

# ***NORTH CAROLINA REGISTER***

**VOLUME 25 • ISSUE 02 • Pages 119 - 171**

**July 15, 2010**

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**PUBLISHED BY**

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

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**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2010 – December 2010

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 <sup>th</sup> day from publication in the Register
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
24:14	01/15/10	12/22/09	01/30/10	03/16/10	03/22/10	05/01/10	05/12/10	10/12/10
24:15	02/01/10	01/08/10	02/16/10	04/05/10	04/20/10	06/01/10	01/26/11	10/29/10
24:16	02/15/10	01/25/10	03/02/10	04/16/10	04/20/10	06/01/10	01/26/11	11/12/10
24:17	03/01/10	02/08/10	03/16/10	04/30/10	05/20/10	07/01/10	01/26/11	11/26/10
24:18	03/15/10	02/22/10	03/30/10	05/14/10	05/20/10	07/01/10	01/26/11	12/10/10
24:19	04/01/10	03/11/10	04/16/10	06/01/10	06/21/10	08/01/10	01/26/11	12/27/10
24:20	04/15/10	03/24/10	04/30/10	06/14/10	06/21/10	08/01/10	01/26/11	01/10/11
24:21	05/03/10	04/12/10	05/18/10	07/02/10	07/20/10	09/01/10	01/26/11	01/28/11
24:22	05/17/10	04/26/10	06/01/10	07/16/10	07/20/10	09/01/10	01/26/11	02/11/11
24:23	06/01/10	05/10/10	06/16/10	08/02/10	08/20/10	10/01/10	01/26/11	02/26/11
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25:01	07/01/10	06/10/10	07/16/10	08/30/10	09/20/10	11/01/10	01/26/11	03/28/11
25:02	07/15/10	06/23/10	07/30/10	09/13/10	09/20/10	11/01/10	01/26/11	04/11/11
25:03	08/02/10	07/12/10	08/17/10	10/01/10	10/20/10	12/01/10	01/26/11	04/29/11
25:04	08/16/10	07/26/10	08/31/10	10/15/10	10/20/10	12/01/10	01/26/11	05/13/11
25:05	09/01/10	08/11/10	09/16/10	11/01/10	11/22/10	01/01/11	01/26/11	05/29/11
25:06	09/15/10	08/24/10	09/30/10	11/15/10	11/22/10	01/01/11	01/26/11	06/12/11
25:07	10/01/10	09/10/10	10/16/10	11/30/10	12/20/10	02/01/11	05/2012	06/28/11
25:08	10/15/10	09/24/10	10/30/10	12/14/10	12/20/10	02/01/11	05/2012	07/12/11
25:09	11/01/10	10/11/10	11/16/10	01/03/11	01/20/11	03/01/11	05/2012	07/29/11
25:10	11/15/10	10/22/10	11/30/10	01/14/11	01/20/11	03/01/11	05/2012	08/12/11
25:11	12/01/10	11/05/10	12/16/10	01/31/11	02/21/11	04/01/11	05/2012	08/28/11
25:12	12/15/10	11/22/10	12/30/10	02/14/11	02/21/11	04/01/11	05/2012	09/11/11

## 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.

**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 04 – DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to amend the rules cited as 04 NCAC 02R .0103, .0303-.0304, .0603, .0701, .0905, .0907, .1005, .1008, .1203, .1405, .1407, .1502, .1701, .1708, .1801-.1803 and repeal the rules cited as 04 NCAC 02R .0601, .1103, .1301, .1710, .1902.*

**Proposed Effective Date:** November 1, 2010

**Public Hearing:**

**Date:** August 19, 2010

**Time:** 10:00 a.m.

**Location:** NC ABC Commission's Office, 3322 Garner Road, Raleigh, NC 27610

**Reason for Proposed Action:** *The NC Alcoholic Beverage Control Commission proposes this action will address both the Legislation that has been enacted by the General Assembly previously and needed technical changes.*

**Procedure by which a person can object to the agency on a proposed rule:** *Interested persons may present oral or written comments at the Rule-Making Hearing. In addition, the record will be open for receipt of written comments from July 15, 2010, to September 13, 2010. Written comments not presented at the hearing should be directed to Robert Hamilton. The proposed rules are available for public inspection and copies may be obtained at the Commission's office at: 3322 Garner Road, Raleigh, NC 27610.*

**Comments may be submitted to:** *Robert A. Hamilton, 4307 Mail Service Center, Raleigh, NC 27699-4307, phone (919)779-0700 x 436, fax (919)661-6165, email bob@adminrule.com.*

**Comment period ends:** September 13, 2010

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

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

- State** 04 NCAC 02R .0203, .0304, .1502
- Local** 04 NCAC 02R .0203, .0304, .1502
- Substantial Economic Impact** (≥\$3,000,000)
- None**

**CHAPTER 02 - BOARD OF ALCOHOLIC CONTROL**

**SUBCHAPTER 02R - ORGANIZATIONAL RULES:  
POLICIES AND PROCEDURES**

**SECTION .0100 - GENERAL PROVISIONS**

**04 NCAC 02R .0103 DEFINITIONS**

(a) As used throughout this Chapter:

- ~~(1)~~ "ABC Law" or "ABC Laws" means any statute or statutes in Chapter 18B or in Article 2C of Chapter 105, and the rules issued by the Commission under the authority of Chapter 18B.
- ~~(2)~~(1) "Administrator" means the principal administrative officer of the Commission.
- ~~(3)~~(2) "Agent," "alcohol law enforcement agent," or "ALE agent" means an enforcement agent of the Alcohol Law Enforcement Division, North Carolina Department of Crime Control and Public Safety.
- (3) "Aggrieved party" means any person substantially affected by any statute or rule administered or adopted by the Commission.
- (4) "Applicant" means any person who requests the issuance of a permit from the Commission.
- (5) "Chairman" means the chairman of the Commission.
- ~~(6)~~ "Commission" means the North Carolina Alcoholic Beverage Control Commission.
- (6) "Contract carrier" means the carriers operated by the contractor on behalf of the state for the purpose of distributing spirituous liquors.
- (7) "Distressed liquor" means liquor which is not saleable due to adulteration, or damage to the bottle, label or tax seal.
- ~~(7)~~(8) "Industry Member" means any manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages.

- (9) "Operator" or "Contractor" means the person or persons responsible for carrying out the storage and distribution of spirituous liquors at the state ABC warehouse.
- ~~(8)~~(10) "Permit" means a written or printed authorization to engage in some phase of the alcoholic beverage industry that may be issued by the Commission.
- ~~(9)~~(11) "Permittee" means a person to whom a permit has been issued by the Commission.
- (12) "State ABC warehouse" means the contractor-operated facility or facilities storing spirituous liquors on behalf of the Commission pursuant to G.S. 18B-204, or, in cases of emergency, the facility or facilities operated by the state for the purpose of storing spirituous liquors.

(b) The definitions in Chapter 18B apply to these Rules, the rules in this Chapter.

Authority G.S. 18B-207; 150B-4.

**SECTION .0300 - PUBLICATIONS: RECORDS: COPIES**

**04 NCAC 02R .0303 DISTRIBUTION, INSPECTION AND COPIES OF ABC LAWS**

(a) Distribution of Rules and Statutes. ~~A copy of the Commission's Rules and Chapter 18B of the General Statutes will be distributed.~~ The Commission shall distribute at no charge a copy of Chapter 18B of the General Statutes and the Commission's Rules to each local ABC board, each ALE agent, ABC officer and local law enforcement officer employed by a contracting agency pursuant to G.S. 18B-501(f), and to each employee of the Commission.

(b) Purchasing Copies of the ABC Laws. Documents. Copies of the following documents are available from the Commission:

- (1) Chapter 18B of the General Statutes and the Commission's Rules;
- (2) Individual sections of Chapter 18B of the General Statutes;
- (3) Individual Commission Rules;
- (4) ABC Retail Guide; and
- (5) Public records retained by the Commission.

ABC laws are available to any interested person who contacts the Commission at the following address or phone number:

North Carolina Alcoholic Beverage Control Commission  
3322 Garner Road  
P.O. Box 26687, Raleigh, NC 27611-6687  
(919) 779-0700

The following items are available and should be purchased together for complete access to the ABC laws of this State:

- ~~(1) Chapter 18B of the North Carolina General Statutes, at a cost of seven dollars (\$7.00).~~
- ~~(2) Title 4, Chapter 2 of the North Carolina Administrative Code, containing all the rules of the Commission, at a cost of seven dollars and fifty cents (\$7.50).~~

~~Payment by check or cash must be made prior to receiving copies of either publication.~~

~~(e) Copies of Individual Rules or Statutes. For a fee of twenty five cents (\$0.25) per page, copies of rules, amendments and general statutes are available to any person contacting the Commission at the address and phone number in Paragraph (b) of this Rule.~~

Copies of the above documents are available at the "actual cost" as defined in G.S. 132-6.2(b) for making the copies and the mailing cost if applicable. The Commission shall provide its "actual cost" on the Commission's website. Persons requesting copies of the above documents shall make payment by certified check, cashier's check or money order to the Commission prior to receiving any copies of the above documents.

~~(d) Public Inspection of Records. Inspection of records and documents in the possession and custody of the Commission is governed by the provisions of Chapter 132 of the North Carolina General Statutes. Fees for copying public records shall be twenty five cents (\$0.25) per page.~~

Authority G.S. 12-3.1; 18B-207; 132-1; 132-1.1; 132-1.2; 132-1.3; 132-6.

**04 NCAC 02R .0304 FEE FOR COMPUTER SERVICES**

~~(a) Lists. For a fee of seven cents (\$0.07) per name, the Commission will provide to any interested person a list of permittees by county or by types of permits issued. Orders for a permittee list should be placed at least 72 hours in advance. The purchaser of the list will be notified of the total cost, including postage, and will be required to remit the total cost plus postage, by check or money order, before receiving a copy of the list.~~

~~(b) Other Data Processing Services. The Commission will attempt to provide data processing services related to the Commission's powers and duties upon request. public information maintained by the Commission. Fees for such services will be determined are based on the actual cost to the Commission and shall be required to be paid in advance. advance by certified check, cashier's check or money order.~~

Authority 18B-207; 150B-19(5)(e).

**SECTION .0600 - DECLARATORY RULINGS**

**04 NCAC 02R .0601 DEFINITION**

~~"Aggrieved party" means any person substantially affected by any statute or rule administered or adopted by the Commission.~~

Authority G.S. 18B-207; 150B-11; 150B-17.

**04 NCAC 02R .0603 REQUEST FOR DECLARATORY RULING**

(a) All requests for a declaratory ruling to contest the validity of a rule previously adopted by the Commission shall supply the following information:

- (1) name and address of aggrieved party;
- (2) statute or rule to which the request relates;

- (3) a brief statement of the manner in which the aggrieved party is affected or may be affected by the statute or rule;
- (4) names and addresses of additional third parties known to the aggrieved party who may possibly be affected by the requested ruling;
- (5) ~~complete and accurate~~ statement of all material facts;
- (6) statement whether or not the aggrieved party is aware of any pending Commission action or court action that may bear on the applicability of the statute or rule to the party's particular situation;
- (7) ~~brief~~ statement of the arguments and legal authority supporting the party's position on the applicability of this statute or rule; and
- (8) statement of whether or not a conference is desired and reasons for requesting conference.

The aggrieved party shall sign and verify the request before an officer qualified to administer oaths that the information supplied in the request form is true and accurate.

(b) The request and any supporting materials relevant to the request shall be sent to the North Carolina Alcoholic Beverage Control Commission, ~~3322 Garner Road, Post Office Box 26687, 4307 Mail Service Center, Raleigh, North Carolina 27611-6687.~~ 27699-4307.

(c) The Commission shall either deny the request, stating the reasons therefore, or issue a declaratory ruling. The Commission shall deny a request for a declaratory ruling when the Commission determines that:

- (1) the request does not comply with the procedural guidelines within Paragraphs (a) and (b) of this Rule;
- (2) the Commission has previously issued a declaratory ruling on substantially similar facts;
- (3) the Commission has previously issued a final agency decision in a contested case on substantially similar facts;
- (4) the facts underlying the request for a declaratory ruling were considered at the time of the adoption of the rule in question; or
- (5) the subject matter is one concerning which the Commission is without authority to make a decision binding the Commission or the petitioner;
- (6) the petitioner is not aggrieved by the rule or statute in question or otherwise has no interest in the subject matter of the request;
- (7) there is reason to believe that the petitioner or some other person or entity materially connected to the subject matter of the request is acting in violation of the G.S. 18B or the rules adopted by the Commission; or
- (8) the subject matter of the request is involved in pending litigation, legislation, or rulemaking.

(d) The Commission shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially

related to, an investigation by the Commission or contested case before the Commission.

Authority G.S. 18B-207; 150B-4.

**SECTION .0700 - PERSONNEL POLICIES:  
COMMISSION**

**04 NCAC 02R .0701 STANDARDS FOR  
COMMISSION AND EMPLOYEES**

(a) Financial Interests Prohibited. No member or employee of the Commission shall have or acquire any financial interest in the business, equipment or premises operated by any person, firm or corporation engaged in the production, sale or distribution of alcoholic beverages.

(b) Relations. No member or employee of the Commission shall be related by blood, to the degree of first cousin or closer, to any person engaged or employed in the production, sale or distribution of alcoholic beverages in this State.

(c) Gifts. No employee or Commission member shall accept any gift or other thing of value from any person, firm or corporation engaged in the production, sale or distribution of alcoholic beverages that would result in a violation of any general statute or Executive Order.

~~(d) Entertainment. Except as prohibited elsewhere in these Rules reasonable entertainment of members or employees by a permittee or his representative is proper when that member or employee is entertained in an official capacity as a representative of the Commission, such as reasonable entertainment at state or national conventions or similar events, or at any time for good and proper reason that will not tend to influence the member or employee in the discharge of his duties with the Commission.~~

Authority G.S. 18B-201; 18B-207.

**SECTION .0900 - FISCAL RULES FOR LOCAL BOARDS**

**04 NCAC 02R .0905 DAILY DEPOSITS**

(a) Each officer whose duty it is to collect or receive moneys of the local board shall deposit into an official depository the collections and receipts daily. If the local board gives its approval, deposits shall be required only when the moneys on hand ~~amount to as much as are~~ equal to or are greater than two hundred fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made in an official depository. Deposits in an official depository shall be reported to the finance officer by means of a duplicate deposit ticket.

(b) A change fund necessary for daily operation of an ABC store shall be established by each local board and maintained in a secure place on the store's premises and shall not be subject to the daily deposit rule. Each change fund shall be maintained in the amount and place established by the local board.

(c) The finance officer may at any time audit the records maintained by any employee collecting sales revenue and may prescribe the form and detail of these records.

(d) The Commission shall waive or alter the daily deposit requirement for any local board for good cause shown and where adequate security for the funds involved is demonstrated.

Authority G.S. 18B-702(d),(e).

**04 NCAC 02R .0907 ANNUAL INDEPENDENT FINANCIAL AUDIT**

(a) Each local board shall have its accounts audited as soon as possible after the close of each fiscal year by an independent certified public accountant. The auditor shall be selected by and report directly to the local board. The audit contract shall be of a standard form ~~approved~~ provided by the Commission. The audit report is due to the Commission ninety days after the end of the fiscal year, ~~when the year.~~ The financial officer shall file ~~two copies~~ one unbound copy of the audit report and management letter with the Commission.

(b) Each officer and employee of the local board having custody of public money or responsibility for keeping records of financial or fiscal affairs shall produce books and records requested by the auditor or the Commission and shall divulge any information relating to fiscal affairs that they request. If any member of the local board or any employee conceals, falsifies or refuses to deliver or divulge any books, records, or information with intent to mislead the auditor or impede or interfere with the audit, he is subject to removal for cause pursuant to G.S. 18B-203(a)(8).

(c) Disclosure of the distribution of profits shall include every element that is applicable under G.S. 18B-805 in a schedule prepared for inclusion with the annual audited financial statements. In addition the schedule shall be supported by a listing of each person who receives moneys from the local board, the date of payment and, if applicable, the purpose for which the payment was made and restrictions on use of the payment. The listing shall be so designated to provide the same totals as were used in the schedule for each type of distribution.

Authority G.S. 18B-702(c), (e).

**SECTION .1000 - LOCAL ABC BOARD: PERSONNEL POLICIES**

**04 NCAC 02R .1005 WAREHOUSE: PRESENCE OF UNAUTHORIZED PERSON PROHIBITED**

~~Personnel Only personnel~~ employed by a local board shall be the ~~only persons permitted to may enter the a local board's warehouse, except for:~~

- (1) truck drivers who need to enter in order to verify the amount of merchandise delivered;
- (2) members of the Commission and its representatives; ~~and~~
- (3) local board ~~members, the local board supervisor, and their duly authorized representatives; members; and~~
- (4) persons with approval from the local board or general manager; provided, they are accompanied by a board member or employee of the local board.

Authority G.S. 18B-207; 18B-807.

**04 NCAC 02R .1008 CONFLICTS OF INTEREST**

(a) Financial Interest Prohibited. No local board member or employee shall have any direct or indirect interest ~~in any manner whatsoever~~ in any firm, corporation, company or enterprise that manufactures, produces, buys, mixes, bottles, sells, stores or transports spirituous liquor.

(b) Employment of Relatives. No local board shall employ in any capacity any person related to a local board member or member of any other authority that appoints members of the local board by blood to a degree of first cousin or closer, nor shall the spouse of any board member be employed by the board.

(c) Employment of Board Members. No member of a local board shall be employed in any capacity by the board, nor be paid or receive any compensation of any kind from the board, except for compensation as a member thereof, which compensation has been established by the appointing authority. No local board member nor member of the local governing authority that appoints members of the local board shall be appointed as manager of a store, or manager, supervisor, director or administrator of the local system. No member of a board or other appointing authority that appoints members of a local board shall be employed in any capacity by that local board. The local board shall carry out its powers and duties as a board and shall not delegate the operation of the system to individual members.

(d) Contracts Prohibited. Members of a local board, acting on behalf of the board, shall not enter into any contracts or agreements or be in any manner interested in any contract or agreement for their own benefit or in the profits thereof, whether privately, openly, singly, or jointly with another member of a local board. Local boards shall not, on behalf of the board, enter into any contract or agreement of any kind with:

- (1) any member of any other authority that appoints members of the local board;
- (2) any person who is related by blood to any member of the board to a degree of first cousin or closer; or
- (3) any spouse of a board member.

~~(e) Membership on Appointing Board Prohibited. No member of the local board shall be a member of the appointing authority that appoints the local board while serving as a member of that local board.~~

~~(f) Exceptions. Notwithstanding the provisions of this Section, the Commission may grant exceptions from this Rule pursuant to G.S. 18B-201 in cases of extreme hardship and where the public interest would not be placed in jeopardy.~~

Authority G.S. 18B-201; 18B-207; 18B-700(g).

**SECTION .1100 - LOCAL ABC BOARDS: RELATIONSHIP WITH STATE COMMISSION**

**04 NCAC 02R .1103 AUDITS TO BE FORWARDED TO COMMISSION**

~~Two copies of the audit of the accounts and conditions of each local board shall be forwarded to the Commission by the auditing firm employed to make said audit.~~

Authority G.S. 18B-205; 18B-207; 18B-702(c).



SECTION .1200 - OPENING AND DISCONTINUANCE OF STORES

04 NCAC 02R .1203 APPROVAL OF NEW STORES

(a) Notice to Commission. The opening of any new ABC stores ~~will~~ shall not be approved by the Commission unless at least a 30 ~~days~~ day notice is given to the Chairman as to the intended location of ~~such~~ the store and until a public notice of the intention to open such ABC store has been posted for 30 days at such location.

(b) Sign Requirements. In order to meet the public notice requirements of Paragraph (a) of this Rule, the local board shall post at least one sign at the proposed new store site in accordance with all the following requirements:

- (1) Dimensions of the sign shall total at least ~~three~~ nine square feet;
- (2) The board shall state on the sign its intention to open an ABC store on the ~~site~~ site and shall state the entity and its phone number to provide public comments;
- (3) Lettering ~~shall~~ be at least four inches in height and background colors shall be of sufficient ~~contrast~~ contrast and lettering ~~shall~~ be of sufficient ~~size~~ size, so that the notice ~~will~~ shall be legible to ~~passersby~~ passersby; and
- (4) The sign shall be posted within ~~three~~ 10 feet of the property line that is parallel to the public road or sidewalk that will ~~run~~ be in front of the proposed store, or if the proposed store will be in ~~a~~ an existing shopping center, the sign shall be posted on the front exterior of the existing storefront or building. Lettering on the sign shall face the public road or sidewalk, or if within an existing shopping center, the lettering shall face the exterior of the existing storefront or building.

Authority G.S. 18B-207; 18B-801.

SECTION .1300 - STORAGE AND DISTRIBUTION OF SPIRITUOUS LIQUORS: COMMERCIAL TRANSPORTATION

04 NCAC 02R .1301 DEFINITIONS

As used in this Subchapter:

- (1) ~~"Contract carrier" means the carriers operated by the contractor on behalf of the state for the purpose of distributing spirituous liquors.~~
- (2) ~~"Distressed liquor" means liquor which is not saleable due to adulteration, or damage to the bottle, label or tax seal.~~
- (3) ~~"Operator" or "Contractor" means the person or persons responsible for carrying out the storage and distribution of spirituous liquors at the state ABC warehouse.~~
- (4) ~~"State ABC warehouse" means the contractor operated facility or facilities storing spirituous liquors on behalf of the Commission pursuant to G.S. 18B-204, or, in cases of~~

~~emergency, the facility or facilities operated by the state for the purpose of storing spirituous liquors.~~

Authority G.S. 18B-101; 18B-207.

SECTION .1400 - PURCHASE OF ALCOHOLIC BEVERAGES BY LOCAL BOARDS

04 NCAC 02R .1405 COMMEMORATIVE BOTTLES

The Commission ~~may~~ shall approve local boards' orders and sales of specially designed bottles commemorating particular events, occasions, or ceremonies, ~~provided the following requirements are complied with:~~ provided:

- (1) local ABC systems procure Commission approval prior to ordering commemorative bottles;
- (2) advertising borne upon commemorative bottles is limited to ~~eleemosynary commemorating historical events of the local board and non-profit, charitable enterprises only~~ (i.e., ordinary profit-oriented businesses will not be are not permitted to advertise themselves or their products via commemorative bottles); and
- (3) ~~except as otherwise expressly authorized by the Commission in the case of the smaller local boards,~~ a local board orders a minimum of 3,000 bottles for any specific commemorative ~~occasion; and occasion.~~
- (4) ~~alcoholic beverages contained in the bottles are bona fide brands listed and approved by the Commission.~~

Authority G.S. 18B-207; 18B-807.

04 NCAC .02R .1407 PAYMENT

- (a) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment fee within 30 days of receipt of the statement.
- (b) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment surcharge within 15 days of receipt of the statement.
- (c) Local boards shall remit full payment of the distiller's invoice within 30 days of delivery of the liquor.
- (d) Local boards that obtain spirituous liquor from another local board pursuant to 04 NCAC 02R .1302(e) shall remit full payment within 15 days of the transaction.

Authority G.S. 18B-207; 18B-702(e);

SECTION .1500 - PRICING OF SPIRITUOUS LIQUOR

04 NCAC 02R .1502 MARKUP FORMULA

(a) ~~On every delivered case of spirituous liquors, there is to shall be an added a 78.8400 percent markup, which is derived by the following formula: (x) equals the base price of the case, including freight and bailment charges as determined by the Commission. The current markup formula shall be published on~~

the Commission's web site, [www.ncabc.com](http://www.ncabc.com). ~~Thirty-six hundredths percent equals the markup allowed local boards; therefore, 1.3600(x) equals the delivered case cost plus the 36.00 percent local markup, or the "retail price," excluding all taxes.~~

Example:

.360000(x) local markup  
 .380800(x) state tax [28% of 1.3600(x)]  
 state tax retained locally [3.5% of 1.3600(x)]  
 .788400(x) total markup

~~(b) The selling price of spirituous liquor, which includes the cost of goods, local markup and all taxes, is derived by following these steps:~~

- ~~(1) Determine the subtotal case cost by adding base case cost, freight and bailment together;~~
- ~~(2) Multiply the subtotal case cost by 1.788400, to four decimals;~~
- ~~(3) Add the bailment surcharge as determined by the commission;~~
- ~~(4) Divide the result by the number of bottles in the case;~~
- ~~(5) Add five cents (\$.05) rehabilitation tax [Add one cent (\$.01) for bottles 50 ml. or less];~~
- ~~(6) Add five cents (\$.05) for the local board charge [Add one cent (\$.01) for bottles 50 ml. or less];~~
- ~~(7) Round the result to an integer evenly divisible by five cents (\$.05). The breaking point is one cent (\$.01), 1 mill; the mill is underlined.~~
  - ~~(A) If cent equals \$ .00, it remains \$ .00;~~
  - ~~(B) If cent equals \$ .05, it remains \$ .05;~~
  - ~~(C) If cent equals \$ .010, (if mill is 0), round downward to \$ .00;~~
  - ~~(D) If cent equals \$ .011, (if mill is 1-9), round upward to \$ .05;~~
  - ~~(E) If cent equals \$ .060, (if mill is 0), round downward to \$ .05;~~
  - ~~(F) If cent equals \$ .061, (if mill is 1-9), round upward to \$ .10;~~
  - ~~(G) If cent equals \$ .411, .42, .43, .44, round upward to \$ .45;~~
  - ~~(H) If cent equals \$ .461, .47, .48, .49, round upward to \$ .50;~~
- ~~(8) The result is the retail selling price per bottle.~~

*Authority G.S. 18B-203(a)(3); 18B-207; 18B-804.*

**SECTION .1700 - RETAIL SALES OF ALCOHOLIC BEVERAGES**

**04 NCAC 02R .1701 REMOVAL OF BEVERAGES FROM ABC STORES**

(a) Spirituous liquor, either distressed or otherwise, shall not leave the custody of a local board after receipt unless:

- (1) The spirituous liquor is sold at retail; or
- (2) The liquor is returned to the state ABC warehouse; or
- (3) The liquor is purchased, exchanged, or otherwise obtained by another local board as provided by 04 NCAC 02R .1302(e).

Any spirituous liquor otherwise leaving the local board ~~without being sold at retail or returned to the state ABC warehouse~~ constitutes is nontaxpaid spirituous liquor.

(b) Distressed Liquor. Distressed liquor shall be given to a public or private hospital for medicinal purposes only or destroyed and the destruction witnessed by the manager or his designed designee and a distiller representative. A Destruction of Unsalable Merchandise Report shall be completed and signed by the witnessing parties. Copies-A written copy of the report shall be sent to the distiller and the Commission-a written or electronic copy shall be sent quarterly to the Commission. The original shall be retained by the local board for a period of three years.

(c) No sales of alcoholic beverages shall be made to employees, board members or other retail customers on credit. This Rule ~~shall~~ does not prohibit purchases made by the use of credit cards where such sales are permitted by the Commission. ~~cards.~~

*Authority G.S. 18B-806; 18B-807.*

**04 NCAC 02R .1708 PURCHASE-TRANSPORTATION PERMITS**

~~Employees of local boards are expressly prohibited from selling more than five liters of fortified wine or spirituous liquor or more than five liters of the two combined to a person at any one time, except as authorized under G.S. 18B-403 and G.S. 18B-404.~~

A copy of all ~~Purchase/Transportation~~ Purchase-Transportation Permits shall be maintained by local boards for a period of one year following issuance. A copy of all Mixed Beverages ~~Purchase/Transportation~~ Purchase-Transportation Permit/Invoice forms shall be retained by the local board for a period of at least three years.

*Authority G.S. 18B-207; 18B-303; 18B-403; 18B-404; 18B-807.*

**04 NCAC 02R .1710 CREDIT CARD SALES**

~~A local board may allow customers to purchase alcoholic beverages with credit cards so long as all the following conditions are met:~~

- ~~(1) The local board files with the Commission a written request for approval to implement the use of credit cards, and furnishes in that request the following:~~
  - ~~(a) proposed date of implementation;~~
  - ~~(b) proposed bank or institution for clearing;~~
  - ~~(c) proposed discount rate; and~~
  - ~~(d) whether instant verification equipment will be used;~~
- ~~(2) The local board must receive written authorization from the Commission to allow credit card sales; and~~
- ~~(3) The minimum alcoholic beverage purchase that may be charged to a credit card is twenty dollars (\$20.00).~~

*Authority G.S. 18B-203(b); 18B-702(e); 18B-807.*

**SECTION .1800 - PURCHASE-TRANSPORTATION PERMITS FOR INDIVIDUALS AND MIXED BEVERAGES PERMITTEES**

**04 NCAC 02R .1801 PURCHASE-TRANSPORTATION PERMITS: WINE: LIQUOR:**

~~(a) Local Board to Issue. Whenever a person desiring to purchase more than 20 liters of unfortified wine, or more than five liters of either fortified wine or spirituous liquor or five liters of the two combined, applies to a local board for a Purchase Transportation Permit, the local board shall issue the purchaser such a permit, following the guidelines of G.S. 18B-403.~~

~~(b)(a) Form. The Purchase-Transportation Permit shall be issued on a printed three-part form and shall specify the following information on the face of the permit:~~

- ~~(1) the name and location of the store from which the purchase is to be made;~~
- ~~(2) whether the purchase is for unfortified wine, fortified wine or spirituous liquor;~~
- ~~(3) destination of the alcoholic beverages including name and address of location;~~
- ~~(4) Special Occasions Permit number of a location, if alcoholic beverages are purchased for a special occasion;~~
- ~~(5) time and date of commencement and conclusion of special occasion, if any;~~
- ~~(6) quantity and type of alcoholic beverages purchased;~~
- ~~(7) signature of local ABC official issuing the permit;~~
- ~~(8) name, address and driver's license number of purchaser.~~

The form shall contain a statement that the permit is valid for only one purchase on the date shown and will expire at 9:30 p.m. on the date of purchase and a further statement that the permit shall accompany the beverages during transport and storage and be exhibited to any law enforcement officer upon request.

~~(e)(b) A local board issuing a Purchase-Transportation Permit shall retain one copy of the permit in its files for a period of one year and give the purchaser two copies, one of which the purchaser will shall give the store from which the alcoholic beverages are purchased.~~

*Authority G.S. 18B-207; 18B-303(a); 18B-403.*

**04 NCAC 02R .1802 MIXED BEVERAGE PERMIT/INVOICE FORM**

(a) Providing Form. A local board in a jurisdiction in which the sale of mixed beverages is lawful shall provide to a mixed beverages permittee ordering and purchasing spirituous liquor for resale in mixed beverages a Purchase-Transportation Permit/Invoice Form for every purchase of liquor by the permittee.

(b) Contents of Form; Copies. Each Purchase-Transportation Permit/Invoice Form shall be printed in ~~triplicate~~ duplicate and shall show on the face of the form the information required by ~~S .0502-04 NCAC 02S .0502~~ of these Rules. The local board shall retain one copy in its permanent records for a period of

three years and shall give one copy of the permit/invoice to the mixed beverages permittee or designated employee to accompany the liquor during transport.

*Authority G.S. 18B-205; 18B-207; 18B-404(b).*

**04 NCAC 02R .1803 CABINET PERMITTEES; PURCHASE-TRANSPORTATION PERMITS**

(a) Approved Container Sizes; Sizes. Authorized Jurisdictions. Local ABC Boards in the following counties may sell 50 milliliter, 100 milliliter, 200 milliliter, 355 milliliter, and 375 milliliter containers of liquor to a hotel that has been issued a Guest Room Cabinet Permit: ~~Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Moore and Wake.~~ Permit.

(b) Purchase-Transportation Permits. A local board receiving an order from a guest room cabinet permittee for liquor intended for resale from guest room cabinets shall provide a separate Purchase-Transportation Permit/Invoice form for the permittee in the same manner as for sales of liquor for mixed beverages permittees, as specified in Rule .1802 of this Section. The Purchase-Transportation Permit/Invoice shall contain all the information required by ~~4 NCAC S .0502(b)~~ 04 NCAC 02S .0502(b), of this Chapter, and in addition, shall show on the face of the form the permittee's Guest Room Cabinet Permit number. One copy of the Purchase-Transportation Permit/Invoice form for guest room cabinet permittees shall be retained by the local board for a period of three years.

(c) Minimum Orders. A local board may require a guest room cabinet permittee to make a minimum purchase of multi-bottle packages or "sleeves" packaged by the manufacturer or bottler, but may not require minimum purchases in case quantities except as authorized by Rule .1404 of this Subchapter.

*Authority G.S. 18B-205; 18B-207; 18B-404(d); 18B-1001.*

**SECTION .1900 - SALES OF LIQUOR TO MIXED BEVERAGES PERMITTEES**

**04 NCAC 02R .1902 DESIGNATION OF STORE**

~~The Commission may authorize a local board that sells liquor to mixed beverages permittees to designate more than one store for this purpose if the volume of sales or the size of the area being served is sufficiently large enough to warrant more than one store.~~

*Authority G.S. 18B-207; 18B-404(c).*

**TITLE 13 – DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to adopt the rules cited as 13 NCAC 14B .0203 and .0616; amend the rules cited as 13 NCAC 14B .0101-.0104, .0201-.0202, .0204-.0205, .0208-.0209, .0211-.0213, .0301-.0303, .0305-.0306, .0308-.0309, .0401-.0407, .0503, .0604, .0610-.0612, and .0701; and repeal the rules cited as 13 NCAC 14A .0103, .0105 and .0108.*

**Proposed Effective Date:** November 1, 2010

**Public Hearing:**

**Date:** August 3, 2010

**Time:** 10:00 a.m.

**Location:** 4 West Edenton Street, 2<sup>nd</sup> Floor, Room 205, Raleigh, NC 27601

**Reason for Proposed Action:**

13 NCAC 14A .0103, .0105, .0108; 14B .0101-.0104, .0201-.0205, .0208, .0211-.0212, .0301-.0303, .0305-.0306, .0308-.0309, .0401-.0406, .0503, .0604, .0610-.0612, .0616 - Pursuant to National Apprenticeship Act of 1977, the NC Department of Labor's Apprenticeship and Training Bureau must remain in compliance with the federal requirements promulgated by the U.S. Department of Labor in order to continue to be recognized under 29 CFR 29.13(c). The U.S. Department of Labor promulgated updates to labor standards, policies and procedures for the registration, cancellation and deregistration of apprenticeship programs, apprenticeship agreements, and administration of the national Apprenticeship Program effective December 29, 2008. States were given up to a two-year period in which to make the changes to State law, regulation and/or policy needed to come into compliance before having to apply for continued recognition under 29 CFR 29.13(c). Therefore, in order to remain in compliance with federal requirements and continue to be recognized under 29 CFR 29.13(c), it is necessary for the NC Department of Labor to repeal, amend and adopt certain rules as proposed.

13 NCAC 14B .0209, .0213, .0407, .0701 - On August 5, 2009, the NC General Assembly enacted S.L. 2009-451, which reduced funding to the NC Department of Labor's Apprenticeship Bureau by twenty-five percent. S.L. 2009-451 was signed by the Governor on August 7, 2009. In order to supplement this large budgetary loss and to avoid an operating expense shortfall by the Bureau, Section 12.1 of S.L. 2009-451 created a new section of Chapter 94, G.S. 94-12, to establish a fee for new and current apprenticeships. Effective August 15, 2009, this new statute imposed fees in the total amount of fifty dollars (\$50.00) on each apprentice who is covered by a written apprenticeship agreement under Chapter 94. Subsequently, the NC Department of Labor adopted emergency rules effective August 27, 2009 and temporary rules effective October 29, 2009 in order to establish the new fees. Therefore, the proposed permanent rules are being proposed to replace the temporary rules currently in effect, including additional changes required for the program to remain in compliance with federal requirements and to continue to be recognized under 29 CFR 29.13(c). Note: Chapter 14 was re-codified effective March 15, 2010. The original citations to the proposed rules were 13 NCAC 14 .0303, .0309, .0508 and .0901. The re-codified citations are listed 13 NCAC 14B .0209, .0213, .0407 and .0701.

**Procedure by which a person can object to the agency on a proposed rule:** Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, NC 27699-1101; or via facsimile at (919) 733-4235. Objections may also be submitted

during the public hearings conducted on these rules, which are noticed above. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on September 13, 2010.

**Comments may be submitted to:** Erin T. Gould, 1101 Mail Service Center, Raleigh, NC 27699-1101; phone (919) 733-7885; fax (919) 733-4235; email erin.gould@labor.nc.gov

**Comment period ends:** September 13, 2010

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

**Fiscal Impact:**

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

**CHAPTER 14 - APPRENTICESHIP AND TRAINING DIVISION**

**SUBCHAPTER 14A - RULES EFFECTIVE FEBRUARY 1, 1984 THROUGH MARCH 14, 2010**

**SECTION .0100 - GENERAL PROVISIONS**

**13 NCAC 14A .0103 APPRENTICESHIP COUNCIL**

~~(a) The apprenticeship council advises the commissioner and the director regarding board policy for the apprenticeship system in North Carolina.~~

~~(b) Council members are appointed, serve their terms, vote, and are reimbursed as provided by G.S. 94-2. The director serves as secretary to the council.~~

~~(c) The council meets at the call of the commissioner. The commissioner shall give 60 days' notice to council members of the time and place of meeting, unless circumstances require shorter notice.~~

~~(d) Any council member may present an item for consideration by the council by submitting to the commissioner the item in brief outline form, together with any technical or statistical documents relative to the subject matter, at least 30 days prior to~~

~~the scheduled meeting, unless waived by the commissioner. The commissioner or director shall issue an agenda to council members at least five days prior to a scheduled meeting.  
(e) The secretary to the council shall prepare minutes of the meeting and shall provide each member of the council with a copy of the minutes.~~

*Authority G.S. 94-1; 94-2.*

**13 NCAC 14A .0105 CERTIFICATION**

~~Upon written request to the director by a sponsor or governmental agency or upon such occasions as agreed to by prior arrangement with a governmental agency, the director shall provide the requesting party, governmental agency, or designee of the requesting party or governmental agency an appropriate statement of certification, if the records of the division so indicate and circumstances verify the accuracy of the records.~~

*Authority G.S. 94-1; 94-2; 94-4; 94-8.*

**13 NCAC 14A .0108 PUBLIC ACCESS TO RECORDS**

~~(a) The director is custodian of the records of the division.  
(b) Any person wishing to inspect the public records of the division shall write to the director specifying with as much particularity as possible the records to be inspected and indicating the preferred times and dates for making inspection. The preferred times must be between 9:00 a.m. and 5:00 p.m. on a weekday not including holidays unless special arrangements are requested and approved by the director.  
(c) The director shall promptly respond to a written request, indicating the time and date the records will be available for inspection. The director shall not refuse to allow inspection of public records at a preferred time and date indicated in a written request unless the director can show good cause why the public records cannot be made available at that time and date, except that the director, at his discretion, may refuse to allow inspection of public records for a period of three working days following the director's receipt of a written request.  
(d) The inspection shall be conducted at the office of the division, or in such other place as the public records are kept, under the supervision of the director. Upon request of the person making inspection and payment of twenty-five cents (\$.25) per page, the director shall make and provide copies of the public records. If the copies are to be certified, the director shall require additional payment of one dollar (\$1.00) for each lot requiring certification. "Certification" of copies under this Rule means a statement that the copies are true copies of the public records of the division, which statement shall be personally signed by the director and embossed with the department seal.~~

*Authority G.S. 132-1; 132-2; 132-6.*

**SUBCHAPTER 14B - RULES EFFECTIVE MARCH 15, 2010**

**SECTION .0100 - GENERAL PROVISIONS**

**13 NCAC 14B .0101 NAME: ADDRESS**

~~(a) The Apprenticeship and Training Division headquarters are located in the North Carolina Department of Labor Building, Raleigh, North Carolina. The mailing address physical address for the division and for the Director of Apprenticeship director of apprenticeship is as follows:~~

~~Apprenticeship and Training Division  
(or Director of Apprenticeship)  
North Carolina Department of Labor  
Four West Edenton Street  
Raleigh, North Carolina 27601~~

N.C. Department of Labor  
Apprenticeship and Training Bureau  
Labor Building  
4 W. Edenton Street  
Raleigh, N.C. 27601

~~(b) All correspondence shall be addressed to the following mailing address:~~

N.C. Department of Labor  
Apprenticeship and Training Bureau  
1101 Mail Service Center  
Raleigh, N.C. 27699-1101

*Authority G.S. 94-1; 94-2.*

**13 NCAC 14B .0102 REGISTRATION AGENCY**

~~(a) The department functions as the State Apprenticeship Agency with authority to determine whether apprenticeship programs operating in this State conform to the provisions of Chapter 94 of the North Carolina General Statutes and the standards published by the U.S. Secretary of Labor, 29 C.F.R. Part 29 (February 18, 1977). (December 29, 2008). The director, under the supervision of the commissioner, administers the functions of the State Apprenticeship Agency through the division and has authority to register and deregister apprentices and apprenticeship programs and agreements.~~

~~(b) As the State Apprenticeship Agency, the department has undertaken undertaken, by adoption of a State Plan Plan, the responsibility for implementing equal opportunity standards relating to apprenticeship, which conform to the regulations published by the U.S. Secretary of Labor, 29 C.F.R. Part 30 (June 12, 1978). This The equal opportunity standards for apprenticeship are contained in Section .0600 of this Subchapter. fully sets forth the requirements of the State Plan so that compliance with this Section constitutes compliance with the State Plan. The director, under the supervision of the commissioner, administers through the division the requirements of this Section. the requirements of Section .0600 through the division.~~

*Authority G.S. 94-1; 94-2; 94-4; 94-8.*

**13 NCAC 14B .0103 VETERANS TRAINING ASSISTANCE ALLOWANCES**

~~(a) The department has been designated, pursuant to 38 U.S.C. 4774(a), 3671(a), as the State Approving Agency for this state with authority to approve programs of apprenticeship and other on-the-job training, in accordance with 38 U.S.C. 4787, 3687, as suitable for the participation of people eligible to receive VA~~

training assistance allowances. allowances from the U.S. Department of Veterans Affairs. As executive head of the department, the commissioner has appointed the director to administer the functions of the State Approving Agency.

(b) The director shall approve all apprenticeship and on-the-job training programs registered pursuant to Section .0200 of this Chapter Subchapter and on-the-job training programs approved pursuant to Section .0300 of this Subchapter, as suitable for the participation of eligible veterans and other people eligible persons to receive VA training assistance allowances. allowances whenever the sponsor submits to the director a written request for approval and a Designation of Certifying Official(s) form.

Authority G.S. 94-1; 94-2; 94-4.

**13 NCAC 14B .0104 DEFINITIONS**

The following definitions apply throughout this Chapter:

- (1) "Commissioner" means the Commissioner of Labor for the State of North Carolina. The commissioner may authorize a representative to administer the duties and responsibilities prescribed for him by this Chapter.
- (2) "Department" means the North Carolina Department of Labor.
- (3) "Director" means the Director of Apprenticeship for the State of North Carolina. The director or commissioner may authorize a representative to administer the duties and responsibilities prescribed for the director by this Chapter.
- (4) "Division" means the Apprenticeship and Training Division within the department.
- (5) "Apprentice" means a worker at least 16 years old, except when a higher minimum age is otherwise fixed by law, who is employed to learn a skilled trade in a registered apprenticeship program.
- (6) "Apprenticeable Occupation" means an occupation having the characteristics set forth in Rule .0201 of this Chapter.
- (7) "Apprenticeship Agreement" means a written agreement between an apprentice and his sponsor, which agreement satisfies the requirements of Rule .0208 of this Chapter.
- (8) "Apprenticeship Committee" means those persons designated by a sponsor to act for the sponsor in the administration of an apprenticeship program; "Joint Apprenticeship Committee" means an apprenticeship committee composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s), which committee was established to operate an apprenticeship program and enter into apprenticeship agreements; and apprenticeship committee in which a collective bargaining

- (9) agent is not a participant is "unilateral" or "non joint."  
"Apprenticeship Program" means a program providing for the qualification, recruitment, selection, employment, and training on the job or apprentices.
- (10) "Apprenticeship Association" means an association of employers who operate or participate in apprenticeship or OJT programs where the programs are operated in a manner similar to the programs operated by other members of the association, the purpose of the association being to assist the members in designing, registering, operating, and participating in an apprenticeship or OJT program.
- (11) "Approval" means the recognition by the director and the recording with the division of an apprenticeship or OJT program, signifying that the program is suitable for participation of veterans or other people eligible to receive training allowances from the Veteran's Administration.
- (12) "Certification" means written acknowledgment by the director that an individual is a registered apprentice, probationary apprentice in a registered apprenticeship program, or trainee in an approved OJT program, that an employer is participating in a registered apprenticeship program or approved apprenticeship or OJT program, that a sponsor is operating a registered apprenticeship program or approved apprenticeship or OJT program, or that an apprenticeship program is registered or approved or an OJT program approved. Certification may acknowledge any combination in this Paragraph as appropriate.
- (13) "Completer" means an individual who has completed the normal term of elementary and secondary education but has not been awarded a diploma because of not passing the state's educational competency examination.
- (14) "Employer" means any person or organization employing an apprentice or trainee, whether or not the employer is a party to the apprenticeship or OJT agreement with the apprentice or trainee; "Participating Employer" means an employer which is not itself a sponsor, although a participating employer may be a member of an employers' group or association.
- (15) "Employers' Group or Association" means an organization composed of employers who employ apprentices or trainees, the purpose of such group being, at least in part, to act as the sponsor of an apprenticeship or OJT program.
- (16) "Fully Qualified Worker" means a worker who is fully qualified by experience, training, or

- skills to undertake the tasks necessary for his employment.
- (17) "~~Group Program~~" means ~~an apprenticeship or OJT program including or designed to include more than one employer.~~
- (18) "~~Journeyman~~" means ~~a fully qualified worker in an apprenticeable occupation, without regard to gender.~~
- (19) "~~OJT Agreement~~" means ~~a written agreement between a trainee and his sponsor, which agreement satisfies the requirements of Rule .0305 of this Chapter.~~
- (20) "~~OJT Program~~" means ~~a program providing for the qualification, recruitment, selection, employment, and training on the job of people other than apprentices.~~
- (21) "~~Probationary Apprentice~~" or "~~Summer Apprentice~~" means ~~an apprentice who complies with all the provisions of this Chapter except that neither the individual nor the individual's apprenticeship agreement is registered and the individual is not employed as a probationary apprentice for more than four months in any calendar year.~~
- (22) "~~Registration~~" means ~~the recognition by the director and the recording with the division of an apprenticeship program, apprenticeship agreement, or apprentice, signifying that the program, agreement, or individual complies with the rules, requirements, criteria, and standards of this Chapter regarding apprenticeship.~~
- (23) "~~Related Instruction~~" means ~~an organized and systematic form of instruction designed to provide the apprentice or trainee with knowledge of the theoretical and technical subjects related to his trade or occupation.~~
- (24) "~~Revision~~" means ~~any substantive modification or change of the program standards of apprenticeship (including an affirmative action plan and a written description of the selection procedure), of the program standards for OJT, or of an apprenticeship or OJT agreement.~~
- (25) "~~Sponsor~~" means ~~any person or organization endeavoring to establish and operate a registered apprenticeship program or an approved OJT program, entering into an apprenticeship or OJT agreement with an apprentice or trainee, and in whose name the program is registered.~~
- Note: ~~A sponsor may authorize a representative, including but not limited to an apprenticeship committee, to administer the duties and responsibilities prescribed for it under this Chapter.~~
- (26) "~~Standards~~" means ~~the program standards of apprenticeship as set forth in Rule .0202 of~~

- this Chapter or the program standards for OJT as set forth in Rule .0301 of this Chapter.
- (27) "~~Trainee~~" means ~~a worker, other than an apprentice, who is employed to learn an occupation in an OJT program.~~
- (28) "~~VA~~" means ~~the Veterans' Administration of the United States.~~
- (29) "~~He,~~" "~~His,~~" or "~~Him~~" means ~~such individual as is indicated without regard to gender.~~

In addition to the definitions contained in G.S. 94-5, the following definitions apply throughout this Subchapter:

- (1) "Apprenticeable Occupation" means an occupation having the characteristics set forth in Rule .0201 of this Subchapter.
- (2) "Apprenticeship Association" means an association of employers who operate or participate in apprenticeship or OJT programs where the programs are operated in a manner similar to the programs operated by other members of the association, the purpose of the association being to assist the members in designing, registering, operating, and participating in an apprenticeship or OJT program.
- (3) "Approval" means the recognition by the director and the recording with the division of an apprenticeship or OJT program, signifying that the program is suitable for participation of veterans or other people eligible to receive training allowances from the U.S. Department of Veterans Affairs.
- (4) "Cancellation" means the termination of the registration of a program at the request of the sponsor, or termination of an Apprenticeship Agreement at the request of the apprentice, in accordance with Section .0400 of this Subchapter.
- (5) "Certification" means written acknowledgment by the director that:
- (a) An individual is a registered apprentice in a registered apprenticeship program or a registered trainee in a registered OJT program; and
- (b) That an employer is participating in a registered apprenticeship program or OJT program, that a sponsor is operating a registered apprenticeship program or OJT program, or that an apprenticeship program or an OJT program is registered. Certification may acknowledge any combination in this Paragraph as appropriate.
- (6) "Commissioner" means the Commissioner of Labor for the State of North Carolina. The commissioner may authorize a representative to administer the duties and responsibilities prescribed by this Subchapter.

**PROPOSED RULES**

- (7) "Competency" means the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by appropriate written and hands-on proficiency measurements.
- (8) "Completer" means an individual who has completed the normal term of elementary and secondary education but has not been awarded a diploma because of not passing the state's educational competency examination.
- (9) "Completion rate" means the percentage of an apprenticeship cohort who receive a certificate of apprenticeship completion within one year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period.
- (10) "Department" means the North Carolina Department of Labor.
- (11) "Director" means the director of apprenticeship for the State of North Carolina. The director or commissioner may authorize a representative to administer the duties and responsibilities prescribed for the director by this Subchapter.
- (12) "Division" means the Apprenticeship and Training Division within the department.
- (13) "Electronic Media" means media that utilize electronics or electromechanical energy for the end user (audience) to access the content; and includes electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement or removable/transportable electronic media and interactive distance learning.
- (14) "Employers' Group or Association" means an organization composed of employers who employ apprentices or trainees, the purpose of such group being, at least in part, to act as the sponsor of an apprenticeship or OJT program.
- (15) "Fully Qualified Worker" means a worker has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.
- (16) "Group Program" means an apprenticeship or OJT program including or designed to include more than one employer.
- (17) "Journeyman" means a fully qualified worker in an apprenticeable occupation. Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.
- (18) "OJT Agreement" means a written agreement between a trainee and his sponsor, which agreement satisfies the requirements of Rule .0305 of this Subchapter.
- (19) "OJT Program" means a program providing for the qualification, recruitment, selection, employment, and training on the job of people other than apprentices.
- (20) "Provisional registration" means the one year initial provisional approval of newly registered apprenticeship programs that meet the required standards for program registration, after which program approval may be made permanent, continued as provisional, or rescinded following a review by the department.
- (21) "Quality Assurance Assessment" means a comprehensive review conducted by the department regarding all aspects of an apprenticeship program's performance, including determining if apprentices are receiving: on-the-job learning in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the department is receiving notification of all new registrations, cancellations, and completions as required by this Subchapter.
- (22) "Registration" means the recognition by the director and the recording with the division of an apprenticeship or OJT program, apprenticeship or OJT agreement, or apprentice or trainee, signifying that the program, agreement, or individual complies with the rules, requirements, criteria, and standards of this Subchapter regarding apprenticeship or OJT.
- (23) "Related Instruction" means an organized and systematic form of instruction designed to provide the apprentice or trainee with knowledge of the theoretical and technical subjects related to his trade or occupation. Such instruction may be given in a classroom, through occupational or industrial courses, by correspondence courses of equivalent value, through electronic media, or through other forms of self-study approved by the department.
- (24) "Revision" means any substantive modification or change of the program standards of apprenticeship (including an affirmative action plan and a written description of the selection procedure), of the program standards for OJT, or of an apprenticeship or OJT agreement.



- (25) "Standards" means the program standards of apprenticeship as set forth in Rule .0202 of this Subchapter or the program standards for OJT as set forth in Rule .0301 of this Subchapter.
- (26) "Technical Assistance" means guidance provided by the division staff in the development, revision, amendment, or processing of a potential or current program sponsor's Standards of Apprenticeship, Apprenticeship Agreements, or advice or consultation with a program sponsor to further compliance with this Subchapter or guidance from the department on how to remedy nonconformity with this Subchapter.
- (27) "Trainee" means a worker, other than an apprentice, who is employed to learn an occupation in an OJT program.
- (28) "Transfer" means a shift of apprenticeship registration from one program to another or from one employer within a program to another employer within that same program, where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

- ~~(1) The sponsor must operate and administer the apprenticeship program in accordance with the program standards of apprenticeship, with the provisions of this Chapter, and with all applicable state and federal statutes and regulations, including but not limited to the provisions of occupational safety and health standards and regulations;~~
- ~~(2) The apprentice must meet the minimum qualifications for an apprentice, as provided in Rule .0207 of this Section;~~
- ~~(3) The apprenticeship program must be in an apprenticeable occupation, as provided in Rule .0201 of this Section;~~
- ~~(4) Every individual to be trained in the registered program must be a registered apprentice or probationary apprentice;~~
- ~~(5) The (a) In order to be eligible for registration by the department, an apprenticeship program must shall be set forth in a written document, signed by the sponsor, document signed by the sponsor containing the terms and conditions of employment, training, and supervision of one or more apprentices in an apprenticeable occupation. The written document shall denominate the program standards of apprenticeship and which includes include the following provisions and is denominated the program standards of apprenticeship; provisions:~~

- ~~(A)(1) The nature of the skilled trade occupation for which the apprentice is to be trained;~~
- ~~(B)(2) The term of apprenticeship consistent with training requirements commonly recognized by the industry, where the term of apprenticeship is not less than at least 2,000 hours of reasonably continuous on-the-job work experience, learning (time-based approach), the attainment of competence (competency-based approach), or a blend of the time-based and competency based approaches (hybrid approach), unless the commissioner expressly gives written approval for fewer hours;~~
- ~~(A) The time-based approach measures skill acquisition through the individual apprentice's completing of at least 2,000 hours of on-the-job learning as described in a work process schedule.~~
- ~~(B) The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach shall still require apprentices to complete an on-the-job learning component. The program standards shall address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of~~

Authority G.S. 94-1; 94-2.

**SECTION .0200 - APPRENTICESHIP PROGRAMS**

**13 NCAC 14B .0201 CRITERIA FOR APPRENTICEABLE OCCUPATIONS**

An apprenticeable occupation possesses all of the following characteristics:

- ~~(1) It is in a skilled trade;~~
- ~~(2)(1) It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training; learning;~~
- ~~(3)(2) It is clearly identified and commonly recognized by an industry;~~
- ~~(4)(3) It involves manual, mechanical, or technical skills and knowledge which normally require not less than 2,000 hours of reasonably continuous on-the-job work experience; learning; and~~
- ~~(5)(4) It normally requires not less than 144 hours of related instruction for every 2,000 hours of on-the-job work experience—learning to supplement the on-the-job supervised training. learning.~~

Authority G.S. 94-1; 94-2; 94-4.

**13 NCAC 14B .0202 STANDARDS OF APPRENTICESHIP**

~~(a) An apprenticeship program must conform to the following minimum requirements in order to obtain and maintain registration:~~

testing and evaluation for such competencies.

(C) The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

(D) The determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the department of the determination as appropriate to the apprenticeable occupation for which the program standards are registered.

~~(C)~~(3) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the approximate allocation of time to be spent in each major process;

~~(D)~~(4) An outline of the related instruction to be provided the apprentice, ~~normally not less than 144 hours for every 2,000 hours of on the job work experience or according to the same proportion for programs of fewer or more hours and a provision that the sponsor will promptly notify the director whenever an apprentice completes a course of study indicated in the outline of related instruction;~~ apprentice in technical subjects related to the occupation. A minimum of 144 hours for each year of apprenticeship is recommended. This instruction may be accomplished through media such as classroom, occupational or industry courses, electronic media, or other instruction approved by the department. Every apprenticeship instructor shall:

(A) Meet one of the following requirements:

(i) Be qualified as a vocational-technical instructor through the N.C. Department of Public Instruction, the N.C. Community College System or an accredited college or university in the state; or

(ii) Be a subject matter expert. For purposes of this Rule, a subject matter expert is an individual who is recognized within an industry as having expertise in a specific occupation, such as a journeyman; and

(B) Have training in teaching techniques and adult learning styles, which may occur before or after the

apprenticeship instructor has started to provide the related technical instruction.

~~(E)~~(5) A schedule of progressively increasing wages to be paid the apprentice consistent with the skill required and based upon the prevailing journeyman rate for the trade and geographic region:

(A) The entry wage for apprentices must shall be no less than the amount prescribed by the State Minimum Wage Law (G.S. 95-25.1 et seq.), unless a higher wage is required by the Fair Labor Standards Act of 1938, as amended, by other applicable federal law, or by collective bargaining agreement;

(B) Unless otherwise established by collective bargaining agreement, the entry wage for apprentices shall normally be no less than 50 percent and shall normally reach at least 85 percent of the journeyman rate by the last period of training;

~~(F)~~ A statement whether the required related instruction will be compensated;

~~(G)~~ A statement that the apprentices will be eligible for and will be paid overtime under the same rules or policies as apply to journeymen employed in the same trade by the apprentices' employer;

~~(H)~~(6) A provision requiring periodic review and evaluation of the apprentice's progress in job performance and related ~~instruction and~~ instruction, identifying the person(s) responsible for such review, and further requiring maintenance of ~~appropriate~~ progress records;

~~(I)~~(7) An assurance that qualified training personnel and adequate supervision on the job will be provided;

~~(J)~~(8) A provision requiring that the ratio of apprentices to journeymen will not exceed two to one at each job site, work force, department, or plant, except as follows:

~~(i)~~(A) In the building and construction trades, the ratio of apprentices to journeymen shall not exceed one to one at each job site, work force, department, or plant;

~~(ii)~~(B) No such specific ratios are required where expressly prohibited or otherwise provided for by an applicable collective bargaining agreement;

~~(K)~~(9) A provision requiring a period of probation of not more than 500 hours of employment and

~~instruction extending over not more than four months, 25% of the length of the program, or one year, whichever is shorter, unless the director approves a longer period at the request of a joint apprenticeship committee, during which probationary period either party to the apprenticeship agreement may cause the agreement to be de-registered by the director upon the request in writing of either party; A provision requiring a probationary period not to exceed 25 percent of the length of the program, or one year, whichever is shorter, with full credit given for such period toward completion of apprenticeship. During the probationary period, either party may unilaterally submit a written request to the director requesting that the agreement be deregistered. Cancellation during the probationary period will not have an adverse impact on the sponsor's completion rate.~~

~~(L) — A provision requiring that after the probationary period an apprenticeship agreement can be deregistered by the director only upon written request of the apprentice, written request showing mutual agreement of the parties, written request of the sponsor showing reasonable cause, or upon deregistration of the apprenticeship program. Where a program is deregistered, apprenticeship agreements which are therefore also subject to being deregistered shall be placed in a status of "inactive" for a period of not more than one year, during which time the party or parties that initiated the deregistration of the program will exercise due diligence in seeking to place said apprentices in employment that will reactivate such agreements and provide the apprentice with the opportunity to complete his apprenticeship training;~~

~~(M)(10)~~ An assurance that adequate and safe equipment and facilities for training and supervision will be provided and that apprentices will be provided safety training on the job and in related instruction;

~~(N)(11)~~ A provision that an apprentice will be given credit toward completion of on-the-job training, including a reduction of the term of the apprenticeship and placement on the schedule of wages at a commensurate level, for previously acquired experience, training, or skills, such reduction and placement to be determined by the sponsor with the approval of the director; The granting of advanced standing or credit for demonstrated competency, acquired experience, training, or

skills for all applicants equally, with commensurate wages for any progression step so granted;

~~(O)(12)~~ A statement that an employer who is unable to fulfill its obligation under the apprenticeship agreement may, with the approval of the director, transfer the agreement to another employer under the same program who agrees to assume the obligations of the agreement, if ~~both~~ the apprentice and ~~the sponsor~~ both sponsors consent to the ~~transfer;~~ transfer and comply with the following provisions:

(A) The transferring apprentice shall be provided a transcript of related instruction and on-the-job learning by the program sponsor;

(B) The transfer shall be to the same occupation; and

(C) A new apprenticeship agreement shall be executed when the transfer is to occur between program sponsors.

~~(P)(13)~~ A provision that the sponsor will promptly submit to the director any proposed revision of the apprenticeship program or agreement for ~~the director's approval;~~ for the registration, cancellation and deregistration of the program, and for the submission of any program standard modification or amendment to the department for approval;

~~(Q)(14)~~ A provision that the sponsor will promptly notify the director of individuals who have signed an apprenticeship agreement, of apprentices who have left the program before completion, and of apprentices who have successfully completed an apprenticeship and that the sponsor will request from the director a certificate of completion for apprentices who have ~~successfully completed an apprenticeship;~~ for the registration, modification and amendment of apprenticeship agreements, and for giving notice to the department of transfers, suspensions, and cancellations of apprenticeship agreements, including a statement of the reasons therefore, and of persons who have successfully completed apprenticeship programs;

~~(R)(15)~~ A provision that the sponsor will maintain all records of an apprenticeship program including ~~but not limited to~~ payroll records, for a period of five years and will make them available for review to department personnel or their authorized representative at the request of the department personnel or, whenever the records pertain to a program with apprentices who have received or are receiving VA training allowances, to VA personnel upon their request; the location of the records shall be specified;

~~(S)~~(16) A provision that the sponsor will notify ~~in writing~~ the director and the VA Regional Office in writing whenever an apprentice receiving a VA training allowance is paid wages in an amount equal to or more than the amount paid to journeymen in the trade and geographic region, as established ~~in Part (E) of~~ by Subparagraph (a)(5) of this Rule;

~~(T)~~(17) ~~A statement of the titles or names and addresses of~~ Contact information, including name, title, address, telephone number and e-mail address, if appropriate, of the appropriate people with authority under the program to receive, process, and resolve complaints arising under the apprenticeship program, including the person(s) or organization designated by the sponsor, if any, and the director as head of the State Apprenticeship Agency, complaints, and the appropriate person(s) or organization for complaints concerning equal employment opportunity in apprenticeship (Section .0600 of this Chapter; Subchapter);

~~(U)~~(18) A statement of the minimum qualifications for apprentices which the sponsor may require in addition to the minimum qualifications set forth in Rule .0207 of this ~~Section. Subchapter.~~ This statement may be satisfied by submission of the written description of the sponsor's selection procedure, as required under ~~Part (W) of (a)(5)~~ Subparagraph (a)(20) of this Rule, if the written description includes all additional minimum requirements;

~~(V)~~(19) The following pledge: "The recruitment, selection, employment, and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religion, national origin, or sex. The sponsor will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by Section .0600 of ~~13 NCAC 14~~ 14"; of this Subchapter and Title 29 of the Code of Federal Regulations, Part 30."

~~(W)~~(20) The sponsor's affirmative action plan and written description of its selection procedure, unless exempted, as provided in Section .0600 of this ~~Chapter; Subchapter;~~

~~(X)~~(21) An assurance that all apprentices in the program will be provided the same training and instruction and will in all respects be treated the same under the program;

~~(Y)~~(22) A provision that each apprentice in the apprenticeship program will be a party to a registered apprenticeship agreement meeting the requirements of Rule .0208 of this ~~Section Subchapter, and each probationary apprentice will be a party to an apprenticeship agreement meeting the requirements of that rule and that~~

the sponsor will provide each apprentice ~~or probationary apprentice~~ with a copy of his the agreement.

(b) The program standards of apprenticeship ~~must shall~~ constitute a statement of the actual program operating or to be operated and not a statement of the goals, objectives, or aspirations of the sponsor, except for the equal opportunity goals and timetables.

Authority G.S. 94-1; 94-2; 94-4.

**13 NCAC 14B .0203 PROGRAM PERFORMANCE STANDARDS**

(a) Programs shall have at least one registered apprentice in order to retain registration, except for the following periods of time which may not exceed one year:

- (1) Between the date when a program is registered and the date of registration for its first apprentice(s); or
- (2) Between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

(b) The department shall evaluate performance of registered apprenticeship programs as follows:

- (1) The tools and factors to be used shall include:
  - (A) Quality assurance assessments;
  - (B) Equal Employment Opportunity (EEO) Compliance Reviews; and
  - (C) Completion rates.
- (2) Any additional tools and factors used by the department in evaluating program performance shall adhere to the goals and policies of the department articulated in this Subchapter and in guidance issued by the U.S. Department of Labor's Office of Apprenticeship.

(c) In order to evaluate completion rates, the department shall review a program's completion rates in comparison to the national average for completion rates. Based on the review, the department shall provide technical assistance to programs with completion rates lower than the national average.

(d) Cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate.

Authority G.S. 94-1; 94-2; 94-4.

**13 NCAC 14B .0204 REGISTRATION REQUEST PROCEDURE**

(a) Upon request by a prospective sponsor to an official of the department, or upon the initiative of an official of the department, a representative of the division shall ~~arrange, or upon the initiative of an official of the department may arrange,~~ arrange a meeting or series of meetings between a representative of the division and the prospective sponsor for the purpose of discussing the requirements for registration and the procedures necessary to register and operate an apprenticeship program.

(b) If the prospective sponsor elects to request registration of an apprenticeship program, it shall complete and submit to the

director the forms required by the director, including but not limited to the following:

- (1) A written request, signed by the prospective sponsor, for registration of an apprenticeship program meeting the requirements of Rule .0202 of this Subchapter;
- (2) An original of the program standards of apprenticeship required under Rule .0202(a)(4) of this Subchapter, including an affirmative action plan according to Rule .0607 of this Chapter Subchapter and a written description of the selection procedure according to Rule .0608 of this Chapter, Subchapter, unless exempted;
- (3) Any written agreement to comply with the program standards by a participating employer as provided by Rule .0106(b) of this Subchapter; and
- (4) One of the following:
  - (A) A written acknowledgment of union agreement or "no objection" to the registration when the program standards, collective bargaining agreement, or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program and such participation is exercised; or
  - (B) A written acknowledgment of a union's receipt of a copy of the completed application forms when the union represents employees in the trade which is an objective of the apprenticeship training, unless an acknowledgment under this Part preceding is required; or
  - (C) A signed statement by the sponsor that no unions represent employees of the sponsor or participating employers in the trade which is an objective of the apprenticeship training.

(c) If the director has received the completed application forms in proper form and has determined that the requirements for an apprenticeship program, as set forth in Rule .0202 of this Subchapter, are met, the program shall be approved and registered with the division. The sponsor shall be notified in writing of the registration.

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0205 ELIGIBILITY AND PROCEDURE FOR REGISTRATION OF AN APPRENTICESHIP PROGRAM**

~~(a) Upon receipt by the director of the forms required from a prospective sponsor for the registration of an apprenticeship program, the director shall review the forms to determine whether they are complete and in conformance with the~~

~~requirements for apprenticeship set forth in Rule .0202 of this Chapter and shall make such investigation as he deems necessary. For the purposes of this Rule, receipt by a representative of the division does not constitute receipt by the director.~~

~~(b) If the director finds that the forms are complete and the proposed apprenticeship program conforms to the requirements for apprenticeship, he shall approve the request for registration, subject to Paragraph (c) of this Rule.~~

~~(c) When a union has been furnished a copy of the request according to Part (b)(4)(B) of Rule .0204 of this Section, the director shall not approve a request for registration until 30 days after receipt of the completed application forms in order that the union may comment upon the request. When notice to a union is required but not provided, the director shall not approve the request until 30 days after notice is provided.~~

~~(d) After the director has approved a request for registration, he shall cause the apprenticeship program to be recorded by the division, which constitutes registration of the program, and shall provide the sponsor with evidence of the registration in the form of a certificate or other written indicia.~~

~~(e) Notwithstanding any other provision of this Chapter, an apprenticeship program jointly sponsored on a multistate basis by employers and unions in an industry other than the building and construction industry and registered pursuant to the requirements of the federal Bureau of Apprenticeship and Training by the Bureau or any recognized state apprenticeship agency or council shall be accorded registration by the director upon the sponsor's submission to the director of a written request together with satisfactory documentation of registration and a copy of the program standards of apprenticeship. An apprenticeship program registered by the division under this Rule is subject to all other requirements of this Chapter, including but not limited to the registration of apprenticeship agreements and individuals, compliance with equal opportunity provisions, procedures for processing complaints, compliance reviews, and de-registration.~~

(a) Eligibility for registration of an apprenticeship program is conditioned upon a program's conformity with the apprenticeship program standards published in this Subchapter. For a program to be determined by the director as being in conformity with this Subchapter, the program shall apply for registration and be registered with the department. The determination by the director that the program meets the apprenticeship program standards is effectuated only through such registration.

(b) Only an apprenticeship program or agreement that meets the following criteria is eligible for registration:

(1) It is in conformity with the requirements of Chapter 94 of the North Carolina General Statutes and the rules of this Subchapter, and the training is in an apprenticeable occupation having the characteristics set forth in 13 NCAC 14B .0203; and

(2) It is in conformity with the requirements of the department's regulation on Equal Employment Opportunity in Apprenticeship and Training in Section .0600 of this Subchapter.

(c) Except as provided under Paragraph (d) of this Rule, apprentices shall be individually registered under a registered program. Such individual registration may be affected:

- (1) By filing copies of each individual apprenticeship agreement with the department; or
- (2) Subject to prior approval by the department, by filing a master copy of such agreement followed by a listing of the name, and other required data, of each individual when apprenticed.

(d) The names of persons in probationary employment as an apprentice under an apprenticeship program registered by the department, if not individually registered under such program, shall be submitted within 45 days of employment to the department for certification to establish the apprentice as eligible for such probationary employment.

(e) The department shall be notified within 45 days of persons who have successfully completed apprenticeship programs; and of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore.

(f) Operating apprenticeship programs, when registered by the department, are accorded registration evidenced by a Certificate of Registration. Programs registered by the department shall be accorded registration evidenced by a similar certificate or other written indicia.

(g) Applications for new programs that the department determines meet the required standards for program registration shall be given provisional registration for a period of one year. The department shall review all new programs for quality and for conformity with the requirements of Chapter 94 of the North Carolina General Statutes and the rules of this Subchapter at the end of the first year after registration. At that time:

- (1) a program that conforms with the requirements may either be made permanent, or may continue to be provisionally registered through the first full training cycle.
- (2) a program not in operation or not conforming to the requirements during the provisional registration period shall be recommended for deregistration procedures.

(h) The department shall review all programs for quality and for conformity with the requirements of Chapter 94 of the North Carolina General Statutes and the rules of this Subchapter at the end of the first full training cycle. A satisfactory review of a provisionally registered program will result in conversion of provisional registration to permanent registration. Subsequent reviews shall be conducted no less frequently than every five years. Programs not in operation or not conforming to the regulations shall be recommended for deregistration procedures.

(i) Any sponsor proposals or applications for modification(s) or change(s) to registered programs or standards shall be submitted to the department in accordance with Rule .0211 of this Subchapter.

(j) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such

participation is exercised, written acknowledgement of union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to an existing union, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The department shall provide for receipt of union comments, if any, within 45 days before final action on the application for registration.

(k) Where the employees to be trained have no collective bargaining agreement, an apprenticeship program may be proposed for registration by an employer or group of employers, or an employer association.

Authority G.S. 94-1; 94-2; 94-4.

**13 NCAC 14B .0208 APPRENTICESHIP AGREEMENT**

~~A~~ In addition to the requirements of G.S. 94-7 and G.S. 94-8, an apprenticeship agreement shall contain the following in order to be registered:

- (1) The contact information, including names, addresses, telephone numbers, and e-mail addresses, if appropriate, and signatures of the contracting parties and, if the apprentice is a minor, the signature of his parent or guardian; of the program sponsor or employer, and their signatures;
- (2) The name and signature of the apprentice, and if the apprentice is a minor, the signature of the apprentice's parent or guardian;
- (2) The date of birth of the apprentice;
- (3) The name, address, and telephone number of the registration agency;
- (4) The dates on which the apprenticeship will begin and end;
- (5) The schedule of wages for the apprentice, either expressly or by specific reference to the apprentice's place on the schedule set forth in the program standards of apprenticeship;
- (6) The particular craft for which the apprentice is to be trained;
- (7)(3) The number of hours to be spent by the apprentice in work on the job, the number of hours to be spent in related instruction, and the rate or amount of compensation, if any, for time spent in related instruction; A statement showing:
  - (a) The number of hours to be spent by the apprentice in work on the job in a time-based program; or a description of the skill sets to be attained by completion of a competence-based program, including the on-the-job learning component; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of a hybrid program; and

- (b) The number of hours to be spent in related instruction in technical subjects related to the occupation, which is recommended to be not less than 144 hours per year;
- ~~(8)(4)~~ The number of hours of probation; Statements providing that the apprenticeship agreement may be de-registered in accordance with Rule .0407 of this Subchapter;
- ~~(9)(5)~~ A statement that a complaint procedure is provided, that details of the procedure are set out in the program standards of apprenticeship, and that the program standards may be obtained or inspected in a certain (specified) location; Contact information, including name, address, and e-mail if appropriate, of the appropriate authority designated under the program to receive, process and resolve controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established procedure or applicable collective bargaining provisions;
- ~~(10)(6)~~ A statement that the apprentice will be afforded equal opportunity in employment and training without discrimination because of race, color, religion, national origin, or sex;
- ~~(11)(7)~~ The A reference incorporating as part of the agreement the program standards of apprenticeship, either directly or by reference, apprenticeship as they exist on the date the agreement is executed and as they may be revised or amended during the period of the agreement; agreement; and
- ~~(12)~~ Such further, specific information as may be necessary to apply the relatively broad provisions of the program standards of apprenticeship to the particular situation of the apprentice in the apprenticeship program; and
- ~~(13)(8)~~ Such other terms of agreement between the parties as are consistent with these Rules and the purposes of apprenticeship in general.

*Authority G.S. 94-2; 94-4; 94-7; 94-8.*

**13 NCAC 14B .0209 REGISTRATION OF APPRENTICE AND AGREEMENT**

- (a) A sponsor or an individual, or a person or organization on behalf of the individual, shall request that an apprenticeship agreement between the individual and his sponsor be registered by submitting to the director a copy of the apprenticeship agreement.
- (b) If the director finds that: If the following requirements are met, then the director shall approve the apprenticeship agreement and cause it to be recorded by the division, which constitutes registration of the agreement:
  - (1) The agreement is complete and applies to a registered apprenticeship program;

- (2) The agreement meets the requirements of Rule .0208 of this ~~Chapter; Subchapter;~~ and
- (3) The individual meets the minimum qualifications for an ~~apprentice; then~~ apprentice.

~~The director shall approve the apprenticeship agreement and cause it to be recorded by the division, which constitutes registration of the agreement.~~

- (c) If the director approves the apprenticeship agreement, he shall also and simultaneously cause the name of the individual who is to be trained under the agreement to be recorded by the division, which constitutes registration of the individual.
- ~~(d) The sponsor shall submit to the director the apprenticeship agreement of a probationary apprentice, although the agreement will not be registered.~~
- ~~(e)(d)~~ All apprenticeship registrations are subject to a registration fee and an annual fee in accordance with G.S. 94-12 and Rule .0701 of this ~~Chapter; Subchapter.~~

*Authority G.S. 94-1; 94-2; 94-4; 94-8; 94-12.*

**13 NCAC 14B .0211 REVISION OF APPRENTICESHIP STANDARDS OR AGREEMENT**

- (a) Any proposed revision of program standards of apprenticeship or an apprenticeship agreement shall be submitted in writing by the sponsor to the director for his approval.
- (b) The revision becomes effective 90 days after the director's receipt of the sponsor's proposed revision unless the director, in writing, ~~either approves or~~ disallows the revision within that ~~time, stating the reason(s) for disallowance.~~ time. The director may disallow part of the proposed revision and allow part, but in such event the sponsor may withdraw the entire proposed revision. If the revision is not approved, the director shall notify the sponsor of the reasons for the disapproval, and provide the sponsor with technical assistance.
- (c) The sponsor may appeal the director's decision to disallow a proposed revision or part of a proposed revision in accordance with Chapter 150B of the North Carolina General Statutes ~~and 13 NCAC 1B~~ within 30 days of the sponsor's receipt of the director's decision.
- (d) When a revision becomes effective, the division shall record the revision so that it amends the program standards or agreement recorded by the division.

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0212 TERMINATION AND EXTENSION OF AGREEMENTS**

- (a) An apprenticeship agreement terminates when the period of the apprenticeship identified by the terms of the agreement (~~see Rule .0208(4) of this Chapter~~) expires.
- (b) The agreement may be extended for a specified period by agreement of the apprentice and sponsor with the approval of the director. The sponsor shall obtain the director's approval of an extension in the manner provided in Rule .0211 of this ~~Section~~ Subchapter for revision of program standards of apprenticeship or an apprenticeship agreement, except that an extension becomes fully effective within 30 days of the director's receipt of

the proposed extension unless ~~earlier approved or disallowed~~. the director, in writing, disallows the revision within that time, stating the reason(s) for disallowance.

Note: The director's approval of an extension does not indicate whether the extension will affect the apprentice's eligibility for a VA training allowance; in some cases an extension, although approved, may disqualify an apprentice for VA purposes.

(c) Nothing in this Rule shall be construed to prevent a sponsor and an individual meeting the minimum qualifications of an apprentice, as set forth in Rule .0207 of this ~~Chapter~~, Subchapter from executing an apprenticeship agreement.

*Authority G.S. 94-1; 94-2; 94-4; 94-6.*

**13 NCAC 14B .0213 CERTIFICATION OR CERTIFICATE OF COMPLETION**

(a) Upon notification from a sponsor that an individual has completed his apprenticeship in the sponsor's registered apprenticeship program, the director shall issue to the individual, or to the sponsor for the individual, a certificate of completion or other written indicia signifying that the individual has completed his training and instruction in a registered apprenticeship program in a certain, identified trade and the date the training was completed.

(b) Notwithstanding Paragraph (a) of this Rule, the director shall not issue the certificate of completion if he decides upon satisfactory evidence that the apprentice is not fully trained because he did not complete the apprenticeship or because the apprenticeship program did not comply with the rules of this ~~Chapter~~. Subchapter. In addition, the director shall not issue the certificate of completion if he determines that the fees authorized by G.S. 94-12 and Rule .0701 of this ~~Chapter~~ Subchapter have not been paid. The director shall ~~promptly~~ give written notification to the sponsor and individual of his decision not to issue the certificate of completion and the reason(s) ~~therefor~~. for the decision.

(c) The sponsor or individual may appeal the director's decision within 30 days or receipt of notification in accordance with Article 3 of Chapter 150B of the ~~N.C.~~ North Carolina General Statutes.

(d) Upon request of a sponsor, the director may issue an honorary certificate of completion to recognize an individual who by training and experience was fully qualified as a journeyman prior to the registration of the sponsor's apprenticeship program.

*Authority G.S. 94-1; 94-2; 94-4; 94-12.*

**SECTION .0300 - ON-THE-JOB TRAINING (OJT) PROGRAMS**

**13 NCAC 14B .0301 STANDARDS FOR OJT PROGRAMS**

(a) ~~The~~ In order to be eligible for registration by the department, an OJT program must shall be set forth in a written document, signed by the sponsor, document signed by the sponsor containing the terms and conditions of employment, training, and supervision of one or more trainees in the trainable

occupation, which includes the following provisions and is denominated the ~~programs~~ program standards for OJT:

- (1) The nature of the occupation which is the objective of the training;
- (2) The term of the course of training consistent with the criteria for OJT ~~programs; programs~~ where the term of training is for a period of not less than six months (1,000 hours) and not more than two years (4,000 hours) of reasonably continuous work experience. The length of the program shall not be longer than the time customarily required by training establishments in the community, or if there are no other training establishments in the community, then not longer than is reasonably necessary, to provide a trainee with the skills, knowledge, technical information, and other facts which the trainee needs to learn in order to become competent in the occupation which is the objective of the training;
- (3) An outline of the work processes in which the trainees are to receive supervised work experience and training on the job, and the approximate allocation of time to be spent in each major process, and the specific location of the training site(s);
- (4) An outline of related instruction to be provided the trainees, if any is ~~to be provided;~~ required;
- (5) A schedule of progressively increasing wages to be paid the trainees, established by the sponsor with the approval of the director as follows:
  - (A) The prevailing rate in the geographic area for fully qualified workers in the occupation which is the objective of the training will be determined;
  - (B) A rate for fully qualified workers applicable to the OJT program will be established based upon the determination made in Part (a)(5)(A) of this Rule;
  - (C) The trainees' wages will be no less than 50 percent of the applicable rate for fully qualified workers established in Part (a)(5)(B) of this Rule and will increase in regular periodic increments until, not later than the last full month of the training period, they are at least 85 percent of the applicable rate; provided that in any event the wages are no less than the applicable state or federal minimum wage;
- ~~(6) A statement whether the related instruction, if any, is to be compensated;~~
- ~~(7)~~(6) An assurance that all trainees in the program, regardless of whether they receive VA training allowances, will be provided the same training and instruction and will in all respects be



- treated the same under the program, in accordance with the criteria for OJT programs;
- ~~(8)(7)~~ A provision requiring periodic review and evaluation of the trainees' progress in job performance and related instruction, if any, ~~and identifying the person(s) responsible for evaluation; such review, and further requiring maintenance of progress records;~~
- ~~(9)(8)~~ A provision requiring that the ratio of trainees to fully qualified workers will not exceed two to one at each job site, work force, department, or ~~plant; plant~~ except as follows:
- (A) In the building and construction trades, the ratio of trainees to fully qualified workers shall not exceed one to one at each job site, work force, department, or plant;
- (B) No such specific ratios are required where expressly prohibited or otherwise provided for by an applicable collective bargaining agreement;
- ~~(10)(9)~~ A provision requiring a period of probation of not more than 500 hours of on-the-job training, during which probationary period either party to the OJT agreement may cause the agreement to be terminated by the director upon the request in writing of either party; A provision requiring a probationary period not to exceed 25 percent of the length of the program, or one year, whichever is shorter, with full credit given for such period toward completion of OJT. During the probationary period, either party may unilaterally submit a written request to the director requesting that the agreement be de-registered.
- ~~(11)~~ A provision requiring that after the probationary period an OJT agreement can be terminated by the director only upon written request of the trainee, upon mutual agreement of the parties, for reasonable cause, or upon the withdrawal of approval from the program;
- ~~(12)(10)~~ An assurance that trainees will be provided safety training and instruction as needed to prevent injury to themselves and other workers; adequate and safe equipment and facilities for training and supervision will be provided and that trainees will be provided safe training on the job and in any related instruction;
- ~~(13)(11)~~ A provision that trainees will be given credit toward the completion of on-the-job training, including a reduction of the term of the OJT course of training and placement on the schedule of wages at a commensurate level, for previously acquired experience, training, or skills, such reduction and placement to be determined by the sponsor with the approval of the director; The granting of advanced
- standing or credit for demonstrated competence, acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted;
- ~~(14)(12)~~ A statement that an employer who is unable to fulfill its obligation under the OJT agreement may, with the written approval of the director, transfer the agreement to another employer under the same program who agrees to assume the obligations of the agreement, if both the trainee and the sponsor consent to the ~~transfer; transfer and comply with the following provisions:~~
- (A) The transferring trainee will be provided a transcript of related instruction, if applicable, and on-the-job training by the program sponsor;
- (B) The transfer shall be to the same occupation; and
- (C) A new OJT agreement shall be executed when the transfer is to occur between program sponsors.
- ~~(15)(13)~~ A provision that the sponsor will promptly submit to the director any proposed revision to the OJT program for the director's approval; for the registration and cancellation of the program, and for the submission of any program standard modification or amendment to the department for approval;
- ~~(16)(14)~~ A provision that the sponsor will promptly notify the director of individuals who have signed an OJT agreement, of trainees who have left the program before completion, and of trainees who have successfully completed the OJT course of training and that the sponsor will request from the director a certificate of completion for trainees who have successfully completed the OJT course of training; for the registration, modification and amendment of OJT agreements, and for giving notice to the department of transfers, suspensions and cancellations of OJT agreements, including a statement of the reasons therefore, and of persons who have successfully completed OJT programs;
- ~~(17)(15)~~ A provision that the sponsor will maintain all records of the OJT program, including ~~but not limited to~~ payroll records, for a period of ~~three~~ five years and shall make them available for review to department personnel or their authorized representative upon the request of the department personnel or, whenever the records pertain to a program with trainees who have received or are receiving VA training allowances, to VA personnel upon their request; the location of the records shall be specified;

- ~~(18)~~(16) A provision that the sponsor will notify ~~in writing~~ the director and the VA Regional Office in writing whenever a trainee receiving a VA training allowance is paid wages in an amount equal to or more than the applicable rate for fully qualified workers as established in ~~the program standards for OJT~~; Subparagraph (a)(5) of this Rule;
- ~~(19)~~(17) A ~~statement of the names of titles and addresses of~~ Contact information, including name, title, address, telephone number and e-mail address, if appropriate of the appropriate people with authority under the program to receive, process, and resolve complaints arising under the OJT agreement, including both the person(s) or organization designated by the sponsor, if any, and the director as administrator of the State Approving Agency; complaints;
- ~~(20)~~(18) A statement of the minimum qualifications for trainees which the sponsor may require;
- ~~(21)~~(19) An assurance that the OJT program complies with the criteria set forth in Rule .0403 of this ~~Section; Subchapter~~;
- ~~(22)~~(20) A ~~pledge that all trainees will be accorded equal opportunity in all phases of OJT employment and training without discrimination because of race, color, religion, national origin, or sex; The following pledge: "The recruitment, selection, employment, and training of trainees during OJT shall be without discrimination because of race, color, religion, national origin, or sex;" and~~
- ~~(23)~~(22) A provision that each trainee in the OJT program will be a party to an OJT agreement meeting the requirements of Rule .0305 of this ~~Section Subchapter~~, and that the sponsor will provide each trainee with a copy of the agreement.

(b) The program standards for OJT ~~must~~ shall constitute a statement of the actual program operating or to be operated and not a statement of the goals, objectives, or aspirations of the sponsor.

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0302 REGISTRATION REQUEST PROCEDURE FOR OJT PROGRAMS**

- (a) Upon request by a prospective sponsor to an official of the department, or upon the initiative of an official of the department, a representative of the division shall ~~arrange, or on the initiative of an official of the department may arrange,~~ arrange a meeting or series of meetings between a representative of the division and the prospective sponsor for the purpose of discussing the relevant criteria and standards and the procedures necessary to ~~obtain approval~~ register and to operate an approved OJT program.
- (b) If the prospective sponsor elects to request that a training program be ~~approved; registered~~, registered, it shall complete and submit to

the director the forms required by the director, including the following:

- (1) A written ~~request~~ request, signed by the prospective sponsor, for approval registration of a training program; program meeting the requirements of Rule .0301 of this Subchapter;
  - (2) An original copy of the program standards for OJT;
  - (3) Any written agreement to comply with the program standards by a participating employer as provided by Rule .0106(b) of this ~~Chapter; Subchapter~~; and
  - (4) A Designation of Certifying Official(s) form.
- (c) If the director has received the completed application forms in proper form and has determined that the requirements for an OJT program, as set forth in Rule .0303 of this ~~Section, Subchapter~~, are met, ~~he shall approve the program, cause the approval to be recorded by the division, and acknowledge the approval in writing to the sponsor. the program shall be registered with the division. The sponsor shall be notified in writing of the registration.~~

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0303 ELIGIBILITY AND PROCEDURE FOR REGISTRATION OF OJT PROGRAMS**

The director may ~~approve~~ register an OJT program only when:

- (1) The sponsor offering the training has submitted to the director the forms required in Rule .0302(b) of this ~~Section; Subchapter~~; and
- (2) The director finds upon investigation that the following criteria are met:
  - (a) The nature of the occupation which is the objective of the training is one in which progression and appointment to the next higher classification are based upon skills learned through organized and supervised training on the job and not upon such factors as length of service and normal turnover;
  - (b) The training content of the program is adequate to qualify the trainee for a job in the occupation which is the objective of the training;
  - (c) ~~The occupation which is the objective of the training normally requires full time training for a period of not less than six months and not more than two years, which the director shall interpret as not less than 1,000 hours and not more than 4,000 hours of reasonably continuous work experience;~~
  - (d) ~~The length of the program is not longer than the time customarily required by training establishments in the community or if there are no~~

- other training establishments in the community, then not longer than is reasonably necessary — to provide a trainee with the skills, knowledge, technical information, and other facts which the trainee needs to learn in order to become competent in the occupation which is the objective of the training;
- (e) Related instruction is provided for the individual trainee(s) who may need it;
  - (f)(c) The sponsor provides adequate space, equipment, instructional material, and instructor personnel for safe and satisfactory on-the-job training;
  - (g) ~~The sponsor has the capacity to keep and keeps adequate records for at least three years showing the progress of each trainee in the OJT program;~~
  - (h)(d) The OJT program does not provide training for people already qualified by training and experience for the occupation which is the objective of the training;
  - (i)(e) Each trainee's wages are paid according to the schedule set out in the program standards for OJT but in no event are less than the applicable state or federal minimum wage;
  - (j)(f) There is a reasonable certainty that a job in the occupation which is the objective of the training will be available to the trainee at the end of the OJT course of training; and
  - (k) All trainees in the OJT program, regardless of whether they receive a VA training allowance, are in all respects treated the same under the program.

Authority G.S. 94-1; 94-2; 94-4.

**13 NCAC 14B .0305 OJT AGREEMENT**

An OJT agreement shall contain the following: following in order to be registered:

- (1) The contact information, including names, addresses, telephone numbers, and e-mail addresses, if appropriate, signatures of the contracting parties and, if the trainee is a minor, the signature of his parent or guardian; of the program sponsor or employer, and their signatures;
- (2) The date of birth of the trainee;
- (3) The name and signature of the trainee, and if the trainee is a minor, the signature of the trainee's parent or guardian;
- (3) The name, address, and telephone number of the division, as the State Approving Agency;

- (4) ~~The dates on which the OJT course of training will begin and end;~~
- (5)(4) ~~The particular nature of the occupation which is the objective of the trainee's training;~~
- (6)(5) ~~The schedule of wages for the trainee, either expressly or by specific reference to the trainee's place on the schedule set forth in the program standards for OJT;~~
- (7)(6) ~~The number of hours to be spent by the trainee in work on the job, job and the number of hours to be spent in related instruction, if any, and the rate or amount of compensation, if any, for related instruction;~~
- (8)(7) The number of hours of probation; Statements providing that the OJT agreement may be cancelled in accordance with Rule .0407 of this Subchapter.
- (9)(8) A statement that a complaint procedure is provided, that details of the procedure are set out in the program standards for OJT, and that the program standards may be obtained or inspected in a certain (specified) location; Contact information, including name, address, and e-mail if appropriate, of the appropriate authority designated under the program to receive, process and resolve controversies or differences arising out of the OJT agreement when the controversies cannot be adjusted or resolved in accordance with the established procedure;
- (10)(9) A statement that the trainee will be afforded equal opportunity in employment and training without discrimination because of race, color, religion, national origin, or sex;
- (11)(10) The A reference incorporating as a part of the agreement the program standards for OJT, either directly or by reference, OJT as they exist on the date the agreement is executed and as they may be revised or amended during the period of the agreement; and
- (12) ~~Such further, specific information as may be necessary to apply the relatively broad provisions of the program standards for OJT to the particular situation of the trainee in the OJT program; and~~
- (13)(11) Such other terms of agreement between the parties as are consistent with these Rules and the purposes of on-the-job OJT training in general.

Authority G.S. 94-1; 94-2; 94-4.

**13 NCAC 14B .0306 REGISTRATION OF OJT AGREEMENTS**

- (a) The sponsor shall promptly submit to the director a copy of all OJT agreements under its program. request that an OJT agreement between the individual and sponsor be registered by submitting to the director a copy of the OJT agreement.

~~(b) If upon receiving an OJT agreement the director finds that: If the following requirements are met, then the director shall approve the OJT agreement and cause it to be recorded by the division, which constitutes registration of the agreement:~~

- ~~(1) The agreement is complete and applies to an approved OJT program; and~~
- ~~(2) The agreement meets the requirements of Rule .0305 of this Section; Subchapter, then the director shall cause the OJT agreement and the trainee who is a party to it to be recorded with the division.~~

~~(c) If the director approves the OJT agreement, he shall also and simultaneously cause the name of the individual who is to be trained under the agreement to be recorded by the division, which constitutes registration of the individual.~~

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0308 REVISION OF OJT STANDARDS OR AGREEMENT**

~~Any revision of program standards for OJT or an OJT agreement shall be made in the manner provided in Rule .0211 of this Chapter for revision of program standards of apprenticeship or an apprenticeship agreement.~~

~~(a) Any proposed revision of program standards for OJT or an OJT agreement shall be submitted in writing by the sponsor to the director for his approval.~~

~~(b) The revision becomes effective 90 days after the director's receipt of the sponsor's proposed revision unless the director, in writing, disallows the revision within that time, stating the reason(s) for disallowance. The director may disallow part of the proposed revision and allow part, but in such event the sponsor may withdraw the entire proposed revision.~~

~~(c) The sponsor may appeal the director's decision to disallow a proposed revision or part of a proposed revision in accordance with Chapter 150B of the North Carolina General Statutes within 30 days of the sponsor's receipt of the director's decision.~~

~~(d) When a revision becomes effective, the division shall record the revision so that it amends the program standards or agreement recorded by the division.~~

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0309 TERMINATION AND EXTENSION OF AGREEMENTS**

~~(a) An OJT agreement terminates when the period of the course of training identified by the terms of the agreement [~~see Rule .0305(4) of this Section~~] expires.~~

~~(b) The agreement may be extended for a specified period by agreement of the trainee and sponsor with the approval of the director. The sponsor shall obtain the director's approval of an extension in the manner provided in Rule .0211 of this Chapter Subchapter for revision of program standards of apprenticeship or an apprenticeship agreement, except that an extension becomes fully effective within 30 days of the director's receipt of the proposed extension unless ~~earlier approved or disallowed~~ the director, in writing, disallows the revision within that time, stating the reason(s) for disallowance.~~

Note: The director's approval of an extension does not indicate whether the extension will affect the trainee's eligibility for a VA training allowance; in some cases an extension, although approved, may disqualify the trainee for VA purposes.

(c) Nothing in this Rule shall be construed to prevent a sponsor and an individual who is not fully qualified by training and experience for the occupation which is the objective of the training from executing an OJT agreement.

*Authority G.S. 94-1; 94-2; 94-4.*

**SECTION .0400 - DE-REGISTRATION AND WITHDRAWAL OF APPROVAL**

**13 NCAC 14B .0401 QUALITY ASSURANCE ASSESSMENTS**

(a) The department may conduct ~~inspections~~ quality assurance assessments of apprenticeship and OJT programs, including but not limited to the records of the programs, in order to determine whether the programs are being conducted in compliance with the applicable rules, requirements, criteria, or standards under this Chapter.

Note: Compliance reviews under Section .0600 of this Chapter (equal employment opportunity in apprenticeship) are made according to that Section. A single ~~compliance~~ review may be conducted for both Section .0400 and Section .0600 purposes, but a finding of lack of compliance may result in different procedures depending upon the nature of the deficiency.

(b) If the sponsor of or participating employer in an apprenticeship or OJT program, or any person under the supervision or control of the sponsor or employer, refuses to allow or materially hinders ~~an inspection~~ a quality assurance assessment of the program by an authorized representative of the department, the director may find that the program is not in compliance with the applicable rules, requirements, criteria, or standards.

(c) If the director determines, upon the advice of the inspector, that an apprenticeship or OJT program is not in compliance with the applicable rules, requirements, criteria, or standards, he shall notify the program sponsor in writing by registered or certified mail, return receipt requested, of the following:

- (1) The manner in which the program fails to comply with the applicable rules, requirements, criteria, or standards;
- (2) The remedial action required to achieve compliance;
- (3) The requirement that the remedial action be effected within 30 days, except that the sponsor may request and the director approve one 30 day extension for good cause;
- (4) The policy of the department that it will cooperate with the sponsor in achieving compliance; and
- (5) The possibility that the lack of compliance will result in de-registration ~~or withdrawal of approval or both~~ of the program in accordance with 13 NCAC 14B .0404 if not remedied within the 30 or 60 day period allotted.

~~(d) The director, at his discretion, may postpone for a period of 90 days from the time the compliance review is made his determination that an apprenticeship or OJT program is not in compliance, provided that the program sponsor is making a good faith effort to operate its program in compliance with the applicable rules, requirements, criteria, or standards. The 90 day period is renewable at the director's discretion so long as the sponsor continues to make a good faith effort.~~

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0402 DE-REGISTRATION OF PROGRAM**

The director may de-register an apprenticeship or OJT program ~~or withdraw approval from an apprenticeship or OJT program~~ only:

- (1) Upon request of the sponsor, according to Rule .0403 of this Section;
- (2) For reasonable cause, according to Rule .0404 of this Section; or
- (3) For inactivity, according to Rule .0405 of this Section.

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0403 VOLUNTARY DE-REGISTRATION**

If a sponsor voluntarily requests de-registration of ~~or withdrawal of approval from~~ a program operated by the sponsor, the director may de-register ~~or withdraw approval from~~ the program by:

- (1) Notifying the sponsor in writing that the ~~registration is cancelled or approval withdrawn or both~~ program is de-registered and the effective date thereof;
- (2) Requiring the sponsor, within 15 days of receipt of the notice of ~~de-registration or withdrawal of approval:~~ de-registration:
  - (a) To notify each apprentice in the program that the de-registration automatically cancels the apprentice's individual registration and removes the apprentice from coverage for federal or state purposes requiring registration of an apprenticeship program or to notify each trainee in the program that the program is no longer approved; and
  - (b) To notify each apprentice or trainee in the program who is receiving VA training allowances that the program is no longer approved for participation for people eligible to receive training allowances;
- (3) If applicable, notifying the VA Regional Office that approval for the program is withdrawn and the effective date thereof; and
- (4) Causing the de-registration ~~or withdrawal of approval~~ to be recorded by the division

division, and publishing or posting public notice of the de-registration.

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0404 DE-REGISTRATION**

(a) If the director has notified a sponsor of a lack of compliance in accordance with Rule .0401 of this Section and the sponsor has failed to remedy the lack of compliance within the time allotted, the director shall send a notice to the sponsor by registered or certified mail, return receipt requested, stating the following:

- (1) The notice is sent pursuant to this Rule;
- (2) The sponsor was notified of certain deficiencies (identifying them) resulting in a lack of compliance with the applicable rules, requirements, criteria, or standards and was advised of the remedial action required, with the date(s) such notice was given;
- (3) The sponsor has failed to remedy the lack of compliance within the time allotted;
- (4) The director has therefore found reasonable cause that the sponsor's program should be ~~de-registered or that approval for the program should be withdrawn or both;~~ de-registered; and
- (5) The director may de-register the sponsor's program ~~or withdraw approval from the program or both~~ unless the sponsor requests a hearing in accordance with Paragraph (b) of this Rule.

(b) If the sponsor desires a hearing regarding the de-registration of ~~or withdrawal of approval from~~ the sponsor's apprenticeship or OJT program, it shall file a petition for a hearing as provided in Chapter 150B of the North Carolina General Statutes and the hearing process shall be conducted as therein provided.

(c) If the sponsor does not request a hearing, the director may de-register the ~~program or withdraw approval from the program or both or, at his discretion, allow the sponsor a further reasonable and specific time to take remedial action.~~ program.

(d) Whenever the director decides to de-register ~~or withdraw approval from~~ a program for reasonable cause, he shall follow the procedure provided in Rule .0403 of this Section for voluntary ~~de-registration and withdrawal of approval and in addition~~ de-registration. In addition, the director shall notify apprentices and trainees as provided in Rule .0403 of this Section if the director has reason to believe that the sponsor may not do so or if, at his discretion, the director chooses so to do. The director shall publish or post public notice of the de-registration.

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0405 DE-REGISTRATION FOR INACTIVITY**

(a) Whenever an apprenticeship or OJT program registered ~~or approved or both~~ by the division has failed to enroll any apprentices or trainees for a period of at least ~~two years,~~ one

year, the director may send a notice to the sponsor stating the following:

- (1) The notice is sent pursuant to this Rule;
- (2) The sponsor's program has failed to enroll any apprentices or trainees, as applicable, for a period of at least ~~two years; one year;~~ and
- (3) The director may de-register the sponsor's program ~~or withdraw approval from the program or both~~ unless the sponsor protests in writing within 15 days of receipt of the notice, stating the reasons why the program should not be ~~de-registered or have its approval withdrawn.~~ de-registered.

(b) If a sponsor protests following notice from the director, the director shall consider the protest before deciding to de-register ~~or withdraw approval from~~ the sponsor's program.

(c) After receiving and considering the sponsor's protest or after allowing sufficient time for the sponsor to protest, the director may notify the sponsor by registered or certified mail, return receipt requested, that the sponsor's program will be de-registered ~~or have its approval withdrawn or both~~ for inactivity as provided by this Rule unless the sponsor requests a hearing in accordance with Paragraph (d) of this Rule.

(d) If the sponsor desires a hearing regarding the de-registration of ~~or withdrawal of approval from~~ the sponsor's apprenticeship or OJT program, it shall file a petition for a hearing as provided in Chapter 150B of the North Carolina General Statutes and the hearing process shall be conducted as therein provided.

(e) If the sponsor does not request a hearing, the director may de-register the program ~~or withdraw approval from the program or both~~ by:

- (1) Causing the de-registration ~~or withdrawal of approval~~ to be recorded by the division and publishing or posting public notice of the de-registration;
- (2) Notifying the sponsor of the de-registration ~~or withdrawal of approval~~ and the effective date thereof; and
- (3) If applicable, notifying the VA Regional Office that approval for the program is withdrawn and the effective date thereof.

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0406 REINSTATEMENT OF REGISTRATION**

(a) Any apprenticeship or OJT program which has been de-registered ~~or had its approval withdrawn~~ involuntarily within the preceding year may be re-registered ~~or re-approved~~ by the director, at his discretion, if he finds upon investigation and presentation of adequate evidence by the sponsor that the program is capable of operating in accordance with the applicable rules, requirements, criteria, or standards under this Chapter.

(b) Any apprenticeship or OJT program which has been de-registered ~~or had its approval withdrawn~~ voluntarily within the preceding year may be re-registered ~~or re-approved~~ by the director, at his discretion, upon request of the sponsor.

(c) Whenever an apprenticeship program is re-registered according to Paragraph (a) or (b) of this Rule, apprenticeship agreements and individuals must be registered in accordance with Rule .0209 of this Chapter regardless of any prior registration in the de-registered program. Whenever an OJT program is ~~re-approved; re-registered.~~ OJT agreements must be submitted in accordance with Rule .0306 of this Chapter regardless of any prior recording.

(d) Nothing in this Rule shall be construed to prevent a sponsor who has operated a program which has been de-registered ~~or had its approval withdrawn~~ from requesting registration ~~or approval~~ of a program according to the procedures provided in this Chapter.

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0407 DE-REGISTRATION OF AGREEMENT**

(a) The director may de-register an apprenticeship or OJT agreement ~~or cancel the recordation of an OJT agreement~~ only as follows:

- (1) During a probationary period, upon request of either party to the agreement;
- (2) After the probationary period:
  - (A) Upon mutual consent of the parties;
  - (B) Upon written request of the apprentice or trainee; or
  - (C) Upon a unilateral request of the sponsor for good and sufficient reason(s), as provided in Paragraphs (c) and (d) of this Rule; or
- (3) At any time when the apprenticeship or OJT program in which the apprentice or trainee is to be trained has been de-registered ~~or had its approval withdrawn~~ in accordance with the rules of this ~~Chapter; Subchapter;~~ Chapter; Subchapter;
- (4) At any time for failure to pay the registration fee or annual fee in accordance with G.S. 94-12 and Rule .0701 of this ~~Chapter; Subchapter.~~

(b) Whenever an apprenticeship or OJT agreement is ~~de-registered or recordation of an OJT agreement is cancelled; de-registered,~~ the director shall:

- (1) Cause the de-registration to be recorded with the ~~division or cause the cancellation to be indicated in the records of the division;~~
- (2) In addition and simultaneously de-register the individual by causing the individual's de-registration to be recorded with the division, in the case of an apprenticeship agreement; and
- (3) ~~Promptly notify~~ Notify the parties to the agreement that the apprenticeship or OJT agreement and apprentice or trainee have been de-registered ~~or that recordation of the trainee's OJT agreement has been cancelled~~ and the effective date thereof, except when the sponsor has notified the apprentice or trainee as a result of the de-registration of ~~or withdrawal of approval from~~ the sponsor's program.

(c) After the probationary period, a sponsor shall give due notice to an apprentice or trainee of reasons why the apprentice's or trainee's agreement should be ~~de-registered or the recordation of the trainee's agreement should be cancelled, de-registered,~~ and the sponsor shall provide the apprentice or trainee a reasonable opportunity to take corrective ~~action, unless the offer of the opportunity would be futile.~~ action.

(d) After the apprentice or trainee has been given due notice and a reasonable opportunity to take corrective action, ~~unless the offer of the opportunity would be futile,~~ the sponsor may unilaterally request de-registration of the apprentice's ~~agreement or cancellation of the recordation of the trainee's or trainee's~~ agreement. The director shall ~~de-register or cancel recordation of the agreement upon written request of the sponsor unless the apprentice or trainee initiates a complaint as provided in either Section .0500 or .0600 of this Chapter, Subchapter as applicable, within the time therein allowed. The sponsor shall have the burden of proof in any administrative hearing to show that there is good cause for de-registration or cancellation and to show that a reasonable opportunity for corrective action was provided or would have been futile.~~ provided.

(e) The effective date of de-registration ~~or cancellation~~ shall be the date of receipt by the director of the sponsor's ~~request, although the notation will not be made in the division's records until after the period has run during which the apprentice or trainee may initiate a complaint or until resolution of the complaint when the apprentice or trainee has initiated a complaint.~~ request.

(f) Prior to taking any action pursuant to Subparagraph (a)(4) of this Rule, the director shall notify the sponsor and the apprentice in writing of his intent to de-register ~~or cancel~~ an apprenticeship agreement for failure to pay the registration fee or annual fee. If the sponsor or apprentice fails to either pay the fee or request a review of such decision within 15 days, the director shall de-register ~~or cancel~~ the apprenticeship agreement and notify them of the availability of an administrative hearing and of judicial review in accordance with Article 3 of Chapter 150B of the NC North Carolina General Statutes.

Authority G.S. 94-1; 94-2; 94-4; 94-12.

**SECTION .0500 - COMPLAINTS**

**13 NCAC 14B .0503 COMPLAINT PROCEDURE**

(a) A complaint must:

- (1) be in writing;
- (2) be signed by the complainant or its authorized representative;
- (3) set forth the specific matter(s) complained of ~~together with~~ and a brief statement of the facts; and
- (4) be accompanied by copies of pertinent documents and correspondence.

(b) ~~A complainant wishing to submit a complaint shall do so~~ Complaints must be filed within 180 days of the incident or circumstances complained of or within 60 days of a final local decision, whichever is later.

(c) Upon ~~receiving the complaint,~~ receipt, the director shall:

- (1) ~~promptly~~ acknowledge receipt of the complaint;
- (2) investigate the nature of the dispute;
- (3) make reasonable efforts to arrive at a mutually agreeable resolution of the dispute ~~mutually satisfactory to~~ between the parties involved;
- (4) render a decision regarding the dispute within 90 days of receiving the complaint, unless a mutually ~~satisfactory~~ agreeable resolution has been reached prior to his decision; and
- (5) furnish the parties and other people as may be appropriate with copies of his decision, if any, and the reason(s) therefor.

~~(d) A party may appeal the decision of the director in accordance with Chapter 150B of the North Carolina General Statutes.~~

~~(e)(d) Nothing in this Rule shall be construed to require an apprentice or trainee to use the review procedure provided by this Rule. precludes an apprentice from pursuing any other remedy authorized under another Federal, State, or local law.~~

Authority G.S. 94-1; 94-2; 94-4; 94-7.

**SECTION .0600 - EQUAL OPPORTUNITY**

**13 NCAC 14B .0604 ANALYSIS: UNDERUTILIZATION**

(a) Every sponsor ~~that is not exempted~~ exempt shall analyze its training program and labor market area in order to determine if the sponsor's program of training on the job is underutilizing ~~underutilizes~~ women or minorities.

(b) The analysis shall include a consideration of the following ~~factors:~~ factors and shall be set forth in writing as part of the affirmative action plan:

- (1) The size of the working age minority and female population in the sponsor's labor market area;
- (2) The size of the minority and female labor force in the sponsor's labor market area;
- (3) The percentage of minority and female apprentices in the particular ~~craft~~ occupation compared with the percentage of the minority and female labor force in the sponsor's labor market area;
- (4) The percentage of minority and female journeymen employed by the employer(s) participating in the program compared with the percentage of the minority and female labor force in the sponsor's labor market ~~area; and~~ area, and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices; and
- (5) The general availability of minorities and women in the sponsor's labor market area with present or potential capacity for apprenticeship in the particular craft.

~~(c) Underutilization is deemed to exist for any sponsor's apprenticeship program when the sponsor has not previously~~

~~operated a training program which could be analyzed for underutilization.~~

Authority G.S. 94-1; 94-2.

**13 NCAC 14B .0610 RECORDS**

(a) The sponsor shall keep all records required by this Rule and any other information relevant to compliance with this ~~Section Subchapter~~ for a period of five years and shall make the records and information available to employees of the department or employees of the U.S. Department of Labor or its authorized representative upon their request.

(b) The sponsor's records shall include the following:

- (1) A summary of the qualifications of each applicant;
- (2) The basis for evaluation and selection or rejection of each applicant;
- (3) The records of interviews of applicants;
- (4) The original application of each applicant;
- (5) ~~A statement of the sponsor's affirmative action plan, including all facts and analyses upon which the plan is based;~~
- (6)(5) Evidence that the sponsor's qualification standards have been validated as ~~required;~~ required by 29 CFR 30.5(b); and
- (6) Information relative to the operation of the apprenticeship program, including job assignment, promotion, demotion, layoff, or termination, rates of pay, or other forms of compensation or conditions of work, hours including hours of work and, separately, hours of training provided, and any other records pertinent to a determination of compliance with these regulations, as may be required by the U.S. Department of Labor; and
- (7) Such other records or information pertinent to the determination of compliance as may be required by the director.

(c) The sponsor shall maintain records pertaining to individual applicants, whether selected or rejected, in a manner which permits identification of minority and female applicants.

(d) Each sponsor shall retain a statement of its affirmative action plan required by 29 CFR 30.4 for the prompt achievement of full and equal opportunity in apprenticeship, including all data and analyses made pursuant to the requirements of 29 CFR 30.4. Sponsors shall review their affirmative action plans annually and update them where necessary, including the goals and timetables.

(e) State Apprenticeship Councils shall keep adequate records, including registration requirements, individual program standards and registration records, program compliance reviews and investigations, and any other records pertinent to a determination of compliance with 29 CFR 30, as may be required by the U.S. Department of Labor, and shall report to the U.S. Department of Labor as may be required by the U.S. Department of Labor.

Authority G.S. 94-1; 94-2; 94-4.

**13 NCAC 14B .0611 COMPLIANCE REVIEWS**

(a) The division shall annually conduct systematic reviews of apprenticeship programs in order to determine the extent to which sponsors are complying with the rules of this ~~Section Subchapter~~ and shall also conduct compliance reviews when special circumstances, including receipt of ~~a complaint, complaints not referred to a private review body pursuant to 29 CFR 30.11(b)(1)(i) and 13 NCAC 14B .0614 so warrant~~, and take appropriate action regarding programs which are not in compliance with the requirements of this Subchapter. Compliance reviews ~~include but are not limited to interviews, audits, and reviews of records.~~ will consist of comprehensive analyses and evaluations of each aspect of the apprenticeship program, including on-site investigations and audits. Apprenticeship programs with fewer than five apprentices may be reviewed less frequently than annually.

(b) Sponsors seeking re-registration shall be subject to a compliance review as described in Paragraph (a) of this Rule by the department as part of the registration process.

(c) Sponsors seeking new registration shall be subject to a compliance review as described in Paragraph (a) of this Rule by the department as part of the registration process. The department will provide appropriate recommendations to the sponsor to enable it to achieve compliance for registration purposes.

~~(b)(d)~~ (d) If the sponsor of or participating employer in an apprenticeship program, or any person under the supervision or control of the sponsor or employer, refuses to allow or materially hinders an inspection and review of the program by an authorized representative of the department, the director may find that the program is not in compliance with the rules of this Section Subchapter.

~~(e)(e)~~ (e) If the director determines, upon the advice of the inspector, If a compliance review indicates that an apprenticeship program is not operating in compliance with the rules of this Section, Subchapter, he the department shall attempt to secure voluntary compliance on the part of the program sponsor by notify notifying the sponsor in writing by registered or certified mail, return receipt requested, of the following:

- (1) The manner in which the program fails to comply with this ~~Section; Subchapter;~~
- (2) Recommendations for achieving compliance;
- (3) The requirement that compliance ~~must shall~~ be achieved within a reasonable time or sanctions ~~must shall~~ be imposed; and
- (4) The policy of the department that it will cooperate with the sponsor in achieving compliance.

Authority G.S. 94-1; 94-2; 94-4.

**13 NCAC 14B .0612 SANCTIONS**

(a) If a sponsor who has been notified by the director of a lack of compliance fails to effect compliance within a reasonable time, or if the director determines that a sponsor has established a pattern or practice of noncompliance, the director shall impose sanctions, including one or more of the following:

- (1) De-registration of the sponsor's program;



- (2) Referral to the Equal Employment Opportunity Commission or the U.S. Attorney General with recommendations for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended; or
  - (3) Referral to the U.S. Attorney General for other court action as authorized by law.
- (b) If the director decides to impose the sanction of de-registration, he shall send a notice to the sponsor by registered or certified mail, return receipt requested, stating the following:
- (1) The notice is sent pursuant to this Rule;
  - (2) The sponsor was notified of certain deficiencies (~~identifying them~~) resulting in a lack of compliance with the rules of this ~~Section, Subchapter, including~~ with the date(s) such notice was ~~given; given and a detail of the identified deficiencies~~;
  - (3) The sponsor has failed to effect compliance within a reasonable time, or the director has determined that the sponsor has established a pattern or practice of noncompliance; and
  - (4) The director will de-register the sponsor's program unless the sponsor requests a hearing, in accordance with Paragraph (c) of this Rule.
- (c) If the sponsor desires a hearing, it shall file a petition for a hearing as provided in Chapter 150B of the North Carolina General Statutes and the hearing process shall be conducted as therein provided.
- (d) If the sponsor does not request a hearing or if de-registration has been ordered following a hearing or judicial proceeding, the director shall de-register the program by:
- (1) Notifying the sponsor in writing that the registration is cancelled and that approval for VA purposes is withdrawn, if applicable, and the effective date thereof;
  - (2) Requiring the sponsor, within 15 days of receipt of the notice:
    - (A) To notify each apprentice in the program that the de-registration automatically cancels the apprentice's individual registration and removes the apprentice from coverage for federal and state purposes requiring registration in an apprenticeship program; and
    - (B) To notify each apprentice in the program who is receiving a VA training allowance that the program is no longer approved for participation for people eligible to receive training allowances;
  - (3) Notifying the apprentices in Subparagraph (d)(2) of this Rule, if the director has reason to believe that the sponsor may not do so or if the director, at his discretion, chooses so to do;
  - (4) If applicable, notifying the ~~Veterans' Administration~~ U.S. Department of Veterans Affairs Regional Office that approval for the

- program is withdrawn and the effective date thereof; and
- (5) Causing the ~~de-registration and withdrawal of approval, de-registration,~~ if any, to be recorded by the division and publishing or posting public notice of the de-registration.

(e) Any apprenticeship program deregistered pursuant to this Subchapter may be reinstated upon presentation of evidence to the director that the apprenticeship program is operating in accordance with this Subchapter.

*Authority G.S. 94-1; 94-2; 94-4.*

**13 NCAC 14B .0616 NONCOMPLIANCE WITH FEDERAL AND STATE EQUAL OPPORTUNITY REQUIREMENTS**

A pattern or practice of noncompliance by a sponsor (or where the sponsor is a joint apprenticeship committee, by one of the parties represented on such committee) with Federal or state laws or regulations requiring equal opportunity may be grounds for the imposition of sanctions in accordance with 13 NCAC 14B .0612 and 29 CFR 30.13 if such noncompliance is related to the equal opportunity of apprentices and/or graduates of such an apprentice program under this Section. The sponsor shall take affirmative steps to assist and cooperate with employers and unions in fulfilling their equal opportunity obligations.

*Authority G.S. 94-1; 94-2; 94-4.*

**SECTION .0700 - APPRENTICESHIP FEES**

**13 NCAC 14B .0701 APPRENTICESHIP REGISTRATION AND ANNUAL FEES**

(a) For all new apprenticeship registrations, the director shall send an invoice for the registration fee required by G.S. 94-12 to the sponsor after the agreement is approved in accordance with Rule .0209 of this ~~Chapter, Subchapter.~~ In subsequent years, the annual fee required by G.S. 94-12 shall be paid to the ~~Department~~ department in accordance with Paragraph (b) of this Rule.

(b) For all apprenticeship registrations active as of September 1st of each year, the director shall send an invoice for the annual fee required by G.S. 94-12 to the sponsor. The sponsor shall pay the annual fee required by G.S. 94-12 shall be submitted on or before September 30th of each year until the apprenticeship is completed or the agreement is de-registered or cancelled in accordance with the Rules of this ~~Chapter, Subchapter,~~ whichever is earlier.

(c) Failure to pay the fees required by G.S. 94-12 shall result in the de-registration or cancellation of the apprenticeship agreement in accordance with Rule .0407 of this ~~Chapter, Subchapter.~~ In addition, a certificate of completion shall not be issued pursuant to Rule .0213 of this ~~Chapter, Subchapter~~ if the fees required by G.S. 94-12 have not been paid.

*Authority G.S. 94-1; 94-2; 94-4; 94-12.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to adopt the rule cited as 21 NCAC 36 .0119 and amend the rules cited as 21 NCAC 36 .0109, .0201, .0203, .0226.

Proposed Effective Date: December 1, 2010

Public Hearing:

Date: September 17, 2010

Time: 1:00 p.m.

Location: Board of Nursing Office, 4516 Lake Boone Trail, Raleigh, NC 27607

Reason for Proposed Action:

21 NCAC 36 .0109 - The Board elected to adopt the Application for Boards and Commissions in accordance with Executive Order 55 to provide enhanced disclosures from applicants for elections or appointment to the Board of Nursing.

21 NCAC 36 .0119 – Licensing Boards are required by Session law 2009-125, HB 221 to adopt rules establishing a procedure for an escrow account for fees tendered during a board's period of suspension in the event the Board fails to submit the reporting requirements listed under Chapter 93-B-2(b) by October of each Calendar year.

21 NCAC 36 .0201, .0203 – In accordance with Chapter 93B-15 payment of license fees by members of the armed forces, board waiver rules (b) Occupational Licensing Boards shall adopt rules to postpone or waiver continuing education, payment of renewal and other fees, and any other requirements of condition relating to the maintenance of licensure by an individual who is currently licensed by and in good standing with the Board, is serving in the armed forces of the Untied States, and to who G.S. 105-249-2 grants an extension of time to file a tax return.

21 NCAC 36 .0226 – Nationally, there is a move away from provisional approval status as a patient safety measure to ensure that advanced practice nurses are fully qualified when they begin to provide services to clients. Changing the Nurse Anesthesia Rule would ensure that nurse anesthetists are nationally certified prior to recognition by the Board of Nursing.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to these Rules by contacting Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, fax (919)781-9461, email jeans@ncbon.com.

Comments may be submitted to: Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, fax (919)781-9461, email jeans@ncbon.com.

Comment period ends: September 17, 2010

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

- State
Local
Substantial Economic Impact (≥\$3,000,000)
None

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 36 .0109 SELECTION AND QUALIFICATIONS OF NURSE MEMBERS

(a) Vacancies in nurse member positions on the Board that are scheduled to occur during the next year shall be announced in the last issue of the North Carolina Board of Nursing "Bulletin" for the calendar year, which shall be mailed to the address on record for each North Carolina licensed nurse and posted on the Board's website at www.ncbon.com. The "Bulletin" and website shall include a petition form for nominating a nurse to the Board and information on filing the petition with the Board.

(b) Each petition shall be checked with the records of the Board to validate that the nominee and each petitioner holds a current North Carolina license to practice nursing. If the nominee is not currently licensed, the petition shall be declared invalid. If any petitioners are not currently licensed and this decreases the number of petitioners to less than 10, the petition shall be declared invalid.

- (c) On forms provided by the Board, each nominee shall:
(1) indicate the category for which the nominee is seeking election;
(2) attest to meeting the qualifications specified in G.S. 90-171.21(d); and
(3) provide written permission to be listed on the ballot; and
(4) complete the Application for Boards and Commissions in accordance with Executive Order 55.

The forms must be received by the Board or postmarked on or before April 15.

(d) Minimum on-going employment requirements for the registered nurse or licensed practical nurse member shall include continuous employment equal to or greater than 50% of a full-time position that meets the criteria for the specified Board member position.

(e) This Paragraph applies in determining qualifications for registered nurse categories of membership:

- (1) Nurse Educator includes any nurse who teaches in or directs a Board approved nursing program in the specific category as outlined in G.S. 90-171.21(d).
- (2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing services to inpatients, but excludes nursing homes and adult care homes.
- (3) A hospital system is defined as a multihospital system, or a single diversified hospital system that includes a hospital as defined in Subparagraph (e)(2) of this Rule plus non-hospital preacute and postacute client services.
- (4) A nurse accountable for the administration of nursing services shall be the chief nurse executive of a hospital, hospital system, or the director of nursing services for a service division that includes inpatient care within a hospital or hospital system.
- (5) A nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist includes any advanced practice registered nurse who meets the criteria specified in G.S. 90-171.21(d)(4).

(f) The term "nursing practice" when used in determining qualifications for registered or practical nurse categories of membership, means any position for which the holder of the position is required to hold a current license to practice nursing at the appropriate licensure level for each category.

(g) A nominee shall be listed in only one category on the ballot.

(h) Separate slates shall be prepared for election of registered nurse nominees and for election of licensed practical nurse nominees. Nominees shall be listed in random order on the slate for licensed practical nurse nominees and within the categories for registered nurse nominees. Slates shall be published in the "Bulletin" and posted to the Board website following the Spring Board meeting and shall be accompanied by biographical data on nominees and a passport-type photograph.

(i) The procedure for voting shall be identified in the "Bulletin" following the Spring Board meeting.

(j) The Board of Nursing may contract with a computer or other service to receive the votes and tabulate the results.

(k) The tabulation and verification of the tabulation of votes shall include the following:

- (1) The certificate number shall be provided for each individual voting; and
- (2) The certificate number shall be matched with the database from the Board.

(l) A plurality vote shall elect. If more than one person is to be elected in a category, the plurality vote shall be in descending order until the required number has been elected. In any election, if there is a tie vote between nominees, the tie shall be resolved by a draw from the names of nominees who have tied.

(m) The results of an election shall be recorded in the minutes of the next regular meeting of the Board of Nursing following the election and shall include at least the following:

- (1) the number of nurses eligible to vote;
- (2) the number of votes cast; and
- (3) the number of votes cast for each person on the slate.

(n) The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.

(o) All petitions to nominate a nurse, signed consents to appear on the slate, verifications of qualifications, and copies of the computerized validation and tabulation shall be retained for a period of three months following the close of an election.

*Authority G.S. 90-171.21; 90-171.23(b).*

#### **21 NCAC 36 .0119 SUSPENSION OF AUTHORITY TO EXPEND FUNDS**

In the event the Board's authority to expend funds is suspended pursuant to Session law 2009-125, the board shall continue to issue and renew licenses and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

*Authority G.S. 93B-2(b).*

#### **SECTION .0200 - LICENSURE**

##### **21 NCAC 36 .0201 REGULAR RENEWAL**

(a) Renewal notices shall be sent no less than 60 days prior to expiration date of a license to all registrants whose licenses are due for biennial renewal. The notices will be mailed to each eligible registrant's address as it appears in the records of the Board. A license is issued for the following biennium when:

- (1) all required information is submitted as requested on the application form; and
- (2) all payment of required fees are received; and

(b) It shall be the duty of each registrant to keep the Board informed of a current mailing address. Failure of the Board to send or of the registrant to receive a notice of renewal shall not excuse the registrant from the requirements for license renewal.

(c) Renewal applications must be postmarked on or before the date the current license expires.

(d) Applicants for license renewal may be required to demonstrate mental and physical competency to practice nursing if required by the Board.

(e) A member of the United States Armed Services is exempt from compliance if on active duty and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

*Authority G.S. 90-171.29; 90-171.23(b); 90-171.34; 90-171.37; 93B-15; 105-249.2.*

##### **21 NCAC 36 .0203 REINSTATEMENT OF LAPSED LICENSE**

(a) The registrant whose license has lapsed and who desires reinstatement of that license shall:

- (1) furnish information required on forms provided by the Board;
- (2) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (3) attest to having completed Continuing Competence requirements and be prepared to submit evidence of completion if requested by the Board as specified in 21 NCAC 36 .0232(b).
- (4) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
- (5) submit such other evidence that the Board may require according to these Rules to determine whether the license should be reinstated;
- (6) provide a statement of the reason for failure to apply for renewal prior to the deadline; and
- (7) submit payment of reinstatement and renewal fee; and
- (8) a member of the united States Armed Services is exempt from compliance if on active duty and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

(b) The registrant whose license has lapsed for a period of five years or more shall also submit:

- (1) evidence of mental and physical health necessary to competently practice nursing; and
- (2) evidence of satisfactory completion of a Board-approved refresher course or proof of active licensure within the past five years in another jurisdiction.

(c) If a refresher course is required, the registrant shall apply for reinstatement of the license within one year of completing the refresher course in order to receive a current license. The application for reinstatement shall include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives and is deemed competent to practice nursing at the appropriate level of licensure.

(d) The Board shall decline to reinstate a license if it is not satisfied as to the applicant's ability to practice nursing.

*Authority G.S. 90-171.23(b); 90-171.35; 90-171.37; 93B-15; 105-249.2.*

**21 NCAC 36 .0226 NURSE ANESTHESIA PRACTICE**

(a) Only those registered nurses who meet the qualifications as outlined in Paragraph (b) of this Rule may perform nurse anesthesia activities outlined in Paragraph (c) of this Rule.

(b) Qualifications and Definitions:

- (1) The registered nurse who completes a program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs, is credentialed as a certified registered nurse anesthetist by the Council on Certification of Nurse Anesthetists, and who maintains recertification through the Council on

Recertification of Nurse Anesthetists, may perform nurse anesthesia activities in collaboration with a physician, dentist, podiatrist, or other lawfully qualified health care provider, but may not prescribe a medical treatment regimen or make a medical diagnosis except under the supervision of a licensed physician.

~~(2) The graduate nurse anesthetist is a registered nurse who has completed a program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs, is awaiting initial certification by the Council on Certification of Nurse Anesthetists and is listed as such with the Board of Nursing. The graduate nurse anesthetist may perform nurse anesthesia activities under the supervision of a certified registered nurse anesthetist, physician, dentist, podiatrist, or other lawfully qualified health care provider provided that initial certification is obtained within 18 months after completion of an accredited nurse anesthesia program.~~

~~(2)(3)~~ Collaboration is a process by which the certified registered nurse anesthetist ~~or graduate nurse anesthetist~~ works with one or more qualified health care providers, each contributing his or her respective area of expertise consistent with the appropriate occupational licensure laws of the State and according to the established policies, procedures, practices and channels of communication which lend support to nurse anesthesia services and which define the role(s) and responsibilities of the qualified nurse anesthetist within the practice setting. The individual nurse anesthetist maintains accountability for the outcome of his or her actions.

(c) Nurse Anesthesia activities and responsibilities which the appropriately qualified registered nurse anesthetist may safely accept are dependent upon the individual's knowledge and skills and other variables in each practice setting as outlined in 21 NCAC 36 .0224(a). These activities include:

- (1) Preanesthesia preparation and evaluation of the client to include:
  - (A) performing a pre-operative health assessment;
  - (B) recommending, requesting and evaluating pertinent diagnostic studies; and
  - (C) selecting and administering preanesthetic medications.
- (2) Anesthesia induction, maintenance and emergence of the client to include:
  - (A) securing, preparing and providing basic safety checks on all equipment, monitors, supplies and

- (B) pharmaceutical agents used for the administration of anesthesia; selecting, implementing, and managing general anesthesia, monitored anesthesia care, and regional anesthesia modalities, including administering anesthetic and related pharmaceutical agents, consistent with the client's needs and procedural requirements;
  - (C) performing tracheal intubation, extubation and providing mechanical ventilation;
  - (D) providing perianesthetic invasive and non-invasive monitoring, recognizing abnormal findings, implementing corrective action, and requesting consultation with appropriately qualified health care providers as necessary;
  - (E) managing the client's fluid, blood, electrolyte and acid-base balance; and
  - (F) evaluating the client's response during emergency from anesthesia and implementing pharmaceutical and supportive treatment to ensure the adequacy of client recovery from anesthesia.
- (3) Postanesthesia Care of the client to include:
- (A) providing postanesthesia follow-up care, including evaluating the client's response to anesthesia, recognizing potential anesthetic complications, implementing corrective actions, and requesting consultation with appropriately qualified health care professionals as necessary;
  - (B) initiating and administering respiratory support to ensure adequate ventilation and oxygenation in the immediate postanesthesia period;
  - (C) initiating and administering pharmacological or fluid support of the cardiovascular system during the immediate postanesthesia period;
  - (D) documenting all aspects of nurse anesthesia care and reporting the client's status, perianesthetic course, and anticipated problems to an appropriately qualified postanesthetic health care provider who assumes the client's care following anesthesia consistent with 21 NCAC 36 .0224(f); and
  - (E) releasing clients from the postanesthesia care or surgical setting as per established agency policy.

(d) Other clinical activities for which the qualified registered nurse anesthetist may accept responsibility include, but are not limited to:

- (1) inserting central vascular access catheters and epidural catheters;
- (2) identifying, responding to and managing emergency situations, including initiating and participating in cardiopulmonary resuscitation;
- (3) providing consultation related to respiratory and ventilatory care and implementing such care according to established policies within the practice setting; and
- (4) initiating and managing pain relief therapy utilizing pharmaceutical agents, regional anesthetic techniques and other accepted pain relief modalities according to established policies and protocols within the practice setting.

Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21; 90-171.23; 90-171.42(b).

\*\*\*\*\*

**CHAPTER 39 – ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Onsite Wastewater Contractor and Inspector Board intends to adopt the rules cited as 21 NCAC 39 .0101-.0102, .0201, .0301, .0401-.0404, .0501, .0601-.0605, and .0701-.0703.*

**Proposed Effective Date:** November 1, 2010

**Public Hearing:**  
**Date:** August 10, 2010  
**Time:** 1:00 p.m. – 4:00 p.m.  
**Location:** Rowan County Environmental Health Conference Room, 402 N. Main Street, Suite 204, Salisbury, NC 28411

**Public Hearing:**  
**Date:** August 11, 2010  
**Time:** 1:00 p.m. – 4:00 p.m.  
**Location:** Haywood County Environmental Health, 1233 N. Main Street, Waynesville, NC 28786

**Public Hearing:**  
**Date:** August 20, 2010  
**Time:** 1:00 p.m. – 4:00 p.m.  
**Location:** Carteret County Environmental Health, 3820 Bridges Street, Morehead City, NC 28557

**Public Hearing:**  
**Date:** August 23, 2010  
**Time:** 1:00 p.m. – 4:00 p.m.  
**Location:** NC DENR Training Room, 2728 Capital Blvd., Raleigh, NC 27604

**Reason for Proposed Action:** *To adopt rules for the certification of on-site wastewater system contractors and inspectors including but not limited to definitions, levels of certification, requirements for applications, fees, examinations, initial and continuing education, issuance of certificates, renewals, disciplinary action and other matters related to the certification of contractors and inspectors and the operation of the Board.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be submitted in writing to the rulemaking coordinator, Mr. Gene Young, during the public comment period, and additionally may be made verbally and/or in writing at one of the public hearings for these rules.*

**Comments may be submitted to:** *Gene Young, NCOWCICB, 1630 Mail Service Center, Raleigh, NC 27699-1630; email gene.young@ncdenr.gov*

**Comment period ends:** *September 13, 2010*

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

**Fiscal Impact:**

- State
- Local
- Substantial Economic Impact ( $\geq$ \$3,000,000)
- None

**SECTION .0100 – DUTIES AND DEFINITIONS**

**21 NCAC 39 .0101 DEFINITIONS**

(a) "Inspection" means an examination of an on-site wastewater system permitted under Article 11 of Chapter 130A of the General Statutes and established by the provisions set out in Article 5 of Chapter 90A and meeting the minimum requirements established by the board.

(b) "Repair" means repair construction activity or alteration to an existing onsite wastewater system that is necessary to comply with a Construction Authorization for a repair permit issued by the Local Health Department.

(c) "Wastewater Treatment Facility" means a mechanical or chemical treatment unit serving more than one source of wastewater and designed by a registered Professional Engineer.

(d) "College course" means a semester unit or quarter based unit of instruction given at a college or university, which is relevant to Onsite Wastewater Contractor or Inspector activities and pre-approved by the board.

(e) "Course/activity" means any course of activity with a clear purpose and objective that will maintain, improve or expand skills and knowledge relevant to the practice of Onsite Wastewater Contractor or Inspector activities and preapproved by the board.

(f) "Personally supervise" means the direction and control of all Onsite Wastewater Contractor or Inspector activities during the time those activities are being conducted.

(g) "Professional development hour" or "PDH" means a nominal contact hour of instruction or presentation that is the basic unit of credit for all courses or activities related to satisfying continuing education requirements.

(h) "Employee" means a person who receives an Internal Revenue Service W2 form for record of compensation.

*Authority G.S. 90A-72; 90A-74.*

**21 NCAC 39 .0102 TYPES OF CERTIFICATION**

(a) The following levels of certification for certified onsite wastewater contractors are:

Level	Description of Activities
I	<u>Single Septic Tank, Conventional (Gravel) Gravity System</u>
II	<u>Grade I, plus: Multiple tanks, Grease Traps, Single Pump or Single Siphon, Fill Systems, Sand Lined Trench, and any approved gravity or single pump dispersal system not specified in Grade Level III or Grade Level IV</u>
III	<u>Grade II, plus: Dual pumps or Dual Siphons, Systems of &gt;1500 gpd to &lt;3000 gpd, Low-Pressure Dispersal, Flow Equalization, and any system requiring ground water lowering with a pump</u>
IV	<u>Grade III, plus: Systems &gt;3000 gpd, Multiple Off-Site Systems, Industrial Process Wastewater, Residential Wastewater Treatment Systems (RWTS), TS-I and TS-II System, Drip Dispersal Systems, and Wastewater Reuse Systems or any Pretreatment Component.</u>

(b) Inspectors shall be certified to inspect all grade levels of onsite wastewater systems referenced in Paragraph (a).

*Authority G.S. 90A-72; 90A-74; 90A-77.*

**SECTION .0200 – CERTIFICATION OF ONSITE WASTEWATER CONTRACTOR OR INSPECTORS**

21 NCAC 39 .0201 APPLICATION REQUIREMENTS FOR CERTIFICATION

(a) Applications for certification or renewal of certification shall be submitted annually on forms provided by the Board. Applications shall include:

- (1) Applicant's name;
(2) Business address;
(3) Phone number;
(4) Date of birth;
(5) Email address, if available;
(6) Business or Employer Name and Address;
(7) Business phone number;
(8) County where company is located;
(9) If the certification is for contractor or inspector;
(10) The contractor certification level requested;
(11) Certification number, if renewal;
(12) Required annual fee for level of certification;
(13) Dates, locations, hours, and providers of required education and training; and
(14) Applicant Signature.

(b) The Board shall determine whether an application is complete. Incomplete applications and applications not accompanied by an appropriate fee shall not be processed and shall be returned to the applicant.

(c) The Board shall not schedule an applicant to take the required examination until their application has been reviewed and approved and the applicant has met all other conditions for certification, which, for new applicants includes an 18 hour new installer course.

(d) The Board may request verification of education and training.

(e) Renewal applications are due by November 15 of each year or will be required to pay a late fee of twenty-five dollars (\$25.00) in accordance with G.S. 90A-78(b) if received after December 31 of that calendar year. The renewal application will not be processed until the late fee is received.

(f) If the renewal application is postmarked more than 90 days after December 31, the person must meet the requirements for re-certification.

(g) Applications for new certifications requiring testing shall be received by the Board at least 15 days prior to the scheduled date of the examination.

(h) Applications for certification level upgrades shall be received at least 24 hours prior to the scheduled date of the examination.

(i) In cases where the applicant is ineligible for examination, the applicant shall be notified by letter and advised of the reason for ineligibility.

(j) Applicants who have supplied false information must wait 12 months before resubmitting an application for certification or renewal and must forfeit all fees paid.

Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78.

SECTION .0300 – ONSITE WASTEWATER CONTRACTOR OR INSPECTOR FEES

21 NCAC 39 .0301 SCHEDULE OF CERTIFICATION FEES

(a) Application fees are:

Table with 3 columns: Grade Level, Initial Fee, Renewal Fee. Rows include I, II, III, IV, Inspector, and Combination Level IV/Inspector.

(b) Application fees shall not be pro-rated.

(c) The fee for a contractor grade level upgrade is fifty dollars (\$50.00) per level.

(d) The fee for re-instatement of a revoked or suspended Certification is five hundred dollars (\$500.00).

(e) The fee for certificate replacement or duplication is twenty-five dollars (\$25.00).

(f) The fee for late renewal is twenty-five dollars (\$25.00). This fee is charged if the renewal request is received after December 31.

(g) The fee for each returned check is twenty-five dollars (\$25.00).

(h) All fees are non-refundable.

Authority G.S. 90A-72; 90A-74; 90A-75.

SECTION .0400 – CERTIFICATION BY EXAMINATION

21 NCAC 39 .0401 ONSITE WASTEWATER CONTRACTOR OR INSPECTOR EXAMINATIONS

(a) Onsite Wastewater Contractor or Inspector examinations shall be written, comprehensive examinations that are standardized statewide.

(b) The Board may administer an examination orally on an individual basis upon submission by the applicant.

(c) A grade on the examination of 70 percent or more shall be passing. Results of the examination shall be reported as either passing or failing.

(d) If retaking the exam for any reason, a different version of the exam shall be administered.

Authority G.S. 90A-72; 90A-74, 90A-77.

21 NCAC 39 .0402 TIME AND PLACE OF EXAMINATION

(a) Onsite Wastewater Contractor or Inspector examination shall be given at least three times a year. Examinations shall be given at least once in the Eastern, Central, and Western regions of the state. Additional examinations may be scheduled by the Board. Information regarding the date, time, and place shall be made available on the Board's web site or upon request.

(b) Each applicant filing for examination shall be notified in writing of the date, time and place of the examination.

Authority G.S. 90A-72; 90A-74; 90A-77.

**21 NCAC 39 .0403 CONDUCTING AND GRADING EXAMINATIONS**

- (a) Examinations shall be conducted and graded under the supervision of a representative of the Board.
- (b) Applicants shall identify themselves by way of a driver's license or other form of photographic identification satisfactory to the proctor and the identification number shall be recorded on the face of the examination paper.
- (c) Representatives of the Board, who are supervising the applicants, may take appropriate action, including dismissal from the examination, if the applicant cheats or otherwise disrupts the exam. If the applicant holds a certificate already, the Board may revoke the certification in accordance with G.S. 90A-81 and 21 NCAC 39 .0701 for cheating on or disrupting an examination.

*Authority G.S. 90A-72; 90A-74; 90A-77; 90A-81.*

**21 NCAC 39 .0404 ISSUANCE OF CERTIFICATES**

- (a) After an examination grading, the applicant shall be informed, in writing by the Board or its authorized representatives as to the results of their examination. The Board shall not respond to oral or other request for exam results.
- (b) Upon successful completion of the examination and all requirements for certification the applicant shall be issued a certification card.
- (c) Questions by the applicant concerning the examination must be made in writing to the Board within six months of the notification date.
- (d) An applicant who fails to pass an examination shall be entitled to and notified of the privilege to review his examination in the presence of one or more Board members or its authorized representative at a location approved by the Board.
- (e) Each certified onsite wastewater contractor or inspector shall be assigned a unique certification number. Certification numbers are not transferable and shall not be used by another onsite wastewater contractor or inspector.

*Authority G.S. 90A-72; 90A-74; 90A-77.*

**SECTION .0500 – CERTIFICATION RENEWAL**

**21 NCAC 39 .0501 CONDITIONS AND LIMITATIONS FOR RENEWAL OF CERTIFICATIONS**

- (a) Certifications shall expire on December 31 of each year.
- (b) A renewal shall not be granted if the applicant's certification is suspended or revoked until the period for such suspension or revocation has expired.
- (c) Certified individuals under this program shall notify the Onsite Wastewater Contractor and Inspectors Certification Board within 30 days in writing of any changes to their name, company name, company address, phone number, or email address.

*Authority G.S. 90A-72; 90A-74; 90A-77.*

**SECTION .0600 – CONTINUING EDUCATION REQUIREMENTS**

**21 NCAC 39 .0601 REQUIREMENTS**

(a) Every certified Onsite Wastewater Contractor or Inspector is required to obtain Professional Development Hours (PDH) units during the renewal period as described in the following Table:

<u>Level</u>	<u>Annual PDH Units Required</u>
<u>I</u>	<u>3</u>
<u>II</u>	<u>6</u>
<u>III</u>	<u>9</u>
<u>IV</u>	<u>12</u>
<u>Inspector</u>	<u>12</u>
<u>Inspector/Grade IV Combo</u>	<u>12</u>

- (b) If a registrant exceeds the annual requirement in any renewal period, a maximum of six PDH units may be carried forward into the subsequent renewal period.
- (c) Selection of courses and activities which meet the requirements of 21 NCAC 39 .0602 is the responsibility of the certified Onsite Wastewater Contractor or Inspector. Evaluation of courses pursuant to 21 NCAC 39 .0603 could result in non-acceptance of courses for the purpose of meeting the continuing education requirements.
- (d) Professional Development Hours (PDH) will be accepted for approved courses pursuant to 21 NCAC 39 .0603. Hours for all other courses must be submitted to the board for approval. However, if not approved, no PDH will be granted for the course.

*Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79.*

**21 NCAC 39 .0602 APPROVAL OF CONTINUING EDUCATION COURSES**

- (a) All continuing education courses must be approved by the Board before PDH can be granted.
- (b) The Board shall require that all continuing education courses must be approved on an annual basis.
- (c) The Board shall approve courses that instruct on Onsite Wastewater Contractor or Inspector activities and the use of Onsite Wastewater Contractor or Inspector equipment, products, and materials. The Board must determine that courses and activities must contain a clear purpose and objective and result in the maintenance, improvement, or expansion of skills and knowledge related to the practice of Onsite Wastewater Contractor or Inspector activities. Additionally, to be approved, requests for approval of courses or activities shall include the following information:
  - (1) Course content;
  - (2) Course schedule;
  - (3) Level of instruction provided (Level 1, 2, 3, 4, Inspector, or level 4/Inspector);
  - (4) Qualifications of instructors (including both education and experience); and
  - (5) Materials provided, field experiences, and other activities available in connection with the course(s).

*Authority G.S. 90A-72; 90A-74; 90A-77, 90A-78; 90A-79.*



**21 NCAC 39 .0603 DETERMINATION OF CREDIT**

The Board has final authority with respect to approval of courses credit, PDH values for courses, and other methods of earning credit. Courses or activities must maintain, improve or expand the skills and knowledge related to the practice of Onsite Wastewater Contractor or Inspector activities in order for an Onsite Wastewater Contractor or Inspector to receive credit. The Board shall award the stated hours of credit (PDH) for any acceptable and successfully completed activity in each of the following categories:

- (1) Credit for college or community college courses shall be a maximum of 12 PDH for receipt of a passing grade in the course. Grades that are considered "below average" based on the college or community college grading scale will not be allowed credit.
- (2) Credit for continuing education correspondence courses; provided through television, videotapes, audiotapes, or other short courses/tutorial materials; that provide a completion certificate shall be one PDH unit for each hour of attendance or contact time.
- (3) Credit for teaching or presenting in Item (2) of this Rule are double the stated credits. Credit for teaching or presenting is available only for the first time that a Onsite Wastewater Contractor or Inspector teaches such a course or makes such a presentation.

*Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79.*

**21 NCAC 39 .0604 RECORDKEEPING**

The responsibility of maintaining records to be used to support credits claimed is the responsibility of the contractor. Records required include:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructors or speakers name and PDH credits earned; or
- (2) Attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance.

*Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79.*

**21 NCAC 39 .0605 SPECIAL PROVISIONS FOR CONTINUING EDUCATION**

(a) An Onsite Wastewater Contractor or Inspector serving on temporary active duty in the uniformed services of the United States for a period of time exceeding 180 consecutive days in a year shall be granted an extension of time in which to obtain the professional development hours required during that renewal period. The extension shall allow the requesting Onsite Wastewater Contractor or Inspector 12 months from the date the extension is granted to correct the deficiency in professional development hours (PDH) for the renewal period in issue.

(b) If an Onsite Wastewater Contractor or Inspector experiences a long term disability or illness he may petition the board for an extension of time to obtain professional development hours

required during that renewal period. The petition shall provide documentation including verification from a medical doctor of illness, with proof of disability, or any additional information requested by the Board. The extension of time shall not exceed 90 days into the following renewal year.

*Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79.*

**SECTION .0700 – PROCEDURES FOR DISCIPLINARY ACTIONS**

**21 NCAC 39 .0701 REVOCATION, OR SUSPENSION OF CERTIFICATION**

(a) The Board may revoke or suspend the certification of an Onsite Wastewater Contractor or Inspector in accordance with the provisions of G.S. 90A-80, 90A-81 and Chapter 150B of the NC General Statutes.

(b) Certification may be relinquished by submission to the Certification Board of the original certificate and a notarized statement of relinquishment.

(c) The Certification Board may issue a written reprimand to an Onsite Wastewater Contractor or Inspector. The reprimand shall be delivered in accordance with the provisions of service in G.S. 150B-42. A copy of the letter shall be kept in the Onsite Wastewater Contractor or Inspector's file. The Onsite Wastewater Contractor or Inspector shall be given the opportunity to put a letter of rebuttal into the file. The letter must be received by the Board within 30 days of receipt of reprimand.

*Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81.*

**21 NCAC 39 .0702 CERTIFICATION FOLLOWING REVOCATION OR VOLUNTARY SURRENDER OF CERTIFICATION**

(a) If a certification is revoked or voluntarily surrendered the person may not apply for a new certification for a period of at least 12 months.

(b) An individual who's certification was revoked or voluntarily surrendered may apply to the board for reinstatement after the 12 month period has ended.

(c) An individual approved by the Board to apply for reinstatement, must then meet all the requirements for a new applicant as specified in article 5 of G.S. 90A and the rules adopted by the Board.

(d) Applicants denied reinstatement by the Board may appeal the decision pursuant to the procedures contained in G.S. 150B, Article 3A.

*Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81.*

**21 NCAC 39 .0703 PENALTIES**

A person who violates any rule of this Section is subject to the penalties of G.S. 90A-81.

*Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81.*

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rules cited as 25 NCAC 01E .0103 and .1801-.1809, and amend the rules cited as 25 NCAC 01E .0203 and 01J .0614-.0615.

Proposed Effective Date: January 1, 2011

Public Hearing:

Date: August 17, 2010

Time: 10:00 a.m.

Location: Office of State Personnel, Administration Building, 3rd Floor, 121 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action:

25 NCAC 01E .0103 – Leave offsetting is being proposed in response to agencies' request for policy clarification on the practice of leave offsetting and to ensure consistent application of the policy throughout State government. Leave offsetting occurs when an employee works additional hours outside their normal schedule in a work week in which they also have scheduled or taken time off. The additional time worked offsets the time that the employee intended to cover with available leave. The number of leave hours originally charged must be reduced by the number of additional hours worked.

25 NCAC 01E .0203, .1801-.1809 – Incentive leave is being proposed in response to agencies' difficulty in recruiting mid or late career applicants to positions that have been identified as critical to the agency mission and for which the agency has documented recruitment difficulty attracting qualified applicants, or in recruiting for executive level or middle management positions. Agencies have experienced difficulty in hiring mid or late career applicants who may have a number of hours of vacation leave or paid time off accumulated with their current employer, and are hesitant to come to work for the State when they learn they would have to start off at the new hire accumulation rate with zero leave and considering it will take several years to accumulate comparable leave balances. The Office of State Personnel is proposing that vacation leave accrual rates for state employees be increased in order to maintain competitiveness with other public and private employers. This proposal was made based on an analysis of vacation leave accrual practices of competitors. The proposal will combine the zero to two years with two but less than five years to create a less than five years category. The proposal will also increase the annual rate by two hours per year for each of the years of total state service category.

25 NCAC 01J .0614-.0615 – This change is being made to delete outdated portions of the disciplinary policy involved in the 1995 changes to the disciplinary policy. "Extensions" of disciplinary actions were permitted to provide a smooth changeover from a system with no time limits on disciplinary actions to a system with an 18 month time limit. Since we are now well beyond 18 months past 1995, this provision is no longer needed and is occasionally confusing.

Procedure by which a person can object to the agency on a proposed rule: A person may object to these proposed rules by

one of the following methods: a written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; an email to peggy.oliver@osp.nc.gov; a telephone call to Peggy Oliver at (919) 807-4832.

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

Comment period ends: September 13, 2010

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

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

- State 25 NCAC 01E .0203, .1801-.1809
Local
Substantial Economic Impact (≥\$3,000,000) 25 NCAC 01E .0203, .1801-.1809
None 25 NCAC 01E .0103; 01J .0614-.0615

CHAPTER 01 - STATE PERSONNEL COMMISSION

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0100 - LEAVE: GENERAL PROVISIONS

25 NCAC 01E .0103 LEAVE OFFSETTING

If employees work additional hours outside their normal schedule in an overtime period in which they also have taken time off, the additional time worked offsets the time that the employee intended to cover with available leave. The number of leave hours originally charged must be reduced by the number of additional hours worked. This offset is mandatory; the employee cannot be paid both for the leave time and the additional work time. This applies to all types of leave except Holiday Leave, Civil Leave and Other Management Approved Leave.

Authority G.S. 126-4.

SECTION .0200 - VACATION LEAVE

**25 NCAC 01E .0203 VACATION LEAVE CREDITS**

(a) Vacation leave credits shall be provided to employees subject to the State Personnel Act for a who are full-time or prorated for a part-time (half-time or over) employee with and have a permanent, trainee, time-limited or probationary appointment and who is are in pay status for one-half of the regularly scheduled workdays and holidays in a pay period. The rate shall be based on G.S. 126, the length of total state service

as defined in 25 NCAC 01D .0112, and the leave practices of the State's competitors. Competitors shall include State governments, local governments, non-profit organizations, and private industry. The rate may be adjusted to maintain competitiveness, taking into consideration the State's total compensation package and the average of the State's major competitors, but shall not be less than the following:

Years of Total State Service	Hours Granted Each Month	Hours Granted Each Year	Days Granted Each Year
<del>Less than 2 years</del>	<del>7 hrs. 50 mins.</del>	<del>94</del>	<del>11 3/4</del>
<del>2 but less Less than 5 years</del>	<del>9.34 9 hrs. 10 mins.</del>	<del>110 112</del>	<del>13 3/4 14.01</del>
<del>5 but less than 10 years</del>	<del>11.34 11 hrs. 10 mins.</del>	<del>134 136</del>	<del>16 3/4 17.01</del>
<del>10 but less than 15 years</del>	<del>13.34 13 hrs. 10 mins.</del>	<del>158 160</del>	<del>19 3/4 20.01</del>
<del>15 but less than 20 years</del>	<del>15.34 15 hrs. 10 mins.</del>	<del>182 184</del>	<del>22 3/4 23.01</del>
<del>20 years or more</del>	<del>17.34 17 hrs. 10 mins.</del>	<del>206 208</del>	<del>25 3/4 26.01</del>

(b) In addition, Incentive Leave may be considered for newly appointed employees in accordance with 25 NCAC 01E .1801 - .1809.

*Authority G.S. 126-4; 126-8.*

**SECTION .1800 – INCENTIVE LEAVE**

**25 NCAC 01E .1801 POLICY**

(a) Incentive leave may be used as a recruitment tool to assist in the employment of qualified individuals who are mid-career professionals employed outside of State government and who are interested in accepting employment with the State of North Carolina.

(b) An agency may award incentive leave to a mid-career professional employee who is newly appointed to a position that the agency has identified as critical to the agency mission and for which the agency has documented recruitment difficulty attracting qualified applicants, or who is newly appointed to an executive level management position.

*Authority G.S. 126-4.*

**25 NCAC 01E .1802 DEFINITIONS**

(a) Middle or Late Career Applicant – An applicant with 10 or more years of directly related experience in their chosen profession.

(b) Executive Level Management Position - A senior management position that reports directly to an appointed/elected agency head and is delegated authority to make decisions that impact the overall direction of the agency and whose duties typically involve planning, strategy, policy-making and line-management. Typical job titles include chief executive officer, chief operating officer, chief financial officer and deputy secretary.

(c) Middle Management Position - A position that reports directly to an executive level management position and supervises lower level management positions and is delegated authority to make decisions that impact the overall direction of a department or division of an agency and whose duties typically involve program planning and coordination, organization

structure, determining goals and standards, determination and interpretation of policy, and fiscal control.

(d) Recruitment Difficulties – Positions that are highly competitive in the labor market due to specialized competencies and/or license/certifications and/or geographic location, and/or those positions in which there is a high turnover which significantly impacts the agency's efforts to recruit and provide services. Recruitment typically involves active specialized recruitment efforts utilizing multiple recruitment resources that require an extended period of recruitment and results in a limited qualified applicant pool.

(e) Newly Appointed - The initial appointment as an employee of the State of North Carolina, or an appointment following a break in service of at least 12 months from a previous appointment as an employee of the State of North Carolina.

(f) Employed Outside of State Government – Employed with an organization that is not part of the State of North Carolina government or not an organization for which the State currently accepts transferred accrued vacation leave upon hire.

*Authority G.S. 126-4.*

**25 NCAC 01E .1803 RECRUITMENT DOCUMENTATION**

If recruitment difficulties are the basis for the application of this policy, the agency shall maintain written documentation related to difficulties in recruiting to fill positions of applicants offered incentive leave. The agency will be expected to provide this documentation to the Office of State Personnel upon request. Documentation should include high turnover rates, special required competencies, types of specialized recruitment resources used during the recruitment period, beginning and ending dates of active recruitment, number of qualified applicants in the applicant pool, and any additional

documentation such as number of applicants that may have rejected offers including a reason why or applicants that may have withdrawn their application from consideration, etc.

Authority G.S. 126-4.

**25 NCAC 01E .1804 ELIGIBILITY REQUIREMENTS**

To be eligible for incentive leave, the employee must be newly appointed and have the following:

- (1) All qualification and competency requirements of the position;
- (2) At least 10 years of experience that is directly related to the position; and
- (3) A full-time or part-time (half-time or more) permanent, probationary or time-limited appointment.

Authority G.S. 126-4.

**25 NCAC 01E .1805 AMOUNT OF LEAVE**

An agency may award a one-time accrual up to 20 days (160 hours) of incentive leave to an eligible new employee upon hire. The one-time leave award shall be pro-rated for part-time employees. Management may negotiate the amount of leave to award to the selected applicant taking into consideration the applicant's current annual vacation leave accrual.

Authority G.S. 126-4.

**25 NCAC 01E .1806 RELATIONSHIP TO OTHER LEAVE**

- (a) The employee will be eligible to earn other accrued leave as allowed by policy;
- (b) Incentive leave shall be maintained and accounted for in a separate account from other accrued leave;
- (c) If an employee has any earned compensatory time such as holiday, overtime, gap hours, on-call, or travel, the compensatory time shall be used before incentive leave; and
- (d) Incentive leave shall be restored (offset) to the employee's incentive leave account for later use if an employee worked in excess of the employee's established work schedule during the applicable overtime work cycle.

Authority G.S. 126-4.

**25 NCAC 01E .1807 CARRY-OVER AND PAYMENT OF LEAVE**

Unused incentive leave will carryover from year to year and can be used only as paid leave. Under no circumstance can it be:

- (1) transferred to sick leave,
- (2) paid out upon separation,
- (3) credited toward retirement, or
- (4) donated as voluntary shared leave.

Authority G.S. 126-4.

**25 NCAC 01E .1808 TRANSFER**

(a) If the employee transfers to a State SPA or EPA position, unused incentive leave may be transferred subject to the

receiving agency's approval. If incentive leave is not transferred, it shall not be paid out in a lump sum; and

(b) Incentive leave cannot be transferred to any non-State government employer including public school, community college, local mental health, local public health, local social services, or local emergency management employer.

Authority G.S. 126-4.

**25 NCAC 01E .1809 USE OF LEAVE**

Subject to supervisory approval, the incentive leave is available for use for the same reasons as allowed by the vacation leave policy.

Authority G.S. 126-4.

**SUBCHAPTER 01J - EMPLOYEE RELATIONS**

**SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL**

**25 NCAC 01J .0614 DEFINITIONS**

- (a) Current Unresolved Incident - Conduct or performance that:
  - (1) constitutes a violation of this Section; and
  - (2) for which no disciplinary action has been previously imposed or issued by agency/university management.
- (b) Disciplinary Demotion - A personnel action taken, without employee agreement, to discipline the employee, which results in:
  - (1) reduction in salary within the employee's current classification; or
  - (2) an assignment to a position in a lower salary grade without a corresponding loss of salary; or
  - (3) an assignment to a position in a lower salary grade with a corresponding loss of salary.
- (c) Disciplinary Suspension Without Pay - The removal of an employee from work for disciplinary purposes without paying the employee.
- (d) Dismissal - The involuntary termination or ending of the employment of an employee for disciplinary purposes or failure to obtain or maintain necessary credentials.
- (e) Gross Inefficiency (Grossly Inefficient Job Performance) - A type of unsatisfactory job performance that occurs in instances in which the employee: fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and, that failure results in:
  - (1) the creation of the potential for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) over whom the employee has responsibility; or
  - (2) the loss of or damage to state property or funds that result in a serious impact on the State or work unit.
- (f) Inactive Disciplinary Action - Any disciplinary action issued after the effective date of this Section, is deemed inactive for the purpose of this Section in the event that:

- (1) the manager or supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved or corrected; or
- (2) the purpose for a performance-based disciplinary action has been achieved, as evidenced by a summary performance rating of level 3 (Good) or other official designation of performance at an acceptable level or better and at least a level 3 or better in the performance area cited in the warning or disciplinary action, following the disciplinary warning or action; or
- (3) 18 months have passed since the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months ~~months, and the agency/university has not, prior to the expiration of the 18 month period, issued to the employee notice of the extension of the period.~~

(g) Insubordination - The willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning.

(h) Unacceptable Personal Conduct is:

- (1) conduct for which no reasonable person should expect to receive prior warning; or
- (2) job-related conduct which constitutes a violation of state or federal law; or
- (3) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the State; or
- (4) the willful violation of known or written work rules; or
- (5) conduct unbecoming a state employee that is detrimental to state service; or
- (6) the abuse of client(s), patient(s), student(s) or a person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State; or
- (7) absence from work after all authorized leave credits and benefits have been exhausted; or
- (8) falsification of a state application or in other employment documentation.

(i) Unsatisfactory Job Performance - Work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency.

*Authority G.S. 126-4; 126-35.*

**25 NCAC 01J .0615 SPECIAL PROVISIONS**

(a) PLACEMENT ON INVESTIGATION - Investigation status is used to temporarily remove an employee from work status. Placement on investigation with pay does not constitute a disciplinary action as defined in this Section or in G.S. 126-35. Management must notify an employee in writing of the reasons

for investigatory placement not later than the second scheduled work day after the beginning of the placement. An investigatory placement with pay may last no longer than 30 calendar days without written approval of extension by the agency head and the State Personnel Director. The State Personnel Director shall approve an extension of the period of investigatory status with pay, for no more than an additional 30 calendar days, for one or more of the following reasons:

- (1) The matter is being investigated by law enforcement personnel, and the investigation is not complete; or
- (2) A management individual who is necessary for resolution of the matter is temporarily unavailable; or
- (3) A person or persons whose information is necessary for resolution of the matter is/are temporarily unavailable.

When an extension beyond the 30-day period is required, the agency must advise the employee in writing of the extension, the length of the extension, and the specific reasons for the extension. If no action has been taken by an agency by the end of the 30-day period and no further extension has been granted, the agency shall either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstance is it permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

It is permissible to place an employee in investigation status with pay only under the following circumstances:

- (1) To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- (2) To provide time within which to schedule and conduct a pre-disciplinary conference; or
- (3) To avoid disruption of the work place and to protect the safety of persons or property.

(b) CREDENTIALS - Some duties assigned to positions in the state service may be performed only by persons who are licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions shall be specified in the statement of essential qualifications or recruitment standards for classifications established by the State Personnel Commission.

- (1) Employees in such classifications shall obtain and maintain current, valid credentials as required by law. Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.

- (2) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency, disciplinary action shall be administered as follows:
- (A) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure or certification information that was a requirement for the position, the employee must be dismissed in accordance with 25 NCAC 01J .0608.
  - (B) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.
  - (C) When credential or work history falsification is discovered before employment with a state agency, the applicant shall be disqualified from consideration for the position in question.
- (c) OTHER SPECIAL PROVISIONS -
- (1) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.
  - (2) ~~Warnings, extensions of disciplinary actions and periods of placement on investigation,~~ Warnings and placement on investigation with pay shall not be grievable unless an agency specifically provides for such a grievance in its agency grievance procedure. Absent an allegation of a violation of G.S. 126-25, warnings shall not appealable to the State Personnel Commission.
- (3) An agency shall furnish to an employee as an attachment to the written documentation of any grievable disciplinary action, a copy of the agency grievance procedure.
  - (4) Each state agency shall adopt and submit to the State Personnel Commission an internal grievance procedure that shall include as an attachment an agency employee relations policy which:
    - (A) Sets out the manner and mechanism with which employees are notified of changes in agency policy and State Personnel Commission rules;
    - (B) Sets out the policy on the use of disciplinary suspension and the procedure for the issuance of warnings.
    - (C) Sets out the policy on the retention of warnings and other disciplinary actions in employee personnel files; and
    - (D) Sets out the policy on how an employee may access the employee's personnel file.
  - (5) Each state agency shall maintain records and provide the OSP information and statistics on the discipline and dismissal process commencing in January 1996 and every year thereafter.
  - (6) Each state agency shall insure that designated personnel are trained in the administration of this Section.

Authority G.S. 126-4; 126-25; 126-35.

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday, June 17, 2010 9:00 a.m. at 1711 New Hope Church Road, RRC Commission 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 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jim R. Funderburk - 1st Vice Chair  
David Twiddy - 2nd Vice Chair  
Ralph A. Walker  
Jerry R. Crisp  
Jeffrey P. Gray

**Appointed by House**

Jennie J. Hayman - Chairman  
John B. Lewis  
Clarence E. Horton, Jr.  
Daniel F. McLawhorn  
Curtis Venable

**COMMISSION COUNSEL**

Joe DeLuca (919)431-3081  
Bobby Bryan (919)431-3079

**RULES REVIEW COMMISSION MEETING DATES**

July 15, 2010                      August 15, 2010  
September 16, 2010              October 21, 2010

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**RULES REVIEW COMMISSION**

**June 17, 2010**

**MINUTES**

The Rules Review Commission met on Thursday, June 17, 2010, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Clarence Horton, Dan McLawhorn, David Twiddy, Curtis Venable and Ralph Walker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Tammara Chalmers, Julie Edwards and Dana Vojtko.

The following people were among those attending the meeting:

Anthony Bonapart	Private Protective Services
Bobby White	Dental Board
Angelia Allcox	DENR/Division of Parks and Recreation
Linda Piper	NC Licensed Child Care Association
Alexandra Gruber	Department of Justice
Stefanie Mach	Department of Justice – Intern
Lynda Elliott	Board of Cosmetic Art Examiners
Clint Pinyan	Brooks Pierce/Board of Pharmacy
Kristi Nixon	Department of Environment and Natural Resources
David Tuttle	Board of Engineers and Surveyors
Karen Waddell	Department of Insurance
Julie Stainback	Department of Agriculture and Consumer Services
Tom Miller	Real Estate Commission
Larry Michael	Department of Environment and Natural Resources
Jani Kozlowski	DHHS/Division of Child Development
Dedra Alston	DHHS/Division of Child Development
Ron Kaylor	DOT/Division of Motor Vehicles
David Bradley	DOT/Division of Motor Vehicles
Anca Grozav	Office of State Budget and Management

Joelle Burleson	DENR/Division of Air Quality
Paul Grable	DENR/Division of Air Quality
Bob Brooks	Board of Certified Public Accountants
Chris Hoke	DHHS/Commission for Public Health
Arigit Paul	DHHS/Commission for Public Health
Anna Carter	DHHS/Division of Child Development
Rebecca Hill	Department of Insurance
Ted Hamby	Department of Insurance
John Barkley	Department of Justice for DENR & EHSE Board
Jean Stanley	Board of Nursing
David McLeod	Department of Agriculture and Consumer Services
Malcolm Blalock	Board of Environmental Health Specialist Examiners
Daren Bakst	John Locke Foundation

### **APPROVAL OF MINUTES**

The meeting was called to order at 9:00 a.m. with Mr. Funderburk presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Vice Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the May 20, 2010 meeting. There were none and the minutes were approved as distributed.

### **FOLLOW-UP MATTERS**

Prior to the review of the rules from the Office of the Commissioner of Banks, Commissioner Twiddy recused himself and did not participate in any discussion or vote concerning these rules because he is a banker.

04 NCAC 03M .0101, .0205 – Office of the Commissioner of Banks. The Commission approved the rewritten rules submitted by the agency.

04 NCAC 03M .0301, .0401, .0604 – Office of the Commissioner of Banks. The Commission approved the rewritten rules submitted by the agency for 03M .0301 and .0401. Rule .0604 was withdrawn by the agency.

21 NCAC 10 .0206 – Board of Chiropractic Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 14I .0401 – Board of Cosmetic Art Examiners - No rewritten rule has been submitted and no action was taken.

21 NCAC 14N .0110, .0113, .0115 – Board of Cosmetic Art Examiners. The Commission approved the rewritten rules submitted by the agency.

21 NCAC 14P .0111 – Board of Cosmetic Art Examiners. The Commission rescinded the objection and approved this rule.

21 NCAC 46 .1418 – Board of Pharmacy. The Commission approved the rewritten rule submitted by the agency. Commissioners Gray, Horton, McLawhorn and Walker voted for the motion. Commissioners Crisp, Twiddy and Venable voted against the motion. The Commission received more than 10 written letters of objection to this rule and therefore is subject to legislative review and a delayed effective date.

Clint Pinyan represented the Board in answering questions from the Commissioners concerning this rule.

Prior to the review of the rule from the Real Estate Commission, Commissioner Twiddy recused himself and did not participate in any discussion or vote concerning these rules because he has a brokers license.

21 NCAC 58E .0602 – Real Estate Commission. The Commission approved the rewritten rule submitted by the agency contingent on receiving a technical change. The technical change has been received.

### **LOG OF FILINGS**

Vice Chairman Funderburk presided over the review of the log of permanent rules.

### **Commissioner of Agriculture**



All permanent rules were approved unanimously.

**Board of Agriculture**

02 NCAC 20B .0104 was approved unanimously.

**Structural Pest Control Committee**

02 NCAC 34 .0331 - The Commission objected to this rule based on lack of statutory authority. There is no authority for the agency to license consultants. G.S. 106-65.24(15) defines licensee as "any person qualified for and holding a license for any phase of structural pest control..." G.S. 106-65.25 requires the Structural Pest Control Committee to classify license phases and then states that separate phases or subphases shall be specified for "P," "W," and "F" phases. Apparently these are the only phases allowed to be licensed (although there may be subphases) since G.S. 106-65.29(1) allows the Committee to adopt rules with respect to the amount and kind of training required of an applicant for a license and certified applicators card to engage in any one or more of the "three phases of structural pest control." G.S. 106-65.25(g) states that "any person issued a license for any one or combination of the phases of structural pest control shall be deemed to be a 'certified applicator' to use or supervise the use of restricted use pesticides..." There does not appear to be authority for the agency to license someone who cannot apply pesticides or supervise the application.

02 NCAC 34 .0503 was approved unanimously.

02 NCAC 34 .1103 - The Commission objected to this rule based on ambiguity. In (a) and (b), it is not clear how the Committee distinguishes between a primary and secondary deviation. This objection applies to existing language in the rule.

**Board of Agriculture**

02 NCAC 28A .1205 - The Commission objected to this rule based on ambiguity. It is neither clear when a reinspection fee will be charged nor how much the fee will be if one is charged. This objection applies to existing language in the rule.

02 NCAC 48A .1209 - The Commission objected to this rule based on lack of statutory authority and ambiguity. It is not clear what standards the agency will use in approving a collected plant certificate. There is no authority cited for setting the standards outside rulemaking. It is also not clear what constitutes "cause" for revoking a certificate. This objection applies to existing language in the rule.

02 NCAC 52B .0210, .0505, .0608 were approved unanimously.

02 NCAC 52B .0502 - The Commission objected to this rule based on ambiguity. In (a)(1), it is not clear what is meant by equivalent to a U.S. pullorum-typhoid clean flock. Either a flock is clean or it is not. This objection applies to existing language in the rule

02 NCAC 52B .0603 - The Commission objected to this rule based on ambiguity. In (c)(2), it is not clear what standards the State Veterinarian is to use in granting prior approval for birds to enter the State before testing.

**Child Care Commission**

All permanent rules were approved unanimously with the following exceptions:

10A NCAC 09 .0102 - The Commission objected to this rule based on lack of statutory authority and ambiguity. In (3), it is not clear what the standards are for Division approval of Basic School-Age Care training. There is no authority cited to set the standards outside rulemaking. It is also not clear who develops it. There are the same issues in (18) for ITS-SIDS Training.

10A NCAC 09 .0511 - The Commission objected to this rule based on lack ambiguity. In (a)(1) and (3), it is not clear how much time is required to amount to a "substantial portion of each day." This objection applies to existing language in the rule.

10A NCAC 09 .2510 - The Commission objected to this rule based on ambiguity. Because it is not clear what training has been approved as Basic School-Age Care training, it is not clear what is required by (b), (c), (d), (f), (g) and (j).

The Commission received 18 written letters of objection to Rules .0102, .0501, .0508, .0604, .0802, .0901, .1702, .1718, and .2502. Prior to the Commission meeting 10 persons submitted written letters to the Commission requesting withdrawal of their written objections. The Commission approved the motion to accept the withdrawal letters. These rules are not subject to legislative review and a delayed effective date.

**Department of Insurance**

All permanent rules were approved unanimously.

**Private Protective Services Board**

Prior to the review of the rules from the Private Protective Services Board, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because he practices in the same law firm as Charles McDarris, counsel to the Board.

12 NCAC 07D .0202 and .0702 were approved unanimously.

12 NCAC 07D .0802 – The Commission objected to this rule based on lack of statutory authority. There does not appear to be authority for the Board to charge a renewal fee for an application for a firearm registration permit. G.S. 74C-9(e)(7) allows an application fee of up to fifty dollars (\$50.00). G.S. 74C-9(e)(8) then allows a new, renewal, replacement or reissuance fee for a firearm registration permit of up to thirty dollars (\$30.00). There is nothing in the statutes to imply that a permit holder has to apply again to have a permit renewed.

The Commission granted the Request for Waiver of Rule 26 NCAC 05 .0108(a) or (d) submitted by the Private Protective Services Board and approved re-written rule 12 NCAC 07D .0802.

**Alarm Systems Licensing Board**

Prior to the review of the rules from the Alarm Systems Licensing Board, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because he practices in the same law firm as Charles McDarris, counsel to the Board.

All permanent rules were approved unanimously.

**Environmental Management Commission**

All permanent rules were approved unanimously.

**Department of Environment and Natural Resources**

15A NCAC 12B .1206 was approved unanimously.

**Commission for Public Health**

15A NCAC 18A .2633 - The Commission objected to paragraph (g) of this rule on the basis of ambiguity. It is unclear what the prohibitions are for various animals, the areas they are prohibited from, and what the precise prohibitions are and who are bound by them.

Daren Bakst spoke against the language of the rule saying it was inartfully drafted and did not make clear what was prohibited and who was bound by it. He also stated that he was not representing the John Locke Foundation in his appearance before the Commission.

**Department of Transportation**

All permanent rules were approved unanimously.

**Board of Certified Public Accountants**

All permanent rules were approved unanimously.

**Board of Cosmetic Art Examiners**

All permanent rules were approved unanimously with the following exception:

21 NCAC 14B .0605 - The Commission objected to this rule based on the fact that there is no authority cited to charge a “processing fee” of \$10.00 as set out in the first line of the rule. It would also appear that a processing fee is included within the “combined fees/CE hours due” listed in the table for the staggered expiration and renewal dates that is being established.

**Board of Dental Examiners**

Commissioner Crisp was not present for any discussion or vote concerning these rules.

All permanent rules were approved unanimously.

**Board of Nursing**

21 NCAC 36 .0404 was approved unanimously.

**Board of Examiners for Engineers and Surveyors**

All permanent rules were approved unanimously.

**Board of Environmental Health Specialist Examiners**

All permanent rules were approved unanimously with the following exceptions:

21 NCAC 62 .0102 – This rule was withdrawn by the agency because it had been previously repealed.

21 NCAC 62 .0404 - The Commission objected to this rule based on lack of statutory authority. The board has no authority to issue letters of warning or censure as set out in (a)(1) and (2) lines 9 – 12 without the licensee’s consent. The authority cited states that the board has the power “to refuse to grant, ... suspend or revoke, any certificate.” It does not recite the authority or power to issue any other type of discipline including letters of warning or censure.

**TEMPORARY RULES**

There were no temporary rules filed for review.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

Commissioner McLawhorn requested that staff draft rules regarding written letters of objection.

The meeting adjourned at 11:07 a.m.

The next scheduled meeting of the Commission is Thursday, July 15 at 9:00 a.m.

Respectfully Submitted,

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Dana Vojtko  
Publications Coordinator

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**LIST OF APPROVED PERMANENT RULES**  
**June 17, 2010 Meeting**

**AGRICULTURE, COMMISSIONER OF**

<u>Adoption by Reference</u>	02	NCAC 09M .0102
<u>Duty to Verify Suppliers</u>	02	NCAC 09M .0103

**AGRICULTURE, BOARD OF**

<u>Admission Rules</u>	02	NCAC 20B .0104
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**STRUCTURAL PEST CONTROL COMMITTEE**

<u>Subterranean Termite Control: Buildings After Constructed</u>	02	NCAC 34 .0503
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**AGRICULTURE, BOARD OF**

<u>Importation Requirements: Avian Species</u>	02	NCAC 52B .0210
<u>Avian Influenza (H5N2)</u>	02	NCAC 52B .0505
<u>Poultry and Ratite Dealers: Licensing and Records</u>	02	NCAC 52B .0608

**BANKS, OFFICE OF THE COMMISSIONER OF**

<u>Definitions</u>	04	NCAC 03M .0101
<u>Financial Responsibility</u>	04	NCAC 03M .0205
<u>Approval of Providers and Programs and Course of Study; P...</u>	04	NCAC 03M .0301
<u>Annual Reporting Requirements</u>	04	NCAC 03M .0401

**CHILD CARE COMMISSION**

<u>Application for a License for a Child Care Center</u>	10A NCAC 09 .0302
<u>On-Going Requirements for a Permit</u>	10A NCAC 09 .0304
<u>Staff/Child Interactions</u>	10A NCAC 09 .0501
<u>Developmental Day Centers</u>	10A NCAC 09 .0505
<u>Activity Schedules and Plans for Centers</u>	10A NCAC 09 .0508
<u>Activities: General Requirements for Centers</u>	10A NCAC 09 .0509
<u>Activity Areas: Preschool Children Two Years and Older</u>	10A NCAC 09 .0510
<u>General Safety Requirements</u>	10A NCAC 09 .0604
<u>Safe Sleep Policy</u>	10A NCAC 09 .0606
<u>Health Standards for Staff</u>	10A NCAC 09 .0701
<u>Standards for Substitutes and Volunteers</u>	10A NCAC 09 .0702
<u>Emergency Medical Care</u>	10A NCAC 09 .0802
<u>General Nutrition Requirements</u>	10A NCAC 09 .0901
<u>Aquatic Activities</u>	10A NCAC 09 .1403
<u>Building Approval for School-Aged Children</u>	10A NCAC 09 .1505
<u>Application for a License for a Family Child Care Home</u>	10A NCAC 09 .1702
<u>Caregiver Interactions</u>	10A NCAC 09 .1703
<u>Requirements for Daily Operations</u>	10A NCAC 09 .1718
<u>Requirements for Records</u>	10A NCAC 09 .1721
<u>Safe Sleep Policy</u>	10A NCAC 09 .1724
<u>Administrative Penalties General Provision</u>	10A NCAC 09 .2201
<u>Retention of Forms and Reports by a Child Care Operator</u>	10A NCAC 09 .2318
<u>Scope</u>	10A NCAC 09 .2501
<u>Special Provisions for Licensure</u>	10A NCAC 09 .2502
<u>Building Code Requirements</u>	10A NCAC 09 .2503
<u>Space Requirements</u>	10A NCAC 09 .2504
<u>Health Requirements for Children</u>	10A NCAC 09 .2505
<u>General Safety Requirements</u>	10A NCAC 09 .2506
<u>Age Appropriate Activities</u>	10A NCAC 09 .2508
<u>Scope</u>	10A NCAC 09 .2801
<u>Application for a Voluntary Rated License</u>	10A NCAC 09 .2802
<u>Program Standards for a Three Component Rated License for...</u>	10A NCAC 09 .2803
<u>Staff/Child Ratios for a Three Component Rated License</u>	10A NCAC 09 .2810
<u>Education Standards for a Rated Licensure for Child Care C...</u>	10A NCAC 09 .2811
<u>Education Standards for Centers that Provide Care Only to...</u>	10A NCAC 09 .2812
<u>Compliance History Standards for a Rated License for Chil...</u>	10A NCAC 09 .2813
<u>Program Standards for a Rated License for Family Child Ca...</u>	10A NCAC 09 .2814
<u>Education Standards for a Rated License for Family Child ...</u>	10A NCAC 09 .2815
<u>Compliance History Standards for a Rated License for Fami...</u>	10A NCAC 09 .2816
<u>Scope</u>	10A NCAC 09 .2901
<u>License</u>	10A NCAC 09 .2902
<u>Staff Qualifications</u>	10A NCAC 09 .2903
<u>Program Requirements</u>	10A NCAC 09 .2904
<u>Family Services</u>	10A NCAC 09 .2905

**INSURANCE, DEPARTMENT OF**

<u>Review/Audit of Third Party Administrators</u>	11 NCAC 12 .0332
<u>Refund of Unearned Premium for Credit Insurance</u>	11 NCAC 12 .0714

**PRIVATE PROTECTIVE SERVICES BOARD**

<u>Fees for Licenses and Trainee Permits</u>	12 NCAC 07D .0202
<u>Fees for Unarmed Security Guard Registration</u>	12 NCAC 07D .0702
<u>Fees for Armed Security Guard Firearm Registration Permit</u>	12 NCAC 07D .0802

**ALARM SYSTEMS LICENSING BOARD**

<u>Renewal or Re-issue of License</u>	12 NCAC 11 .0204
<u>Renewal or Reregistration of Registration</u>	12 NCAC 11 .0306
<u>Accreditation Standards</u>	12 NCAC 11 .0503

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Large Municipal Waste Combustors</u>	15A NCAC 02D .1205
<u>Small Municipal Waste Combustors</u>	15A NCAC 02D .1212

**ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF**

<u>Fees and Charges</u>	15A NCAC 12B .1206
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**TRANSPORTATION, DEPARTMENT OF**

<u>Definitions</u>	19A NCAC 03D .0517
<u>Licensing of Safety or Exhaust Emissions Inspection Stations</u>	19A NCAC 03D .0518
<u>Stations</u>	19A NCAC 03D .0519

**CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF**

<u>Use of CPA Title</u>	21 NCAC 08H .0105
<u>Non-Resident Notification</u>	21 NCAC 08H .0106
<u>Forfeiture or Inactivation of Certificate and Reissuance ...</u>	21 NCAC 08J .0106
<u>Registration and Renewal</u>	21 NCAC 08K .0104
<u>Accounting Principles</u>	21 NCAC 08N .0209
<u>Forecasts</u>	21 NCAC 08N .0210
<u>Responsibilities in Tax Practice</u>	21 NCAC 08N .0211
<u>Outsourcing to Third-Party Service Providers</u>	21 NCAC 08N .0214
<u>Consulting Services Standards</u>	21 NCAC 08N .0304
<u>Valuation Services Standards</u>	21 NCAC 08N .0308
<u>Auditing Standards</u>	21 NCAC 08N .0403
<u>Accounting and Review Services Standards</u>	21 NCAC 08N .0404
<u>Governmental Accounting Standards</u>	21 NCAC 08N .0405
<u>Attestation Standards</u>	21 NCAC 08N .0406

**CHIROPRACTIC EXAMINERS, BOARD OF**

<u>Certification of Radiologic Technologists</u>	21 NCAC 10 .0206
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**COSMETIC ART EXAMINERS, BOARD OF**

<u>Definitions</u>	21	NCAC 14A .0101
<u>Office Hours</u>	21	NCAC 14A .0103
<u>Dimensions of Beauty Salon</u>	21	NCAC 14F .0107
<u>Condition of Equipment</u>	21	NCAC 14G .0112
<u>Bathroom Facilities</u>	21	NCAC 14H .0110
<u>Animals</u>	21	NCAC 14H .0117
<u>Permanent Files</u>	21	NCAC 14I .0101
<u>Inspection Reports and Reports of Student Hours</u>	21	NCAC 14I .0103
<u>Storing and Labeling of Cosmetics</u>	21	NCAC 14J .0203
<u>Live Model Performances</u>	21	NCAC 14K .0107
<u>Passing Grades for Examination</u>	21	NCAC 14N .0110
<u>Re-examination</u>	21	NCAC 14N .0113
<u>Full Time and Part Time Equivalency</u>	21	NCAC 14N .0115
<u>Licenses Required</u>	21	NCAC 14P .0106
<u>Establishment of Cosmetic Art Schools</u>	21	NCAC 14P .0111
<u>Continuing Education Requirements</u>	21	NCAC 14R .0101
<u>Application Criteria and Continuing Education Course Appr...</u>	21	NCAC 14R .0102
<u>Criteria for Continuing Education Courses</u>	21	NCAC 14R .0103
<u>Uniform</u>	21	NCAC 14S .0101
<u>Time Requirements According to Hours</u>	21	NCAC 14S .0102
<u>Approved Field Trips</u>	21	NCAC 14S .0103
<u>Equipment for Beginner Department</u>	21	NCAC 14S .0104
<u>Storing and Labeling of Cosmetics</u>	21	NCAC 14S .0105
<u>Equipment</u>	21	NCAC 14S .0106
<u>Performances</u>	21	NCAC 14S .0107
<u>Students' Personal Supplies</u>	21	NCAC 14S .0108
<u>Tests</u>	21	NCAC 14S .0109
<u>Approval of Credit for Natural Hair Care Instruction/Anot...</u>	21	NCAC 14S .0110
<u>Services Performed</u>	21	NCAC 14S .0111
<u>Licensing of Natural Hair Care Specialists</u>	21	NCAC 14S .0112
 <b>DENTAL EXAMINERS, BOARD OF</b>		
<u>Board Conducted Reexamination</u>	21	NCAC 16C .0405
<u>Credentials and Permits for Moderate Conscious Sedation, ...</u>	21	NCAC 16Q .0301
<u>Clinical Requirements and Equipment</u>	21	NCAC 16Q .0302
 <b>NURSING, BOARD OF</b>		
<u>Listing and Renewal</u>	21	NCAC 36 .0404
 <b>PHARMACY, BOARD OF</b>		
<u>Advanced Pharmacy Technician</u>	21	NCAC 46 .1418
 <b>ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR</b>		
<u>Expirations and Renewals of Certificates</u>	21	NCAC 56 .0505
<u>Expirations and Renewals of Certificates</u>	21	NCAC 56 .0606
<u>Annual Renewal</u>	21	NCAC 56 .0804

**REAL ESTATE COMMISSION**

Course Description 21 NCAC 58E .0602

**ENVIRONMENTAL HEALTH SPECIALIST EXAMINERS, BOARD OF**

Secretary-Treasurer 21 NCAC 62 .0104  
Petition for Rulemaking 21 NCAC 62 .0201  
Notice 21 NCAC 62 .0202  
Hearings 21 NCAC 62 .0203  
Justification of Rulemaking Decision 21 NCAC 62 .0204  
Record of Rulemaking Proceedings 21 NCAC 62 .0205  
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Opportunity for an Administrative Hearing 21 NCAC 62 .0301  
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Record of Contested Cases 21 NCAC 62 .0319  
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Public Inspection 21 NCAC 62 .0408  
Specialized Training 21 NCAC 62 .0411  
Environmental Health Specialist Intern Experience 21 NCAC 62 .0414  
Code of Ethics 21 NCAC 62 .0415

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**CONTESTED CASE DECISIONS**

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*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) 431-3000. 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	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)	09 ABC 5421	Brooks	04/19/10	
ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	Brooks	04/19/10	
ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market	09 ABC 5257	Brooks	04/19/10	
ABC Commission v. Boulos 2, Inc., T/A Akron Texaco	10 ABC 0027	May	04/21/10	
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	Overby	03/31/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	Brooks	04/01/10	
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/hearings/decisions/">http://www.ncoah.com/hearings/decisions/</a>				
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>				
Ward Drug Co. of Nashville Gary Glisson v. DHHS	09 DHR 3830	Webster	04/29/10	
A+ Child Development Center LLC, v. DHHS, Division of Child Development	09 DHR 5443	May	04/27/10	
Gail N. Highsmith v. DHHS	09 DHR 5513	Brooks	05/13/10	
June Rae Crittenden v. Health Care Registry Section, DHHS	09 DHR 6166	Overby	03/29/10	
Elizabeth Ann Holt v. DHHS, Division of Health Service Regulation	09 DHR 6347	Brooks	03/31/10	
Estate of Nora L. Edwards, Wanda Harrington v. DHHS, Div. of Medical Assistance	09 DHR 6836	Overby	03/16/10	
Teresa Dargan Williams v. DHHS, Division of Health Service Regulation	10 DHR 0246	Gray	05/21/10	
Tamekia Cain v. DHHS, Division of Health Service	10 DHR 0488	Gray	05/20/10	
<b><u>DEPARTMENT OF JUSTICE</u></b>				
Tony Blaine Drake v. Criminal Justice Education and Training Standards Commission	09 DOJ 4151	Lassiter	04/14/10	
Daniel Brannon Gray v. Sheriff's Education and Training Standards Commission	09 DOJ 4364	May	03/15/10	
Phyllis Ann Johnson v. DOJ, Company Police Program	09 DOJ 5295	Elkins	05/03/10	25:01 NCR
Kenneth Maidene, Jr v. Sheriff's Education and Training Standards Commission	09 DOJ 5650	Overby	04/19/10	
Dustin Matthew James v. Sheriffs' Education and Training Standards Commission	09 DOJ 6254	Gray	05/07/10	
Jeffrey Edward Byrd v. Sheriffs' Education and Training Standards Commission	10 DOJ 0389	May	05/26/10	
<b><u>DEPARTMENT OF STATE TREASURER</u></b>				
Michael L. Bost Sr., v. Retirement System	09 DST 3781	May	04/15/10	
<b><u>DEPARTMENT OF INSURANCE</u></b>				
Tammy A. Lee v. Blue Cross Blue Shield of NC	09 INS 6817	Overby	05/03/10	

**OFFICE OF STATE PERSONNEL**



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**CONTESTED CASE DECISIONS**

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Nedra T. Rollins v. NC State University	09 OSP 1536	Overby	06/07/10
Pamela D. Shoffner v. Agricultural and Technical State University, Mr. Linc Butler, Assistant Vice Chancellor for Human Resources	09 OSP 4432	Brooks	05/19/10
Charolettee Hope v. Cumberland County Department of Social Services	09 OSP 4436	Gray	04/15/10
Robert L. Hamm v. Department of Correction	09 OSP 5320	May	04/15/10
Dwight Steven Murphy v. DHHS, Div. of Services for the Blind	09 OSP 5924	Webster	05/13/10