

NORTH CAROLINA REGISTER

VOLUME 26 • ISSUE 22 • Pages 1842 - 1888

May 15, 2012

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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.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919) 807-4740

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: contact: Amy Bason amy.bason@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603
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Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
 Publication Schedule for January 2012 – December 2012

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
26:14	01/17/12	12/21/11	02/01/12	03/19/12	03/20/12	05/01/12	05/16/12	10/13/12
26:15	02/01/12	01/10/12	02/16/12	04/02/12	04/20/12	06/01/12	01/30/13	10/28/12
26:16	02/15/12	01/25/12	03/01/12	04/16/12	04/20/12	06/01/12	01/30/13	11/11/12
26:17	03/01/12	02/09/12	03/16/12	04/30/12	05/21/12	07/01/12	01/30/13	11/26/12
26:18	03/15/12	02/23/12	03/30/12	05/14/12	05/21/12	07/01/12	01/30/13	12/10/12
26:19	04/02/12	03/12/12	04/17/12	06/01/12	06/20/12	08/01/12	01/30/13	12/28/12
26:20	04/16/12	03/23/12	05/01/12	06/15/12	06/20/12	08/01/12	01/30/13	01/11/13
26:21	05/01/12	04/10/12	05/16/12	07/02/12	07/20/12	09/01/12	01/30/13	01/26/13
26:22	05/15/12	04/24/12	05/30/12	07/16/12	07/20/12	09/01/12	01/30/13	02/09/13
26:23	06/01/12	05/10/12	06/16/12	07/31/12	08/20/12	10/01/12	01/30/13	02/26/13
26:24	06/15/12	05/24/12	06/30/12	08/14/12	08/20/12	10/01/12	01/30/13	03/12/13
27:01	07/02/12	06/11/12	07/17/12	08/31/12	09/20/12	11/01/12	01/30/13	03/29/13
27:02	07/16/12	06/22/12	07/31/12	09/14/12	09/20/12	11/01/12	01/30/13	04/12/13
27:03	08/01/12	07/11/12	08/16/12	10/01/12	10/22/12	12/01/12	01/30/13	04/28/13
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27:07	10/01/12	09/10/12	10/16/12	11/30/12	12/20/12	02/01/13	05/2014	06/28/13
27:08	10/15/12	09/24/12	10/30/12	12/14/12	12/20/12	02/01/13	05/2014	07/12/13
27:09	11/01/12	10/11/12	11/16/12	12/31/12	01/22/13	03/01/13	05/2014	07/29/13
27:10	11/15/12	10/24/12	11/30/12	01/14/13	01/22/13	03/01/13	05/2014	08/12/13
27:11	12/03/12	11/07/12	12/18/12	02/01/13	02/20/13	04/01/13	05/2014	08/30/13
27:12	12/17/12	11/26/12	01/01/13	02/15/13	02/20/13	04/01/13	05/2014	09/13/13

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.

PUBLIC NOTICE
STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION/ NPDES PROGRAM
1617 MAIL SERVICE CENTER
RALEIGH, NC 27699-1617
NOTIFICATION OF INTENT TO REISSUE A NPDES WASTEWATER GENERAL PERMIT

The North Carolina Environmental Management Commission proposes to reissue the following NPDES wastewater general permit:

NPDES General Permit No. NCG500000 for discharge of non-contact cooling water, cooling tower and boiler blow down, condensate, exempt stormwater, cooling waters associated with hydroelectric operations, and similar wastewaters.

Written comments regarding the proposed general permit renewal will be accepted until 30 days after the publish date of this notice. The Director of the NC Division of Water Quality (DWQ) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to the DWQ, at the above address. Interested persons may visit the DWQ at 512 N. Salisbury Street, Raleigh, NC 27604 to review information on file. Additional information on this notice may be found on our website: <http://portal.ncdenr.org/web/wq/swp/ps/npdes/calendar>, or by calling Autumn Romanski at (919) 791-4247.

PUBLIC NOTICE
STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION/ NPDES PROGRAM
1617 MAIL SERVICE CENTER
RALEIGH, NC 27699-1617
NOTIFICATION OF INTENT TO REISSUE A NPDES WASTEWATER GENERAL PERMIT

The North Carolina Environmental Management Commission proposes to reissue the following NPDES wastewater general permit:

NPDES General Permit No. NCG520000 for discharge of treated wastewater resulting from in-stream sand mining associated stormwater and similar wastewaters.

Written comments regarding the proposed general permit renewal will be accepted until 30 days after the publish date of this notice. The Director of the NC Division of Water Quality (DWQ) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to the DWQ, at the above address. Interested persons may visit the DWQ at 512 N. Salisbury Street, Raleigh, NC 27604 to review information on file. Additional information on this notice may be found on our website: <http://portal.ncdenr.org/web/wq/swp/ps/npdes/calendar>, or by calling Bob Guerra at (919) 807-6387.

Public Notice
North Carolina Environmental Management Commission / NPDES Unit
1617 Mail Service Center
Raleigh, North Carolina, 27699-1617
Notice of Intent to Reissue an NPDES General Wastewater Permit

The North Carolina Environmental Management Commission proposes to reissue the following NPDES wastewater general permit: NPDES General Permit NCG530000 for discharges related to seafood washing and sensing; concentrated aquatic animal production (CAAP) facilities, and similar discharges.

Written comments regarding the proposed general permit renewal will be accepted until 30 days after the publish date of this notice. The Director of the NC Division of Water Quality (DWQ) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to the DWQ, at the address above. Interested persons may visit the DWQ at 512 N. Salisbury Street, Raleigh, NC 27604 to review information on file. Additional information on this notice may be found on our website: <http://portal.ncdenr.org/web/wq/swp/ps/npdes/calendar>, or by calling Joe R. Corporon, P.G. at (919) 807-6394.



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JBG:SHH:tst
DJ 166-012-3
2012-0920

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

April 11, 2012

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

Dear Mr. Holec:

This refers to the annexation (Ordinance No. 12-005 (2012)) and its designation to District 2 for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on February 27, 2012.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Christian Herren, Jr.", written over the typed name and title.

J. Christian Herren, Jr.
Chief, Voting Section



STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

April 12, 2012

Ms. Trudy Lynn Wade
1 Creswell Court
Greensboro, NC 27407

Re: Request for Advisory Opinion

Dear Ms. Wade:

I am in receipt of your April 11, 2012 request for an advisory opinion pursuant to N.C. Gen. Stat. § 163-278.23. The following advisory opinion is based upon the information provided by you.

You inquired about the legality of an event that your campaign plans for 9:00 a.m. Saturday, April 14, 2012 at the Citgo Gas Station located at Stoney Creek Village, 6305 Burlington Road/Highway 70, Whitsett, North Carolina. According to your inquiry: Your campaign plans to pay to the station owner the portion of the gasoline price representing the gasoline tax for the first 100 customers arriving at the station after the start of the event. The customers will pay the reduced price, which would be the regular price minus the amount representing the gasoline tax to be paid by your campaign. The campaign will pay the total amount (the difference in price between what was charged to the 100 customers and what the gas station would normally charge), by check, to the station owner at the end of the event. Your inquiry specifies that this event will be open to any customer who is within the first 100 to arrive — it will not be limited to eligible voters of District 27 in which you are running for office, or even to North Carolina citizens. The inquiry states that the payment is not made in anticipation of any vote.

Based upon the facts of the planned event as presented by you, the event will be lawful. If the event is conducted as specified — not limiting this discounted gas price to any specific group, and not in conjunction with you or your campaign asking for or anticipating a vote from any person attending the event — it would not be in violation of state election law.

Along with this conclusion, a caution should be noted: It is a Class I felony “[f]or any person to give or promise or request or accept at any time, before or after any such primary or election, any

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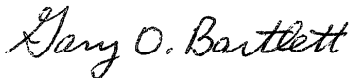
money, property or other thing of value whatsoever in return for the vote of any elector.” N.C. Gen. Stat. § 163-275(2). According to your inquiry, something of value will be given — a discount on the price of gasoline. However, this thing of value is not given in exchange for a vote, according to the specifics you set out in your inquiry. Please note that if you or your campaign verbalizes or acts in a manner that could be reasonably construed as requesting a person’s vote in conjunction with this event, those facts could put you or your campaign in violation of the law cited above.

The amount to be paid to the gas station would be considered an expenditure, required to be reported by your campaign and paid in a verifiable form. N.C. Gen. Stat. §§ 163-278.6(9), 163-278.11(a)(2), 163-278.8(f). Your inquiry states that this will be paid by check, a verifiable form of payment.

Finally, your inquiry mentions that it has been quoted that our office is “investigating” this matter. After consulting with our General Counsel, a clarification is in order: Our office is only *reviewing* this matter, which was the term used by our General Counsel. Unless additional facts from the event itself are brought to the attention of our office, this advisory opinion concludes the review of this matter.

This opinion is based upon the information provided in your inquiry. If any information provided in that inquiry should change, you should consult with our office to ensure that this opinion would still be binding. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett

cc: Julian Mann, Codifier of Rules



STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

April 13, 2012

Mr. Steven B. Long
Parker Poe Adams & Bernstein LLP
150 Fayetteville Street
Suite 1400
Raleigh, North Carolina 27601

Re: Request for Advisory Opinion pursuant to N.C. Gen. Stat. § 163-278.23

Dear Mr. Long:

Thank you for your March 7, 2012 letter in which you inquired whether an independent expenditure political committee [hereinafter "IE PAC"] registered with the State Board of Elections may receive unlimited contributions from corporations and other business entities. I apologize for the delay in responding to your letter – the delay was necessitated by the desire to make sure this opinion was as thorough as possible.

The General Assembly, in S.L. 2008-150, Section 6(c), added subsection (e5) to N.C. Gen. Stat. § 163-278.13 in response to the Fourth Circuit's decision in *North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274 (2008). This provision states:

(e5) The contribution limits of subsections (a) and (b) of this section do not apply to contributions made to an independent expenditure political committee. For purposes of this section, an "independent expenditure political committee" is a political committee whose treasurer makes and abides by a certification to the State Board of Elections that the political committee does not and will not make contributions, directly or indirectly, to candidates or to political committees that make contributions to candidates. The State Board of Elections shall provide forms for implementation of this subsection. This subsection shall not apply to a candidate or a political committee controlled by a candidate. The exception of this subsection is in addition to any other exception provided by law.

Thus, individuals, political committees and other entities were allowed to make unlimited contributions to an IEPAC by those other than "a candidate or a political committee controlled by a candidate."

In response to the holding of the United States Supreme Court in *Citizens United v. FEC*, 130 S.Ct. 876 (2010), that a prohibition on corporate independent expenditures was an unconstitutional ban on speech,

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the General Assembly amended two state campaign finance laws to allow any entity, including corporations, to make independent expenditures and to set forth a reporting schedule for expenditures by independent entities. See S.L. 2010-170, §§ 2 & 5, amending N.C. Gen. Stat. § 163-278.12 & - 278.19(a). Corporations were still prohibited in N.C. Gen. Stat. § 163-278.19(a) from making contributions to a political committee and in N.C. Gen. Stat. § 163-278.15 political committees were prohibited from accepting corporate contributions.

Since the *Citizens United* decision the question of whether contribution limits may be applied to contributions to IEPAC's was addressed in *SpeechNow.org v. FEC*, 599 F.3d 686, 694-95 (D.C. Cir. 2010). The D.C. Circuit struck application of contribution limits on donations by *individuals* to a group that limited itself to independent expenditures. The Court stated: "In light of the Court's holding [in *Citizens United*] as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption. The Court has effectively held that there is no corrupting "quid" for which a candidate might in exchange offer a corrupt "quo." Given this analysis from *Citizens United*, we must conclude that the government has no anti-corruption interest in limiting contributions to an independent expenditure group such as SpeechNow."

Shortly after the decision in *SpeechNow*, the Federal Elections Commission concluded "that there is no basis to limit the amount of contributions to the Committee from individuals, political committees, corporations and labor organizations." AO 2010-11 at 3 (July 22, 2010).

Since the time of the *Citizens United* decision, IEPACs registered in North Carolina have been rare until this election. The precise question you have raised has not formally arisen before. We will be asking the General Assembly to consider amending the statutes at its earliest opportunity to allow IEPACs to accept unlimited corporate and individual contributions in order to be consistent with the United States Supreme Court's opinion in *Citizens United* and the FEC's ruling following the opinion in *SpeechNow.org*.

Until the North Carolina statutes are amended to clarify the General Assembly's interpretation of *Citizens United v. FEC* with respect to North Carolina's IE PACS, it is my opinion that the State Board of Elections should not penalize or require forfeitures by IE PACS registered in North Carolina for accepting contributions from corporations, business entities, professional associations, labor unions and insurance companies. However, disclosure of these contributions as with all other contributions is still required.

This opinion is based upon the information provided in your March 7, 2012 letter. If any information in that letter should change, you should consult with our office to ensure that this opinion would still be binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,


Gary O. Bartlett

cc: Julian Mann, Codifier of Rules

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: North Carolina Building, Fire, Fuel Gas and Residential Codes.

Authority for Rule-making: *G.S. 143-136; 143-138.*

Reason for Proposed Action: *To incorporate changes in the NC State Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.*

Public Hearing: *June 11, 2012, 9:00AM, NCSU McKimmon Center, 1101 Gorman Street, Raleigh, NC 27606. Comments on both the proposed rule and any fiscal impact will be accepted.*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on July 16, 2012.*

Statement of Subject Matter:

1. Request by Christopher Havanas, with GOJO Industries, Inc., to amend the 2012 NC Fire Code, Section 3405.5, number 5. The proposed amendment is as follows:

Section 3405.5 Alcohol-based hand rubs classified as Class I or II liquids. The use of wall-mounted dispensers containing alcohol-based hand rubs classified as Class I or II liquids shall be in accordance with all of the following:
(no change to items 1 through 4, 6 through 7)

5. Dispensers shall not release their contents except when the dispenser is manually activated.

Exception: Facilities shall be permitted to install and use automatically activated "touch free" alcohol-based hand rub dispensing devices with the following requirements:

1. The facility or persons responsible for the dispensers shall test the dispensers each time a new refill is installed in accordance with the manufacturer's care and use instructions.

2. Dispensers shall be designed and must operate in a manner that ensures accidental or malicious activations of the dispensing device are minimized. At a minimum, all devices subject to or used in accordance with this section shall have the following safety features:

2.1 Any activations of the dispenser shall occur when an object is placed within 4 inches of the sensing device.

2.2 The dispenser shall not dispense more than the amount required for hand hygiene consistent with the label instructions as regulated by the United States Food and Drug Administration (US FDA).

2.3 An object placed within the activation zone and left in place will cause only one activation.

Motion – Al Bass/Second – Lon McSwain/Granted – The request was granted unanimously and sent to the Administrative/Fire Committees for review.

Reason Given – The proposal represents the language contained in the 2012 IFC and the 2012 NFPA 101. It defines the engineering parameters for safe operation of touch free systems while ensuring facilities have access to current touch free technologies that promote hand hygiene compliance. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

2. Request by Lon McSwain, NC Building Code Council, to amend the 2012 NC Building Code, Section 1005.1. The proposed amendment is as follows:

1005.1 Minimum required egress width. The *means of egress* width shall not be less than required by this section. The total width of *means of egress* in inches (mm) shall not be less than the total *occupant load* served by the *means of egress* multiplied by 0.3 inch (7.62 mm) per occupant for stairways and by 0.2 inch (5.08 mm) per occupant for other egress components. The width shall not be

less than specified elsewhere in this code. Multiple *means of egress* shall be sized such that the loss of any one *means of egress* shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any *story* of a building shall be maintained to the termination of the *means of egress*.

~~Exception: *Means of egress* complying with Section 1028.~~

Exceptions:

1. *Means of egress* complying with Section 1028.

2. For other than Group H and I-2 occupancies, the capacity, in inches (mm), of *means of egress stairways* shall be calculated by multiplying the *occupant load* served by the *stairway* by a *means of egress* capacity factor of 0.2 inch (5.1 mm) per occupant in buildings equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1 or 903.3.1.2 and an *emergency voice/alarm communications system* in accordance with Section 907.5.2.2.

3. For other than Group H and I-2 occupancies, the capacity, in inches (mm), of *means of egress* components other than *stairways* shall be calculated by multiplying the *occupant load* served by such components by a *means of egress* capacity factor of 0.15 inch (5.1 mm) per occupant in buildings equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1 or 903.3.1.2 and an *emergency voice/alarm communications system* in accordance with Section 907.5.2.2.

Motion – Kim Reitterer/Second – John Hitch/Granted – The request was granted unanimously.

Reason Given – To provide prescriptive exceptions for compliance with means of egress capacity. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

3. Request by Ralph Euchner, NC Building Code Council, to amend the 2012 NC Fuel Gas Code, Section 310.1.1. The proposed amendment is as follows:

310.1.1 CSST. Corrugated stainless steel tubing (CSST) gas *pipng* systems shall be bonded to the electrical service grounding electrode system ~~at the point where the gas service enters the building.~~ The bonding jumper shall be not smaller than 6 AWG copper wire or equivalent.

Motion – David Smith/Second – Al Bass/Granted – The request was granted unanimously.

Reason Given – To remove language that requires additional runs of bonding wire where it may not be necessary. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

4. Request by David Smith, NC Building Code Council, to amend the 2012 NC Residential Code, Section R602.10. The proposed amendment is as follows:

Replace the 2012 NC Residential Code Sections R602.10 through R602.12 with the attached "Revised Wall Bracing Provisions of the 2012 North Carolina Residential Code".

R602.10-Wall Bracing Document is posted at the following link:

http://www.ncdoi.com/OSFM/Engineering/BCC/engineering_bcc_minutes.asp

Motion – Al Bass/Second – David Smith/Granted – The request was granted unanimously.

Reason Given – To simplify the wall bracing provisions of the NC Residential Code. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

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 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commissioner of Insurance intends to adopt the rules cited as 11 NCAC 13 .0525, .0531; and amend the rules cited as 11 NCAC 13 .0520, .0522-.0524, .0526, .0528, .0530, .0532-.0537, .0539, .0541-.0542.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdoi.com/LS/>

Proposed Effective Date: September 1, 2012

Public Hearing:

Date: June 15, 2012

Time: 10:00 a.m.

Location: NC Department of Insurance, Dobbs Building, 3rd Floor Conference Room, 430 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action:

11 NCAC 13 .0520, .0523, .0526, .0528, .0530, .0532-.0537, .0539, .0541, .0542 – Recommendations for clarification based on industry comments.

11 NCAC 13 .0522 – Recommendation for one hour of CE directly related to bail bond rules and regulations from comments received from NC Bail Bond Association.

11 NCAC 13 .0524 – Clarification based on a specific procedure.

11 NCAC 13 .0525 – New rule to create an advisory board based upon concerns brought forth by CE providers and the NC Bail Agents Association.

11 NCAC 13 .0531 – New rule to address procedures for special accommodations.

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to these rules until the expiration of the comment period on July 16, 2012.*

Comments may be submitted to: Karen Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201; email karen.waddell@ncdoi.gov

Comment period ends: July 16, 2012

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 (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 13 - AGENT SERVICES DIVISION – NON-INSURANCE ENTITIES

SECTION .0500 - BAIL BONDSMEN AND RUNNERS

11 NCAC 13 .0520 DEFINITIONS FOR BAIL BOND PRELICENSING AND CONTINUING EDUCATION

As used in this Section, unless the context indicates otherwise:

- (1) "Agent Services Division" or "Division" means the Agent Services Division of the North Carolina Department of Insurance, the Division responsible for the licensing, education and regulation of professional bail bondsmen, surety bail bondsmen, and bail bond runners.
- (2) "Bail bond continuing education" or "BCE" means instruction in subjects related to the duties and responsibilities of a runner or a bail bondsman.
- (3) "Bail bond continuing education credit" or "BCEC" means a value assigned to a course by the Commissioner after review and approval of course information. This term means the same as "hours of continuing education" as used in G.S. 58-71-71(b). "instructional hours" as defined in this Section.

- (4) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, as recognized by the North Carolina Secretary of State. "Business entity" does not mean a sole proprietorship.
- ~~(4)~~(5) "Certificate Of Course Completion" means a document from ~~the~~ an approved bail bond pre-licensing or continuing educational provider certifying that the applicant has met the requirements of pre-licensing or continuing education.
- ~~(5)~~(6) "Compliance year" means the annual license period running from July 1 to June 30 in which the licensee is required to complete three hours of BCEC pursuant to G.S. 58-71-71(b).
- ~~(6)~~(7) "Course" means a bail bond continuing education or prelicensing education course directly related to bail bond principles and practices, ~~conducted in a classroom setting or a video replay of such course.~~
- ~~(7)~~(8) "Instructor" means an individual who meets the qualifications required by 11 NCAC 13 .0542; who teaches, lectures, leads, or otherwise instructs a course; and is responsible for the preparation and presentation of lesson plans to that school's students. ~~plans.~~
- ~~(8)~~(9) "Instructional hour" means a 50 minute hour in the classroom. minutes of classroom instruction.
- ~~(9)~~(10) "Licensee" means a licensed professional bail bondsman, surety bail bondsman or runner.
- ~~(10)~~(11) "Outline" means the content outline prepared and published by the Department that summarizes the specific bail bond subject areas on which the professional bail bondsman, surety bail bondsman or runner license examination is based.
- ~~(11)~~(12) "Professional Testing Service" or "Service" means the organization specializing in the development and administration of licensing examinations on a contract basis for the Department.
- ~~(12)~~(13) "Provider" means an individual or entity that provides prelicensing or continuing education courses approved by the Department.
- ~~(13)~~(14) "State Licensing Examination" or "Examination" means a collection of questions designed to test the knowledge of an applicant for licensure as a professional bail bondsman, surety bail bondsman, or runner license knowledge of the ~~on the~~ basic concepts, principles and laws relevant to the bail bond profession to determine his competence to be licensed in North Carolina.

Authority G.S. 58-2-40; 58-71-5(a); 58-71-70; 58-71-71.

11 NCAC 13 .0522 CONTINUING EDUCATION REQUIREMENTS

- (a) Each person holding a professional bail bondsman, surety bail bondsman or runner's license shall ~~obtain complete~~ three instructional hours of continuing education pursuant to G.S. 58-71-71(b); G.S. 58-71-71(b) before June 30 of each compliance year as a condition of license renewal.
- (b) ~~An instructor shall receive the maximum BCEC awarded to a student for the course. The continuing education required by this Rule must be obtained by taking courses approved by the Commissioner for continuing education purposes from providers approved by the Commissioner to offer such courses. A course must provide three instructional hours of continuing education and one of these three instructional hours shall be directly related to Article 71 of Chapter 58 and Articles 26 and 37 of Chapter 15A of the North Carolina General Statutes or applicable rules set forth in Title 11 of the North Carolina Administrative Code.~~
- ~~(e) Licensees shall maintain records of all BCECs for five years after obtaining the BCEC, and shall make them available for inspection by the Commissioner upon request.~~
- ~~(d)~~(c) A licensee is exempt from the requirements of this Rule if the licensee provides proof of one of the following:
- (1) active military service; or
 - (2) ~~he or she is in compliance with G.S. 58-71-71(e).~~ he or she is 65 years of age or older and has been licensed as a runner or bail bondsman for 15 years or more.
- (d) A provider shall electronically submit course attendance records to the Department within 15 business days after course completion, but not later than June 15 of each year. The Commissioner shall award BCECs to the licensees who have, according to the provider's records, successfully completed the course. In order to renew a license, the Commissioner must receive proper proof of satisfaction of the continuing education requirement prior to processing a license renewal application.
- ~~(e) Courses completed before the issue date of a new license do not meet the requirements of this Section for that new license. An error on the licensee's BCE record that is caused by the provider in submitting the course attendance records shall be resolved by the provider within 15 days after the discovery of the error by the provider.~~
- ~~(f) No BCEC shall be given for courses taken before they have been approved by the Commissioner. Licensees shall maintain copies of all BCE Certificates of Course Completion received for five years after obtaining the BCECs, and shall make them available for inspection by the Commissioner upon request.~~

Authority G.S. 58-2-40; 58-2-185; 58-2-195; 58-71-71.

11 NCAC 13 .0523 QUALIFICATION FOR BCEC

- (a) The Commissioner shall award one BCEC for each approved instructional hour. hour completed by the licensee. A licensee must complete the entire course in order to receive such credit.
- (b) ~~Courses shall not be approved for less than one BCEC. An instructor shall receive the maximum BCEC awarded to a student for the course.~~
- (c) ~~Course providers shall monitor participants for attendance and ensure that licensees complete the BCEC hours approved by~~

~~the Commissioner. Participants shall not read any material other than related to the course during instructional hours or use any electronic devices such as cell phones, laptops, computers other than what is provided by the instructor as part of the curriculum of the course. No BCEC will be awarded for courses completed before the issue date of a new license.~~

~~(d) The licensee shall attend 100 percent of the course for BCEC. No BCEC shall be given for courses taken that have not been approved by the Commissioner.~~

Authority G.S. 58-2-40; 58-71-71.

11 NCAC 13 .0524 BCEC EXTENSION OF TIME FOR MEDICAL DISABILITY OR WAIVER FOR MILITARY SERVICE

~~(a) A licensee may request in writing to the Commissioner an extension of time in which to complete BCEC if the request is made 45 days prior to the expiration date of the license. A licensee who is unable to comply with continuing education requirements due to the licensee's medical disability may request an extension of time to complete the continuing education requirements. The Commissioner may grant an extension of time to complete the continuing education requirements for up to one year if the licensee submits an application for such extension on a form prescribed by the Commissioner and documentation of the licensee's medical disability, including but not limited to records of hospitalization and medical treatment, before June 30.~~

~~(b) The Commissioner shall deny or grant the requested extension no later than 30 days prior to the expiration date of the license. A licensee who is unable to comply with continuing education requirements due to military service may request a waiver from the continuing education requirements for the current compliance period. The Commissioner may grant a waiver from the continuing education requirements for the current compliance period if the licensee submits an application for a waiver on a form prescribed by the Commissioner and copies of military orders as evidence of the licensee's active deployment before June 30.~~

Authority G.S. 58-2-40; 58-71-71.

11 NCAC 13 .0525 CONTINUING EDUCATION ADVISORY COMMITTEE

~~(a) The Commissioner shall appoint, in accordance with G.S. 58-2-30(b), one advisory committee for licensee continuing education. The advisory committee shall recommend reasonable rules or revisions to existing rules to the Commissioner for promulgation under G.S. 58-71-71. The Commissioner may adopt, reject or modify such recommendations. The committee may meet at least once a year but no more than twice a year to make further recommendations to the Commissioner for additional rules or revisions to existing rules.~~

~~(b) No payments shall be paid to Advisory Committee members for per diem, travel or subsistence.~~

~~(c) The advisory committee shall be comprised of:~~

- ~~(1) two employees of the Department of Insurance, one of whom shall serve as the Chairman and vote only in the case of a tie vote;~~

- ~~(2) one representative from each approved continuing education provider, not to exceed a total of four such representatives;~~
- ~~(3) one representative of the North Carolina School Board Association;~~
- ~~(4) one representative of the North Carolina Sheriff's Association;~~
- ~~(5) one representative of the Administrative Office of the Courts;~~
- ~~(6) one representative of the North Carolina Association of Clerks of Superior Court;~~
- ~~(7) one representative of the North Carolina Conference of District Attorneys;~~
- ~~(8) one representative of the North Carolina Bail Agents Associations; and~~
- ~~(9) one person holding an active license under Article 71 of Chapter 58.~~

Authority G.S. 58-2-30; 58-2-40; 58-71-71.

11 NCAC 13 .0526 CRITERIA FOR BCE COURSE APPROVAL AND COURSE OPERATIONAL REQUIREMENTS

~~(a) Providers of all courses shall file with the Commissioner copies of program catalogs, course outlines and copies of advertising literature before the course is approved pursuant to G.S. 58-71-71(d). This Rule applies to BCE courses as defined under Rule .0520(2) of this Section. A BCE provider cannot conduct a BCE course without prior written approval from the Commissioner.~~

~~(b) A provider shall submit course attendance records electronically within 15 business days after course completion. A BCE course provider shall file with the Commissioner an application for course approval.~~

~~(c) An error on the licensee's record that is caused by the provider in submitting the course attendance records shall be resolved by the provider within 15 days after the discovery of the error by the provider. The following requirements must be satisfied in order for a provider to obtain approval of a BCE course:~~

- ~~(1) the Commissioner must find that the subject matter of the course enhances the professional competence and the professional responsibility of bail bondsmen and runners;~~
- ~~(2) the course must provide three instructional hours of BCE and at least one of those instructional hours shall be directly related to Article 71 of Chapter 58 and Articles 26 and 37 of Chapter 15A of the North Carolina General Statutes or applicable rules set forth in Title 11 of the North Carolina Administrative Code;~~
- ~~(3) the course provider must certify that the course shall be conducted in accordance with the course operational requirements of this Rule and that the provider will comply with all other requirements in this Section; and~~

- (4) the proposed instructor must be approved by the Commissioner to instruct the course pursuant to Rule .0542 of this Section.
- (d) The Commissioner shall approve or disapprove a course within 60 days after receipt of all required information. The Commissioner shall provide written notice to any provider who is denied course approval explaining the reason for the denial. Any provider receiving a written notice of denial may seek Department of Insurance review of such denial within 15 business days from the date of receipt of such notice.
- (e) A BCE provider shall include the following information and documents with the course approval application:
- (1) a statement explaining for whom the course is designed;
 - (2) a written explanation of the course objectives;
 - (3) a list of the names of all persons who will be affiliated in an official capacity with the course and a description of their duties;
 - (4) the name of the instructor or instructors that the provider is sponsoring to teach the course;
 - (5) an outline that shall include:
 - (A) the method of course presentation;
 - (B) a detailed course content outline of the subjects to be covered in the course and the instructional hours which the provider has assigned to the major topics; and
 - (C) the schedule of dates, beginning and ending times, and locations where the course will be offered, along with the names of instructors for each course session, submitted at least 30 days before any subsequent course offerings.
 - (6) a copy of the form Certificate of Course Completion which will be issued to attendees who satisfactorily complete the course;
 - (7) a copy of all materials to be handed out during the course;
 - (8) copies of all program catalogs, course outlines and advertising literature with the application; and
 - (9) a written description of the procedures which the provider will utilize to monitor and confirm attendance.
- (f) The following are course operational requirements:
- (1) a provider must at all times assure compliance with the criteria for course approval;
 - (2) a provider may not substantially alter a course after it has been approved without advance written approval from the Commissioner. A substantial alteration is any change that would modify the content, outline, or time allocations stated in the course syllabus or outline or which would change any of the course topics;
 - (3) the Commissioner may deny BCEC to licensees who attend a course which has been substantially altered without prior written approval from the Commissioner;
- (4) a course provider shall not present or use material in a course that was not previously filed with the Commissioner pursuant to Paragraph (b) of this Rule, except to reflect recent developments discovered after submission of course materials to the Commissioner;
 - (5) in the event of absence, illness, injury or death of an instructor, the provider may use another approved instructor to teach a course. Any time the provider substitutes or replaces an instructor, the provider shall give written notification to the Commissioner of the name of the substitute approved instructor. Such notification must be made as soon as the provider decides to use a substitute instructor;
 - (6) a provider's facilities and equipment shall be in compliance with all applicable local, State and federal laws and regulations regarding safety, sanitation, and access by persons with disabilities;
 - (7) the provider is responsible for administrative matters such as recruiting instructors, evaluating classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the continuing education program;
 - (8) a provider shall file with the Commissioner a report that sets forth the exact dates, times, locations, and instructor names for each scheduled continuing education course. This information shall be submitted at least 30 days before any subsequent course offerings;
 - (9) a provider shall notify the Commissioner in writing of any change of course location or schedule information no fewer than five business days before the change;
 - (10) a course provider shall verify the participant's identity prior to the start of the BCE course through check of a photo ID issued by the State of North Carolina such as a valid professional bail bondsman, surety bail bondsman or bail bond runner license or a valid driver license issued by the North Carolina Division of Motor Vehicles;
 - (11) a course provider shall monitor participants for attendance in order to ensure that licensees complete the BCEC hours approved by the Commissioner. Participants shall not read any material which is unrelated to the course during instructional hours or use any electronic devices other than what is provided by the instructor as part of the curriculum of the course;
 - (12) course providers must conduct a course for the full time specified in the approval request submitted to the Commissioner;

- (13) course providers shall not advertise a course as approved for BCECs before the Commissioner has granted such approval in writing;
- (14) course providers shall issue Certificates of Course Completion to any licensee who satisfactorily completes a course. Course providers shall not issue Certificates of Course Completion to any licensee before the licensee has completed the course;
- (15) providers shall retain continuing education records on file for five years, including:
 - (A) copies of all the materials;
 - (B) class schedules;
 - (C) advertisements;
 - (D) bulletins, catalogs, and other official publications;
 - (E) attendance records;
 - (F) list of student names and the name of the instructor; and
 - (G) student registration information; and
- (16) the provider shall make these records available to the Commissioner upon request.

(g) A BCE course provider must reapply for approval of any BCE courses previously approved by the Commissioner by filing a new application for course approval with the Commissioner within 60 days of the effective date of any amendments to the requirements for BCE course approval in this Section.

Authority G.S. 58-2-40; 58-71-71.

11 NCAC 13 .0528 SANCTIONS FOR BCEC NONCOMPLIANCE BY LICENSEES, COURSE PROVIDERS AND INSTRUCTORS

(a) If a licensee does not meet the continuing education requirements by the June 30 deadline, his or her license will lapse with an effective date of June 30. A licensee whose license has lapsed due to the failure to meet the continuing education requirements must apply for a new license in accordance with the requirements of G.S. 58-71-40 and meet all requirements for issuance of such license.

~~(a)~~(b) The Commissioner shall may proceed with administrative action under G.S. 58-71-80 against a professional bail bondsman, surety bail bondsman or runner licensee for any of the following causes:

- (1) Failing to respond to Department inquiries, including continuing education audit requests, within seven calendar days after the receipt of the inquiry or request;
- (2) Requesting an extension of time to complete BCEC under false pretenses; or
- (3) Refusing to cooperate with Department employees in an investigation or inquiry.

~~(b) The Commissioner shall summarily suspend or terminate the provider or instructor's certificate of authority to provide or instruct a course for any of the following causes:~~

(c) The Commissioner may suspend or terminate the provider or instructor's certificate of authority to provide or instruct a course if the Commissioner finds that the provider or instructor has:

- (1) ~~Advertising~~ Advertised that a course is approved before the Commissioner has granted such approval in writing;
- (2) ~~Submitting~~ Submitted a course outline with material inaccuracies, either in length, presentation time, or topic content;
- (3) ~~Presenting~~ Presented or ~~using~~ used materials in a course that were not previously filed with the Commissioner pursuant to ~~11 NCAC 13 .0526(a);~~ Rule .0526(b) of this Section, except to reflect recent developments discovered after submission of course materials to the Commissioner;
- (4) ~~Failing~~ Failed to conduct a course for the full time specified in the approval request submitted to the Commissioner;
- (5) Offered or instructed a course before it has been approved by the Department.
- ~~(5) Preparing and distributing certificates of attendance or completion before the course has been approved;~~
- (6) ~~Issuing~~ Issued certificates of attendance or completion before the completion of the course;
- (7) ~~Failing~~ Failed to issue certificates of attendance or completion to any licensee who satisfactorily completes a course;
- ~~(8) Failing to notify the Commissioner in writing of suspected or known violations of the North Carolina General Statutes or Administrative Code within 30 days after becoming aware of the violations;~~
- ~~(9) Failing to comply with the rules in this Section or violating G.S. 58-71-80 and G.S. 58-71-95;~~
- ~~(10)(8) Failing~~ Failed to monitor attendance and ensure that licensees complete the course hours approved by the Commissioner; ~~or~~
- ~~(11)(9) Preparing~~ Prepared and ~~distributing~~ distributed fraudulent certificates of attendance or ~~completion;~~ completion;
- (10) Provided false information to the Commissioner;
- (11) Failed to verify participant identity prior to the start of the BCE course through a check of a valid photo ID issued by the State of North Carolina or the North Carolina Division of Motor Vehicles;
- (12) Engaged in false or deceptive advertising practices; or
- (13) Failed to respond to the Department of Insurance inquiries within seven calendar days after receipt of the inquiry or request.

~~(c)~~(d) Course providers and instructors are responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of conducting any of the activities associated with the course.

~~(d) Upon a finding of a violation of this rule the Commissioner shall require the violator to:~~

(e) If the Commissioner finds that cause exists to suspend or terminate the provider or instructor's certificate of authority to provide or instruct a course under Paragraph (b) of this Rule, the Commissioner may, in addition to or in lieu of suspension or revocation of the provider or instructor's certificate of authority, require the provider or instructor to:

- (1) Refund all course tuition and fees to licensees;
- (2) Provide licensees with a course to replace the course that was found in violation; or
- (3) Cease all courses offered by the provider or instructor.

(f) The provisions of Chapter 150B of the General Statutes apply to proceedings under this Rule.

Authority G.S. 58-2-40; 58-71-71; 58-71-72.

11 NCAC 13 .0530 ISSUANCE OF AND CONTINUATION BCEC OF PROVIDER APPROVAL

(a) ~~Any individual or entity intending to provide classes, seminars, or other forms of instruction as approved courses shall submit: This Rule applies to all bail bond continuing education providers offering a continuing education course prescribed by G.S. 58-71-71(b). All providers desiring to conduct a continuing education course shall be approved and issued a certificate of authority by the Commissioner before commencement of the courses.~~

- ~~(1) an application provided by the Commissioner for provider approval; and~~
- ~~(2) an application provided by the Commissioner for course approval.~~

(b) ~~The Commissioner shall provide any potential course provider who is denied approval a written explanation for the denial. Any individual or business entity intending to provide classes, seminars, or other forms of instruction as approved courses shall submit:~~

- ~~(1) a written application provided by the Commissioner for provider approval; and~~
- ~~(2) a written application provided by the Commissioner for course approval pursuant to Rule .0526(b) of this Section.~~

(c) ~~Any provider receiving a provider approval denial has 15 business days from the date of the denial to respond to the denial. The provider shall identify the instructor it is sponsoring to instruct the course on the provider application.~~

(d) ~~Providers shall retain continuing education records for five years and shall provide these records upon request to the Commissioner. A business entity which applies for provider approval must identify the street address, and mailing address, if different, of the principal office where the business entity's continuing education records will be maintained on the application for provider approval. In order to be approved as a provider, a business entity must be registered with the North Carolina Secretary of State's Office if required by law and be active according to the records of the Secretary of State's Office.~~

(e) Individuals or business entities that plan to use a trade name in conducting or advertising bail bond continuing education courses must state the trade name on the provider application and submit certified copies of the trade name registration filed pursuant to G.S. 66-68 with the Register of Deeds offices of

each North Carolina County in which the provider will use the trade name with the provider application.

(f) Proposed providers who are individuals and the registered agent, board of directors, and officers of business entity applicants shall submit to a personal interview by the Agent Services Division upon request.

(g) The Division shall approve a provider and issue a certificate of authority to the provider when:

- (1) the provider has submitted all information required by the rules in this Section;
- (2) the course to be conducted has been approved pursuant to Rule .0526 of this Section; and
- (3) the instructor who the provider is sponsoring to instruct the course has been approved as a continuing education instructor pursuant to Rule .0542 of this Section.

(h) The Commissioner shall approve or disapprove a provider within 60 days after receipt of all required information. The Commissioner shall provide written notice to any provider who is denied approval explaining the reason for the denial. Any provider receiving a written notice of denial may seek Department of Insurance review of such denial within 15 business days from the date of receipt of such notice.

(i) In addition to the grounds set forth in Rule .0528(b) of this Section, the Commissioner may deny, revoke, suspend, or terminate approval of any provider upon finding any of the following:

- (1) the provider has failed to comply with any of the provisions of this Section;
- (2) the provider has not conducted at least one continuing education course during any 12 month period;
- (3) the provider has refused or failed to submit information or forms prescribed by the rules in this Section; or
- (4) the provider has submitted material false information to the Commissioner;

(j) In all proceedings to deny, revoke, suspend, or terminate the certificate of authority of a provider, the provisions of Chapter 150B of the General Statutes are applicable.

(k) When a provider's approval is terminated, the procedure for reinstatement is to apply as a new provider, with a statement of the reason that the provider is now eligible for approval.

(l) If a provider's approval has been terminated upon the Commissioner's finding that the provider has not conducted at least one continuing education course during any 12 month period, that provider may reapply after one year. If approved as a provider, the Commissioner shall give the provider six months to conduct at least one approved BCE course.

(m) A BCE course provider which has previously been approved by the Commissioner must reapply for provider approval by filing a new application for course approval within sixty days of the effective date of any amendments to the requirements for BCE provider approval in this Section.

Authority G.S. 58-2-40; 58-71-71.

11 NCAC 13 .0531 SPECIAL ACCOMODATIONS FOR COMPLETION OF BCE REQUIREMENT THROUGH AUDIO VISUAL REPLAY

An individual with a documented physical or mental disability which prevents the individual from attending a BCE class may satisfy the BCE requirements by watching an audio visual recording of an approved BCE course conducted by an approved instructor in lieu of attending a BCE class. In order to qualify for this special accommodation, the individual must submit a written request for approval to complete the BCE requirement by an audio visual replay and documentation of the individual's physical or mental disability to the Division. The individual must explain how and why the disability prevents him or her from attending a BCE class in his or her written request to the Division. The Division shall approve or deny a request for such special accommodation.

Authority G.S. 58-2-40.

11 NCAC 13 .0532 LICENSING EXAMINATIONS: SPECIAL ACCOMMODATIONS (AMERICANS WITH DISABILITIES ACT)

An individual with a documented physical or mental disability may have special assistance from other individuals acting as readers or recorders for the state licensing examination. Applicants requiring special assistance shall request the assistance from the professional testing service before registration for the examination. ~~Verification~~ Documentation by an appropriate health or mental health professional of handicaps and a statement of all assistance needed shall be included at the time of application.

Authority G.S. 58-2-40; 58-71-70.

11 NCAC 13 .0533 SCHEDULE OF LICENSING EXAMINATIONS

The Division shall publish or cause to have published advanced notice the current schedules of state professional bail bondsman, surety bail bondsman, and runner examinations. The schedules shall include day, time and location of each examination.

Authority G.S. 58-2-40; 58-71-70.

11 NCAC 13 .0534 CERTIFICATE OF COURSE COMPLETION

~~A Certificate of Course Completion shall be signed by an approved prelicensing provider or instructor indicating that the applicant has completed the mandatory prelicensing education requirements as specified in G.S. 58-71-71. Providers shall validate each student who successfully completes the prelicensing course required by G.S. 58-71-71 and passes the course's comprehensive examination by issuing a Certificate of Course Completion which is signed by the approved prelicensing provider or instructor. Providers shall not issue a Certificate of Course Completion to a student before the student has completed all course requirements and passed the course's comprehensive examination. Certificates of Course Completion expire six months from issuance. No person may take an examination for an Article 71 license that has not completed the~~

full prelicensing education requirement within the last six months.

Authority G.S. 58-2-40; 58-71-71.

11 NCAC 13 .0535 LICENSING EXAMINATION AUTHORIZATION LETTER

~~After review of the professional bail bondsman, surety bail bondsman, or runner license application and verification the applicant meets the qualifications for licensure as prescribed by G.S. 58-71-50 and has submitted license fees as specified in G.S. 58-71-55, the Division shall issue an Examination Authorization Letter which allows the professional bail bondsman, surety bail bondsman, and runner license applicant to make a reservation to sit for the bail bond examination. The Examination Authorization letter is valid for 30 days from date of issuance.~~

(a) In order to make a reservation to sit for the bail bond license examination required by G.S. 58-71-70, a person must obtain an Examination Authorization letter from the Division.

(b) The Division shall only issue an examination letter to a person if he or she:

- (1) has submitted a complete license application for professional bail bondsman, surety bail bondsman, or runner with an attached Certificate of Course Completion showing that the applicant has completed the prelicensing education requirements within six months of the application;
- (2) has submitted the license fees as specified in G.S. 58-71-55; and
- (3) appears to meet the qualifications for licensure as prescribed by 58-71-50(b).

(c) No person may take an examination for an Article 71 license who has not completed the full prelicensing education requirement within the last six months.

(d) The Examination Authorization letter is valid for 30 days from date of issuance.

Authority G.S. 58-2-40; 58-71-70; 58-71-71.

11 NCAC 13 .0536 RESPONSIBILITY OF APPLICANT AT EXAMINATION SITE

(a) Professional bail bondsman, surety bail bondsman, or runner license applicants shall bring to the examination site the Examination Authorization letter issued by the ~~Division, the confirmation numbers obtained from the testing service at the time of examination reservation,~~ Division and two forms of proof of identity, one of which shall be photo bearing.

(b) Applicants are allowed to bring the following examination supplies to the examination site:

- (1) a simple function calculator; calculator approved by the test administrator;
- (2) pens; and
- (3) pencils.

~~(c) No applications shall be supplied at the examination site for completion by applicants and no or supplies as described in Paragraph (b) of this Rule shall be furnished to applicants at the examination site.~~

(d) Applicants shall arrive at the examination site at the time specified in the examination schedule.

Authority G.S. 58-2-40; 58-71-70; 58-71-71.

11 NCAC 13 .0537 ADMINISTRATION OF EXAMINATION

(a) Professional bail bondsman, surety bail bondsman, or runner license applicants may use a simple function calculator approved by the test administrator during the examination.

(b) Applicants shall not take cellular telephones, textbooks, other books or papers into the examinations. Applicants found to have any of these materials shall not be allowed to continue the examination.

(c) Applicants ~~may leave the examination room only after shall not leave the examination room while the examination is being administered without first~~ obtaining permission from ~~the an~~ examination proctors and ~~handing turning in all of their exam materials. materials to an examination proctor. No Applicants shall not be allowed any extra time shall be allowed for completing to complete~~ the examination.

(d) Any applicant who gives or receives assistance not authorized by these Rules during the examination shall turn in all ~~exam~~ examination materials and leave the room. Under these circumstances, the applicant's answer sheet shall not be scored and information regarding the giving of assistance shall be reported by the proctors to the Commissioner.

Authority G.S. 58-2-40; 58-71-70; 58-71-71.

11 NCAC 13 .0539 BAIL BOND PRELICENSING EDUCATION PROVIDER

(a) This Rule applies to all bail bond prelicensing individual or business entity providers offering a prelicensing course prescribed by G.S. 58-71-71. All providers desiring to conduct a prelicensing course shall be approved and issued a certificate of authority by the Commissioner before commencement of the courses.

(b) ~~A provider~~ An individual or entity seeking approval to conduct a prelicensing course shall ~~make written application to the Commissioner for a certificate of authority. submit:~~

- (1) ~~an application provided by the Commissioner for provider approval; and~~
- (2) ~~an application provided by the Commissioner for course approval pursuant to Rule .0542(b) of this Section.~~

(c) ~~The Division shall approve a provider when: Business entities must identify the street address, and mailing address, if different, of the principal office where the business entity will maintain its prelicensing education records. Business entities must be registered with the North Carolina Secretary of State's Office if required by law and must be active upon the records of the Secretary of State's Office.~~

- (1) ~~the provider has submitted all information required by the rules in this Section;~~
- (2) ~~the course to be conducted complies with Rule 11 NCAC 13 .0541 of this Section; and~~
- (3) ~~the provider has a qualified instructor to teach bail bonding for which it is seeking approval.~~

~~(d) The Commissioner shall deny, revoke, suspend, or terminate approval of any provider upon finding that: Individuals and business entities that plan to use a trade name in conducting or advertising bail bond prelicensing education courses must identify the name on the application and provide certified copies of the trade name registration filed pursuant to G.S. 66-68 with the Register of Deeds offices of each North Carolina County in which the provider will use the trade name.~~

- (1) ~~the provider has failed to comply with any of the provisions of this Section;~~
- (2) ~~any provider official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, licensing examination questions for the state exam;~~
- (3) ~~the provider has not conducted at least one prelicensing course during any 12 month period; or~~
- (4) ~~the provider has refused or failed to submit information or forms prescribed by the rules in this Section.~~

~~(e) In all proceedings to deny, revoke, suspend, or terminate the certificate of authority of a provider, the provisions of Chapter 150B of the General Statutes are applicable. Proposed providers who are individual applicants and the registered agent, board of directors, and officers of business entity applicants shall submit to a personal interview by the Agent Services Division upon request.~~

~~(f) When a provider's approval is discontinued, the procedure for reinstatement is to apply as a new provider, with a statement of the reasons that the provider is now eligible for reconsideration. The Division shall approve a provider and issue a certificate of authority to the provider when:~~

- (1) ~~the provider has submitted all information required by the rules in this Section;~~
- (2) ~~the course to be conducted has been approved pursuant to Rule .0541 of this Section; and~~
- (3) ~~the instructor who the provider is sponsoring to instruct the course has been approved as a prelicensing instructor pursuant to Rule .0542 of this Section to teach bail bonding.~~

~~(g) If a provider's approval has been suspended upon the Commissioner's finding that the provider has not conducted at least one prelicensing course during any 12 month period, that provider may reapply after one year of suspension. At such time, the Commissioner shall give the provider six months to conduct at least one prelicensing course. The Commissioner shall approve or disapprove a provider within 60 days after receipt of all required information. The Commissioner shall provide written notice to any provider who is denied approval explaining the reasons for the denial. Any provider receiving a written notice of denial may seek Department of Insurance review of such denial within 15 business days from the date of receipt of such notice.~~

~~(h) A provider shall notify the Commissioner in writing of any change of course location or schedule information no fewer than five business days before the change. The Commissioner may deny, revoke, suspend, or terminate approval of any provider upon finding that any of the following grounds exist:~~

- (1) the provider has failed to comply with any of the provisions of this Section;
- (2) any provider official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, licensing examination questions from the state exam;
- (3) the provider has not conducted at least one prelicensing course during any 12-month period;
- (4) the provider has refused or failed to submit information or forms prescribed by the rules in this Section.
- (5) the provider has submitted false information to the Commissioner
- (6) the provider has failed to verify participant identity prior to the start of the prelicensing education course through a check of a valid photo ID issued by the Division of Motor Vehicles;
- (7) the provider has engaged in false or deceptive advertising practices; or
- (8) the provider has failed to respond to Department of Insurance inquiries within seven calendar days after receipt of the inquiry or request.

In all proceedings to deny, revoke, suspend, or terminate the certificate of authority of a provider, the provisions of Chapter 150B of the General Statutes are applicable.

(i) A provider shall notify the Commissioner in writing of a change of textbook prior to use in an approved prelicensing course. When a provider's approval is terminated, the procedure for reinstatement is to apply as a new provider, with a statement of the reasons that the provider is now eligible for approval.

(j) An approved provider may use, for advertising or promotional purposes, examination performance data made available to the provider by the Commissioner, provided that any data disclosed by the provider shall be accurate, shall be presented in a manner that is not misleading, and shall: If a provider's approval has been terminated upon the Commissioner's finding that the provider has not conducted at least one prelicensing course during any 12-month period, that provider may reapply after one year. If approved as a provider, the Commissioner shall give the provider six months to conduct at least one approved prelicensing course.

- (1) be limited to the annual examination performance data for the particular provider and for all examination candidates in the State; and
- (2) include the type of examination, the time period covered, the number of candidates examined, and either the number or percentage of candidates passing the examination.

(k) A provider's facilities and equipment shall have been found by appropriate local building code inspectors to be in compliance with all applicable local, State and federal laws and regulations regarding safety, sanitation, and access by persons with disabilities. An approved provider may use, for advertising or promotional purposes, examination performance data made available to the provider by the Commissioner, provided that any

data disclosed by the provider shall be accurate, shall be presented in a manner that is not misleading, shall not include tested individuals names or identifying information, and shall:

- (1) be limited to the annual examination performance data for the particular provider and for all examination candidates in the State; and
- (2) include the type of examination, the time period covered, the number of candidates examined, and either the number or percentage of candidates passing the examination.

(l) The provider is responsible for administrative matters such as recruiting instructors, evaluating and certifying the qualifications of instructors, developing educational programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the prelicensing program. Providers that were previously approved by the Commissioner must reapply with the Commissioner for provider approval within 60 days of the effective date of any changes to the provider approval requirements in this Section.

(m) A provider shall publish and provide to all prelicensing students before enrollment a publication that contains the following information:

- (1) name of provider and publication date;
- (2) name of sponsor;
- (3) all associated costs; and
- (4) an outline or description of all prelicensing courses offered.

(n) A provider shall file with the Commissioner a report that sets forth the exact dates, times, locations, and instructor name for each scheduled prelicensing course. This information shall be submitted at the beginning of each quarter or semester before the first class meeting of each prelicensing course.

(o) Providers shall retain the following material on file at one location for at least five years:

- (1) class schedules;
- (2) advertisements;
- (3) bulletins, catalogues, and other official publications;
- (4) grade reports, showing a numeric grade for each student;
- (5) attendance records;
- (6) master copy of each comprehensive course examination, indicating the answer key course location, course dates and name of instructor;
- (7) list of student names and the name of the instructor; and
- (8) student registration information.
- (9) All files shall be made available to the Commissioner upon request.

(p) In the event of illness, injury or death of an instructor, the provider may use another instructor to complete a course.

Authority G.S. 58-2-40; 58-2-40, 58-71-71.

11 NCAC 13 .0541 CRITERIA FOR BAIL BOND PRELICENSING EDUCATION COURSES AND COURSE OPERATIONAL REQUIREMENTS

~~(a) Providers shall offer no less than 12 instructional hours of prelicensing education. This Rule applies to prelicensing education courses. Providers cannot conduct a prelicensing education course without prior written approval and issuance of a certificate of authority from the Commissioner.~~

~~(b) The following requirements are course standards: A prelicensing course provider shall file with the Commissioner an application for course approval.~~

~~(1) All courses shall consist of instruction on bail bonding licensing, regulations, procedures for setting bail and forfeiture of bail as set forth in Chapter 58 Article 71 and Chapter 15A Article 26 and 37 of the North Carolina General Statutes.~~

~~(2) Courses may also include coverage of related subject areas not prescribed by the Commissioner; however, such courses must provide additional class time, above the minimum requirement stated in Paragraph (a) of this Rule, for the coverage of such subject areas.~~

~~(3) Prelicensing courses shall be for instructional purposes only and not for promoting the interests of or recruiting employees for any particular bail bond agency or surety insurance company.~~

~~(4) Providers shall establish and enforce academic standards for course completion that assure that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course.~~

~~(5) Providers shall conduct a comprehensive course examination that covers all subject areas prescribed by the Commissioner for each course. Providers may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the provider. No comprehensive course examination shall be given until a student has completed the instructional requirement as prescribed in Subparagraph (1) of this Paragraph.~~

~~(6) Students shall attend the minimum 12 hours of bail bond instruction set forth in Paragraph (a) of this Rule. Time set aside for breaks, pop tests, quizzes, the final comprehensive course examination and other non instructional activities shall not count toward the minimum instructional requirement.~~

~~(c) The following requirements shall be met for scheduling purposes: The following requirements must be satisfied in order for a provider to obtain approval of a prelicensing course:~~

~~(1) The course must provide no less than 12 instructional hours of prelicensing education.~~

~~(2) The course shall consist of instruction on bail bonding licensing, regulations, procedures for~~

setting bail and forfeiture of bail as set forth in Article 71 of Chapter 58, and Articles 26 and 37 of Chapter 15A of the North Carolina General Statutes.

(3) The courses may also include coverage of related subject areas not prescribed by the Commissioner; however, the course must provide additional class time, above the minimum requirement stated in Subparagraph (1) of this Paragraph, for the coverage of such subject areas.

(4) The Commissioner must find that the course will enhance the professional competence and professional responsibility of bail bondsmen and runners.

(5) The course shall be for instructional purposes only and not for promoting the interests of or recruiting employees for any particular bail bond agency or surety insurance company.

(6) The provider must certify that the course shall be conducted in accordance with the operational requirements of this Rule and that the provider will comply with all other requirements in this Section.

(7) The provider has established academic standards for course completion that assure that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course and will enforce those standards for course completion.

(8) The proposed instructor is approved by the Commissioner to instruct the course pursuant to Rule .0542 of this Section.

(1) Class meetings shall not exceed eight hours of instruction in any given day.

(2) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open entry or open exit basis.

(d) The choice of classroom course text is at the discretion of each provider. The Commissioner shall approve or disapprove a course within 60 days after receipt of all required information. The Commissioner shall provide written notice to any provider who is denied course approval explaining the reason for the denial. Any provider receiving a written notice of denial may seek Department of Insurance review of such denial within 15 business days from the date of receipt of such notice.

(e) All prelicensing courses shall be taught by instructors who meet the qualifications described in Rule 11 NCAC 13 .0542. Providers shall include the following information and documents with the course approval application:

(1) A statement explaining for whom the course is designed;

(2) A written explanation of the course objectives;

(3) A list of the names of all persons who will be affiliated in an official capacity with the course and a description of their duties;

(4) The name of the instructor or instructors that the provider is sponsoring to teach the course;

(5) An outline that shall include:

- (A) the method of course presentation;
 - (B) a detailed course content outline of the subjects to be covered in the course and the instructional hours which the provider has assigned to the major topics; and
 - (C) the schedule of dates, beginning and ending times, and locations where the course will be offered, along with the names of instructors for each course session, submitted at least 30 days before any subsequent course offerings;
- (6) A copy of the final course examination;
 - (7) A copy of the form Certificate of Course Completion which will be issued to attendees who satisfactorily complete the course;
 - (8) A copy of all materials to be handed out during the course;
 - (9) Copies of all program catalogs, course outlines and advertising literature with the application; and
 - (10) A written description of the procedures which the provider will utilize to monitor and confirm attendance.
- (f) ~~The following certification of course completion procedures apply:~~ The following are course operational requirements:
- (1) A provider must at all times assure compliance with the criteria for course approval.
 - (2) The choice of classroom course text is at the discretion of each provider, so long as the text has been approved by the Commissioner. A provider shall obtain written approval of the Commissioner for a change of textbook prior to use in an approved prelicensing course.
 - (3) A provider's facilities and equipment shall be in compliance with all applicable local, State and federal laws and regulations regarding safety, sanitation, and access by persons with disabilities.
 - (4) The provider is responsible for administrative matters such as recruiting instructors, evaluating and certifying the qualifications of instructors, developing educational programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the prelicensing program.
 - (5) Prelicensing education courses shall only be taught by instructors who have been approved as prelicensing education instructors pursuant to Rule .0542 of this Section. In the event of absence, illness, injury, or death of an instructor, the provider may use another approved instructor to complete a course.
 - (6) In the event of absence, illness, injury or death of an instructor, the provider may use another approved instructor to complete a course. Any time the provider substitutes or replaces an instructor, the provider shall give written notification to the Commissioner of the name of the substitute approved instructor. Such notification must be made as soon as the provider decides to use a substitute instructor.
- (7) A provider shall publish and provide to the Commissioner and all prelicensing students before enrollment a publication that contains the following information:
 - (A) name of provider and publication date;
 - (B) name of sponsor;
 - (C) all associated costs; and
 - (D) an outline or description of all prelicensing courses offered.
 - (8) A provider shall file with the Commissioner a report that sets forth the exact dates, times, locations, and instructor name for each scheduled prelicensing course. This information shall be submitted at the beginning of each quarter or semester before the first class meeting of each prelicensing course.
 - (9) A provider shall notify the Commissioner in writing of any change of course location or schedule information no fewer than five business days before the change.
 - (10) The provider shall administer a comprehensive final course examination that covers all subject areas prescribed by the Commissioner for each course. The provider may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the provider. No comprehensive course examination shall be given until a student has completed the instructional requirement as prescribed in Paragraph (c)(1) of this Rule.
 - (11) Students shall attend the minimum 12 instructional hours of bail bond instruction. Time set aside for breaks, pop-tests, quizzes, the final comprehensive course examination and other non-instructional activities shall not count toward the minimum instructional requirement. Participants shall not read any material which is unrelated to the course during instructional hours or use any electronic devices.
 - (12) Providers shall verify the participant's identity prior to the start of the prelicensing education course through check of a photo ID issued by the State of North Carolina such as a valid driver's license or identification card issued by the North Carolina Division of Motor Vehicles.
 - (13) Course providers shall monitor participants for attendance in order to ensure that licensees complete the prelicensing education course approved by the Commissioner. Participants shall not read any material which is unrelated

to the course during instructional hours or use any electronic devices other than what is provided by the instructor as part of the curriculum of the course.

- (14) Class meetings shall not exceed eight hours of instruction in any given day.
- (15) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open-entry or open-exit basis.
- (16) The choice of classroom course text is at the discretion of each provider, so long as the course has been approved by the Commissioner.
- (17) Providers shall issue Certificates of Course Completion in accordance with Rule .0534 of this Section.
- (18) Providers shall retain the following material on file at one location for at least five years:
 - (A) class schedules;
 - (B) advertisements;
 - (C) bulletins, catalogs, and other official publications;
 - (D) grade reports, showing a numeric grade for each student;
 - (E) attendance records;
 - (F) master copy of each comprehensive course examination, indicating the answer key course location, course dates and name of instructor;
 - (G) list of student names and the name of the instructor; and
 - (H) student registration information.

(g) All files shall be made available to the Commissioner upon request.

- (1) ~~Providers shall validate each student who successfully completes a prelicensing course by issuing a Certificate of Course Completion. The Certificate of Course Completion shall not be validated for a student prior to the student completing all course requirements and passing the course's comprehensive examination; and~~
- (2) ~~A Certificate of Course Completion shall be attached to the application for bail bond license(s) and expires six months after issuance. If an applicant does not apply for a license within six months after receiving the Certificate of Course Completion, the applicant must complete the prelicensing education requirements again.~~

(h) Providers that were previously approved and issued a certificate of authority by the Commissioner must reapply with the Commissioner for provider approval within 60 days of the effective date of any changes to the provider approval requirements in this Section.

Authority G.S. 58-2-40; 58-2-40, 58-71-71.

11 NCAC 13 .0542 BAIL BOND PRELICENSING AND BCEC INSTRUCTORS

~~(a) A person desiring approval as a bail bond prelicensing or BCEC instructor shall make written application to the Commissioner. This Rule applies to bail bond prelicensing and continuing education instructors. Instructors cannot conduct a bail bond prelicensing education or continuing education course without prior written approval and issuance of a certificate of authority from the Commissioner.~~

~~(b) A person desiring approval as a bail bond prelicensing or continuing education instructor shall submit a written application to the Commissioner. Instructor applicants must be sponsored by a provider seeking to employ the applicant as an instructor. If the employing provider is not currently approved by the Commissioner, an application for prelicensing or BCEC provider approval shall be submitted along with the application for instructor approval.~~

~~(c) The Commissioner shall approve an applicant for a bail bond prelicensing instructor upon finding that the applicant has met the following qualifications: All prelicensing courses shall be taught by instructors who are qualified to be issued a bail bondsman or runner license under G.S. 58-71-50(b) and 58-71-80 and have at least 10 years experience in the NC bail bond industry, NC law enforcement or the judicial system. These qualification requirements shall be met on a continuing basis.~~

- ~~(1) Has not been disqualified in any manner under Chapter 58 of the North Carolina General Statutes; and~~
- ~~(2) Has 10 years or more experience in the NC bail bond industry;~~

~~(d) The Commissioner shall approve an applicant for a BCEC instructor upon finding that the applicant has met the following qualifications: All bail bond continuing education courses shall be taught by instructors who are qualified to be issued a bail bondsman or runner license under G.S. 58-71-50(b) and 58-71-80 and have at least five years experience in the following:~~

- ~~(1) NC bail bond industry;~~
- ~~(2) full time employee of a surety insurance company;~~
- ~~(3) NC law enforcement or the judicial system;~~
- ~~(4) Skip tracer;~~
- ~~(5) Private investigation; or~~
- ~~(6) Banking, certified public accountant or other profession related to business management principles.~~
- ~~(1) Has not been disqualified in any manner under Chapter 58 of the North Carolina General Statutes; and~~
- ~~(2) Has five or more total years experience in the following:~~
 - ~~(A) NC bail bond industry;~~
 - ~~(B) full time employee of a surety insurance company;~~
 - ~~(C) NC law enforcement or the judicial system;~~
 - ~~(D) Skip tracer;~~
 - ~~(E) Private investigation; or~~

(F) ~~Banking, certified public accountant or other profession related to business management principles.~~

These qualifications shall be met on a continuing basis.

~~(e) Instructor applicants shall submit to a personal interview by the Agent Services Division. A written history of courses taught by the applicant or other documentation is required to verify the applicant's qualifications to instruct approved courses. In determining whether an applicant is fit to instruct a bail bond prelicensing or continuing education course, the Commissioner may consider whether the applicant has ever had any disciplinary action taken on his or her bondsman or runner license or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or plead guilty to any criminal act. The Commissioner may also consider whether disciplinary action or criminal charges are pending.~~

~~(f) The Commissioner shall deny, summarily suspend, or terminate the approval of an instructor upon finding that: An instructor shall not have received any disciplinary action regarding his or her bondsman or runner license from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a suspension or revocation.~~

- ~~(1) The instructor fails to meet the criteria for approval provided by this Rule;~~
- ~~(2) The instructor has failed to comply with statutes or rules regarding prelicensing or BCEC courses;~~
- ~~(3) The instructor provided false information to the Commissioner;~~
- ~~(4) The instructor has at any time been disqualified under Chapter 58 of the North Carolina Department of Insurance; or~~
- ~~(5) The instructor has obtained or used, or attempted to obtain or use examination questions, in any manner or form.~~

~~(g) In all proceedings to deny, revoke, suspend, or terminate approval of an instructor, the provisions of Chapter 150B of the General Statutes are applicable. The Commissioner shall approve an applicant as an instructor upon finding that the applicant has met the requirements of this Rule.~~

~~(h) When an instructor's approval is discontinued, the procedure for reinstatement is to apply as a new instructor, with a statement of reasons that he is now eligible for reconsideration. The Commissioner shall perform an investigation before new approval is granted. The Commissioner shall approve or disapprove an instructor application within 60 days after receipt of all required information. The Commissioner shall provide written notice to any instructor who is denied approval explaining the reasons for the denial. Any instructor receiving a written notice of denial may seek Department of Insurance review of such denial within 15 business days from the date of receipt of such notice.~~

~~(i) The Commissioner may deny, suspend, or terminate the approval of an instructor upon finding that the instructor:~~

- ~~(1) Failed to meet the criteria for approval provided by this Rule;~~

- ~~(2) Failed to comply with statutes or rules regarding prelicensing or BCEC courses;~~
- ~~(3) Provided false information to the Commissioner;~~
- ~~(5) Obtained or used, or attempted to obtain or use examination questions, in any manner or form.~~
- ~~(6) Failed to respond to Department of Insurance inquiries within seven calendar days after receipt of the inquiry or request.~~

~~(j) In all proceedings to deny, revoke, suspend, or terminate approval of an instructor, the provisions of Chapter 150B of the General Statutes are applicable.~~

~~(k) When an instructor's approval is terminated, the procedure for reinstatement is to apply as a new instructor, with a statement of reasons that he is now eligible for approval. The Commissioner shall perform an investigation before new approval is granted.~~

~~(l) Approved instructors must report any convictions for misdemeanor offenses other than traffic offenses, felony convictions, or disciplinary action against the instructor's professional license(s) to the Commissioner within 15 days of the conviction or action and must provide copies of official documents showing the conviction or disciplinary action entered or taken against the instructor.~~

~~(m) Instructors that were previously approved and issued a certificate of authority by the Commissioner must reapply for instructor approval by filing a new application for instructor approval with the Commissioner within 60 days of the effective date of any amendments to the instructor approval requirements in this Section.~~

Authority G.S. 58-2-40; 58-71-71.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Cosmetic Art Examiners intends to adopt the rule cited as 21 NCAC 14A .0404, amend the rules cited as 21 NCAC 14P .0108, .0111-.0114; 14R .0101; 14T .0602-.0603, .0705, and repeal the rules cited as 21 NCAC 14F .0101, .0104-.0105, .0107-.0109, .0113; 14H .0105, .0107-.0115, .0117-.0118, .0120-.0121; 14R .0102-.0104.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.nccosmeticarts.com/uploads/Board/PRApril2012.pdf>

Proposed Effective Date: *September 1, 2012*

Public Hearing:

Date: *May 30, 2012*

Time: *9:00 a.m.*

Location: *1201 Front Street, Suite 110, Raleigh, NC 27609*

Reason for Proposed Action: *These rules have written/amended or recommended for repeal by the Board to provide clear language for required licensee actions per G.S. 88B and to eliminate unnecessary regulations.*

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 April 24, 2012 to July 16, 2012. Written comments not presented at the hearing should be directed to Stefanie Kuzdrall.*

Comments may be submitted to: *Stefanie Kuzdrall, 1201 Front Street, Suite 110, Raleigh, NC 27609; phone (919) 715-0018; fax (919) 733-4127; email skuzdrall@nccosmeticarts.com*

Comment period ends: *July 16, 2012*

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 (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

SUBCHAPTER 14A - DEPARTMENTAL RULES

SECTION .0400 - LICENSE RENEWAL WAIVER FOR ARMED FORCES

21 NCAC 14A .0404 FEES

(a) Personal checks for fees returned unpaid for any reason shall be treated in the same manner as though no fee had been tendered and the bank's returned check fee shall be assessed to the account holder. All subsequent payments must be submitted via credit card, money order or certified check.

(b) All moneys tendered in payment of fees shall be in the exact amount required for said fees.

(c) Licenses, certifications, duplicates, inactivations, or reactivations will not be processed until all fees and assessed civil penalties are paid in full.

(d) In addition to the conduct set forth in G.S. 90B-11, the board may take disciplinary action for offering a check to the Board in payment of required fees which is returned unpaid.

Authority G.S. 88B-2; 88B-4.

SUBCHAPTER 14F - RULES AND REGULATIONS GOVERNING THE LICENSING OF BEAUTY SHOPS

SECTION .0100 - RULES AND REGULATIONS GOVERNING THE LICENSING OF BEAUTY SHOPS

21 NCAC 14F .0101 APPLICATION FOR SALON LICENSE

~~Persons desiring to continue to operate or open a cosmetic art shop, or to reopen a cosmetic art shop which has been closed more than 90 days in the State of North Carolina shall make application to the North Carolina State Board of Cosmetic Art Examiners on an application form to be furnished by the Board.~~

Authority G.S. 88B-14.

21 NCAC 14F .0104 SEPARATION OF BEAUTY SALON

~~(a) A beauty salon, whether residential or non residential, shall be separated from any building or room used for any other business by solid walls at least 7 ft. in height.~~

~~(b) An entrance to a beauty salon from a passageway, walkway or mall area used only for access to the salon, or to the salon and other businesses, may be open.~~

Authority G.S. 88B-4(9).

21 NCAC 14F .0105 NEWLY ESTABLISHED RESIDENTIAL SALONS

~~(a) A cosmetic art shop shall be separate and apart from any building or room used for any other business or purpose, separated by a solid wall of at least seven feet in height and must have a separate outside entrance.~~

~~(b) A newly established cosmetic art shop, shall be separate and apart from any building or room used for living, dining or sleeping and shall be separate and apart from any other room used for any other purpose by a solid wall of ceiling height, making separate and apart rooms used for a cosmetic art shop. All entrances to the cosmetic art shop shall be through solid, full length doors installed in solid walls of ceiling height.~~

Authority G.S. 88B-4.

21 NCAC 14F .0107 DIMENSIONS OF BEAUTY SALON

~~A cosmetic art shop shall maintain at least five feet of space between each styling chair from the center to the center of each chair, and shall have at least two feet of space from each chair to the wall of the salon, front and back. Shampoo bowls must be at least 40 inches apart center of bowl to center of bowl.~~

Authority G.S. 88B-4(a)(9).

21 NCAC 14F .0108 INSPECTION OF COSMETIC ART SHOPS

~~(a) A newly established cosmetic art shop, a shop which has been closed for more than 90 days, a shop which has changed ownership, or a shop which has been operating without a license shall be inspected before a license will be issued. The Board shall be given 30 days notice to schedule an inspection.~~

~~(b) Each cosmetic art shop must pass inspection by the Board pursuant to 21 NCAC Subchapter 14H. Inspections shall be conducted at least annually and may be conducted without notice.~~

Authority G.S. 88B-4; 88B-21; 88B-14.

21 NCAC 14F .0109 SIGNS

~~A beauty salon shall be designated by a sign of not less than four inch letters at the outside entrance to said premises provided it is not contrary to a local ordinance.~~

Authority G.S. 88-23.

21 NCAC 14F .0113 FAILURE TO PERMIT INSPECTION

~~If an inspector is unable to inspect a salon twice with appointment, the Board may initiate proceedings to revoke or suspend the salon license or may refuse to renew the salon license.~~

Authority G.S. 88-23.

SUBCHAPTER 14H - SANITATION

SECTION .0100 - SANITATION

21 NCAC 14H .0105 SANITARY RATINGS AND POSTING OF RATINGS

~~(a) The sanitary rating of a beauty establishment shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments shall be rated in the following manner:~~

- ~~(1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;~~
- ~~(2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded grade B;~~
- ~~(3) all establishments receiving a rating of at least 70 percent or more, and less than 80 shall be awarded grade C.~~

~~(b) Every beauty establishment shall be given a sanitary rating. A cosmetic art school shall be graded no less than three times a year, and a cosmetic art shop shall be graded once a year.~~

~~(c) The sanitary rating given to a beauty establishment shall be posted in a conspicuous place at all times.~~

~~(d) All new establishments must receive a rating of at least 90 percent before a license will be issued.~~

~~(e) The willful operation of a beauty establishment which fails to receive a sanitary rating of at least 70 percent (grade C) shall~~

~~be sufficient cause for revoking or suspending the letter of approval or permit.~~

~~(f) A re-inspection for the purpose of raising the sanitary rating of a beauty establishment shall not be given within 30 days of the last inspection, unless the rating at the last inspection was less than 80 percent.~~

~~(g) A whirlpool and footspa sanitation record must be kept on each whirlpool and footspa for inspection on a form provided by the Board.~~

Authority G.S. 88B-4; 88B-23; 88B-24.

21 NCAC 14H .0107 WATER SUPPLY

~~(a) A beauty establishment shall have a supply of running hot and cold water in the clinic area, approved by the local health department.~~

~~(b) When a service is provided in a room closed off by a door, the water supply required in this Rule must be within 20 feet of the door or 25 feet from the service table or chair. The restroom sink shall not be used to meet this requirement.~~

Authority G.S. 88B-4.

21 NCAC 14H .0108 FLOOR COVERINGS

~~All floor coverings shall be washable and kept clean and in good repair.~~

Authority G.S. 88-23.

21 NCAC 14H .0109 VENTILATION AND LIGHT

~~(a) All doors and windows shall be kept clean and, if open for ventilation, effectively screened.~~

~~(b) Necessary ventilation shall be provided at all times. In the clinic areas of all cosmetic art schools and in the areas where patrons are serviced in all cosmetic art shops, there must be an adequate, continuous exchange of air.~~

~~(c) Adequate light shall be provided for each operator.~~

Authority G.S. 88-23.

21 NCAC 14H .0110 BATHROOM FACILITIES

~~(a) Toilet and hand washing facilities consisting of at least one commode and one lavatory with hot and cold running water, liquid soap and individual towels shall be provided.~~

~~(b) A residential beauty salon shall furnish bathroom facilities separate and apart from the residence.~~

Authority G.S. 88B-4(a)(9).

21 NCAC 14H .0111 CLEANLINESS OF OPERATORS

~~(a) All operators and students shall be personally clean and neat.~~

~~(b) Every person employed in a beauty establishment shall wear clean, washable outer garments with sleeves while serving patrons.~~

~~(c) Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.~~

Authority G.S. 88B-4; 88B-14.

21 NCAC 14H .0112 CLEANLINESS OF CLINIC AREA

- ~~(a) The clinic area shall be kept clean.~~
- ~~(b) Waste material shall be kept in covered receptacles. The area surrounding the waste receptacles shall be maintained in a neat and sanitary manner.~~
- ~~(c) Sanitation rules which apply to towels and cloths are as follows:

 - ~~(1) Separate and clean protective drapes, linens and towels shall be used for each patron.~~
 - ~~(2) After a protective cape, drape, linen or towel has been used once, it shall be placed in a clean, closed container until laundered. Any paper or nonwoven protective drape or covering shall be discarded after one use.~~
 - ~~(3) There shall be an adequate supply of clean protective drapes, linens and towels at all times.~~
 - ~~(4) All plastic capes used on patrons shall not be allowed to come in contact with the patron's neck.~~
 - ~~(5) Clean drapes, linens and towels shall be stored in a covered receptacle when not in use.~~~~
- ~~(d) At least six combs and brushes shall be provided for each cosmetology operator and cosmetology student.~~
- ~~(e) All combs, brushes, and implements shall be cleaned and disinfected after each use in the following manner:

 - ~~(1) They shall be soaked in a cleaning solution that will not leave a residue and, if necessary, scrubbed.~~
 - ~~(2) They shall be disinfected in accordance with the following:

 - ~~(A) EPA _____ registered, hospital/pseudomonacidal (bactericidal, _____ virucidal, _____ and fungicidal) or tuberculocidal, that is mixed and used according to the manufacturer's directions; or~~
 - ~~(B) 1 and 1/3 cup of 5.25 percent household bleach to one gallon of water for 10 minutes.~~

~~The disinfectant shall not shorten the service life of the comb, brush, esthetics or manicuring instrument. In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended in the Material Safety Data Sheet prepared on the disinfectant manufacturer.~~~~
 - ~~(3) They shall be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed.~~~~
- ~~(f) Disposable and porous implements must be discarded after use or upon completion of the service.~~
- ~~(g) Product that comes into contact with the patron must be discarded upon completion of the service.~~
- ~~(h) Clean items and items needing to be disinfected shall be kept in separate containers.~~

~~(i) A covered receptacle may have an opening so soiled items may be dropped into the receptacle.~~

Authority G.S. 88B-4; 88B-14.

21 NCAC 14H .0113 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT

- ~~(a) All scissors, shears, razors, and other metal instruments must be cleaned and disinfected after each use in the following manner:

 - ~~(1) If the implement is not immersible, it shall be cleaned by wiping it with a moistened clean cloth and disinfected with a disinfectant used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.~~
 - ~~(2) If it is immersible, it shall be disinfected by immersion and whenever it comes in contact with blood, with:

 - ~~(A) disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.~~
 - ~~(B) EPA _____ registered, hospital/pseudomonacidal (bactericidal, _____ virucidal, _____ and fungicidal) or tuberculocidal, that is mixed and used according to the manufacturer's directions; or~~
 - ~~(C) household bleach in a 10 percent solution for 10 minutes.~~~~
 - ~~(3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.~~~~
- ~~(b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.~~
- ~~(c) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.~~

Authority G.S. 88B-4; 88B-14.

21 NCAC 14H .0114 CARE OF CREAMS: LOTIONS: AND COSMETICS

~~All creams, lotions, and other cosmetics used for patrons must be kept in clean, closed containers, and must conform in all respects to the requirements of the Pure Food and Drug Law. Lotions, or fluids must be poured into a clean glass or other sanitized container and applied to patrons by means of cotton or other sanitized methods.~~

Authority G.S. 88-23.

21 NCAC 14H .0115 FIRST AID

~~Each beauty establishment must have antiseptics and other necessary supplies available to provide first aid when necessary.~~

Authority G.S. 88-23.

21 NCAC 14H .0117 ANIMALS

Animals or birds shall not be in a beauty establishment. Trained animals accompanying disabled persons are exempt.

Authority G.S. 88B-4; 88B-17; 88B-23.

21 NCAC 14H .0118 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS

The system of grading the sanitary rating of cosmetic art schools and shops based on the rules set out in 21 NCAC 14H .0106 to .0117 shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

- (1) clean and repaired entrance and reception room 2;
- (2) general condition of the entire establishment 8;
- (3) water system; hot and cold running water 2;
- (4) walls, ceiling and floors:
 - (A) construction and coverings 4;
 - (B) clean 4;
 - (C) good repair 3;
- (5) lighting and fresh continuous ventilation (windows included); their adequacy and cleanliness 3;
- (6) public toilet:
 - (A) clean and ventilated 5;
 - (B) liquid soap and individual towels furnished 5;
 - (C) hot and cold running water 2;
- (7) appearance of operators and students 4;
- (8) linens:
 - (A) supply of clean drapes, linens and towels stored in clean closed containers 2;
 - (B) soiled drapes, linens and towels properly stored in closed containers 3;
- (9) waste in closed containers and clean area 4;
- (10) equipment cleanliness:
 - (A) disinfectants selected from those approved by the Federal Environmental Protection Agency 6;
 - (B) disinfectants used properly 5;
 - (C) all implements cleaned, disinfected, and properly stored 12;
 - (D) furniture, fixtures, and equipment clean and in good repair 7;
- (11) working area:
 - (A) workstation clean 4;
 - (B) lavatories clean 4;
 - (C) jars and containers closed, clean and disinfected 2;
 - (D) no unnecessary articles in work area 2;
- (12) antiseptics and first aid supplies on hand 1;

- (13) cosmetics:
 - (A) clean and sanitary conditions 2;
 - (B) storage area for supplies clean and in order 3;
- (14) no animals or birds kept or allowed in the establishment except as provided by Rule .0117 of this Subchapter.

Authority G.S. 88B-2; 88B-4; 88B-14.

21 NCAC 14H .0120 WHIRLPOOL, FOOTSPA AND FACIAL STEAMER SANITATION

(a) As used in this Rule whirlpool or footspa means any basin using circulating water.

(b) After each patron each whirlpool or footspa must be cleaned and disinfected as follows:

- (1) All water must be drained and all debris removed from the basin;
- (2) The basin must be disinfected by filling the basin with water and circulating:
 - (A) Two tablespoons of automatic dishwashing powder and ¼ cup of 5.25 percent household bleach to one gallon of water through the unit for 10 minutes; or
 - (B) Surfactant or enzymatic soap with an EPA registered disinfectant with bactericidal, fungicidal and virucidal activity used according to manufacturer's instructions through the unit for 10 minutes;
- (3) The basin must be drained and rinsed with clean water; and
- (4) The basin must be wiped dry with a clean towel.

(c) At the end of the day each whirlpool or footspa must be cleaned and disinfected as follows:

- (1) The screen must be removed and all debris trapped behind the screen removed;
- (2) The screen and the inlet must be washed with surfactant or enzymatic soap or detergent and rinsed with clean water;
- (3) Before replacing the screen one of the following procedures must be performed:
 - (A) The screen must be totally immersed in a household bleach solution of ¼ cup of 5.25 percent household bleach to one gallon of water for 10 minutes; or
 - (B) The screen must be totally immersed in an EPA registered disinfectant with bactericidal, fungicidal and virucidal activity in accordance to the manufacturer's instructions for 10 minutes;
- (4) The inlet and area behind the screen must be cleaned with a brush and surfactant soap and water to remove all visible debris and residue; and

- ~~(5) The spa system must be flushed with low sudsing surfactant or enzymatic soap and warm water for at least 10 minutes and then rinsed and drained.~~
- ~~(d) Every week after cleaning and disinfecting pursuant to Paragraphs (a) and (b) of this Rule each whirlpool and footspa must be cleaned and disinfected in the following manner:~~
 - ~~(1) The whirlpool or footspa basin must be filled with water and ¼ cup of 5.25 percent household bleach for each one gallon of water;~~
 - ~~(2) The whirlpool or footspa system must be flushed with the bleach and water solution pursuant to Subparagraph (d)(1) of this Rule for 10 minutes and allowed to sit for at least six hours; and~~
 - ~~(3) The whirlpool or footspa system must be drained and flushed with water before use by a patron.~~
- ~~(e) A record must be made of the date and time of each cleaning and disinfecting as required by this Rule including the date, time, reason and name of the staff member that performed the cleaning. This record must be kept and made available for at least 90 days upon request by either a patron or inspector.~~
- ~~(f) The water in a vaporizer machine must be emptied daily and the unit disinfected.~~

Authority G.S. 88B-4; 88B-14.

21 NCAC 14H .0121 PROHIBITED PRACTICES

- ~~(a) Licensees must not use or possess in a shop any of the following products:~~
 - ~~(1) Methyl Methacrylate Liquid Monomer a.k.a. MMA;~~
 - ~~(2) Razor type callus shavers designed and intended to cut growths of skin such as corns and calluses;~~
 - ~~(3) Permanent makeup, defined as beautifying the face by inserting or implanting facial cosmetic pigment under the surface of the skin or mucosa;~~
 - ~~(4) FDA rated Class III devices;~~
 - ~~(5) Any adulterated chemical exfoliating substances;~~
 - ~~(6) Carbolic acid (phenol) over two percent strength;~~
 - ~~(7) Animals including insects, fish, amphibians, reptiles, birds or mammals to perform any service; or~~
 - ~~(8) Variable speed electrical nail file on the natural nail unless it has been designed for use on the natural nail.~~
- ~~(b) A licensee must not:~~
 - ~~(1) Use product in any other manner than the product's intended use;~~
 - ~~(2) Diagnose any medical condition or treat any medical condition unless referred by a physician;~~
 - ~~(3) Provide any service unless trained prior to performing the service;~~

- ~~(4) Perform services on a client if the licensee has reason to believe the client has any of the following:~~
 - ~~(A) a communicable disease;~~
 - ~~(B) a contagious condition;~~
 - ~~(C) an inflamed, infected, broken, raised or swollen skin or nail tissue; or~~
 - ~~(D) an open wound or sore in the area to be worked on that would contraindicate the efficacy of the service;~~
- ~~(5) Alter or duplicate a license issued by the Board; or~~
- ~~(6) Advertise or solicit clients in any form of communication in a manner that is false or misleading.~~
- ~~(c) Class II devices may be used by licensees while under the supervision of a licensed physician.~~

Authority G.S. 88B-2; 88B-4.

SUBCHAPTER 14P - CIVIL PENALTY

SECTION .0100 - CIVIL PENALTY

21 NCAC 14P .0108 REVOCATION OF LICENSES AND OTHER DISCIPLINARY MEASURES

- ~~(a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:~~

(1)	1st offense	\$500.00
(2)	2nd offense	\$750.00
(3)	3rd offense	\$1000.00
- ~~(b) The presumptive civil penalty for practicing cosmetology, natural hair care, manicuring or esthetics with a license issued to another person is:~~

(1)	1st offense	\$500.00
(2)	2nd offense	\$800.00
(3)	3rd offense	\$1,000.00
- ~~(c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:~~

(1)	1st offense	\$500.00
(2)	2nd offense	\$800.00
(3)	3rd offense	\$1000.00
- ~~(d) The presumptive civil penalty for submitting false or fraudulent documents is:~~

(1)	1st offense	\$500.00
(2)	2nd offense	\$800.00
(3)	3rd offense	\$1,000.00
- ~~(e) The presumptive civil penalty for refusing to present photographic identification is:~~

(1)	1st offense	\$100.00
(2)	2nd offense	\$250.00
(3)	3rd offense	\$500.00
- ~~(f) The presumptive civil penalty for advertising by means of knowingly false or deceptive statement is:~~

(1)	1st offense	warning (\$300.00)
(2)	2nd offense	\$400.00
(3)	3rd offense	\$500.00

PROPOSED RULES

~~(e)~~(f) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license is:

- (1) 1st offense \$ 50.00
- (2) 2nd offense \$100.00
- (3) 3rd offense \$250.00

~~(h)~~(g) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation is:

- (1) 1st offense \$500.00
- (2) 2nd offense \$800.00
- (3) 3rd offense \$1000.00

~~(i)~~(h) The presumptive civil penalty for the illegal use or possession of equipment or Methyl Methacrylate Monomer (MMA) in a cosmetic art shop or school is:

- (1) 1st offense \$300.00
- (2) 2nd offense \$500.00
- (3) 3rd offense \$1000.00

~~(j)~~(i) The presumptive civil penalty for failure to maintain footspa sanitation records is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$200.00
- (3) 3rd offense \$300.00

Authority G.S. 88B-4; 88B-24; 88B-29.

21 NCAC 14P .0111 ESTABLISHMENT OF COSMETIC ART SCHOOLS

(a) The presumptive civil penalty for failure to provide minimum floor space or equipment and supplies as required by Subchapters 14G, 14I, 14J, 14K, ~~14O~~ 14O, 14T and 14S is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$350.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for failure to provide instruction at a ratio of ~~one teacher for every 20 students~~ required is:

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(c) The presumptive civil penalty for failure to report a change in the teaching staff is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(d) The presumptive civil penalty for failure to submit an application for the approval of a school in the case of a change of location or ownership is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$200.00
- (3) 3rd offense \$500.00

Authority G.S. 88B-4(2); 88B-16; 88B-29.

21 NCAC 14P .0112 SANITARY RATINGS AND POSTING OF RATINGS - APPLICABLE TO ESTABLISHMENTS WITH A SANITATION GRADE OF LESS THAN 80%

(a) The presumptive civil penalty for failure to display an inspection grade card is:

- (1) 1st offense \$50.00

- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(b) The presumptive civil penalty for non-working toilet facilities is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(c) The presumptive civil penalty for failure to maintain equipment, furnishings and floor coverings is:

- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00

(d) The presumptive civil penalty for failure to provide hot and cold running water is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(e) The presumptive civil penalty for keeping any animal or bird in a cosmetic art shop or school is: (Trained animals accompanying sightless or hearing impaired persons are exempt)

- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00

~~(f) The presumptive civil penalty for failure to have students wear clean washable uniform is:~~

- ~~(1) 1st offense warning (\$50.00)~~
- ~~(2) 2nd offense \$100.00~~
- ~~(3) 3rd offense \$200.00~~

~~(g)~~(f) The presumptive civil penalty for failure of operators in cosmetic art shops to wear clean outer garments with sleeves is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

~~(h)~~(g) The presumptive civil penalty for failure to store used or clean protective drapes, linens or towels, or failure to launder used protective drapes, linens or towels is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

~~(i)~~(h) The presumptive civil penalty for failure to dispose of supplies or instruments which come in direct contact with a patron and which cannot be disinfected is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

~~(j)~~(i) The presumptive civil penalty for failure to disinfect non-electrical instruments and equipment is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

~~(k)~~(j) The presumptive civil penalty for failure to store and label creams, powders, and other cosmetic preparations is:

- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00

PROPOSED RULES

~~(k)~~ The presumptive civil penalty for failure to have necessary first aid equipment on hand is:

- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00

~~(l)~~ The presumptive civil penalty for failure to provide necessary lighting or ventilation is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

~~(m)~~ The presumptive civil penalty for windows and doors not effectively screened is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

~~(n)~~ The presumptive civil penalty for trash containers not covered is:

- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00

~~(o)~~ The presumptive civil penalty for failure to use EPA approved disinfectant is:

- (1) 1st offense \$50.00
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

~~(p)~~ The presumptive civil penalty for failure to maintain a sanitary establishment (80% rating or better) is:

- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00

Authority G.S. 88B-4; 88B-29.

21 NCAC 14P .0113 OPERATIONS OF SCHOOLS OF COSMETIC ART

(a) The presumptive civil penalty for failure to record student's hours of daily attendance is:

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$200.00
- (3) 3rd offense \$300.00

(b) The presumptive civil penalty for failure to report withdrawal or graduation of a student within 30 working days is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(c) The presumptive civil penalty for failure to submit cosmetology enrollments within 30 working days or manicurist, natural hair care specialist and esthetician enrollments within 15 working days is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(d) The presumptive civil penalty for failure to display a copy of the sanitation rules is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(e) The presumptive civil penalty for failure to post consumer sign "Cosmetic Art School - Work Done Exclusively by Students" is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(f) The presumptive civil penalty for allowing a cosmetic art shop to operate within a cosmetic art school is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$600.00

(g) The presumptive civil penalty for a cosmetic art school that is not separated from a cosmetic art shop or other business by a solid wall, floor to ceiling, with an separate entrance and a door that stays closed at all times is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$600.00

(h) The presumptive civil penalty for failure to have students wear clean washable uniform and/or identification is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

Authority G.S. 88B-4; 88B-16; 88B-29.

21 NCAC 14P .0114 COSMETOLOGY CURRICULUM

(a) The presumptive civil penalty for a school allowing cosmetology or apprentice cosmetology students with less than 300 hours credit to work on the public. (Shampoo and scalp manipulations are exempt) is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$200.00
- (3) 3rd offense \$300.00

(b) The presumptive civil penalty for a school for manicurist students with less than ~~46~~ 60 hours credit working on the public is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$200.00
- (3) 3rd offense \$300.00

(c) The presumptive civil penalty for a school for esthetician students with less than ~~60~~ 75 hours credit working on the public is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$200.00
- (3) 3rd offense \$300.00

(d) The presumptive civil penalty for a school for natural hair care students with less than ~~46~~ 60 hours credit working on the public is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$200.00
- (3) 3rd offense \$300.00

Authority G.S. 88B-4; 88B-29.

SUBCHAPTER 14R - CONTINUING EDUCATION

SECTION .0100 - CONTINUING EDUCATION

21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS

- ~~(a) No licensee shall receive continuing education credit for course duplication completed during the licensing cycle.~~
 - ~~(b) Continuing education courses completed prior to an individual's being licensed by the Board shall not qualify for continuing education credit. A licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board. Apprentices shall not earn continuing education credit for any class.~~
 - ~~(c) All licensees must complete courses in their subject area.~~
 - ~~(d) All providers shall allow any representative or employee of the Board entrance into any Board approved continuing education requirement course at no cost to the Board.~~
 - ~~(e) The Board shall keep a current roster of approved continuing education courses. Additional copies of the roster shall be available to licensees and the public upon request to the Board. Requesting individuals shall provide stamped, self addressed envelopes.~~
 - ~~(f) Out of state continuing education hours shall be submitted for approval to the Board.~~
 - ~~(g) The Board shall approve out of state continuing education hours provided the course is a lecture or hands on. The actual course must be at least two hours and the licensee must submit the following:~~
 - ~~(1) Out of state continuing education form, created by the Board which contains the following:~~
 - ~~(A) Licensee's name, telephone number and mailing address;~~
 - ~~(B) Licensee license number;~~
 - ~~(C) Provider name and contact information;~~
 - ~~(D) Date and location of course;~~
 - ~~(E) Course description;~~
 - ~~(F) Length of class;~~
 - ~~(G) Instructor original signature; and~~
 - ~~(H) Licensee's original signature; and~~
 - ~~(2) Attached to the form the following:~~
 - ~~(A) Provider curriculum for the course;~~
 - ~~(B) Itinerary; and~~
 - ~~(C) timed outline.~~
- All material required in Subparagraph (2) of this Paragraph must be typed. The licensee must submit all the above within 30 days of completing the course,
- ~~(h) Licensees are exempt from 8 hours of continuing education requirements until the licensing period commencing after their initial licensure.~~
 - ~~(i) Continuing education course instructors shall receive credit for any approved continuing education class taught once during the renewal period.~~
 - ~~(j) Licensees may take internet and correspondence courses not to exceed 12 hours per renewal period for cosmetologists, four hours per renewal period for natural hair care specialists, manicurists and estheticians and eight hours per renewal period for teachers.~~

- ~~(k) As used in this Subchapter an internet course is defined as a course that is accessible only through a computer that has internet access including emailed information and video.~~
- ~~(l) As used in this Subchapter a correspondence course is defined as a course that is accessible via mail or DVD with exercises and test which upon completion are returned to the CE provider by mail for grading.~~
- ~~(m) As used in this Subchapter a classroom course is provided by the licensee physically attending the class.~~

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE APPROVAL

- ~~(a) Application for course approval shall be completed on forms provided by the Board and shall demonstrate that the applicant is:~~
 - ~~(1) Submitting the form to the Board's office at least 90 days prior to the proposed initial date of the course offering.~~
 - ~~(2) Proposing a course offering that includes:~~
 - ~~(A) 50 percent of subject matter in the cosmetic arts or cosmetic art teacher training techniques, 25 percent business ethics and management and 25 percent subject matter related to cosmetic art; or~~
 - ~~(B) 50 percent of subject matter in the cosmetic arts or cosmetic art teacher training techniques and 50 percent of subject matter must be related to cosmetic art.~~
 - ~~(3) Providing a resume for all course each instructor for the classroom course.~~
 - ~~(4) Providing a timed outline for the proposed course with timed increments for each segment.~~
 - ~~(5) Submitting the lesson plan with course proposal information for all demonstrations, hands on or lecture materials.~~
 - ~~(6) Providing course materials that are typed and legible.~~
 - ~~(7) Providing a floor plan with the dimensions for attendance greater than 50.~~
 - ~~(8) Teaching current Board sanitation (21 NCAC 14H) regulations.~~
- ~~(b) The following offerings shall not be approved by the Board for continuing education credit:~~
 - ~~(1) That portion of any offering devoted to any breaks including breakfast, lunch and dinner or other refreshments.~~
 - ~~(2) Any application that fails to meet the standards of Rule.0103 of this Subchapter.~~
 - ~~(3) Any curriculum for a classroom course in which the course subject matter deals only with sanitation requirements unless the course is administered by the Board.~~
 - ~~(4) Any curriculum that contains diagnosis or medical treatment.~~

- (5) ~~Any curriculum that repeats information in another course sponsored by that provider that has been approved by the Board.~~
- (c) ~~An internet course shall have an examination or methodology built into the course to verify the course material has been completed. All courses shall have a timing element to prevent advancement within each section or page of the course until all material has been reviewed.~~
- (d) ~~A provider shall disable any timing or verification element when an Internet course is being reviewed for approval by the Board.~~
- (e) ~~A correspondence course shall have an examination or methodology built into the course to verify the course material has been completed and all material shall be mailed through the postal service or comparable mail services.~~
- (f) ~~The Board shall approve or deny an application within 45 days of receiving the request.~~
- (g) ~~A unique continuing education number shall be assigned to each approved course.~~
- (h) ~~The continuing education program approval shall be for two years from the date of approval.~~
- (i) ~~Approved courses may be conducted as often as desired during the approved period. The provider must send a list of scheduled course dates to the Board.~~

Authority G.S. 88-B 4; 88B-21(e).

21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES

- (a) ~~Programs shall not be approved by the Board in segments of less than two hours.~~
- (b) ~~Course monitors are required at the rate of one monitor per 20 students with a maximum of 10 monitors for a seminar course and one monitor per 10 students for a hands on course. Instructors may serve as the course monitor with fewer than 20 students.~~
- (c) ~~Providers must use an attendance sign in sheet provided by the Board, listing the licensee's name, signature and license number to verify attendance. If a course monitor was required the individual's name and signature must be listed on the sign in sheet indicating participation as a class monitor. Forms may be copied.~~
- (d) ~~No provider shall certify the attendance of a person who was not physically present during at least ninety percent of the course time.~~
- (e) ~~A provider shall maintain for four years a record of attendance of each person attending a course including the following information:~~
 - (1) ~~Board approved continuing education number;~~
 - (2) ~~Name and license number of attendee;~~
 - (3) ~~Course title and description;~~
 - (4) ~~Hours of attendance;~~
 - (5) ~~Date of course;~~
 - (6) ~~Name and original signature of instructor/monitor in employ of provider;~~
 - (7) ~~Provider name; and~~
 - (8) ~~A copy of course certificate.~~

- (f) ~~The provider must give a certificate noting items listed in Paragraph (e) of this Rule to the attendee upon completion of the course.~~
- (g) ~~Course attendance may be restricted to licensees due to course prerequisites for admission or by the maximum number of participants allowable as determined by the provider and disclosed during the application process.~~
- (h) ~~The minimum attendance of a course for credit purposes is four licensees attendees. The maximum attendance of a class for credit purposes is 200 licensed attendees.~~
- (i) ~~Each provider shall notify the Board at least five days in advance of any additional course dates or any changes including locations, times, floor plan and changes of course instructors. The Board must be notified at least 48 hours in advance of a cancellation.~~
- (j) ~~The Board shall approve credit for courses only in increments of an hour and not in portions of an hour. The Board shall not approve a course less than two hours, nor shall it approve more than eight hours of credit in one day.~~
- (k) ~~Classroom courses may be no less than two hours or more than eight hours per day.~~
- (l) ~~Internet and correspondence courses may be no less than two hours or more than 12 hours.~~
- (m) ~~Each provider must enter into the Board's database within ten days after completion of each course, an attendance list of licensees who completed the course. The list shall include for each licensee:~~
 - (1) ~~Course title;~~
 - (2) ~~Date conducted;~~
 - (3) ~~Address location where the course was conducted;~~
 - (4) ~~Licensee name;~~
 - (5) ~~Licensee's license number;~~
 - (6) ~~Course continuing education number; and~~
 - (7) ~~Continuing education hours earned.~~
- (n) ~~The use of both the electronic attendance form and the on-site sign in sheet with original attendee signatures is mandatory. These forms are used to verify attendance. Each provider shall submit to the Board, within 10 days after completion of each course, the course sign in sheets with the licensee names and signatures of all licensed attendees that completed the course.~~
- (o) ~~The Board may suspend, revoke, or deny the approval of an instructor or provider, who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.~~
- (p) ~~Audits of CE course providers may be conducted and upon the Board's request each CE course provider shall provide completed records complete records must be provided to the Board upon request.~~

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14R .0104 LICENSE RENEWAL PROCEDURES

~~After completion of the continuing education requirements for any licensing cycle the licensee shall forward only the license renewal application and the license renewal fee. The Board shall maintain all continuing education attendance information.~~

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14T .0602 COSMETOLOGY CURRICULUM

SUBCHAPTER 14T - COSMETIC ART SCHOOLS

(a) To meet the approval of the Board, a cosmetologist training course must consist of at least 1500 hours of instruction in theory and practical application, divided as follows:

SECTION .0600 - CURRICULA

Theory and Performance Requirements	Hours	Services	
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing/thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails	300		
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching or coloring hair; esthetics and manicuring; and business management and salon business	1200		
Performance Requirements		Mannequin	Live Model
Scalp and hair treatments			10
Fullhead fingerwave and style		5 or	5
Fullhead pincurl and style		5 or	5
Hair styling – sets, blowdrying, thermal press/flat iron, and artificial hair		70	100
Haircuts		10	75
Chemical reformation or permanent waving and relaxers		25	10
Temporary color			2
Color application – semi, demi, permanent color and hair lightening		10	30
Multidimensional color – low/high lighting, cap, bleach		10	15
Lash and brow color			2
Nail care – manicures and pedicures			15
Artificial nails sets		5 or	5
Facials with surface manipulation/makeup manipulations			10
<u>Makeup application</u>			<u>2</u>
Hair removal			5

- (b) A minimum of 300 hours of theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.

- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.
- (j) A nail set is one hand including all four fingers and thumb.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0603 APPRENTICE COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, an apprentice cosmetologist training course must consist of at least 1200 hours of instruction in theory and practical application, divided as follows:

PROPOSED RULES

Theory and Performance Requirements	Hours	Services	
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing/thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails	300		
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching or coloring hair, esthetics and manicuring; and business management and salon business	900		
Performance Requirements		Mannequin	Live Model
Scalp and hair treatments			8
Fullhead fingerwave and style		3 or	3
Fullhead pincurl and style		3 or	3
Hair styling – sets, blowdrying, thermal press/flat iron, and artificial hair		56	80
Haircuts		8	60
Chemical reformation or permanent waving and relaxers		19	8
Temporary color			1
Color application – semi, demi, permanent color and hair lightening		8	11
Multidimensional color – low/high lighting, cap, bleach		8 3	3 8
Lash and brow color			1
Nail care – manicures and pedicures			12
Artificial nails sets		4 or	4
Facials with surface manipulation/makeup manipulations			7
<u>Makeup application</u>			<u>1</u>
Hair removal			3

- (b) A minimum of 300 hours of theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.
- (j) A nail set is one hand including all four fingers and thumb.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

SECTION .0700 - SCHOOL LICENSURE, OPERATIONS, CLOSING AND RELOCATING SCHOOLS

21 NCAC 14T .0705 SCHOOL PERFORMANCE REQUIREMENTS

- (a) Each cosmetic art school shall meet or exceed a program completion rate of at least 50 percent during any five year period and shall meet or exceed a student pass rate on state licensure examinations of at least 70 percent during any three year period.
- (b) The school shall allow the teachers to have the opportunity to prepare for class, evaluate students' progress in the course, counsel students individually, and participate in activities of continuing education.
- (c) Cosmetic art schools must provide to substitutes copies of lesson plans and the performance evaluation plan for the successful grading of clinical performances.
- (d) School attendance policies shall give appropriate performances attendance credit for all hours attended;

PROPOSED RULES

(e) If a graduate meets all the financial, hours, academic, and performance requirements the school must provide the student with the examination application.

(f) Cosmetic Art schools shall maintain current bond according to G.S. 88B and shall submit certification of renewal or new bond prior to expiration of the bond approved by the Board.

(g) Each school shall submit to the Board upon renewal financial record of prepaid tuition and a letter signed by an

authorized representative of the school documenting the calculations made and the method of computing the amount of the bond for the preceding year. Each school shall maintain and submit to the Board proof of Bond in an amount of ten thousand dollars (\$10,000), or equivalent to prepaid tuition received during the previous year, whichever is greater.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday May 1, 2012 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 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Addison Bell
Margaret Currin
Pete Osborne
Bob Rippy
Faylene Whitaker

Appointed by House

Ralph A. Walker
Curtis Venable
George Lucier
Garth K. Dunklin
Stephanie Simpson

COMMISSION COUNSEL

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

RULES REVIEW COMMISSION MEETING DATES

June 21, 2012 July 19, 2012
August 16, 2012 September 20, 2012

RULES REVIEW COMMISSION

April 19, 2012

MINUTES

The Rules Review Commission met on Thursday, April 19, 2012, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Margaret Currin, Garth Dunklin, George Lucier, Pete Osborne, Bob Rippy, Stephanie Simpson, Ralph Walker and Faylene Whitaker.

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

The meeting was called to order at 10:01 a.m. with Judge Walker 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).

APPROVAL OF MINUTES

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the March 15, 2012 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

21 NCAC 32C .0102, .0105, .0106, .0109 – Medical Board. The Commission approved the re-written rules submitted by the agency.

LOG OF FILINGS

Chairman Walker presided over the review of the log of permanent rules.

State Board of Elections

08 NCAC 01 .0101 was approved unanimously.

Child Care Commission

10A NCAC 09 .1719 was approved unanimously.

Private Protective Services Board

All rules were approved unanimously.

Environmental Management Commission

Thomas Slusser from the agency addressed the Commission and answered questions from the Commission.

All rules were approved unanimously.

State Personnel Commission

Nellie Riley from the agency addressed the Commission.

All rules were approved unanimously with the following exception:

25 NCAC 01J .1101 – The Commission objected to this rule based on lack of statutory authority in accordance with G.S. 150B-21.10. There is no authority cited for Paragraph (e) as written. The addition of "genetic information" to the classifications of unlawful workplace harassment makes Paragraph (e) inconsistent with G.S. 126-34.1. G.S. 126-34.1(a)(10) limits filing a workplace harassment case to harassment based upon age, sex, race, color, national origin, religion, creed, and handicapping (disabling) condition. While harassment based on genetic information may violate federal law, it does not give rise to a contested case under Article 3 of G.S. 150B. G.S. 126-34.1(e) specifically states that "[a]ny issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by [G.S. 126-34.1] shall not be grounds for a contested case under G.S. 126." Harassment based on genetic information is not specifically authorized as a ground for a contested case.

TEMPORARY RULES

Chairman Walker presided over the review of the log of temporary rules.

Department of Transportation

Betsy Strickland with the Attorney General's office addressed the Commission.

Joseph Qubain with the agency addressed the Commission.

19A NCAC 02D .0531, .0532 – The Commission objected to these rules based on lack of statutory authority in accordance with G.S. 150B-21.1(b1). G.S. 136-82 requires the Board of Transportation to establish tolls. Based on all notices and forms received about these rules, it appears that the rules were both proposed and adopted by the Department of Transportation without any formal action by the Board. It appears simply that the wrong agency has engaged in rulemaking and the correct agency has not even begun rulemaking. Without action by the Board, there is no way to know if these are the tolls the correct agency desires to establish. Neither G.S. 143B-348 nor G.S. 143B-10(j) move the authority to adopt the rules from the Board to the Department. The last sentence in the first paragraph of G.S. 143B-348 gives the Secretary authority to promulgate rules and regulations concerning all transportation functions assigned to the Department. The problem is that the function of establishing tolls was not assigned to the Department, but to the Board, by the recent change to G.S. 136-82. The second sentence in the first paragraph says that all transportation matters assigned to the Department are the responsibility of the Secretary "except those reserved to the Board of Transportation by statute." The statute clearly gives the authority to establish tolls to the Board. This statute does not allow the Department to usurp the authority given to the Board by the General Assembly. There is nothing in G.S. 143B-10(j) that would authorize the Department to establish tolls. Tolls are fees. G.S. 150B-19(5) prohibits an agency from adopting a rule that establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so with limited exceptions that are not relevant to these rules. G.S. 136-82 authorizes the Board, not the Department, to establish the tolls so G.S. 143B-10(j) is not relevant to this rulemaking. In summary, there is no authority cited for the Department of Transportation to adopt these rules. That authority is given to the Board of Transportation and the Board has not engaged in rulemaking.

OTHER BUSINESS

The Commission discussed the meeting that some members were having with some of the legislative leadership that afternoon. Issues to be discussed included an expedited process for the Department of Revenue when adopting rules dealing with forced combinations and adding a sunset provision for all rules.

The meeting adjourned at 11:33 a.m.

The next scheduled meeting of the Commission is Thursday, May 17 at 10:00 a.m.

Respectfully Submitted,

Julie Edwards
Editorial Assistant

Rules Review Commission
Meeting
Please **Print** Legibly

APRIL 19, 2012

Name	Agency
MARION THOMAS	NC DOT Ferry Division
Betsy Skieldand	NC DSS
Jeanne Rutledge	NC WCCC
Drew Morgan	NC DHHS
Alexi Gruber	NC DOJ
Jessi Hayes	NC HBA
C. Apperson	NCMB
Nellie E. Riley	OSIP
Helen Lynch	NC DOT
Phyllis Sanchez	NC DOJ
Delia Watts	NC DWK/DWO
Diana Alon	DCDEE
Thomas Slusser	NC DWCR
Michael Rogers	"
Eric Smith	"
Jennifer Everett	NC DENR
Anca GROZAV	OSBM
David McGowan	NCAR

**LIST OF APPROVED PERMANENT RULES
April 19, 2012 Meeting**

ELECTIONS, BOARD OF

Agency Name, Address, and Hours 08 NCAC 01 .0101

CHILD CARE COMMISSION

Requirements for a Safe Indoor/Outdoor Environment 10A NCAC 09 .1719

PRIVATE PROTECTIVE SERVICES BOARD

Application for Licenses and Trainee Permits 12 NCAC 07D .0201

Renewal or Reissue of Licenses and Trainee Permits 12 NCAC 07D .0203

Application for Unarmed Security Guard Registration 12 NCAC 07D .0701

Renewal or Reissue of Unarmed Security Guard Registration 12 NCAC 07D .0706

Application/Armed Security Guard Firearm Registration Permit 12 NCAC 07D .0801

Renewal of Armed Security Guard Firearm Registration Permit 12 NCAC 07D .0806

Application for Firearms Trainer Certificate 12 NCAC 07D .0902

ENVIRONMENTAL MANAGEMENT COMMISSION

Purpose 15A NCAC 02C .0201

Scope 15A NCAC 02C .0202

Definitions 15A NCAC 02C .0204

Area of Review 15A NCAC 02C .0205

Corrective Action 15A NCAC 02C .0206

Mechanical Integrity 15A NCAC 02C .0207

Financial Responsibility 15A NCAC 02C .0208

Classification of Injection Wells 15A NCAC 02C .0209

General Permitting Requirements Applicable to All Injecti... 15A NCAC 02C .0211

Additional Criteria and Standards Applicable to Class 5 W... 15A NCAC 02C .0213

Abandonment and Change-of-Status 15A NCAC 02C .0214

Variance 15A NCAC 02C .0215

Delegation 15A NCAC 02C .0216

Permitting by Rule 15A NCAC 02C .0217

Aquifer Recharge Wells 15A NCAC 02C .0218

Aquifer Storage and Recovery Wells 15A NCAC 02C .0219

Aquifer Test Wells 15A NCAC 02C .0220

Experimental Technology Wells 15A NCAC 02C .0221

Geothermal Aqueous Closed-Loop Wells 15A NCAC 02C .0222

Geothermal Direct Expansion Closed-Loop Wells 15A NCAC 02C .0223

Geothermal Heating/Cooling Water Return Wells 15A NCAC 02C .0224

Groundwater Remediation Wells 15A NCAC 02C .0225

Salinity Barrier Wells 15A NCAC 02C .0226

Stormwater Drainage Wells 15A NCAC 02C .0227

Subsidence Control Wells 15A NCAC 02C .0228

Tracer Wells 15A NCAC 02C .0229

Other Wells 15A NCAC 02C .0230

RULES REVIEW COMMISSION

<u>Abandonment and Change-of-Status Wells</u>	15A NCAC 02C .0240
<u>Variance</u>	15A NCAC 02C .0241
<u>Delegation</u>	15A NCAC 02C .0242

MEDICAL BOARD

<u>Name of Corporation</u>	21 NCAC 32C .0102
<u>Stock and Financial Matters</u>	21 NCAC 32C .0105
<u>Charter Amendments and Stock Transfers</u>	21 NCAC 32C .0106
<u>Registration of Foreign Professional Corporation</u>	21 NCAC 32C .0109

STATE PERSONNEL COMMISSION

<u>Purpose</u>	25 NCAC 01L .0102
<u>Program Implementation: Agency and University Level</u>	25 NCAC 01L .0104

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 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
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
ABC Commission v. TruVisions Enterprises, LLC, T/A Touch	10 ABC 7025	06/29/11	26:06 NCR 509
Elm Street Connection LLC, DBA Bella Mea Coal Fired Pizza v. ABC Commission	10 ABC 06298	11/07/11	
ABC Commission v. Universal Entertainment, LLC T/A Zoo City Saloon	11 ABC 2294	07/05/11	
ABC Commission v. Quick Quality Inc., T/A Quick Quality	11 ABC 2543	07/19/11	
ABC Commission v. Lead C. Corp v. T/A Burger King/Shell Convenience Store	11 ABC 5066	10/19/11	
ABC Commission v. CK2, LLC, T/A Quick Mart	11 ABC 02087	02/29/11	26:20 NCR 1566
ABC Commission v. GK Mart Inc., T/A GK Mart	11 ABC 02647	07/22/11	
ABC Commission v. Universal Entertainment, LLC T/A Zoo City Saloon (name changed to El Patron Night Club and Bar)	11 ABC 06892	11/04/11	
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ABC Commission v. CH Pub LLC, T/A Kildares Irish Pub	11 ABC 07109	08/16/11	
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