 NCAC 57B .0203 CRITERIA FOR APPROVAL
Approval to conduct real estate appraisal precertification courses shall be granted to a school or course sponsor when it is shown to the satisfaction of the Board that:

- (1) the school or course sponsor has submitted all information required by the Board.
- (2) the school or course sponsor complies with the standards described in this Section; and
- (3) the courses to be conducted comply with the standards described in Section .0300 of this Subchapter.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008.

21 NCAC 57B .0207 ADMINISTRATION
One person shall be designated as the Director for each approved school or course sponsor and shall be responsible for administrative matters such as program development, scheduling of classes, advertising, maintenance of facilities and equipment, record keeping and general supervision of the instruction program. The director shall ensure that the policies and general operations of the school or course sponsor comply with the provisions of Sections .0200 and .0300 of this Subchapter. The Director shall possess a good character and reputation and must also meet the fitness standards for applicants for trainee registration or appraiser certification. The Director shall:

- (1) have a baccalaureate or higher degree in the field of education; or
- (2) have at least two years full time experience within the past 10 years as an instructor or school administrator; or
- (3) meet the minimum appraisal education and experience qualifications listed in 21 NCAC 57B .0306 to teach either the residential or general appraisal precertification courses; or

- (4) possess qualifications which are found by the Board to be substantially equivalent to Item (1), (2), or (3) of this Rule.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; August 1, 2002.

21 NCAC 57B .0208 ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

The Board may suspend, revoke or deny renewal of approval of a real estate school or course sponsor to conduct appraiser precertification courses upon finding that any court of competent jurisdiction has found the school or course sponsor official or instructor in the employ of the school or course sponsor to be in violation of any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring that courses related to certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; August 1, 2002.

21 NCAC 57B .0209 CERTIFICATE OF COURSE COMPLETION

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

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; July 1, 2005; August 1, 2002.

21 NCAC 57B .0301 PURPOSE

This Section establishes minimum standards for real estate appraisal precertification courses prescribed by G.S. 93E-1-6(a).

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008.

21 NCAC 57B .0302 COURSE CONTENT

- (a) All courses shall consist of instruction in the subject areas outlined in the Appraiser Qualification Board's Guide Note 1.
 (b) Courses may also include coverage of additional related subject areas; however, any such course must provide additional

class time above the minimum required classroom hours specified in 57B .0101, .0102, and .0103 and the minimum requirement of 15 hours for USPAP for the coverage of such additional subject areas.

- (c) On or before the first class meeting day of the Basic Appraisal Principles course, the instructor shall give to each student material prepared by the Board regarding the trainee registration process and the process to upgrade to a certified appraiser.

History Note: Authority G.S. 93E-1-6; 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; July 1, 2005; August 1, 2002.

21 NCAC 57B .0303 COURSE COMPLETION STANDARDS

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

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

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

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

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

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; July 1, 2005; August 1, 2002.

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

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

- (1) Residential appraiser courses: 200 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and two years' full-time experience as a certified residential or general real estate appraiser within the previous five years. At least one-half of such experience must be in residential property appraising.
- (2) General appraiser courses: 300 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years. At least one-half of such experience must be in income property appraising. Instructors must also be a certified general real estate appraiser and have been so certified for at least five years.
- (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course. The instructor must be a certified residential or a certified general appraiser.
- (4) Statistics, modeling and finance: must have previously completed this class, or must have completed 3 semester hours of statistics in an accredited college or university.

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

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

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary;
- (2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative examples as

appropriate, and to respond appropriately to questions from students;

- (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
- (4) The ability to effectively utilize instructional aids to enhance learning;
- (5) The ability to maintain an effective learning environment and control of a class; and
- (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students' backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

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

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

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

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

(h) Persons desiring to become instructors for precertification courses must file an application for approval with the Board. There is no fee for application for instructor approval. Once an instructor has been approved to teach a specific precertification course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer precertification courses.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002.

21 NCAC 57B .0307 CRITERIA FOR COURSE RECOGNITION

- (a) Schools and course sponsors seeking to offer appraiser precertification courses shall make written application to the Board and pay applicable fees as required by G.S. 93E-1-8(b).
- (b) Appraisal subject matter electives offered for precertification credit shall meet all other requirements of this Chapter. The content of these electives shall be directly related to the appraisal of real property to be approved for precertification credit. Appraisal subject matter elective courses shall contain a minimum of 15 hours.
- (c) Various combinations of courses may be recognized as equivalent to the appraiser precertification courses specified in 57B .0101, .0102 and .0103.
- (d) The 15 hour USPAP course shall be the 15-hour National USPAP Course approved by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent.
- (e) The application shall state the name of the instructor for the course. All instructors shall be approved by the Board pursuant to 57B .0306(h). After the course is approved, if a school or course sponsor wishes to change instructors, the school shall notify the Board of the name of the new instructor at least seven calendar days before the proposed change would take effect. If the proposed instructor is not currently approved in accordance with 57B .0306(h), the instructor shall be approved by the Board before the school or course sponsor may change instructors.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; August 1, 2002.

21 NCAC 57B .0401 APPLICABILITY

This Section applies to private real estate appraisal schools offering precertification courses, appraisal trade organizations and to all other course sponsors other than North Carolina colleges, universities, junior colleges, community or technical colleges accredited by the Southern Association of Colleges and Schools, and agencies of the federal, State or local government.

History Note: Authority G.S. 93E-1-8(a), (b); 93E-1-10;

Eff. July 1, 1994; Amended Eff. September 1, 2008; January 1, 2008; August 1, 2002.

21 NCAC 57B .0604 PRECERTIFICATION COURSES

- (a) Appraisal precertification courses conducted by North Carolina approved schools or by appraisal trade organizations which are approved as equivalent to the North Carolina precertification courses may be separately approved as appraisal continuing education courses. Trainees, licensed and certified appraisers may obtain continuing education credit for these courses only to the extent permitted by Rule .0204 of Subchapter 57A. Appraisal trade organizations must at all times assure compliance with Rules .0606, .0607, and .0608 of this Section in order to retain such approval for these courses.
- (b) It is presumed that any person taking any of the precertification courses is doing so for registration or certification purposes. If the person wishes to obtain continuing education credit for the course, he or she shall request such credit in writing and shall send the original course completion certificate or course attendance certificate with the request.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. September 1, 2008; March 1, 2007; July 1, 2005; August 1, 2002.

21 NCAC 57B .0613 PAYMENT OF FEE REQUIRED BY G.S. 93E-1-7(c)

Schools and course sponsors who are required by G.S. 93E-1-7 to pay a fee to the Board for each licensee completing an approved continuing education course conducted by the school or course sponsor shall remit the fee to the Board along with the roster and evaluations required by Rule .0606(10) and .0608 of this Subchapter.

History Note: Authority G.S. 93E-1-8(c),(d); 93E-1-10; Eff. September 1, 2008.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday August 21, 2008 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
Keith O. Gregory
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn

RULES REVIEW COMMISSION MEETING DATES

August 21, 2008 September 18, 2008
October 16, 2008 November 20, 2008

AGENDA

RULES REVIEW COMMISSION
Thursday, August 21, 2008, 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. Board of Agriculture – 02 NCAC 52J .0203, .0210, .0302, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0601, .0602, .0603, .0604, .0605, .0606, .0607, .0608, .0609, .0701, .0702, .0703, .0704, .0705, .0801, .0802, .0803 (Bryan)
 - B. DHHS: Division of MH/DD/SAS – 10A NCAC 27G .7102 (Bryan)
 - C. Environmental Management Commission – 15A NCAC 02B .0262-.0272 (DeLuca)
 - D. Board of Dental Examiners – 21 NCAC 16H .0203 (DeLuca)
 - E. Board of Dental Examiners – 21 NCAC 16I .0104 (DeLuca)
 - F. Board of Dental Examiners – 21 NCAC 16R .0106 (DeLuca)
 - G. NC Building Code – 2006 IPC with NC Amendments – IPC 302.1 (DeLuca)
- IV. Review of Log of Permanent Rule filings for rules filed between June 23, 2008 and July 21, 2008 (attached)
- V. Review of Temporary Rules
- VI. Commission Business
 - Next meeting: September 18, 2008

**Commission Review
Log of Permanent Rule Filings
June 23, 2008 through July 21, 2008**

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 46 are adopted by the Commission for Public Health and concern local standards including general provisions (.0100); standards for local health departments (.0200) and local health department staff (.0300); and sanitation inspections (.0400).

<u>Minimum Standard Health Department: Staffing</u>	10A	NCAC	46	.0301
Amend/*				

SOCIAL SERVICES COMMISSION

The rules in Chapter 70 concern children's services.

The rules in Subchapter 70F concern child placing agencies: maternity homes and children's camps including general provisions (.0100); and organization and administration (.0200).

<u>Scope</u>	10A	NCAC	70F	.0101
Amend/*				
<u>Licensure</u>	10A	NCAC	70F	.0102
Amend/*				
<u>Governance</u>	10A	NCAC	70F	.0201
Amend/*				
<u>Responsibilities of the Governing Body</u>	10A	NCAC	70F	.0202
Amend/*				
<u>Finances, Fees and Insurance</u>	10A	NCAC	70F	.0203
Amend/*				
<u>Agency Setting</u>	10A	NCAC	70F	.0204
Amend/*				
<u>Responsibility to Licensing Authority</u>	10A	NCAC	70F	.0205
Amend/*				
<u>Personnel Policies</u>	10A	NCAC	70F	.0206
Amend/*				
<u>Staff</u>	10A	NCAC	70F	.0207
Amend/*				
<u>Confidentiality</u>	10A	NCAC	70F	.0208
Amend/*				
<u>Client Rights</u>	10A	NCAC	70F	.0209
Repeal/*				
<u>Grievance Procedures</u>	10A	NCAC	70F	.0210
Repeal/*				
<u>Searches</u>	10A	NCAC	70F	.0211
Repeal/*				
<u>Medication Information</u>	10A	NCAC	70F	.0212
Repeal/*				
<u>Home-Schooling</u>	10A	NCAC	70F	.0213
Repeal/*				

The rules in Subchapter 70G concern child placing agencies and foster care including general provisions (.0400); minimum licensing standards (.0500); and best practice standards (.0300).

<u>Scope</u>	10A	NCAC	70G	.0101
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RULES REVIEW COMMISSION

Repeal/*					
<u>Organization and Administration</u>	10A	NCAC	70G	.0102	
Repeal/*					
<u>Personnel</u>	10A	NCAC	70G	.0201	
Repeal/*					
<u>Intake Procedures and Practices</u>	10A	NCAC	70G	.0202	
Repeal/*					
<u>Case Plan</u>	10A	NCAC	70G	.0203	
Repeal/*					
<u>Placement Services</u>	10A	NCAC	70G	.0204	
Repeal/*					
<u>Records</u>	10A	NCAC	70G	.0205	
Repeal/*					
<u>Assessment and Treatment/Habilitation or Service Plan</u>	10A	NCAC	70G	.0206	
Repeal/*					
<u>Client Records for Children Receiving Mental Health Treat...</u>	10A	NCAC	70G	.0207	
Repeal/*					
<u>Medication Requirements</u>	10A	NCAC	70G	.0208	
Repeal/*					
<u>Behavior Management and Discipline</u>	10A	NCAC	70G	.0209	
Repeal/*					
<u>Staffing Requirements</u>	10A	NCAC	70G	.0301	
Repeal/*					
<u>Training Requirements</u>	10A	NCAC	70G	.0302	
Repeal/*					
<u>Scope</u>	10A	NCAC	70G	.0401	
Adopt/*					
<u>Definitions</u>	10A	NCAC	70G	.0402	
Adopt/*					
<u>Personnel</u>	10A	NCAC	70G	.0501	
Adopt/*					
<u>Application Procedures and Practices</u>	10A	NCAC	70G	.0502	
Adopt/*					
<u>Placement Services</u>	10A	NCAC	70G	.0503	
Adopt/*					
<u>Out-of-Home Family Services Agreement for Children Receiv...</u>	10A	NCAC	70G	.0504	
Adopt/*					
<u>Person-Centered Plan for Children Receiving Therapeutic F...</u>	10A	NCAC	70G	.0505	
Adopt/*					
<u>Client Records</u>	10A	NCAC	70G	.0506	
Adopt/*					
<u>Client Rights</u>	10A	NCAC	70G	.0507	
Adopt/*					
<u>Grievance Procedures</u>	10A	NCAC	70G	.0508	
Adopt/*					
<u>Searches</u>	10A	NCAC	70G	.0509	
Adopt/*					
<u>Medication Administration Requirements</u>	10A	NCAC	70G	.0510	
Adopt/*					
<u>Home-Schooling</u>	10A	NCAC	70G	.0511	
Adopt/*					
<u>Physical Restraining Holds, Behavior Management and Disci...</u>	10A	NCAC	70G	.0512	

Adopt/*
Critical Incidents 10A NCAC 70G .0513
 Adopt/*

The rules in Subchapter 70H concern child-placing agencies: adoption including scope (.0200); applicability (.0300); and minimum licensing standards (.0400).

Applicability 10A NCAC 70H .0101
 Repeal/*
Organization and Administration 10A NCAC 70H .0102
 Repeal/*
Intake Procedures and Practices 10A NCAC 70H .0103
 Repeal/*
Case Plan 10A NCAC 70H .0104
 Repeal/*
Placement Services to Families and Children 10A NCAC 70H .0105
 Repeal/*
Adoptive Home Recruitment 10A NCAC 70H .0106
 Repeal/*
Adoptive Home Application 10A NCAC 70H .0107
 Repeal/*
Preplacement Assessment 10A NCAC 70H .0108
 Repeal/*
Notification Regarding Preplacement Assessment 10A NCAC 70H .0109
 Repeal/*
Services to Adoptive Applicants and Families 10A NCAC 70H .0110
 Repeal/*
Legal Process 10A NCAC 70H .0111
 Repeal/*
Records 10A NCAC 70H .0112
 Repeal/*
Fees 10A NCAC 70H .0113
 Repeal/*
Scope 10A NCAC 70H .0201
 Adopt/*
Organization and Administration 10A NCAC 70H .0301
 Adopt/*
Conflict of Interest 10A NCAC 70H .0302
 Adopt/*
Personnel 10A NCAC 70H .0401
 Adopt/*
Intake Procedures and Out-Of-Home Family Services Agreement 10A NCAC 70H .0402
 Adopt/*
Placement Services to Families and Children 10A NCAC 70H .0403
 Adopt/*
Adoptive Home Application 10A NCAC 70H .0404
 Adopt/*
Preplacement Assessment 10A NCAC 70H .0405
 Adopt/*
Notification Regarding Preplacement Assessment 10A NCAC 70H .0406
 Adopt/*
Services to Adoptive Applicants and Families 10A NCAC 70H .0407

RULES REVIEW COMMISSION

Adopt/*					
<u>Legal Process</u>	10A	NCAC	70H	.0408	
Adopt/*					
<u>Records</u>	10A	NCAC	70H	.0409	
Adopt/*					

The rules in Subchapter 70I concern the minimum licensing standards for residential child-care including general licensing requirements (.0100); minimum licensure standards (.0200); organization and administration (.0300); personnel (.0400); service planning (.0500); service delivery (.0600); buildings, grounds and equipment (.0700); best practice standards (.0800); and physical plant (.0900).

<u>Licensing Process</u>	10A	NCAC	70I	.0102	
Amend/*					
<u>Definitions</u>	10A	NCAC	70I	.0201	
Amend/*					
<u>Responsibility to Licensing Authority</u>	10A	NCAC	70I	.0202	
Amend/*					
<u>Substantiations of Neglect Against the Facility</u>	10A	NCAC	70I	.0203	
Amend/*					
<u>Licensure Procedures</u>	10A	NCAC	70I	.0204	
Amend/*					
<u>Governance</u>	10A	NCAC	70I	.0301	
Amend/*					
<u>Responsibilities of the Governing Body</u>	10A	NCAC	70I	.0302	
Amend/*					
<u>Finances and Insurance</u>	10A	NCAC	70I	.0303	
Amend/*					
<u>Internal Operating Procedures</u>	10A	NCAC	70I	.0304	
Repeal/*					
<u>Recordkeeping and Reporting</u>	10A	NCAC	70I	.0305	
Amend/*					
<u>Client Rights</u>	10A	NCAC	70I	.0306	
Amend/*					
<u>Grievance Procedures</u>	10A	NCAC	70I	.0307	
Amend/*					
<u>Personnel Policies</u>	10A	NCAC	70I	.0401	
Amend/*					
<u>Personnel Deployment</u>	10A	NCAC	70I	.0402	
Amend/*					
<u>Personnel File</u>	10A	NCAC	70I	.0403	
Amend/*					
<u>Personnel Qualifications</u>	10A	NCAC	70I	.0404	
Amend/*					
<u>Personnel Positions</u>	10A	NCAC	70I	.0405	
Amend/*					
<u>Volunteers</u>	10A	NCAC	70I	.0407	
Amend/*					
<u>Admissions Policies</u>	10A	NCAC	70I	.0501	
Amend/*					
<u>Admission Procedures</u>	10A	NCAC	70I	.0502	
Amend/*					
<u>Admission Agreement</u>	10A	NCAC	70I	.0503	

Amend/*				
<u>Orientation</u>	10A	NCAC	70I	.0504
Amend/*				
<u>Discharge Policies and Procedures</u>	10A	NCAC	70I	.0505
Amend/*				
<u>Client Records</u>	10A	NCAC	70I	.0506
Amend/*				
<u>Program Policies and Practices</u>	10A	NCAC	70I	.0601
Amend/*				
<u>Family Involvement</u>	10A	NCAC	70I	.0602
Amend/*				
<u>Visiting Resources</u>	10A	NCAC	70I	.0603
Repeal/*				
<u>Health Services</u>	10A	NCAC	70I	.0604
Amend/*				
<u>Routine Aspects of Health, Personal Hygiene and Safety</u>	10A	NCAC	70I	.0605
Amend/*				
<u>Nutrition</u>	10A	NCAC	70I	.0606
Amend/*				
<u>Recreation and Leisure Activities</u>	10A	NCAC	70I	.0609
Amend/*				
<u>Religion and Spiritual Development</u>	10A	NCAC	70I	.0610
Amend/*				
<u>Work</u>	10A	NCAC	70I	.0612
Amend/*				
<u>Discipline and Behavior Management</u>	10A	NCAC	70I	.0613
Amend/*				
<u>Critical Incidents and Critical Incident Reports</u>	10A	NCAC	70I	.0614
Amend/*				
<u>Searches</u>	10A	NCAC	70I	.0615
Amend/*				
<u>Requirements for Approval</u>	10A	NCAC	70I	.0701
Repeal/*				
<u>Construction and Renovation</u>	10A	NCAC	70I	.0702
Repeal/*				
<u>Applicable Building Codes</u>	10A	NCAC	70I	.0703
Repeal/*				
<u>Fire and Building Safety</u>	10A	NCAC	70I	.0704
Repeal/*				
<u>General Sanitation</u>	10A	NCAC	70I	.0705
Repeal/*				
<u>Bathing and Toilet Areas</u>	10A	NCAC	70I	.0706
Repeal/*				
<u>Sleeping Areas</u>	10A	NCAC	70I	.0707
Repeal/*				
<u>Living/Activity Areas</u>	10A	NCAC	70I	.0708
Repeal/*				
<u>Dining Areas</u>	10A	NCAC	70I	.0709
Repeal/*				
<u>Heat, Light and Ventilation</u>	10A	NCAC	70I	.0710
Repeal/*				
<u>Exterior Space</u>	10A	NCAC	70I	.0711

RULES REVIEW COMMISSION

Repeal/*				
<u>Inspections</u>	10A	NCAC	70I	.0712
Repeal/*				
<u>Vehicles Used for Transportation of Children</u>	10A	NCAC	70I	.0713
Repeal/*				
<u>Staffing Requirements</u>	10A	NCAC	70I	.0801
Repeal/*				
<u>Training Requirements</u>	10A	NCAC	70I	.0802
Repeal/*				
<u>Application of Physical Plant Requirements</u>	10A	NCAC	70I	.0901
Adopt/*				
<u>Design and Construction</u>	10A	NCAC	70I	.0902
Adopt/*				
<u>Location</u>	10A	NCAC	70I	.0903
Adopt/*				
<u>Living Arrangement</u>	10A	NCAC	70I	.0904
Adopt/*				
<u>Living/Activity Areas</u>	10A	NCAC	70I	.0905
Adopt/*				
<u>Dining Areas</u>	10A	NCAC	70I	.0906
Adopt/*				
<u>Kitchen</u>	10A	NCAC	70I	.0907
Adopt/*				
<u>Laundry Room</u>	10A	NCAC	70I	.0908
Adopt/*				
<u>Sleeping Areas</u>	10A	NCAC	70I	.0909
Adopt/*				
<u>Bathing and Toilet Areas</u>	10A	NCAC	70I	.0910
Adopt/*				
<u>Corridors</u>	10A	NCAC	70I	.0911
Adopt/*				
<u>Outside Entrances and Exits</u>	10A	NCAC	70I	.0912
Adopt/*				
<u>Floors</u>	10A	NCAC	70I	.0913
Adopt/*				
<u>Housekeeping and Furnishings</u>	10A	NCAC	70I	.0914
Adopt/*				
<u>Fire Safety and Disaster Plans</u>	10A	NCAC	70I	.0915
Adopt/*				
<u>Building Service Equipment</u>	10A	NCAC	70I	.0916
Adopt/*				
<u>Outside Premises</u>	10A	NCAC	70I	.0917
Adopt/*				
<u>Vehicles Used for Transportation of Children</u>	10A	NCAC	70I	.0918
Adopt/*				

The rules in Subchapter 70J concern minimum licensing standards for specialized residential child care programs including children's foster care camps (.0100); and emergency shelter care program (.0200).

<u>Applicability</u>	10A	NCAC	70J	.0101
Amend/*				
<u>Personnel</u>	10A	NCAC	70J	.0103

Amend/*				
<u>Applicability</u>	10A	NCAC	70J	.0201
Amend/*				
<u>Admission Procedures</u>	10A	NCAC	70J	.0202
Amend/*				
<u>Admission Criteria</u>	10A	NCAC	70J	.0203
Amend/*				
<u>Recordkeeping</u>	10A	NCAC	70J	.0204
Amend/*				
<u>Service Planning</u>	10A	NCAC	70J	.0205
Amend/*				
<u>Discharge Services</u>	10A	NCAC	70J	.0206
Amend/*				

The rules in Subchapter 70K concern residential maternity homes including general provisions (.0100); minimum licensure standards (.0200); and physical plant (.0300).

<u>Definition</u>	10A	NCAC	70K	.0101
Amend/*				
<u>Organization and Administration</u>	10A	NCAC	70K	.0102
Amend/*				
<u>Licensing Actions</u>	10A	NCAC	70K	.0103
Adopt/*				
<u>Personnel</u>	10A	NCAC	70K	.0201
Amend/*				
<u>Services</u>	10A	NCAC	70K	.0202
Amend/*				
<u>Case Record</u>	10A	NCAC	70K	.0203
Amend/*				
<u>Program of Care</u>	10A	NCAC	70K	.0204
Amend/*				
<u>Physical Facilities</u>	10A	NCAC	70K	.0205
Repeal/*				
<u>Case Plan or Out-of-Home Family Services Agreement</u>	10A	NCAC	70K	.0206
Adopt/*				
<u>Client Rights</u>	10A	NCAC	70K	.0207
Adopt/*				
<u>Grievance Procedures</u>	10A	NCAC	70K	.0208
Adopt/*				
<u>Searches</u>	10A	NCAC	70K	.0209
Adopt/*				
<u>Critical Incidents and Critical Incident Reports</u>	10A	NCAC	70K	.0210
Adopt/*				
<u>Application of Physical Plant Requirements</u>	10A	NCAC	70K	.0301
Adopt/*				
<u>Design and Construction</u>	10A	NCAC	70K	.0302
Adopt/*				
<u>Location</u>	10A	NCAC	70K	.0303
Adopt/*				
<u>Living Arrangement</u>	10A	NCAC	70K	.0304
Adopt/*				
<u>Living Room</u>	10A	NCAC	70K	.0305

Adopt/*				
<u>Dining Room</u>	10A	NCAC	70K	.0306
Adopt/*				
<u>Kitchen</u>	10A	NCAC	70K	.0307
Adopt/*				
<u>Bedrooms</u>	10A	NCAC	70K	.0308
Adopt/*				
<u>Bathrooms</u>	10A	NCAC	70K	.0309
Adopt/*				
<u>Corridors</u>	10A	NCAC	70K	.0310
Adopt/*				
<u>Outside Entrances and Exits</u>	10A	NCAC	70K	.0311
Adopt/*				
<u>Laundry Room</u>	10A	NCAC	70K	.0312
Adopt/*				
<u>Floors</u>	10A	NCAC	70K	.0313
Adopt/*				
<u>Housekeeping and Furnishings</u>	10A	NCAC	70K	.0314
Adopt/*				
<u>Fire Safety and Disaster Plans</u>	10A	NCAC	70K	.0315
Adopt/*				
<u>Building Service Equipment</u>	10A	NCAC	70K	.0316
Adopt/*				
<u>Outside Premises</u>	10A	NCAC	70K	.0317
Adopt/*				

The rules in Subchapter 70L concern waiver procedures, denial, suspension, revocation and appeal procedures.

<u>Use of Volunteers in Children's Services Care</u>	10A	NCAC	70L	.0101
Repeal/*				
<u>Waiver of Licensing Rules</u>	10A	NCAC	70L	.0102
Amend/*				
<u>Denial, Amendment, Suspension and Revocation</u>	10A	NCAC	70L	.0201
Adopt/*				
<u>Appeal Procedures</u>	10A	NCAC	70L	.0301
Adopt/*				

The rules in Subchapter 70M concern adoption standards including general provisions (.0100); organization and administration (.0200); functions of an adoption agency (.0300); adoption assistance (.0400); out-of-state adoption fees (.0500); and non-recurring adoption costs (.0600).

<u>Scope</u>	10A	NCAC	70M	.0101
Amend/*				
<u>Public Agencies</u>	10A	NCAC	70M	.0201
Amend/*				
<u>Services to Adoptive Applicants</u>	10A	NCAC	70M	.0302
Amend/*				
<u>Fees</u>	10A	NCAC	70M	.0303
Adopt/*				
<u>Adoptive Home Recruitment</u>	10A	NCAC	70M	.0304
Adopt/*				
<u>General Eligibility Requirements</u>	10A	NCAC	70M	.0502

Amend/*

MARINE FISHERIES COMMISSION

The rules in Subchapter 3I are general and miscellaneous rules.

Definitions 15A NCAC 03I .0101
Amend/*

The rules in Subchapter 3J concern the use of nets in general (.0100) and in specific areas (.0200); the use of pots, dredges, and other fishing devices (.0300); and fishing gear (.0400).

Purse Seines 15A NCAC 03J .0105
Amend/*

Atlantic Ocean 15A NCAC 03J .0202
Amend/*

The rules in subchapter 3K concern oyster, clams, scallops and mussels including shellfish, general (.0100); crabs (.0200); hard clams (mercenaria) (.0300); rangia clams (.0400); and scallops (.0500).

Prohibited Shellfish 15A NCAC 03K .0101
Amend/*

Prohibited Rakes 15A NCAC 03K .0102
Amend/*

Shellfish Management Areas 15A NCAC 03K .0103
Amend/*

Recreational Harvest of Shellfish 15A NCAC 03K .0105
Amend/*

Taking or Unloading Oysters and Clams on Sunday or at Night 15A NCAC 03K .0106
Amend/*

Depuration of Shellfish 15A NCAC 03K .0107
Amend/*

Dredges/Mechanical Methods Prohibited 15A NCAC 03K .0108
Adopt/*

Shellfish Harvester and Dealer Tags 15A NCAC 03K .0109
Adopt/*

Open Season and Possession Limit 15A NCAC 03K .0201
Amend/*

Seed Oyster Management Areas 15A NCAC 03K .0208
Adopt/*

Oyster Sanctuaries 15A NCAC 03K .0209
Adopt/*

Prohibited Taking 15A NCAC 03K .0304
Amend/*

The rules in Subchapter 3L concern shrimp (.0100); crabs (.0200); and lobsters (.0300).

Recreational Harvest of Crabs 15A NCAC 03L .0209
Adopt/*

The rules in Subchapter 3M cover harvesting of finfish including general rules (.0100); striped bass (.0200); mackerel (.0300); menhaden and Atlantic herring (.0400); and other finfish (.0500).

RULES REVIEW COMMISSION

<u>Unmarketable Finfish</u> Amend/*	15A	NCAC	03M	.0102
<u>General</u> Amend/*	15A	NCAC	03M	.0201
<u>Season, Size and Harvest Limit: Atlantic Ocean</u> Amend/*	15A	NCAC	03M	.0204
<u>Spanish and King Mackerel</u> Amend/*	15A	NCAC	03M	.0301
<u>Season and Areas</u> Repeal/*	15A	NCAC	03M	.0401
<u>Foodfish Prohibited</u> Repeal/*	15A	NCAC	03M	.0402
<u>Fishing on Weekends and Holidays Prohibited</u> Repeal/*	15A	NCAC	03M	.0403
<u>Fish Spill Reporting Mandatory</u> Repeal/*	15A	NCAC	03M	.0404
<u>Red Drum</u> Amend/*	15A	NCAC	03M	.0501
<u>Trout</u> Amend/*	15A	NCAC	03M	.0504
<u>Shark</u> Repeal/*	15A	NCAC	03M	.0505
<u>Snapper-Grouper Complex</u> Amend/*	15A	NCAC	03M	.0506
<u>Bluefish</u> Amend/*	15A	NCAC	03M	.0511
<u>Compliance with Fishery Management Plans</u> Amend/*	15A	NCAC	03M	.0512
<u>River Herring</u> Amend/*	15A	NCAC	03M	.0513
<u>Scup</u> Repeal/*	15A	NCAC	03M	.0514
<u>Kingfish (Sea Mullet)</u> Adopt/*	15A	NCAC	03M	.0518
<u>Shad</u> Adopt/*	15A	NCAC	03M	.0519
<u>Tuna</u> Adopt/*	15A	NCAC	03M	.0520

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

<u>Standards for Shellfish Bottom and Water Column Lease</u> Amend/*	15A	NCAC	03O	.0201
<u>Shellfish Lease Application Processing</u> Amend/*	15A	NCAC	03O	.0203
<u>Shellfish Franchises</u> Amend/*	15A	NCAC	03O	.0210

The rules in Subchapter 3R specify boundaries for various areas (.0100); and fishery management areas (.0200).

<u>Designated Seed Oyster Management Areas</u>	15A	NCAC	03R	.0116
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Adopt/*

Oyster Sanctuaries

15A NCAC 03R .0117

Adopt/*

WILDLIFE RESOURCES COMMISSION

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).

Town of Emerald Isle

15A NCAC 10F .0376

Adopt/*

REVENUE, DEPARTMENT OF

The rules in Chapter 6 deal with individual income taxes.

The rules in Subchapter 6B concern individual income tax including filing rules (.0100); personal exemptions (.0300); annuities and pensions (.0400); general (.0500); other tax credits (.0600); active and reserve duty military pay (.0700); installment sales (.0800); sale of principal residence (.0900); private annuity transactions (.1000); involuntary conversion (.1100); cost basis of property (.1200); tenancy by the entirety (.1300); income and deductions of decedents (.1400); stock dividends and stock rights (.1500); basis of divested stock (.1600); exempt income (.1700); scholarship and fellowship grants (.1800); employee death benefits (.1900); depreciation and depletion (.2000); conservation and land clearing (.2100); travel expenses (.2200); education expenses (.2300); moving expenses (.2400); retirement plans (.2500); carry-over loss (.2600); interest deduction (.2700); taxes paid (.2800); casualty and theft losses (.2900); contributions (.3000); medical expenses (.3100); penalties individual income tax (.3200); accounting periods and methods (.3300); statute of limitations and federal changes (.3400); partnerships (.3500); life estate and remainder interest (.3600); estates and trusts (.3700); miscellaneous rules (.3800); non-residents and part-year residents (.3900) and S corporation (.4000).

Completing a Return

17 NCAC 06B .0104

Amend/*

Extensions

17 NCAC 06B .0107

Amend/*

Tax Credit for Qualified Business Investments

17 NCAC 06B .0612

Repeal/*

Penalties for Failure to File and Pay

17 NCAC 06B .3203

Amend/*

Refunds

17 NCAC 06B .3406

Amend/*

Taxable Income of Nonresidents and Part-Year Residents

17 NCAC 06B .3904

Amend/*

The rules in Subchapter 6C concern the withholding of individual income taxes including withholding requirements (.0100), and the regulation of reporting and paying of income tax withheld (.0200).

New Withholding Agents

17 NCAC 06C .0201

Amend/*

Annual Reports

17 NCAC 06C .0203

Amend/*

Amounts Withheld are Held in Trust for Secretary of Revenue

17 NCAC 06C .0204

Amend/*

The rules in Subchapter 6D concern estimated tax including filing estimated income tax payments (.0100) and penalties for underpayment of estimated income tax (.0200).

Determining an Underpayment 17 NCAC 06D .0209
Amend/*

SECRETARY OF STATE, DEPARTMENT OF

The rules in Chapter 6 are from the Securities Division and cover general provisions (.1100), exemptions (.1200), registration of securities (.1300), registration of dealers and salesmen (.1400), miscellaneous provisions (.1500), registration of qualified businesses (.1600), registration of investment advisors and investment advisor representatives (.1700), miscellaneous provisions relating to investment advisers (.1800), and registration of athlete agents (.1900).

Designated Securities 18 NCAC 06 .1201
Repeal/*

Application for Registration of Athlete Agents 18 NCAC 06 .1901
Repeal/*

Expiration of Registration 18 NCAC 06 .1902
Repeal/*

Renewal of Registration 18 NCAC 06 .1903
Repeal/*

Approval of Agent Contracts 18 NCAC 06 .1904
Repeal/*

Notice to Client 18 NCAC 06 .1905
Repeal/*

Forms 18 NCAC 06 .1906
Repeal/*

COSMETIC ART EXAMINERS, BOARD OF

The rules in Subchapter 14A are the Cosmetic Art Board of Examiners structure and organization rules. The rules in Section .0100 are the organizational rules.

Definitions 21 NCAC 14A .0101
Amend/*

The rules in Subchapter 14F govern all aspects of licensing a beauty salon.

Salon Renewal 21 NCAC 14F .0114
Repeal/*

The rules in Subsection 14G give the requirements for the establishment of cosmetic art schools.

Forms 21 NCAC 14G .0102
Repeal/*

Equipment and Teachers 21 NCAC 14G .0107
Amend/*

The rules in Subchapter 14H are sanitation rules for both operators and facilities.

Sanitary Ratings and Posting of Ratings 21 NCAC 14H .0105
Amend/*

Water Supply 21 NCAC 14H .0107
Amend/*

Cleanliness of Operators 21 NCAC 14H .0111
Amend/*

Cleanliness of Clinic Area: Supplies: Combs and Brushes 21 NCAC 14H .0112

Amend/*				
<u>Cleanliness of Scissors, Shears, Razors and Other Equipment</u>	21	NCAC	14H	.0113
Amend/*				
<u>Health of Operators</u>	21	NCAC	14H	.0116
Repeal/*				
<u>Animals</u>	21	NCAC	14H	.0117
Amend/*				
<u>Systems of Grading Beauty Establishments</u>	21	NCAC	14H	.0118
Amend/*				
<u>Footspa Sanitation</u>	21	NCAC	14H	.0120
Amend/*				

The rules in Subchapter 14I govern the operation of cosmetic art schools including record keeping (.0100); the reception area (.0200); classrooms (.0300); and licensure of convicted felons (.0400).

<u>Transfer of Credit</u>	21	NCAC	14I	.0105
Amend/*				
<u>Report of Enrollment</u>	21	NCAC	14I	.0107
Amend/*				
<u>Summary of Cosmetic Art Education</u>	21	NCAC	14I	.0109
Amend/*				
<u>Recitation Room</u>	21	NCAC	14I	.0301
Amend/*				
<u>Classroom Bulletin Board</u>	21	NCAC	14I	.0303
Amend/*				
<u>Application/Licensure/Individuals Who Have Been Convicted...</u>	21	NCAC	14I	.0401
Amend/*				
<u>Requests for Preapplication Review of Felony Convictions</u>	21	NCAC	14I	.0402
Repeal/*				

The rules in Subchapter 14J cover the cosmetology curriculum including the beginners' department (.0100); the advanced department (.0200); combined studies (.0300); the course of study (.0400); and credit for study outside of North Carolina (.0500).

<u>Equipment</u>	21	NCAC	14J	.0302
Amend/*				

The rules in Subchapter 14K deal with the manicurist curriculum.

<u>Uniforms</u>	21	NCAC	14K	.0101
Amend/*				
<u>Equipment and Instruments</u>	21	NCAC	14K	.0103
Amend/*				
<u>Identification Pins</u>	21	NCAC	14K	.0105
Amend/*				
<u>Live Model Performances</u>	21	NCAC	14K	.0107
Amend/*				

The rules in Subchapter 14L deal with teacher qualifications and examinations (.0100) and teacher program and curriculum (.0200).

<u>Application to Take Examination</u>	21	NCAC	14L	.0106
Amend/*				
<u>Supervision of Cosmetic Art Teacher Trainer</u>	21	NCAC	14L	.0208
Amend/*				

RULES REVIEW COMMISSION

<u>Effect on Student-Teacher Ration</u>	21	NCAC	14L	.0210
Amend/*				
<u>Fee</u>	21	NCAC	14L	.0214
Repeal/*				

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).

<u>Initial Application and Fees</u>	21	NCAC	14N	.0102
Amend/*				
<u>General Examination Instructions</u>	21	NCAC	14N	.0103
Amend/*				

The rules in Subchapter 14O are esthetician curriculum rules.

<u>Uniforms</u>	21	NCAC	14O	.0101
Amend/*				
<u>Course of Study</u>	21	NCAC	14O	.0102
Amend/*				
<u>Identification Pins</u>	21	NCAC	14O	.0105
Amend/*				
<u>Sanitation</u>	21	NCAC	14O	.0107
Repeal/*				

The rules in Subchapter 14P are civil penalty rules.

<u>Renewals, Expired Licenses, Licenses Required</u>	21	NCAC	14P	.0105
Amend/*				
<u>Licenses Required</u>	21	NCAC	14P	.0106
Amend/*				
<u>Licenses to be Posted</u>	21	NCAC	14P	.0107
Amend/*				
<u>Revocation of Licenses and Other Disciplinary Measures</u>	21	NCAC	14P	.0108
Amend/*				
<u>Sanitary Ratings and Posting of Ratings - Applicable to E...</u>	21	NCAC	14P	.0112
Amend/*				
<u>Operations of Schools of Cosmetic Art</u>	21	NCAC	14P	.0113
Amend/*				
<u>Sanitary Ratings</u>	21	NCAC	14P	.0115
Amend/*				

The rules in Subchapter 14R are continuing education rules.

<u>Continuing Education Requirements</u>	21	NCAC	14R	.0101
Amend/*				
<u>Application Criteria and Continuing Education Course Appr...</u>	21	NCAC	14R	.0102
Amend/*				
<u>Criteria for Continuing Education Courses</u>	21	NCAC	14R	.0103
Amend/*				

MASSAGE AND BODYWORK THERAPY, BOARD OF

The rules in Chapter 30 concern the Board of Massage and Bodywork Therapy and include organization and general provisions (.0100); application for licensure (.0200); licensing (.0300); business practices (.0400); standards of professional conduct (.0500); massage and bodywork therapy schools (.0600); continuing education (.0700); rules (.0800); and complaints, disciplinary action and hearings (.0900).

<u>Definitions</u>	21	NCAC	30	.0102
Amend/*				
<u>Application and Scope</u>	21	NCAC	30	.0201
Amend/*				
<u>Treatment in Body Cavities</u>	21	NCAC	30	.0516
Adopt/*				

MEDICAL BOARD

The rules in Subchapter 32X concern practitioner information.

<u>Required Information</u>	21	NCAC	32X	.0101
Adopt/*				
<u>Voluntary Information</u>	21	NCAC	32X	.0102
Adopt/*				
<u>Reporting of Medical Judgments, Awards, Payments and Sett...</u>	21	NCAC	32X	.0103
Adopt/*				
<u>Contents of the Report</u>	21	NCAC	32X	.0104
Adopt/*				
<u>Publication of Judgments, Awards, Payments or Settlements</u>	21	NCAC	32X	.0105
Adopt/*				
<u>Publishing Certain Misdemeanor Convictions</u>	21	NCAC	32X	.0106
Adopt/*				
<u>Noncompliance or Falsification of Information</u>	21	NCAC	32X	.0107
Adopt/*				

BUILDING CODE COUNCIL

<u>NC Building Code: Soffit in Group R</u>	704.15
Amend/*	
<u>NC Building Code: Flame Spread</u>	1405.13.2
Amend/*	
<u>NC Mechanical Code: Exhaust Penetrations</u>	504.2
Amend/*	
<u>NC Residential Code: Flame Spread</u>	R302.4
Amend/*	
<u>NC Residential Code: Exterior Concrete Slab-on-grade Foot...</u>	4404.4
Amend/*	
<u>NC Residential Code: Gable endwalls</u>	4406.3
Amend/*	
<u>NC Residential Code: Anchorage using wood structural panels</u>	4408.4
Amend/*	

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>
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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	
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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
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Anna Fields v. Value Options	07 DHR 2326	Joseph	06/02/08
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Mamaue Aytch v. DHHS	08 DHR 0325	Elkins	05/23/08
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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
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