

# ***NORTH CAROLINA REGISTER***

**VOLUME 22 • ISSUE 06 • Pages 357 - 395**

**September 17, 2007**

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2007 – December 2007

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 (first legislative day of the next regular session)	270 <sup>th</sup> day from publication in the Register
21:13	01/02/07	12/07/06	01/17/07	03/05/07	03/20/07	05/01/07	05/08	09/29/07
21:14	01/16/07	12/20/06	01/31/07	03/19/07	03/20/07	05/01/07	05/08	10/13/07
21:15	02/01/07	01/10/07	02/16/07	04/02/07	04/20/07	06/01/07	05/08	10/29/07
21:16	02/15/07	01/25/07	03/02/07	04/16/07	04/20/07	06/01/07	05/08	11/12/07
21:17	03/01/07	02/08/07	03/16/07	04/30/07	05/21/07	07/01/07	05/08	11/26/07
21:18	03/15/07	02/22/07	03/30/07	05/14/07	05/21/07	07/01/07	05/08	12/10/07
21:19	04/02/07	03/12/07	04/17/07	06/01/07	06/20/07	08/01/07	05/08	12/28/07
21:20	04/16/07	03/23/07	05/01/07	06/15/07	06/20/07	08/01/07	05/08	01/11/08
21:21	05/01/07	04/10/07	05/16/07	07/02/07	07/20/07	09/01/07	05/08	01/26/08
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21:24	06/15/07	05/24/07	06/30/07	08/14/07	08/20/07	10/01/07	05/08	03/11/08
22:01	07/02/07	06/11/07	07/17/07	08/31/07	09/20/07	11/01/07	05/08	03/28/08
22:02	07/16/07	06/22/07	07/31/07	09/14/07	09/20/07	11/01/07	05/08	04/11/08
22:03	08/01/07	07/11/07	08/16/07	10/01/07	10/22/07	12/01/07	05/08	04/27/08
22:04	08/15/07	07/25/07	08/30/07	10/15/07	10/22/07	12/01/07	05/08	05/11/08
22:05	09/04/07	08/13/07	09/19/07	11/05/07	11/20/07	01/01/08	05/08	05/31/08
22:06	09/17/07	08/24/07	10/02/07	11/16/07	11/20/07	01/01/08	05/08	06/13/08
22:07	10/01/07	09/10/07	10/16/07	11/30/07	12/20/07	02/01/08	05/08	06/27/08
22:08	10/15/07	09/24/07	10/30/07	12/14/07	12/20/07	02/01/08	05/08	07/11/08
22:09	11/01/07	10/11/07	11/16/07	12/31/07	01/21/08	03/01/08	05/08	07/28/08
22:10	11/15/07	10/25/07	11/30/07	01/14/08	01/21/08	03/01/08	05/08	08/11/08
22:11	12/03/07	11/08/07	12/18/07	02/01/08	02/20/08	04/01/08	05/08	08/29/08
22:12	12/17/07	11/26/07	01/01/08	02/15/08	02/20/08	04/01/08	05/08	09/12/08

## **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.

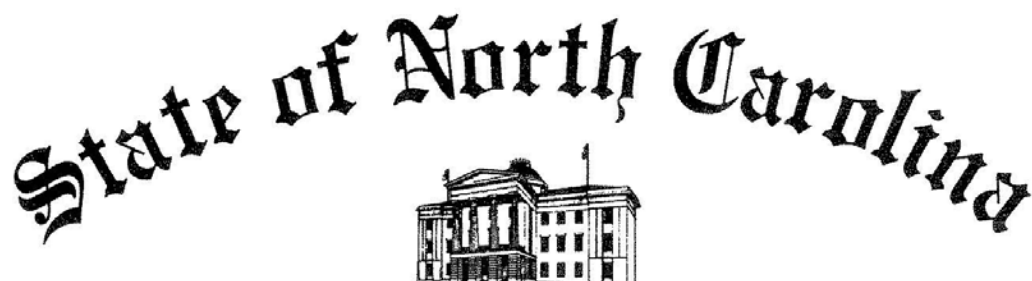
### **NOTICE OF TEXT**

**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.



MICHAEL F. EASLEY  
GOVERNOR

**EXECUTIVE ORDER NO. 122  
REPLACING EXECUTIVE ORDER NO. 74  
CONCERNING CREATION OF A PROGRAM OFFICE, A POLICY BOARD,  
AND ADVISORY COMMITTEES, TO SUPPORT SUSTAINABLE NATURAL  
RESOURCE AND ENVIRONMENTAL MANAGEMENT IN THE  
ALBEMARLE-PAMLICO ESTUARINE SYSTEM**

**WHEREAS**, the Albemarle-Pamlico National Estuary Program (APNEP), formerly known as the Albemarle-Pamlico Estuarine Study, is a cooperative effort established by the State of North Carolina and the United States Environmental Protection Agency; and

**WHEREAS**, the mission of the APNEP is to identify, restore, and protect the significant resources in the Albemarle-Pamlico estuarine system in North Carolina and southeast Virginia; and

**WHEREAS**, the APNEP is a collaborative effort involving state, federal, regional, local, educational, and public entities in the protection and enhancement of the Albemarle-Pamlico estuarine system; and

**WHEREAS**, Congress designated the Albemarle-Pamlico estuarine system as an "estuary of national significance" in 1987; and

**WHEREAS**, the APNEP was the first National Estuary Program to be designated under Section 320 of the Clean Water Act; and

**WHEREAS**, the APNEP has provided extensive information and supported scientific research about natural resource and environmental issues facing the Albemarle-Pamlico estuary since 1987; and

**WHEREAS**, scientific information from the Albemarle-Pamlico Estuarine Study was combined with extraordinary involvement by citizens to develop a Comprehensive Conservation and Management Plan (CCMP) entitled "A Guide to Environmental and Economic Stewardship in the Albemarle-Pamlico Region" that was adopted in 1994; and

**WHEREAS**, the CCMP also recognizes that, from an ecological and economic standpoint, the most effective means to ensure the environmental health and sustainability of the

Albemarle-Pamlico estuarine system is to manage and protect the resources in the five major river basins of the watershed; and

**WHEREAS**, the CCMP also recognizes the importance of involving the public in making decisions regarding natural resource and environmental management, and research;

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

**Section 1. Establishment.**

An **Albemarle-Pamlico National Estuary Program Office** is hereby established to coordinate and facilitate the implementation and advancement of the CCMP, the APNEP mission, and the activities of the Policy Board and Advisory Committees. The APNEP Program Office shall serve as a conduit for information between the Policy Board, Advisory Committees, state and federal agencies, local government, tribes, academia, and the public. The Program Office will be located in the Offices of the Secretary of the North Carolina Department of Environment and Natural Resources (DENR).

A **Policy Board** for the Albemarle-Pamlico watershed shall be established to work with DENR and the Program Office to advise, support, evaluate, update, advocate, and guide the implementation of the CCMP and the APNEP mission.

A Committee of Citizen Advisors ("**Citizen Advisory Committee**") for the Albemarle-Pamlico watershed shall be established to advise and support the Policy Board, and to serve as liaisons to local agencies and interested parties regarding environmental and natural resource management concerns and issues relevant to implementation of the CCMP and the APNEP mission.

A Committee of Science and Technical Advisors ("**Science and Technical Advisory Committee**") for the Albemarle-Pamlico watershed shall be established to advise the Policy Board and agencies responsible for implementation of the CCMP on scientific and technical issues.

A Committee of Management Agency Representatives ("**Management Advisory Committee**") for the Albemarle-Pamlico watershed shall be established to facilitate and support the implementation and advancement of the CCMP management actions and the APNEP mission.

**Section 2. Program Boundaries.**

The boundaries of the Albemarle-Pamlico National Estuary Program are the geographic area of each of the following river basins as defined by the hydrologic boundaries ascribed to it by the North Carolina Department of Environment and Natural Resources:

1. Neuse (including areas of the White Oak River Basin that drain to Core and Bogue sounds),
2. Tar-Pamlico (including areas draining directly into the northern Pamlico Sound),
3. Roanoke (that portion of the basin below Lake Gaston dam),
4. Chowan (including the portion of the basin located in Virginia), and
5. Pasquotank (including waters and areas that drain directly into the Albemarle, Currituck, Croatan, and Roanoke sounds, as well as that portion of the basin located in Virginia).

**Section 3. Policy Board.**

**A. Membership.**

1. The Secretary of the Department of Environment and Natural Resources shall appoint or invite the initial Policy Board membership.
2. The Policy Board will be broad-based and include the following:
  - a. The Secretary of North Carolina Department of Environment and Natural Resources, or designee;
  - b. The Secretary of Natural Resources of the Commonwealth of Virginia, or designee, is invited to participate;
  - c. The Executive Director of the North Carolina Clean Water Management Trust Fund, or designee;
  - d. One representative of Partnership for the Sounds;
  - e. One representative of Cooperative Extension;
  - f. One representative of Sea Grant;
  - g. Two representatives from each of the Advisory Committees;
  - h. One who shall, at the time of appointment, is actively connected with higher education.
  - i. One who shall, at the time of appointment, is actively connected with local or regional planning;
  - j. One who shall, at the time of appointment, is actively connected with major business or industry;
  - k. One who shall, at the time of appointment, is actively connected with the commercial fishing or seafood industry;
  - l. One who shall, at the time of appointment, is actively connected with agriculture;
  - m. One who shall, at the time of appointment, is actively connected with forestry;
  - n. One who shall, at the time of appointment, is actively associated with a local, state, or national conservation organization;
  - o. One who shall, at the time of appointment, is actively connected with or have experience in finance/banking;
  - p. One who shall, at the time of appointment, is actively connected with communication media;
  - q. One at-large member; and

- r. A representative of the United States Environmental Protection Agency--National Estuary Program is invited to participate as a non-voting ex-officio member.
  - 3. Members must reside or have interests within the program boundaries.
  - 4. Each member shall serve a three-year term, renewable once consecutively. The membership will have staggered appointments so that one-third of the membership can be reappointed each year.
  - 5. Vacancies shall be filled by appointment or invitation from the remaining Board members as set forth in the Board's bylaws.
  - 6. The Policy Board may expand its membership, as it deems necessary, upon two-thirds affirmative vote.
- B. Duties.
- 1. The role of the Policy Board shall be to guide, evaluate, and support the CCMP implementation process and advancement of the CCMP and its management actions, and to ensure the highest level of collaboration, coordination, and cooperation among state and federal agencies, local governments, the public, and various interest groups.
  - 2. The Policy Board shall consult the Advisory Committees for recommendations pertaining to implementation of CCMP management actions at the regional and local level, and the coordination and development of research and monitoring priorities.
  - 3. The Policy Board shall advise the state, federal, and local agencies responsible for environmental and natural resource management about concerns and issues relevant to implementation of the CCMP.
  - 4. The Policy Board shall make recommendations based on CCMP implementation progress and success, and shall identify and prioritize information needs as described in the CCMP.
  - 5. The Policy Board shall evaluate the relevance of the CCMP and consult the Advisory Committees for recommendations on amending the CCMP to address new or emerging issues that may affect the significant natural resources of the Albemarle-Pamlico estuarine system.
  - 6. The Policy Board shall be an advocate for the implementation of the CCMP and the APNEP mission and the APNEP.
  - 7. The Policy Board, in cooperation with the Program Office, shall assist in the development of an annual report, budget, and work plan that address priorities for implementing and updating the CCMP.
  - 8. The Policy Board will have no authority other than as an advisory body.
  - 9. The Policy Board shall be responsible for determining its own rules of order, bylaws, chairmanship, attendance requirements, and other matters of protocol.
- C. Meetings.
- 1. The Policy Board shall meet at least two times each year or more frequently if deemed appropriate by the Chair or upon request by the Program Director.



2. Federal, state, and local agencies with environmental management responsibilities in the Albemarle-Pamlico watershed are invited to participate in meetings of the Policy Board.
3. All meetings shall be open to the public and noticed in accordance with North Carolina's open meeting laws.

**Section 4. Advisory Committees.**

**A. Citizen Advisory Committee**

1. Membership.
  - a. Citizen Advisory Committee (CAC) members must reside, or have interests, within the program boundaries of the Albemarle-Pamlico National Estuary Program.
  - b. Membership shall include:
    1. One representative of the Soil and Water Conservation Districts in North Carolina;
    2. One representative of the Soil and Water Conservation Districts in Virginia is invited;
    3. Two representatives from non-governmental environmental conservation organizations;
    4. One representative of environmental education;
    5. One representative of K-12 education;
    6. One representative from industry or business;
    7. One representative of agriculture;
    8. One representative of commercial fishing or the seafood industry;
    9. One representative of forestry;
    10. One representative of county government;
    11. One representative of municipal or town government;
    12. One representative from each of the following:
      - a. North Carolina League of Municipalities, and
      - b. North Carolina Association of County Commissioners;
    13. One representative from each of the following is invited:
      - a. Virginia Municipal League, and
      - b. Virginia Association of Counties;
    14. One representative is invited to represent the State recognized tribal organizations from within the program boundaries in North Carolina;
    15. One representative is invited to represent the State recognized tribal organizations from within the program boundaries in Virginia; and
    16. Six at-large positions.
  - c. The CAC may expand its membership to include other interested parties as it deems necessary and as set forth in the committee's bylaws.
  - d. Members shall serve a three-year term, renewable once consecutively. The membership will have staggered appointments so that one-third of the membership can be reappointed each year.

- e. The Director of the Albemarle-Pamlico National Estuary Program Office shall nominate the initial CAC membership to be approved by the Policy Board. In making his nominations, the Director shall, to the greatest extent possible, seek to ensure geographic, demographic and social balance, and willingness to serve.
    - f. Vacancies shall be filled by appointment or invitation from the remaining CAC members as set forth in the committee's bylaws.
  - 2. Duties.
    - a. The CAC shall be responsible for coordinating CCMP implementation strategies at a local level.
    - b. The CAC shall advise and consult with the Policy Board, Science and Technical Advisory Committee, Management Advisory Committee, the public, and various interest groups, as well as local agencies within the Albemarle-Pamlico watershed regarding implementation of CCMP management actions and advancement of the CCMP at the local level.
    - c. The CAC shall be an advocate for the implementation of the CCMP and the APNEP mission and the APNEP at the local level.
    - d. The CAC will have no authority other than as an advisory body.
    - e. The CAC shall select two members to serve on the Policy Board.
    - f. The CAC shall be responsible for determining its own rules of order, bylaws, chairmanship, attendance requirements, and other matters of protocol.
  - 3. Meetings.
    - a. The CAC shall meet at least two times each year, or more frequently if deemed appropriate or upon request by the Policy Board or the Program Director.
    - b. Federal, state, and local agencies with environmental management responsibilities in the Albemarle-Pamlico watershed are invited to participate in meetings of the CAC.
    - c. All meetings shall be open to the public and noticed in accordance with North Carolina's open meeting laws.
- B. Science and Technical Advisory Committee
- 1. Membership.
    - a. The Science and Technical Advisory Committee (STAC) will be broad-based and should include scientists and researchers from local colleges, universities, and research institutions, as well as technical staff from federal, state, and local agencies, industry, and environmental organizations.
    - b. All members will be expected to have an advanced degree (Master's or above) and/or extensive experience (at least 6 years), with expertise in scientific and technical fields germane to the mission of the APNEP.
    - c. The Director of the Albemarle-Pamlico National Estuary Program Office shall nominate the initial STAC membership to be approved by the Policy Board. In making his nominations, the Director shall, to the greatest extent possible, seek to ensure broad-based science and technical representation

- for research, monitoring, and resource management issues germane to the Albemarle-Pamlico watershed.
- d. Members should have expertise in science and technology relevant to environment and natural resource management, including but not limited to: landscape ecology, terrestrial ecology, wetlands ecology, submerged aquatic ecology, marine biology, hydrology, remote sensing, ecological assessment, engineering, agricultural technologies, forest technologies, soil conservation, water quality modeling, environmental policy, economics, public policy, planning, spatial statistics, and law.
  - e. Each member shall serve a three-year term, renewable once consecutively. The membership will have staggered appointments so that one-third of the membership can be reappointed each year.
  - f. Vacancies shall be filled by appointment or invitation from the remaining committee members as set forth in the committee's bylaws.
2. Duties.
- a. The STAC shall be responsible for recommending research and monitoring activities and needs related to CCMP implementation or advancement to the Policy Board and the Program Office.
  - b. The STAC shall advise and consult with the Policy Board, the public, and various interest groups, as well as local, state, and federal governments within program boundaries on scientific and technical issues affecting implementation and advancement of the CCMP management actions. Members shall advise these groups of actions and information relevant to research and monitoring issues in the Albemarle-Pamlico watershed.
  - c. The STAC will have no authority other than as an advisory body.
  - d. The STAC will serve as a forum for the exchange of scientific information about the Albemarle-Pamlico estuarine system.
  - e. The STAC shall select two members to serve on the Policy Board.
  - f. The STAC shall be responsible for determining its own rules of order, bylaws, chairmanship, attendance requirements, and other matters of protocol.
3. Meetings.
- a. The STAC shall meet at least two times each year, or more frequently if deemed appropriate or upon request by the Policy Board or the Program Director.
  - b. Federal, state, and local agencies with environmental management responsibilities in the Albemarle-Pamlico watershed are invited to participate in meetings of STAC.
  - c. All meetings shall be open to the public and noticed in accordance with North Carolina's open meeting laws.
- C. Management Advisory Committee
- 1. Membership.
    - a. The Management Advisory Committee (MAC) will be broad-based and should include representation from federal, state, and local agencies with

environmental and natural resource management responsibilities within the Albemarle-Pamlico watershed.

- b. The Director of the Albemarle-Pamlico National Estuary Program Office shall nominate the initial MAC membership to be approved by the Policy Board. In making appointments, the Policy Board shall, to the greatest extent possible, seek to ensure that appropriate management agencies are included.
  - c. The MAC may expand its membership as it deems necessary and as set forth in the committee's bylaws.
  - d. Vacancies shall be filled by appointment or invitation from the remaining committee as set forth in the committee's bylaws.
2. Duties.
- a. The MAC shall be responsible for coordinating, supporting, and advocating CCMP implementation strategies at a state and federal agency level.
  - b. The MAC shall advise and consult with the Policy Board, CAC, and STAC on the implementation of CCMP management actions and advancement of the CCMP at the federal, state, and local agency level.
  - c. The MAC will have no authority other than as an advisory body.
  - d. The MAC shall select two members to serve on the Policy Board.
  - e. The MAC shall be responsible for determining its own rules of order, bylaws, chairmanship, attendance requirements, and other matters of protocol.
  - f. The MAC will serve as a forum for the exchange of management information about the Albemarle-Pamlico estuarine system.
3. Meetings.
- a. The MAC shall meet at least two times each year, or more frequently if deemed appropriate or upon request by the Policy Board or Program Director.
  - b. All meetings shall be open to the public and noticed in accordance with North Carolina's open meeting laws.

#### **Section 5. Compensation, Per Diems, and Expenses.**

Members of the APNEP Policy Board and Advisory Committees shall serve voluntarily and without compensation or per diems. Extraordinary expenses may be reimbursed subject to approval by the Program Director.

#### **Section 6. Effect of Other Executive Orders.**

All other Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded. This order specifically replaces Executive Order No. 74.

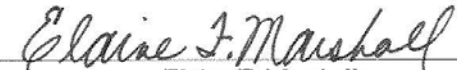
This Order shall become effective immediately and remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this second day of August in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-second.



  
\_\_\_\_\_  
Michael F. Easley  
Governor

ATTEST:

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

**Note from the Codifier:** This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DENR:

Application by: Carl Perry, President  
E-Z Set Company, Inc  
PO Box 176  
Haymarket, VA 21068

For: Innovative Approval for "E-Z Drip" subsurface drip wastewater system

DENR Contact: Ted Lyon  
1-919-715-3274  
Fax: 919-715-3227  
[ted.lyon@ncmail.net](mailto:ted.lyon@ncmail.net)

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Water Protection Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Water Protection Section web site: [http://www.deh.enr.state.nc.us/osww\\_new/new1//index.htm](http://www.deh.enr.state.nc.us/osww_new/new1//index.htm).

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Ted Lyon, Chief, On-site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or [ted.lyon@ncmail.net](mailto:ted.lyon@ncmail.net), or fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY  
DDSM Properties, LLC**

Pursuant to N.C.G.S. § 130A-310.34, DDSM Properties, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Salisbury, Rowan County, North Carolina. The Property, which is known as the former Bendix Heavy Vehicle Systems Facility, consists of 20.96 acres and is located at 727 Bendix Drive. Environmental contamination exists on the Property in soil and groundwater. DDSM Properties, LLC has committed itself to redevelop the Property for manufacturing, warehousing, distribution, office and, with prior written DENR approval, other non-residential commercial uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and DDSM Properties, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Rowan Public Library, 201 W. Fisher Street, Salisbury, North Carolina 28144-4935, by contacting Melody Moxley at that address, in the reference area (2<sup>nd</sup> floor) or by phone at (704) 216-8230; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if DDSM Properties, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on September 18, 2007. All such comments and requests should be addressed as follows:

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

**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 19A – DEPARTMENT OF TRANSPORTATION

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Department of Transportation intends to amend the rules cited as 19A NCAC 02D .0801, .0803, .0805 - .0807, .0810, .0812, .0818, .0825, .0827, .0830 and repeal the rules cited as 19A NCAC 02D .0802, .0804, .0808 - .0809, .0811, .0813 - .0817, .0819, .0821 - .0824, .0828.

**Proposed Effective Date:** January 1, 2008

### Public Hearing:

**Date:** October 9, 2007

**Time:** 2:00 p.m.

**Location:** Department of Transportation Building, Room 150, 1 South Wilmington Street, Raleigh, NC

**Reason for Proposed Action:** The purpose of the proposed revisions to the administrative code is to update the code to reflect changes in operating procedures.

**Procedure by which a person can object to the agency on a proposed rule:** Any person objecting to these proposed rule changes may contact Victor Barbour at 1591 Mail Service Center, Raleigh, NC 27699-1591 or fax (919) 250-4119 or [vbarbour@dot.state.nc.us](mailto:vbarbour@dot.state.nc.us).

**Comments may be submitted to:** Victor Barbour, 1591 Mail Service Center, Raleigh, NC 27699-1591, fax (919) 250-4119, email [vbarbour@dot.state.nc.us](mailto:vbarbour@dot.state.nc.us)

**Comment period ends:** November 16, 2007

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

### Fiscal Impact:

☐

State

☐

Local

☐

Substantive (≥\$3,000,000)

☒

None

## CHAPTER 02 - DIVISION OF HIGHWAYS

### SUBCHAPTER 02D - HIGHWAY OPERATIONS

#### SECTION .0800 - PREQUALIFICATION: ADVERTISING AND BIDDING REGULATIONS

##### 19A NCAC 02D .0801 PREQUALIFYING TO BID: REQUALIFICATION

(a) In order to ensure that contracts let pursuant to G.S. 136-28.1(a) are awarded to responsible bidders, prospective bidders and contractors shall comply with the rules set forth in this Section except as otherwise provided by law. prequalify with the Department. For highway construction, maintenance and repair contracts other than those specified in G.S. 136-28.1(a), prequalification requirements shall be specified in the bid documents. The requirements for prequalification are as follows:

- (1) ~~Applicant must submit a completed NCDOT Experience Questionnaire along with any additional supporting information requested by the Department.~~
- (2) ~~Applicant must demonstrate that he has sufficient ability and experience in related highway construction projects to perform the work specified in NCDOT contracts, including the type and dollar value of previous contracts.~~
- (3) ~~Applicant must demonstrate a history of successful performance and completion of projects in a timely manner, subject to contractual time adjustments.~~
- (4) ~~Applicant must demonstrate the financial ability to furnish bonds as specified in G.S. 44A-26.~~
- (5) ~~Applicant must demonstrate sufficient available equipment to perform highway construction contracts in a timely manner.~~
- (6) ~~Applicant must demonstrate sufficient available experienced personnel to perform highway construction contracts. The identities and qualifications of both management and labor work force shall be provided.~~
- (7) ~~Applicant must provide names and addresses of persons for whom the firm has performed~~



~~related type work. Responses from the references must be on Department of Transportation forms and must be received by the Department prior to evaluating the request for prequalification.~~

- ~~(8) Applicant must provide any information requested concerning the corporate and operational management structure of the company, the identity of persons or entities owning stock or other equity interest in the company, and the relationship between the applicant and any other company prequalified with the Department or applying for prequalification.~~

~~Any prospective bidder, not prequalified, may request a NCDOT Experience Questionnaire form from the State Contractual Services Engineer, Division of Highways, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The Experience Questionnaire form must be completed in its entirety and signed by an officer of the firm; the officer's signature shall be notarized. In addition to submitting the Experience Questionnaire form as set forth in this Rule, the prospective bidder shall submit supporting information in a format of his/her choosing to address the requirements listed in this Rule. All required statements and documents shall be filed with the State Highway Construction and Materials Engineer by the prospective bidder at least two weeks prior to the date of opening of bids. A bid shall not be opened unless all prequalification requirements have been met by the bidder and have been found to be acceptable by the Chief Engineer-Operations.~~

~~(b) In order to be eligible to contract with the Department pursuant to G.S. 136-28.1(a), all prospective bidders and subcontractors shall be prequalified with the Department to ensure that they are responsible bidders and reputable contractors capable of effectively and efficiently performing the work awarded to them. Upon a determination by the Department that all prequalification requirements have been met, the applicant shall be assigned a Prequalification Number. This Prequalification Number shall thereafter be assigned to all applicants for prequalification or requalification which the Department determines are under sufficient common ownership and management control to warrant prequalification as a single entity. This determination by the Department shall be based on the information submitted with the Experience Questionnaire and any other information obtained by the Department.~~

~~(c) The requirements of prequalification are as follows:~~

- ~~(1) Applicants shall demonstrate the necessary experience, knowledge, and expertise to safely perform and timely complete highway construction projects in which they bid or subcontract;~~
- ~~(2) Applicants shall demonstrate that they have sufficient financial resources, including available equipment and qualified personnel, to adequately perform and timely complete highway construction projects in which they bid or subcontract;~~

- (3) Applicants shall demonstrate that they have the necessary knowledge and expertise to comply with all state and federal environmental laws relating to highway construction, maintenance and repair contracts; and

- (4) Applicants shall certify they are independent and not affiliated with other bidders of the same project.

~~(e)(d) Bidders shall comply with all applicable laws regulating the practice of general contracting as contained in G.S. 87.~~

~~(d) All bidders must requalify biennially. To requalify, the prospective bidder must submit a completed Experience Questionnaire form, acceptable to the State Highway Construction and Materials Engineer, on or before the anniversary date of the original prequalification. Experience Questionnaire forms shall be furnished approximately 30 days prior to the anniversary date and must be completed and executed in the same manner as the original form. The Experience Questionnaire form shall be submitted to the State Contractual Services Engineer.~~

(e) Prospective bidders and subcontractors shall update their prequalification status annually and shall completely requalify every three years.

(f) A prequalified bidder or subcontractor must maintain compliance with the rules in this Section at all times in order to be eligible to contract with the Department pursuant to G.S. 136-28.1(a). If at any time a bidder or subcontractor fails to comply with these Rules, the Department shall disqualify the bidder or subcontractor from any further bidding until he is able to demonstrate compliance with these requirements by requalifying.

*Authority G.S. 136-18(1); 136-28.1; 136-44.1; 136-45; 143B-350(f).*

#### **19A NCAC 02D .0802 INVITATION TO BID**

~~After an advertisement to bid has been made, an invitation to bid will be mailed to contracting firms, material suppliers, and other interested parties who have requested they be placed on the invitation to bid mailing list, informing them that bids will be received for the construction of specific projects. Such invitation will indicate the project number, length, locations, and descriptions; a general summary of the items and approximate quantities of work to be performed; and the time and place for the public opening and reading of the bids received. Information concerning the cost and the availability of plans and proposal forms will also be indicated in the invitation to bid.~~

*Authority G.S. 136-18(1); 136-28.1; 143B-350(g).*

#### **19A NCAC 02D .0803 ADVERTISEMENT AND INVITATIONS FOR BIDS**

~~(a) All projects shall be advertised in three widely-circulated daily newspapers throughout the state prior to the bid opening.~~

(b) After an advertisement to bid has been made, an invitation to bid shall be made available to those contracting firms, material suppliers and other interested parties who have requested they be placed on the invitation to bid list. The invitation to bid shall be

mailed out or otherwise made available on the date of advertisement. ~~An invitation to bid will be mailed to those contracting firms, material suppliers and other interested parties who have requested they be placed on the invitation to bid mailing list. This invitation to bid will be mailed out on the day the advertisement appears in the newspapers.~~

(c) The invitation to bid shall indicate the contract identification number and description of the projects to be let, a general summary of the items and approximate quantities of work to be performed, and the time and place for the public opening and reading of the bids received. Information concerning the cost and the availability of bid documents shall also be provided in the invitation to bid.

(d) Prospective bidders that desire to bid on projects identified in the invitation to bid shall purchase the project specific bid documents from the Department containing information necessary to submit the appropriate bid. Other interested parties may also purchase project specific bid documents from the Department. Documents may be purchased at cost from the Department.

*Authority G.S. 136-28.1; 143-129.*

#### **19A NCAC 02D .0804 CONTENTS OF PROPOSAL FORMS**

~~(a) A proposal form will be furnished by the Department upon request. Each proposal form will be marked on the front cover by the Department with the name of the firm or individual to whom it is being furnished. This form will state the location of the contemplated construction and will show a schedule of contract items with the approximate quantity of each of these items for which bid prices are invited. It will set forth the date and time for the opening of bids. The form will also include any special provisions or requirements which vary from or are not contained in the plans or standard specifications.~~

~~(b) All papers bound with the proposal form are necessary parts thereof and shall not be detached, taken apart, or altered.~~

~~(c) The plans, standard specifications, and other documents designated in the proposal form shall be considered a part of the proposal form whether attached or not.~~

~~(d) The prospective bidder will be required to pay the Department of Transportation the sum stated in the invitation to bid for each copy of the proposal form and each set of plans requested.~~

*Authority G.S. 136-18(1); 136-28.1.*

#### **19A NCAC 02D .0805 COMBINATION BIDS**

~~If the The Department so elects, proposal forms may issue be issued proposals for projects in combination or separately, so that bids may be submitted either on the combination or on separate units of the combination. The Department shall The right is reserved to make awards on combination bids or separate bids to the best advantage of the Department. No combination bids, other than those specified by the Department in the proposal form proposals, will shall be considered.~~

*Authority G.S. 136-18(1); 136-28.1.*

#### **19A NCAC 02D .0806 INTERPRETATION OF QUANTITIES IN PROPOSAL FORM**

~~(a) The quantities appearing in the proposal form—are approximate only and are to shall be used for the comparison of bids. Payment to the contractor willshall be made only for the actual quantities of the various items that are completed and accepted in accordance with the terms of the contract.~~

~~(b) When quantities are shown for items to be bid on a lump sum basis, these quantities are furnished for the convenience of bidders, and the Department assumes no responsibilityshall not be responsible for, nor guarantees guarantee as correct, any quantity given.~~

*Authority G.S. 136-18(1); 136-28.1.*

#### **19A NCAC 02D .0807 EXAMINATION OF PLANS: SPECS: CONTRACT: AND SITE OF WORK**

~~A The bidder shall examine carefully—the site of the work contemplated, the plans and specifications, and the proposal and contract forms therefor. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and scope of work to be performed; the quantities of materials to be furnished; and as to the conditions and requirements of the proposal and plans under which his bid is offered. and as to the requirements of the proposal form, plans, specifications, and contract. A bidder or contractor shall make such independent investigation and examination as he deems necessary to satisfy himself as to conditions to be encountered in the performance of the work and with respect to possible local material sources, the quality and quantity of material available from such property, and the type and extent of processing that may be required in order to produce material conforming to the requirements of the specifications contract.~~

*Authority G.S. 136-18(1); 136-28.1.*

#### **19A NCAC 02D .0808 PREPARATION AND SUBMISSION OF BIDS**

~~All bids shall be prepared and submitted in accordance with the following listed requirements:~~

- ~~(1) The proposal form furnished by the department shall be used and shall not be taken apart or altered. The bid shall be submitted on the same proposal form which has been furnished to the bidder by the department as identified by the bidder's name marked on the front cover by the department.~~
- ~~(2) All entries including signatures shall be written in ink.~~
- ~~(3) The bidder shall submit a unit or lump sum price for every item in the proposal form other than items which are authorized alternates to those items for which a bid price has been submitted. As an exception to this Rule, when the proposal form permits a bidder to submit a bid on only a portion of the work covered by the entire proposal form, the bidder shall then submit a unit or lump sum price for every item~~

- constituting that portion of the work on which the bidder has elected to place a bid other than items which are authorized alternates to those items for which a bid price has been submitted. The unit or lump sum prices bid for the various contract items shall be written in figures. The unit prices shall be rounded off by the bidder to contain no more than four decimal places.
- (4) ~~An amount bid shall be entered in the proposal form for every item on which a unit price has been submitted. The amount bid for each item other than lump sum items shall be determined by multiplying each unit bid price by the quantity for that item, and shall be written in figures in the "Amount Bid" column in the proposal form. In the case of lump sum items, the price shall be written in figures in the "Amount Bid" column in the proposal form.~~
  - (5) ~~The total amount bid shall be written in figures in the proper place in the proposal form. The total amount bid shall be determined by adding the amounts bid for each item.~~
  - (6) ~~Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the bidder shall initial the change in ink.~~
  - (7) ~~The bid shall be properly executed. In order to constitute proper execution, the bid shall be executed in strict compliance with the following:~~
    - (a) ~~If a bid is by an individual, it shall show the name of the individual and shall be signed by the individual with the word "Individually" appearing under the signature. If the individual operates under a firm name, the bid shall be signed in the name of the individual doing business under the firm name.~~
    - (b) ~~If the bid is by a corporation, it shall be executed in the name of the corporation by the president, vice president, or assistant vice president. It shall be attested by the Secretary or assistant secretary. The seal of the corporation shall be affixed. If the bid is executed on behalf of a corporation in any other manner than as listed in this Rule, a certified copy of the minutes of the board of directors of said corporation authorizing the manner and style of execution and the authority of the person executing shall be attached to the bid or shall be on file with the department.~~
  - (c) ~~If the bid is made by a partnership, it shall be executed in the name of the partnership by one of the partners.~~
  - (d) ~~If the bid is a joint venture, it shall be executed by each of the joint venturers in the appropriate manner set out in this Rule. In addition, the execution by the joint venturers shall appear below their names.~~
  - (e) ~~The bid execution shall be notarized by a notary public whose commission is in effect on the date of execution. Such notarization shall be applicable both to the bid and to the non-collusion affidavit which is part of the signature sheets.~~
  - (8) ~~The bid shall not contain any unauthorized additions, deletions, or conditional bids.~~
  - (9) ~~The bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.~~
  - (10) ~~The bid shall be accompanied by a bid bond on the form furnished by the department or by a bid deposit. The bid bond shall be completely and properly executed in accordance with the requirements of Rule .0809 of this Section. The bid deposit shall be a certified check or cashiers check in accordance with Rule .0809 of this Section.~~
  - (11) ~~The bid shall be placed in a sealed envelope and shall have been delivered to and received by the department prior to the time specified in the invitation to bid.~~
  - (12) ~~The bid shall not be an unbalanced bid.~~

*Authority G.S. 136-18(1); 136-28.1.*

#### **19A NCAC 02D .0809 BID BOND OR BID DEPOSIT**

- (a) ~~Each bid shall be accompanied by a corporate bid bond or a bid deposit of a certified or cashiers check in the amount of at least five percent of the total amount bid for the contract. No bid will be considered or accepted unless accompanied by one of the foregoing securities. The bid bond shall be executed by a corporate surety licensed to do business in North Carolina and the certified check or cashiers check shall be drawn on a bank or trust company insured by the Federal Deposit Insurance Corporation and made payable to the Department of Transportation in an amount of at least five percent of the total amount bid for the contract.~~
- (b) ~~The condition of the bid bond or bid deposit is: the principal shall not withdraw its bid within 60 days after the opening of the same, and if the Board of Transportation shall award a contract to the principal, the principal shall within 10 days after the notice of award is received by him, give payment and performance bonds with good and sufficient surety as required for the faithful performance of the contract and the protection of all persons supplying labor and materials in the prosecution of the work; in the event of the failure of the principal to give such~~

payment and performance bond such contract and execute such documents as required then the amount of the bid bond shall be immediately paid to the Department as liquidated damages or, in the case of a bid deposit, the deposit shall be forfeited to the Department.

(c) ~~Withdrawal of a bid due to a mistake made in the preparation of the bid, where permitted by Rule .0813 of this Section shall not constitute withdrawal of a bid as cause for payment of the bid bond or forfeiture of the bid deposit.~~

(d) ~~When a bid is secured by a bid bond, the bid bond shall be on the form furnished by the Department. The bid bond shall be executed by both the bidder and a corporate surety licensed under the laws of North Carolina to write such bonds. The execution by the bidder shall be in the same manner as required by Rule .0808 of this Section for the proper execution of the bid. The execution by the corporate surety shall be the same as is provided for by Rule .0808(7)(b) of this Section for the execution of the bid by a corporation. The seal of the corporate surety shall be affixed to the bid bond. The bid bond form furnished is for execution of the corporate surety by a General Agent or Attorney in Fact. A certified copy of the Power of Attorney shall be attached if the bid bond is executed by a General Agent or Attorney in Fact. The Power of Attorney shall contain a certification that the Power of Attorney is still in full force and effect as of the date of the execution of the bid bond by the general agent or Attorney in Fact. If the bid bond is executed by the corporate surety by the President, Vice President, or Assistant Vice President and attested to by the Secretary or Assistant Secretary, then the bid bond form furnished shall be modified for such execution, instead of execution by the Attorney in Fact or the General Agent.~~

(e) ~~When a bid is secured by a bid deposit (certified check or cashiers check), the execution of a bid bond will not be required.~~

(f) ~~If the bidder has failed to meet all conditions of the bid bond but the Department has not received the amount due under the bid bond, the Bidder may be disqualified from further bidding as provided in Rule .0816 of this Section.~~

*Authority G.S. 136-18(1); 136-28.1; 143-129.*

#### **19A NCAC 02D .0810 DELIVERY OF BIDS**

(a) ~~All bidders shall submit bids in accordance with the bid documents to the Department. bids shall be placed in a sealed envelope having the name and address of the bidder, and the statement "Bid for the Construction of State Highway Project No. \_\_\_\_\_ in \_\_\_\_\_ County (Counties)" on the outside of the envelope.~~

(b) ~~All bids not delivered within the time or manner specified in the bid documents shall not be accepted and shall be returned to the bidder unopened or, in the case of electronic bids, not read publicly. If delivered in person, the sealed envelopes shall be delivered to the office of the Contract Officer as indicated in the invitation to Bid, except that if it is delivered in person on the day on which bids are to be opened, it shall be delivered to the place indicated in the invitation to bid. If delivered by mail, the sealed envelope shall be placed in another sealed envelope and the outer envelope addressed to the Contract Officer, Division of Highways, North Carolina Department of Transportation, Raleigh, N. C. 27611. The outer envelope shall also bear the~~

~~statement "Bid for the Construction of State Highway Project No. \_\_\_\_\_."~~

(c) ~~All bids shall be delivered prior to the time specified in the invitation to bid. All bids received after such time will not be accepted and will be returned to the bidder unopened.~~

*Authority G.S. 136-18(1); 136-28.1.*

#### **19A NCAC 02D .0811 WITHDRAWAL OR REVISION OF BIDS**

~~A bidder may, without prejudice to himself, withdraw a bid after it has been delivered to the Department, provided the request for such withdrawal is made either in writing or by telegram to the Chief Engineer Operations or the engineer presiding over the public opening of bids before the date and time set for the opening of bids. The bidder may then submit a revised bid provided it is received prior to the time set for opening of bids. Only those persons authorized to sign bids under the provisions of Rule .0808(7) of this Section shall be recognized as being qualified to withdraw a bid.~~

~~Withdrawal of a bid after the date and time set for the opening of bids will be permitted only in accordance with Rule .0813 of this Section.~~

*Authority G.S. 136-18(1); 136-28.1; 143-29.1.*

#### **19A NCAC 02D .0812 RECEIPT AND OPENING OF BIDS**

(a) ~~The Department shall open and read Bids bids will be opened and read publicly at the time and place indicated in the invitation to bid. Bidders, their authorized agents, and other interested parties are invited to may be present.~~

(b) ~~Bid evaluation, including bid rejection, waiver of irregularities, or award shall be conducted in accordance with the terms of the bid documents. A bid will be received and opened from any bidder who:~~

- (1) ~~is prequalified in accordance with the provisions of Rule .0801 of this Section; and~~
- (2) ~~has delivered the bid to the place indicated in the specifications prior to the time indicated in the invitation to bid.~~

(c) ~~Bid revisions by the Department or bid withdrawal by the bidder shall be made in accordance with the terms of the bid documents. A bid received from a bidder who has not complied with the requirements in this Rule will be returned to the bidder unopened and under no circumstances will be considered for award.~~

*Authority G.S. 136-18(1); 136-28.1.*

#### **19A NCAC 02D .0813 WITHDRAW OF BIDS – MISTAKE**

(a) ~~Criteria for Withdrawal of Bid: The Department of Transportation may allow a bidder submitting a bid pursuant to G.S. 136-28.1 for construction or repair work to withdraw his bid after the scheduled time of bid opening upon a determination that:~~

- (1) ~~a mistake was in fact made in the preparation of the bid;~~

- (2) ~~the mistake in the bid is of a clerical or mathematical nature and not one of bad judgment, carelessness in inspecting the work site, or in reading the plans and specifications;~~
- (3) ~~the mistake is found to be made in good faith and was not deliberate or by reason of gross negligence;~~
- (4) ~~the amount of the error or mistake is equal to or greater than three percent of the total amount bid;~~
- (5) ~~the notice of his mistake and request for withdrawal of the bid by reason of the mistake was promptly communicated to the Chief Engineer within 48 hours after the scheduled time of bid opening. If the Bidder notifies the Chief Engineer verbally, written notice of mistake must be submitted within 48 hours to the Chief Engineer accompanied by copies of bid preparation information;~~
- (6) ~~the Department of Transportation will not be prejudiced or damaged except for the loss of the bid.~~

~~(b) Hearing by Chief Engineer: If a bidder files a notice of mistake along with a request to withdraw his bid, the Chief Engineer (or his designee) will promptly hold a hearing thereon. The Chief Engineer will give to the requesting bidder reasonable notice of the time and place of any such hearing. The bidder may appear at the hearing and present the original working papers, documents or materials used in the preparation of the bid sought to be withdrawn, together with other facts and arguments in support of his request to withdraw his bid. The bidder shall present a written affidavit that the documents presented are the original, unaltered documents used in the preparation of the bid.~~

~~(c) Action by State Highway Administrator: A determination may be made by the administrator that the bidder meets the criteria for withdrawal of the bid as set forth in Paragraph (a) of this Rule upon presentation of clear and convincing evidence by the bidder. The Chief Engineer will present his findings to the State Highway Administrator for action on the bidder's request. The Chief Engineer will advise the Bidder of the Administrator's decision prior to the Board of Transportation's consideration of award.~~

~~(d) Bid Bond: If a bid mistake is made and a request to withdraw the bid is made, the bid bond shall continue in full force and effect until there is a determination by the Administrator that the conditions in Paragraph (a) of this Rule have been met. The effect of the refusal of the contractor to give payment and performance bonds within ten days after the notice of award is received by him, if award has been made by the Board of Transportation after consideration and denial of the contractor's request to withdraw his bid, shall be governed by the terms and conditions of the bid bond.~~

*Authority G.S. 136-18(1); 143B-350(f).*

#### **19A NCAC 02D .0814 CORRECTION OF BID ERRORS**

~~(a) General: The provisions of this Rule shall apply in waiving irregularities and correcting apparent clerical errors and~~

~~omissions in the "unit bid price" and the "amount bid" for contract bid items.~~

~~(b) Omitted Unit Bid Price—Amount Bid Completed—Quantity Bid on Is One Unit: In the case of a bid item for which the "amount bid" is completed, but the "unit bid price" is omitted and the "quantity" specified shown in the proposal for the bid item is only one unit, the "unit bid price" shall be deemed to be the same as the amount bid for that bid item and shall constitute the "contract unit price" for that bid item.~~

~~(c) Omitted Unit Bid Price—Amount Bid Completed—Quantity Bid on Is More than One Unit: In the case of a bid item for which "the amount bid" is completed (extension of the "unit bid price" by the quantity) but the "unit bid price" is omitted and the quantity shown in the proposal for the bid item is more than one unit, the "unit bid price" shall be deemed to be the amount derived by dividing the "amount bid" for that item by the quantity shown in the proposal for that bid item and shall constitute the "contract unit price" for that bid item.~~

~~(d) Discrepancy in the "Unit Bid Price" and the "Amount Bid": In the case of a bid item in which there is a discrepancy between the "unit bid price" and the extension for the bid item ("amount bid"), the "unit bid price" shall govern. As an exception to Paragraphs (a), (b), and (c) of this Rule, on bids for contracts not funded with any Federal funds, the extension for the bid item ("amount bid") shall govern when the discrepancy consists of an obvious clerical mistake in the "unit bid price" consisting of the misplacement of a decimal point. The correction to the "unit bid price" will be made only when the following two conditions are met:~~

- ~~(1) The corrected "unit bid price" multiplied by the quantity equals the "amount bid" for the bid item.~~
- ~~(2) The corrected "unit bid price" is closer to the average of the engineer's estimate and the individual bids for the contract item than the uncorrected "unit bid price".~~

~~(e) Omitted "Unit Bid Price" and Omitted "Amount Bid"—Deemed "Zero" Bid: The provisions of this Paragraph shall apply only to bids for contracts not funded with any Federal funds. In the case of omission of the "unit bid price" and the omission of the "amount bid" for any one item and also in the case of the omission of the "amount bid" where a lump sum price is called for, the "amount bid" and the "unit bid price" shall be deemed to be zero where the value of the omitted "amount bid" is one percent or less of the "total amount bid" for the entire project (excluding the omitted item). The value of the omitted "amount bid" will be derived by determining the average of the engineer's estimate and the individual bids for that contract item. Where the "unit bid price" is deemed to be zero as provided in this Paragraph, such zero "unit bid price" shall constitute the "contract unit price" for the affected bid item. Where the "amount bid" for a lump sum bid item is deemed to be zero as provided in this Paragraph, such zero "amount bids" shall constitute the "contract lump sum price" for that bid item. This Paragraph shall not apply to the bid item for "Mobilization".~~

~~(f) Unit bid prices containing more than four decimal places: In the case of a Bid Item for which the "amount bid" contains more than four decimal places for the "Unit Bid Price", only the whole~~

number and the first four decimal places shall constitute the "Contract Unit Price" for that Bid Item.

*Authority G.S. 136-18(1); 143B-350(f).*

**19A NCAC 02D .0815 REJECTION OF BIDS**

(a) ~~Any bid submitted which fails to comply with any of the requirements of Rules .0808, .0809 or .0811 of this Section shall be considered irregular and may be rejected.~~

(b) ~~Irregularities due to apparent clerical errors and omissions may be waived in accordance with Rule .0814 of this Section.~~

(c) ~~Any bid including any unit or lump sum bid price which is unbalanced to the potential detriment of the Department will be considered irregular and may be rejected. In the event the Board determines it is in the best public interest to accept such irregular bid, it may award the contract based on such bid subject to the provisions of subarticle 109-4(B) of the Standard Specifications for Roads and Structures.~~

(d) ~~In addition to Paragraphs (a), (b), and (c) of this Rule, any bids for contracts not funded with any Federal funds which are submitted by any bidder who has failed to obtain the appropriate General Contractor's license, as required by Chapter 87 of the General Statutes of North Carolina, shall be considered irregular and will not be considered for award.~~

*Authority G.S. 136-18(1); 143B-350(f).*

**19A NCAC 02D .0816 DISQUALIFICATION OF BIDDERS**

(a) ~~The Department may disqualify a contractor from further bidding until he has applied for and has been requalified in accordance with Rule .0801 of this Section for any of the following reasons:~~

- (1) ~~unsatisfactory progress in accordance with the terms and conditions of existing or previous contracts as specified in Article 108-8 or Article 105-7 of the Standard Specifications for Roads and Structures.~~
- (2) ~~uncompleted contracts which, in the judgment of the Chief Engineer, may hinder or prevent the timely completion of additional work if awarded.~~
- (3) ~~failure to comply with Article 108-6 of the Standard Specifications for Roads and Structures.~~
- (4) ~~failure to satisfy the Disadvantaged Business Enterprise requirements of the project special provisions.~~
- (5) ~~failure to submit the documents required by Article 109-9 of the Standard Specifications for Roads and Structures within 60 days after being requested by the Engineer, or the submission of false information.~~
- (6) ~~direct personal recruitment of DOT employees for employment if:~~
  - (A) ~~the personal contact is initiated by the contractor;~~
  - (B) ~~the employee works either for the DOT Construction Unit or in~~

construction operations of any of the 14 Highway Divisions in a capacity of direct involvement with highway construction work; and

(C) ~~the employee has decision making authority for the current project on which the employee and contractor are currently working.~~

(7) ~~failure to return overpayments as directed by the Engineer.~~

(b) ~~The Department shall disqualify a contractor from further bidding until he has applied for and has been requalified in accordance with Rule .0801 of this Section for any of the following reasons:~~

- (1) ~~being declared in default in accordance with Article 108-9 of the Standard Specifications for Roads and Structures.~~
- (2) ~~failure to comply with prequalification requirements.~~
- (3) ~~the submission of more than one bid for the same contract by an individual, partnership, joint venture, or corporation prequalified under the same Prequalification Number.~~
- (4) ~~evidence of collusion among bidders; each participant in such collusion shall be disqualified.~~
- (5) ~~failure to furnish a non-collusion affidavit upon request.~~
- (6) ~~failure to comply with a written order of the Engineer as provided in Article 105-1 of the Standard Specifications for Roads and Structures or oral directives given by the Department's project personnel, if in the judgment of the Chief Engineer Operations such failure is of sufficient magnitude to warrant disqualification.~~
- (7) ~~the Department has not received the amount due under a forfeited bid bond or under the terms of a performance bond.~~

(c) ~~Upon a determination that a contractor should be disqualified for one or more of the reasons listed in Paragraph (a) or (b) of this Rule, the Department may remove all entities prequalified under the same Prequalification Number.~~

*Authority G.S. 136-18(1); 136-28.1.*

**19A NCAC 02D .0817 CONSIDERATION OF BIDS**

After the bids are opened and read, they will be compared on the basis of the summation of the products of the quantities shown in the bid schedule by the unit bid prices. The results of such comparisons will be immediately available to the public. In the event of errors, omissions, or discrepancies in the bid prices, corrections to the bid prices will be made in accordance with the provision of Rule .0814 of this Section. Such corrected bid prices will be used for the comparison and consideration of bids. The Board of Transportation may reject any or all bids, waive technicalities, request the low bidder submit an up to date financial and operating statement, advertise for new bids, or

proceed to do the work otherwise, if in the judgement of the Board, the best interests of the State will be promoted thereby.

*Authority G.S. 136-18(1); 136-28.1; 143B-350(f).*

**19A NCAC 02D .0818 NON-COLLUSION AFFIDAVIT AND CERTIFICATIONS**

(a) Every bidder and subcontractor shall furnish to the Department non-collusion affidavits certifying that the bidder has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with his bid on the project. The affidavit shall also indicate that the bidder intends to do the work with its own employees or subcontractors and is not bidding for the benefit of another contractor.In compliance with Section 112(e) of title 23 USC, and rules of the Department, each and every bidder shall furnish the Department with an affidavit certifying that the bidder has not entered into any agreement, participated in any collusion, otherwise taken any action in restraint of free competitive bidding in connection with his bid on the project. The affidavit shall also indicate that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

(b) The prospective bidder and subcontractors shall also furnish executed debarment certification forms to the Department. In the event the prospective bidder or subcontractor cannot certify that he is not disbarred, the prospective bidder or subcontractor shall provide a written explanation, which the Department shall review and evaluate to determine if the bidder or subcontractor is still prequalified for bidding, contracting or subcontracting on Department projects.Affidavit forms will be included in the proposal form as part of the signature sheets. Execution of the signature sheets will also constitute execution of the non-collusion affidavit. The signature sheets shall be notarized.

(c) ~~A non-collusion certification shall be executed by prime contractors and lower tier participants in each transaction involving public funds. Transactions which require certifications from lower tier participants are:~~

- (1) ~~Transactions between a prime contractor and a person, other than for a procurement contract, for goods or services, regardless of type.~~
- (2) ~~Procurement contracts for goods and services, between a prime contractor and a person, regardless of type, expected to equal or exceed the Federal small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) [currently twenty five thousand dollars (\$25,000)] under a prime contract.~~
- (3) ~~Procurement contracts for goods or services between a prime contractor and a person, regardless of the amount, under which that person will have a critical influence on or substantive control over the transaction. Such persons include, but are not limited to, bid estimators and contract managers.~~

The certifications for both the prime contractor and the lower tier participants shall be on a form furnished by the Department of Transportation to comply with Federal Highway Administration requirements, as published in 49 CFR Part 29.

~~The prime contractor is responsible for obtaining the certifications from the lower tier participants and is responsible for keeping them as part of the contract records.~~

*Authority G.S. 136-18(1); 136-28.1; 143-54.*

**19A NCAC 02D .0819 AWARD OF CONTRACT**

(a) General: ~~When a contract is awarded, it will be made by the Board of Transportation to the lowest responsible bidder as determined by the Board. The lowest responsible bidder will be notified by letter that his bid has been accepted and that he has been awarded the contract. This letter shall constitute the notice of award. The notice of award, if the award be made, will be issued within 60 days after the opening of bids, except that with the consent of the lowest responsible bidder the decision to award the contract to such bidder may be delayed for as long a time as may be agreed upon by the Department and such bidder. In the absence of such agreement, the lowest responsible bidder may withdraw his bid at the expiration of the 60 days without penalty if no notice of award has been issued.~~

~~Award of a contract involving any unbalanced bid price(s) may be made in accordance with the provisions of Article 102 15 of the Standard Specifications for Roads and Structures.~~

(b) Award Limits: ~~A Bidder who desires to bid on more than one project or which bids are to be opened on the same date, and who also desires to avoid receiving an award of more projects than he is equipped to handle, may bid on any number of projects but may limit the total amount of work awarded to him on selected projects by completing the form "Award Limits on Multiple Projects" for each project subject to the award limit. This form will be bound within each proposal form. This form will not be effective unless the amount is filled in and the form is properly signed. In the event that a Bidder is the lowest responsible Bidder on projects subject to the award limit and the value of such projects is more than the "award limit" established by such Bidder, the Board of Transportation will not award such Bidder projects from among those subject to the award limit which have a total value exceeding the award limit. The projects to be awarded to the Bidder will be those projects on which award will result in the lowest total cost to the Department of Transportation.~~

~~In determining the lowest total cost to the Department, the options of rejecting a bid or readvertising for new bids may be considered.~~

~~All bids submitted without the properly executed form "Award Limits on Multiple Projects" will not be subject to the award limit. In the event that there is a discrepancy between the completed award limit forms submitted by the same Bidder for the different projects in a letting, the Department may declare all such award limit forms invalid or to make such interpretation of the discrepancy as may be in the best interests of the Department. However, the presence of such discrepancy shall not be reason for declaring any bid irregular nor shall it invalidate the conditions of his bid bond or bid deposit.~~

~~Where a prequalified Contractor bids individually (as opposed to a Joint Venture) on one or more projects and also bids on one or more projects as part of a Joint Venture, such individual Bidder and such Joint Venture will be considered separate bidders in applying the provisions of this Rule.~~

*Authority G.S. 136-18(1); 136-28.1.*

**19A NCAC 02D .0821 RETURN OF BID BOND OR BID DEPOSIT**

All bid bonds will be retained by the Department until the contract bonds are furnished by the successful bidder, after which all such bid bonds will be destroyed unless the individual bid bond form contains a note requesting that it be returned to the bidder or the surety. Checks which have been furnished as a bid deposit by all bidders other than the three lowest responsible bidders pursuant to G.S. 143-129 will be retained not more than 10 days after the date of opening of bids. After the expiration of such period, Department of Transportation warrants in the equivalent amount of checks which were furnished as a bid deposit will be issued. Checks which have been furnished as a bid deposit by the three lowest responsible bidders pursuant to G.S. 143-129 will be retained until after the contract bonds have been furnished by the successful bidder, at which time Department of Transportation warrants in the equivalent amount of checks which were furnished as a bid deposit will be issued.

*Authority G.S. 136-18(1); 136-28.1.*

**19A NCAC 02D .0822 CONTRACT BONDS**

The successful bidder, within 14 calendar days after the notice of award is received by him, shall provide the Department with a contract payment bond and a contract performance bond each in an amount equal to 100 percent of the amount of the contract. All bonds shall be in conformance with G.S. 44A-33. The corporate surety furnishing the bonds shall be authorized to do business in the State.

*Authority G.S. 44A-33; 136-18(1).*

**19A NCAC 02D .0823 EXECUTION OF CONTRACT**

As soon as possible following receipt of the properly executed contract bonds, the Department will complete the execution of the contract, retain the original contract, and return one certified copy of the contract to the contractor.

*Authority G.S. 136-18(1); 136-28.1.*

**19A NCAC 02D .0824 FAILURE TO FURNISH CONTRACT BONDS**

The successful bidder's failure to file acceptable bonds within 14 calendar days after the notice of award is received by him shall be just cause for the forfeiture of the bid bond or bid deposit and rescinding the award of the contract. Award may then be made to the next lowest responsible bidder or the work may be readvertised and constructed under contract or otherwise, as the Board of Transportation may decide.

*Authority G.S. 136-18(1).*

**19A NCAC 02D .0825 CONFIDENTIALITY OF COST ESTIMATES**

All cost estimates prepared by the Department for the purpose of comparing bids shall be confidential and not disclosed until after the opening of bids.

~~(a) All cost estimates prepared for the purpose of comparing bids, and the names and identity of corporations, firms, partnerships, individuals or joint venturers who have requested plans or proposal forms for the purposes of bidding, shall be confidential and not disclosed until after the opening of bids except as provided in Paragraph (c) of this Rule.~~

~~(b) This information shall be furnished to the Federal Highway Administration in accordance with written rules, regulations, policies and procedures of the Federal Highway Administration.~~

~~(c) The list of the remaining plan holders shall be made public twice between the date of advertisement and the letting date through the Department's Supportive Service contractor and other agents so designated by the State Highway Engineer—Design, except that a potential bidder who obtains a set of plans/proposals for a project may request that his name remain confidential at the time he requests the plans/proposals.~~

*Authority G.S. 133-33.*

**19A NCAC 02D .0827 SUBSURFACE INFORMATION**

(a) If a subsurface investigation report information is available on a project, a copy of the subsurface information may be obtained from the department Department by the prospective bidders upon request. A copy of the subsurface information will be mailed to plan holders upon request.

(b) The subsurface information and the subsurface investigation on which it is based are is made for the purpose of study, planning, and design, and not for construction or pay purposes. The various field boring logs, rock cores, and soil test data available may be reviewed or inspected in Raleigh at the Highway Building by contacting office of the Geotechnical Unit. Neither the subsurface investigation report information nor the field boring logs, rock cores, or soil test data shall be part of the contract.

(c) General soil and rock strata description and indicated boundaries are based on geotechnical interpretation of all available subsurface investigations data and may not necessarily reflect the actual subsurface conditions between borings or between sample strata within the borehole. The laboratory sample and the in situ (in-place) test data can be relied on only to the degree of reliability inherent in the standard test method test. The observed water levels or soil moisture conditions indicated in the subsurface investigation are as recorded at the time of the investigation. These water levels or soil moisture conditions may vary considerably with time according to climatic conditions including temperature, precipitation and wind, as well as other nonclimatic factors.

(d) Details shown on the subsurface investigation reports information are preliminary only only; and in many cases the final design details are may be different. For bidding and construction purposes, the construction plans and contract contains the documents contain the for final design information on this project. The department Department does shall not warrant or guarantee the sufficiency or accuracy of the investigation made, nor the interpretations made or opinions of the department Department as to the type of materials and



conditions ~~to that may~~ be encountered. The bidder or ~~contractor~~ subcontractor shall make such independent subsurface investigations as he deems necessary to satisfy himself as to conditions to be encountered on this project. The contractor shall have no claim for additional compensation or for an extension of time for any reason resulting from the actual conditions encountered at the site differing from those indicated in the subsurface information.

*Authority G.S. 136-18(1); 143B-350(f)(3).*

#### **19A NCAC 02D .0828 COMPUTER BID PREPARATION**

(a) ~~A diskette to assist the Bidder in preparing his bid by means of a personal computer will be furnished by the Department if so requested by the Bidder at the same time he orders a proposal form. The diskette will contain an identical copy of the itemized proposal sheets included in the proposal and computer program which may be used to prepare a bid on the sheets. The bid diskette will function properly with an IBM personal computer or compatible computer using DOS.~~

(b) ~~The only entries into the program which will be permitted by the bidder are the appropriate unit or lump sum prices for those items which must be bid in order to provide a complete bid for the project. Unit prices shall be rounded off to four decimal places. When these entries have been made, the program will automatically prepare and print a complete set of itemized proposal sheets which will include the amount bid for the various items and the total amount bid for the project in addition to the unit or lump sum prices bid. This set of itemized proposal sheets, when submitted together with the appropriate proposal form, will constitute the bid and shall be delivered to the Department in accordance with Rule .0810 of this Section. If the Bidder submits his bid on computer generated itemized proposal sheets, bid prices shall not be written on the itemized proposal sheets bound in the proposal form. The computer generated itemized proposal sheets shall be signed by the same individual who has signed the proposal form. The bid diskette furnished by the Department shall be returned with the bid.~~

(c) ~~In the case of a discrepancy between the unit or lump sum prices submitted on the itemized proposal sheets and those contained on the diskette furnished to the Department, the unit or lump sum prices submitted on the itemized proposal sheet shall prevail.~~

(d) ~~The provisions of Rule .0808 of this Section will apply to the preparation of bids except that the bid may be submitted on computer generated itemized proposal sheets in which case the entries on the itemized proposal sheets will not be required to be in ink. Changes to any entry on the computer generated itemized proposal sheets shall be made in accordance with Rule .0808(6) of this Section. When the Computer Generated Itemized Proposal Sheets are not signed and received with the proposal, this will constitute, no bid received.~~

(e) ~~The Department will not be responsible for loss or damage to a bid diskette after it has been mailed to the Bidder. If loss or damage occurs, the Bidder may order another bid diskette.~~

*Authority G.S. 136-18(1); 136-28.1.*

#### **19A NCAC 02D .0830 DEFINITIONS**

This Section establishes the Department's rules for letting of contracts ~~to bidders for highway construction or repair~~ pursuant to G.S. 136-28.1(a). For purposes of this Section, the following definitions shall apply:

- (1) ~~"Advertisement" means public advertisement inviting bids for the construction of specific projects.~~
- (2) ~~"Amount Bid" means the total amount bid for a particular item of work in a proposal.~~
- (3)(1) ~~"Bid" means the offer of a Bidder bidder on the proposal form furnished by the Department to perform work and furnish labor and materials at the prices quoted.~~
- (4)(2) ~~"Bidder" means an individual, partnership, firm, corporation, or joint venture formally submitting a bid for the work contemplated.~~
- (3) "Bid documents" means the package of materials, in paper or electronic form, containing all project specific contract information including the plans and proposals furnished by the Department.
- (5)(4) ~~"Contract" means the executed agreement between the Department of Transportation and the successful Bidder bidder, covering the performance of the work and the compensation for work.~~
- (5) "Department" means the North Carolina Department of Transportation.
- (6) "Debarment certification form" means a certification form provided by the Department for execution by the prospective bidder or subcontractor certifying that he is not, nor has been, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from certain transactions and has not been charged, indicted or convicted of debarment related activities and shall otherwise assume debarment certification responsibilities as part of any contract with the Department. "Disadvantaged Business Enterprise (DBE)" means a small business concern, as defined pursuant to Section 3 of the Small Business Act (15 USC 632), which is:
  - (a) ~~Owned and controlled by one or more socially and economically disadvantaged individuals; or~~
  - (b) ~~A firm which has been found to be socially and economically disadvantaged by the Small Business Act under the 8(d) program; or~~
  - (c) ~~A firm which has been certified as socially and economically disadvantaged by the North Carolina Department of Transportation. Such term shall not include disadvantaged individual or individuals with annual gross receipts over the preceding~~

~~three fiscal years in excess of  
fourteen million dollars  
(\$14,000,000) as adjusted by the  
Department for inflation.~~

- (7) "Invitation to bid" means the notification that bids will be received for the construction of specific projects. ~~"Extension of Bid Item" means the unit bid price multiplied by the quantity.~~
- (8) ~~"Mobilization" means the preparatory work needed to move necessary personnel, equipment, supplies, and incidentals to the project site in order to begin construction.~~
- (9) ~~"Prebid Conference" means a conference held before bids are accepted on a project to allow Contractors to become more familiar with the project and prepare more accurate bids on difficult projects.~~
- (10) "Proposal Form" means the form provided by the Department on which the offer of the Bidder to perform work at a designated bid price is submitted.

*Authority G.S. 136-28.1.*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Transportation intends to amend the rules cited as 19A NCAC 02D .1101 - .1112.*

**Proposed Effective Date:** *January 1, 2008*

**Public Hearing:**

**Date:** *October 15, 2007*

**Time:** *1:00 p.m.*

**Location:** *Department of Transportation Building, 1 South Wilmington Street, Raleigh, NC*

**Reason for Proposed Action:** *In 2006, G.S. 136-28.4 was amended. These code changes are to meet new statutory requirements.*

**Procedure by which a person can object to the agency on a proposed rule:** *Any person objecting to proposed rule may send comments to Jan Bryant at N.C. Department of Transportation, 1501 Mail Service Center, Raleigh, NC 27699-1501 or fax (919) 715-4088 or e-mail at rule-comment@dot.state.nc.us.*

**Comments may be submitted to:** *Jan Bryant, NC Department of Transportation, 1501 Mail Service Center, Raleigh, NC 27699-1501, fax (919) 715-4088, email rule-comment@dot.state.nc.us*

**Comment period ends:** *November 16, 2007*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of*

the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

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

**CHAPTER 02 - DIVISION OF HIGHWAYS**

**SUBCHAPTER 02D - HIGHWAY OPERATIONS**

**SECTION .1100 - DISADVANTAGED BUSINESS ENTERPRISE, MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE PROGRAMS FOR HIGHWAY AND BRIDGE CONSTRUCTION CONTRACTS**

**19A NCAC 02D .1101 PURPOSE AND SCOPE**

(a) The North Carolina Department of Transportation shall ensure that Disadvantaged Business Enterprises (DBE) have ~~the maximum~~ opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.

(b) The North Carolina Department of Transportation shall ensure that Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) have ~~the maximum~~ opportunity to participate in the performance of contracts financed with non-Federal funds.

(c) Contracts financed with federal funds shall comply with 49 CFR 23 and 26. Contracts financed with non-federal funds shall comply with G.S. 136-28.4 and 49 CFR 23 and 26.

(d) 49 CFR 23 & 26 are incorporated by reference, including all subsequent amendments and editions.

(e) Information referenced in this Section may be viewed or obtained from the following sources:

- (1) 49 CFR 23 & 26 is available at website <http://www.gpoaccess.gov/cfr/index.html> or may be purchased at a cost of twenty three dollars (\$23.00) from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402-9238, telephone number 202-512-1800.
- (2) DBE written appeals: U.S. Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington, DC 20590.

- (3) The Department's State Contractor Utilization Engineer, 1509 Mail Service Center, Raleigh, NC 27699-1509, telephone number 919-733-7174.
- (4) Disadvantaged/Minority/Women Business Enterprise Directory: <http://apps.dot.state.nc.us/vendor/directory/>
- (5) Unified Certification Application: <http://www.ncdot.org> or may be obtained at no cost from the State Contractor Management Engineer, Telephone number, (919) 733-7174.

*Authority G.S. 136-28.4; 143B-348.*

## **19A NCAC 02D .1102 DEFINITIONS**

For Purposes of the rules in this Section, the following terms shall apply:

- (1) Disadvantaged Business Enterprise shall have the same meaning as shown in 49 CFR 26 Subpart A.
- (2) Minority shall be defined in accordance with G.S. 136-28.4.
- (3) Women shall be defined in accordance with G.S. 136-28.4.
- (4) Minority Business Enterprise shall have the same meaning as shown in 49 CFR 26 Subpart D.
- (5) Women Business Enterprise shall have the same meaning as shown in 49 CFR 26 Subpart D.
- (6) The Department's Unified Certification Program (UCP) shall have the same meaning as shown in 49 CFR Part 26, Subpart E.

For purposes of the rules in this Section, the following terms shall apply:

- (1) ~~Socially and economically disadvantaged individual means a person who is a citizen or lawful permanent resident of the United States and who is:~~
  - (a) ~~A Black American;~~
  - (b) ~~A Hispanic American;~~
  - (c) ~~An Asian Pacific American;~~
  - (d) ~~A Native American;~~
  - (e) ~~An Asian Indian American;~~
  - (f) ~~A Woman;~~
  - (g) ~~A member of another group or an individual found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Administration Act, as amended [15 U.S.C. 637(d)]; or~~
  - (h) ~~A member of another group, or an individual found to be economically and socially disadvantaged by the North Carolina Department of Transportation using the criteria prescribed in the Small Business Administration Act, as amended [15 U.S.C. 637(d)].~~

- (2) ~~Disadvantaged Business Enterprise (DBE) means a small business concern, as defined pursuant to Section 3 of the Small Business Act (15 U.S.C. 632) and implementing regulations which is:~~
  - (a) ~~Owned and controlled by one or more socially and economically disadvantaged individuals;~~
  - (b) ~~A firm which has been found to be socially and economically disadvantaged by the Small Business Act under the 8(a) program; or~~
  - (c) ~~A firm which has been certified as socially and economically disadvantaged by the North Carolina Department of Transportation except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding three fiscal years in excess of fourteen million dollars (\$14,000,000) as adjusted by the Department for inflation.~~
- (3) ~~An Owned and Controlled Business means a business:~~
  - (a) ~~Which is at least 51 percent owned by one or more eligible individuals, or in case of a publicly owned business at least 51 percent of the stock is owned by one or more eligible individuals; and~~
  - (b) ~~Whose management and daily business operations are controlled by one or more of the eligible individuals who own it.~~
- (4) ~~Eligible Individual means a socially and economically disadvantaged individual as defined in this Rule on projects financed in whole or in part with Federal funds. On projects financed with non Federal funds, eligible individual means a minority or woman individual as defined in this Rule.~~
- (5) ~~Eligible Firm means a firm owned and controlled by an eligible individual as defined in this Rule.~~
- (6) ~~An eligible manufacturer means a firm owned and controlled by an eligible individual that operates or maintains a factory or establishment which produces on the premises the materials or supplies obtained by the contractor.~~
- (7) ~~An eligible regular dealer means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials or supplies required for the performance of the contract are bought, kept in~~

stock, and regularly sold to the public in the usual course of business. To be an eligible regular dealer, the firm must engage in, as its principal business and in its own name, the purchase and sale of products in question. A regular dealer in such items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this Rule.

- (8) ~~Minority means a citizen or lawful permanent resident of the United States who is:~~
- (a) ~~A Black American;~~
  - (b) ~~A Hispanic American;~~
  - (c) ~~An Asian Pacific American;~~
  - (d) ~~A Native American; or~~
  - (e) ~~An Asian Indian American.~~
- (9) ~~Minority Business (MB) means a business firm which is owned and controlled by one or more minorities, except that such term shall not include any concern or group of concerns controlled by the same minority individual or individuals which has average annual gross receipts over the preceding three fiscal years in excess of fourteen million dollars (\$14,000,000) as adjusted by the Department for inflation.~~
- (10) ~~Woman means a citizen or lawful permanent resident of the United States who is female.~~
- (11) ~~Women Business (WB) means a business firm which is owned and controlled by one or more women, except that such term shall not include any concern or group of concerns controlled by the same female individual or individuals which has average annual gross receipts over the preceding three fiscal years in excess of fourteen million dollars (\$14,000,000) as adjusted by the Department for inflation.~~

Authority G.S. 143B-348.

#### 19A NCAC 02D .1103 CERTIFICATION OF FIRMS

(a) The Department's Unified Certification Program shall be responsible for the certification of all Disadvantaged Business Enterprise, Minority Business Enterprise, and Women Business Enterprise program participants.

(a)(b) Any Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise firms wishing to participate in the goals programs of the Department shall be certified by the Department.

(b)(c) The Department shall conduct a certification review after it receives a completed Unified Certification Application Schedule A and checklist required supporting documentation, which is available at no cost from the Civil Rights and Business Development Section of the Contractual Services Unit, P.O. Box 25201, Raleigh, NC, telephone 919-733-2300. The certification review shall be conducted in

accordance with the Code of Federal Regulations, 49 CFR 23 & 26(a).

(d) ~~The standards of eligibility Eligibility shall be those prescribed byin accordance with the Code of Federal Regulations, 49 CFR 26 Subparts D and E.23.53, which is hereby incorporated by reference including all subsequent amendments and editions.~~

This publication is available at a cost of twenty three dollars (\$23.00) from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402-9328, telephone 202-512-1800.

Authority G.S. 136-28.4; 143B-348.

#### 19A NCAC 02D .1104 RENEWAL OF CERTIFICATION

(a) Each firm certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise shall renew review its certification annually. The annual review shall be conducted in accordance with the Code of Federal Regulations, 49 CFR 23. 26.

(b) ~~In the event a firm fails to renew its certification within 15 months of the issuance of its most recent certification, that firm's name shall be removed from the Department's Disadvantaged/Minority/Women Business Enterprise Directory which shall be published monthly and may be obtained at no cost from the Division of Highways, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.~~

(b) Each firm certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise shall be recertified every three years in accordance with the 49 CFR 26.

Authority G.S. 143B-348.

#### 19A NCAC 02D .1105 CHANGE IN OWNERSHIP OR CONTROL

(a) ~~At any Any time a firm certified with the Department has there shall be a change of ownershipownership, or controlcontrol, business size, type of work, or other factors that affect the firm's eligibility as set out in 49 CFR 26 Subparts D & E as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise, the firm shall inform the Department in writing within 30 days of the change, of a firm certified with the Department, that firm shall submit a revised Schedule A which shall be available at no cost from the Civil Rights and Business Development Section of the Contractual Services Unit, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.~~

(b) ~~The Department shall evaluate the firm using standards of eligibility as prescribed in the Code of Federal Regulations, 49 CFR 23.53.~~

Authority G.S. 143B-348.

#### 19A NCAC 02D .1106 DECERTIFICATION

(a) Each firm certified with the Department shall at all times comply with the standards of eligibility as prescribed in 49 CFR 23.

~~(b) In the event~~If the Department finds a firm in non-compliance with the standards of eligibility, that firm shall be decertified in accordance with 49 CFR 23 and 26.87, and its name removed from the Disadvantaged/Minority Business Enterprise Directory.

Authority G.S. 143B-348.

#### **19A NCAC 02D .1107 APPEALS OF DENIAL OF CERTIFICATION**

(a) Any Minority Business Enterprise firms or Women Business Enterprise firm~~firms which believes it has been wrongly denied certification or which believes it has been wrongly decertified~~ may file an appeal of that ~~denial~~action to the Department's Director of Civil Rights, P.O. Box 25201, Raleigh, NC 27611, telephone 919 733 2300, State Contractor Management Engineer as follows:

- (1)~~(b)~~ The filed appeal ~~must~~shall be received by the Department Director of Civil Rights within 20 30 calendar days of the notice of denial. Upon receipt of the appeal, the State Contractor Management Engineer~~Director~~ shall schedule a hearing for the firm with the Department's ~~DBE~~Disadvantaged Business Enterprise, Minority Business Enterprise, Women Business Enterprise Appeals Committee.
- (2) If the denial of certification or decertification is upheld by the Department's appeals committee, the Minority Business Enterprise firm or Women Business Enterprise firm may file a written appeal to the Secretary of Transportation within 30 days of the committee's decision.
- (3) If the denial of certification is upheld by the Secretary of Transportation, the decision shall be final.

(b) Any Disadvantaged Business Enterprise firm denied certification or has been decertified may file an appeal of that action as follows:

- (1) The Disadvantaged Business Enterprise firm may file an appeal to the Department's State Contractor Management Engineer. The appeal shall be received by the Department within 30 calendar days of the notice of denial. Upon receipt of the appeal, the State Contractor Management Engineer shall schedule a hearing for the firm with the Department's appeals committee.
- (2) The Disadvantaged Business Enterprise firm may file a written appeal within 90 days of notice of appeal directly to the U.S. Department of Transportation, Office of Civil Rights in accordance with the 49 CFR 26.89.
- (3) The appeals may be filed simultaneously within 30 days if the appeal to the Department is denied.

(e) If the denial of certification is upheld by the Appeals Committee, the firm may file a written appeal within 180 days of the initial denial with the U.S. Department of Transportation,

400 7th Street, S.W., Washington, DC 20590, telephone 202-336-1111, in accordance with the Code of Federal Regulations, 49 CFR 23.55.

Authority G.S. 143B-348.

#### **19A NCAC 02D .1108 GOALS**

(a) The Department shall perform an analysis to determine the availability of ready, willing and able Disadvantaged Business Enterprise, Minority Business Enterprise, and Women Business Enterprise firms relative to all businesses ready, willing and able to participate in Department projects. Goals for disadvantaged business enterprises, minority business enterprises, and women business enterprises shall be established in accordance with 49 CFR Subpart C 26.45(C)(3) and G.S. 136-28.4(b1).~~For each highway or bridge construction project determined appropriate by the Department, a disadvantaged business enterprise goal or minority and women business enterprise goals shall be established. To be determined appropriate, project items of work shall include but not be limited to one or more of the following: clearing and grubbing; hauling and trucking; storm drainage; concrete and masonry construction; guardrail; fencing; landscaping; erosion control; reinforcing steel; utility construction; or pavement markers and markings. In determining the goal or goals, the Department will consider the approximate dollar value of the contract, the geographical location of the proposed work, the number of eligible firms in the geographical area, and the anticipated value of the items of work to be included in the contract. Additionally, the Department shall consider the annual goals mandated by Congress and the North Carolina General Assembly. The goal or goals shall be prescribed in the project proposal as a percent of the bidder's construction bid price.~~

(b) The Contractor shall ~~exercise all necessary and reasonable steps to ensure that eligible firms participate in at least the percentage of the contract as required by the project proposal.~~

Authority G.S. 136-28.4; 143B-348.

#### **19A NCAC 02D .1109 COUNTING PARTICIPATION TOWARD MEETING THE GOAL**

Participation of Disadvantaged Business Enterprise, Minority Business Enterprise, and Women Business Enterprise firms for federally funded and non-federally funded projects shall be counted in accordance with 49 CFR 26 Subpart C and G.S. 136-28.4.~~(a) All bidders, at the time a bid proposal is submitted, shall also submit a listing of participation on the appropriate form, contained in the proposal, in order for the bid to be considered responsive. For a firm to be counted toward meeting the goal, the firm shall be certified by the Department as evidenced by a current letter of certification or by its listing on the current Disadvantaged/Minority/Women Business Enterprise Directory, which shall be published monthly by the department and shall be available at no cost from the Civil Rights & Business Development Section, P.O. Box 25201, Raleigh, NC 27611, telephone 919 733 2300.~~

(b) If a firm is determined to be an eligible firm and certified by the Department, the total dollar value of the participation provided by the firm shall be counted toward the goal. The total

dollar value of participation by the certified firm shall be based upon unit or lump sum prices agreed upon by the prime contractor and the certified firm.

(c) ~~The Contractor may count toward its appropriate goal a portion of the total dollar value of participation with a joint venture eligible under the standards of this Rule equal to the percentage of the ownership and control of the eligible partner in the joint venture.~~

(d) ~~The Contractor may count toward its goal only the expenditures to the certified eligible firm that perform a commercially useful function in the work of a contract. An eligible firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an eligible firm is performing a commercially useful function, the Department shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.~~

(e) ~~A contractor may count toward its goal 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from an eligible regular dealer, and 100 percent of such expenditures to an eligible manufacturer.~~

(f) ~~A contractor may count toward its goal the following expenditures to eligible firms that are not manufacturers or regular dealers:~~

- ~~(1) The fees and commissions charged for providing a bona fide service such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, or supplies required for the performance of the contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared to fees customarily allowed for similar services.~~
- ~~(2) The fees charged for the delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.~~
- ~~(3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with the fees customarily allowed for similar services.~~

(g) ~~For a given contract line item or contracts financed with non federal funds, the Contractor shall designate the goal to which the total dollar value of participation awarded to a firm owned and controlled by a minority woman shall be credited. The total dollar value for such firms shall be credited to one goal~~

~~only and shall not be split or duplicated between the Minority Business or Women Business goals.~~

(h) ~~On projects funded entirely with non federal funds, should the contractor submit with his bid submittal participation in excess of the goal(s) by an amount equal to or greater than one thousand dollars (\$1,000), then the Department shall place on deposit for future use by the contractor the amount of participation in excess of the goal(s). Separate accounts shall be maintained by the Department for minority and women goals. The contractor may accumulate excess participation for a period not to exceed 24 months.~~

*Authority G.S. 136-28.4; 143B-348.*

## **19A NCAC 02D .1110 NON-ATTAINMENT OF GOALS**

(a) ~~When the low bidder fails to obtain the participation required to satisfy goals established in the project proposal, he shall submit information to demonstrate to the Department he has made sufficient reasonable good faith efforts to satisfy the goals. The submission shall be received by the Department on or prior to the date and time specified in the project proposal. The following factors shall be evaluated by the Department prior to determining whether the contractor has demonstrated good faith efforts:~~

- ~~(1) Whether the bidder attended any pre bid meetings that were scheduled by the Department to inform eligible firms of subcontracting opportunities;~~
- ~~(2) Whether the bidder provided written notice to a reasonable number of eligible firms that their interest in the contract was being solicited;~~
- ~~(3) Whether the bidder followed up initial solicitations of interest by contacting eligible firms to determine with certainty they were interested;~~
- ~~(4) Whether the bidder selected portions of the work to be performed by eligible firms in order to increase the likelihood of meeting the contract goals;~~
- ~~(5) Whether the bidder provided interested eligible firms with adequate information about the plans, specifications, and requirements of the contract;~~
- ~~(6) Whether the bidder negotiated in good faith with interested eligible firms not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities;~~
- ~~(7) Whether quotations were received from interested eligible firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. For projects funded in whole or part with Federal funds, the fact that the DBE firm's quotation for the work is not the lowest quotation received shall not in itself be considered a sound reason for rejecting the quotation as unacceptable. Nothing in this Rule shall be construed to require the Contractor to accept~~

~~unreasonable quotes in order to satisfy the goals;~~

~~(8) Whether the bidder made efforts to assist interested eligible firms in obtaining any required insurance;~~

~~(9) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract goals.~~

~~(b) In the event one bidder is the apparent low bidder on two projects within the same letting and located in the same geographic area of the state, as a part of the good faith effort, the Department shall consider allowing the bidder to combine participation in like goals programs as long as the overall goal value of both projects is achieved.~~

~~(c) In the event the apparent low bidder on a project funded entirely with non federal funds fails to meet the goal(s) required by the proposal, he may as a part of his good faith effort, request the Department to consider the withdrawal of sufficient in-kind participation previously deposited by him in accordance with Rule .1109(h) of this Section to satisfy the goal(s) requirement.~~

~~(d) If the apparent low bidder fails to submit sufficient participation by eligible firms to satisfy the contract goals and upon determination by the Department based upon the information submitted that the apparent lowest responsive bidder failed to make sufficient reasonable efforts to meet the contract goals, the Board of Transportation may reject the bid.~~

~~(e) In the event the Board of Transportation does not award the contract to the lowest responsive bidder, the Board of Transportation may award the contract to the next lowest responsive bidder that can satisfy the Department that the contract goals have been met or demonstrated a reasonable good faith effort to do so.~~

A contractor who does not meet the goals established shall be considered in non-attainment and shall comply with good faith requirements set forth in 49 CFR 26 Subpart C and G.S. 136-28.4.

*Authority G.S. 136-28.4; 143B-348.*

## 19A NCAC 02D .1111 PERFORMANCE RELATED REPLACEMENT OF ELIGIBLE FIRMS

(a) Certified firms who are utilized to meet the goal(s) established and who are not performing their contractual obligation may be replaced.

(b) Performance related replacement of eligible firms for federally funded projects and non-federally funded projects shall meet the requirements of 49 CFR 26 Subpart C.

The Department may allow replacement of an eligible firm for the following performance related reasons:

~~(1) If an eligible firm listed by the contractor and submitted at the time of bidding does not perform in a satisfactory manner, the contractor shall make all necessary, reasonable efforts to replace the eligible firm with another eligible firm in the same category as the firm originally submitted.~~

~~(2) Any substitution of eligible firms after award of the contract shall be approved by the Department. The contractor shall submit any~~

~~requests for substitutions through the Resident Engineer, and the request shall provide the basis or reason for the proposed substitution. In determining whether a substitution is appropriate, the Department shall consider the information submitted by the contractor, information obtained from the eligible firm the contractor seeks to remove, the items of work remaining in the contract, and the timeliness of the proposed substitution. The substitute firm shall be on the Department's list of approved subcontractors. The list of approved subcontractors shall be available at no cost from the Office of the State Contractual Services Engineer, N.C. DOT, PO Box 25201, Raleigh, NC 27611, telephone 919 733 7174.~~

~~(3) To demonstrate necessary, reasonable efforts, the contractor shall document the steps he has taken to replace eligible firms with other eligible firms. Such documentation shall include but not be limited to the following:~~

~~(a) Copies of written notification to eligible firms that their interest is solicited in subcontracting the work defaulted by the previous subcontractor or in subcontracting other work in the contract;~~

~~(b) Efforts to negotiate with eligible firms for specific subbids including at a minimum:~~

~~(i) The names, addresses, and telephone numbers of eligible firms that were contacted;~~

~~(ii) A description of the information provided eligible firms regarding the plans and specifications for portions of the work to be performed;~~

~~(c) A statement of why additional agreements with eligible firms were not reached;~~

~~(d) For each eligible firm rejected as unqualified, the reasons for the contractor's conclusion; and~~

~~(e) Efforts made to assist the eligible firms contacted, if needed in obtaining bonding or insurance required by the contractor.~~

~~(4) Failure of the contractor to demonstrate reasonable efforts to replace an eligible firm with another eligible firm shall be just cause to disqualify the contractor from further bidding for a period of up to six months after notification by certified mail.~~

*Authority G.S. 136-28.4; 143B-348.*

**19A NCAC 02D .1112 REPLACEMENT OF A FIRM REMOVED BY DECERTIFICATION**

(a) Certified firms who are utilized to meet the goals(s) established and become decertified may be replaced.

(b) Replacement of a firm removed by decertification for federally funded projects and non-federally funded projects shall meet the requirements of 49 CFR 26 Subpart E.

~~The Department may allow replacement of an eligible firm under the following conditions:~~

~~(1) If the Department has approved a Request For Subcontract for a particular eligible firm, and that eligible firm is subsequently decertified by the Department, the Department shall not require the prime contractor to solicit replacement participation equal to the remaining work to be performed by the certified firm.~~

~~(2) If a prime contractor has a listed eligible firm in his low bid submittal and that firm is decertified prior to the Department approving a Request for Subcontract for the named eligible firm, the prime contractor shall be required to make a good faith effort in accordance with Rule .1111(3) of this Section to:~~

~~(a) Replace the decertified firm with a certified firm; or~~

~~(b) Obtain replacement participation in other areas of the work.~~

*Authority G.S. 136-28.4; 143B-348.*

**TITLE 21 –OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to adopt the rules cited as 21 NCAC 32B .1101 - .1105, .1201 - .1207.*

**Proposed Effective Date:** *January 1, 2008*

**Public Hearing:**

**Date:** *November 16, 2007*

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

**Location:** *NC Medical Board, 1203 Front Street, Raleigh, NC 27604*

**Reason for Proposed Action:**

*21 NCAC 32B .1101 - .1105 set up a streamlined reactivation procedure for applicants whose license has gone inactive within the past year and not as a result of disciplinary action.*

*21 NCAC 32B .1201 - .1207 set up another level called reinstatement, which is slightly shorter than the regular application process, and which may be used by applicants who have had a license in this state, but it has either been inactive for*

*more than one year or has had disciplinary action taken against it.*

**Procedure by which a person can object to the agency on a proposed rule:** *Person may submit objections to these Rules by contacting R. David Henderson, Executive Director, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609, fax (919) 326-1131 or email info@ncmedboard.org.*

**Comments may be submitted to:** *David Henderson, 1203 Front Street, Raleigh, NC 27609, phone (919) 326-1100, fax (919) 326-1131, email david.henderson@ncmedboard.org*

**Comment period ends:** *November 16, 2007*

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

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

**Fiscal Impact:**

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

**SUBCHAPTER 32B – LICENSE TO PRACTICE MEDICINE**

**SECTION .1100 – REACTIVATION OF FULL LICENSE**

**21 NCAC 32B .1101 APPLICATION FORMS**

An applicant for reactivation of a license which has been placed on inactive status within the past calendar year shall complete the Board's application forms requesting information regarding the applicant's personal, education, and professional background.

*Authority G.S. 90-6; 90-13.*

**21 NCAC 32B .1102 FEE**

A fee of two hundred and sixty three dollars (\$263.00) is due at the time of application. In the event the applicant does not appear for a scheduled personal interview, licensure is denied, or the application is withdrawn, no portion of the fee may be refunded.

*Authority G.S. 90-6; 90-13.*



**21 NCAC 32B .1103 PERSONAL INTERVIEW**

An applicant for reactivation of license may be required to appear in person for an interview with the Executive Director, a Board member, or the full Board, upon verification of all credentials.

*Authority G.S. 90-6; 90-13.*

**21 NCAC 32B .1104 ROUTINE INQUIRIES**

An applicant for reactivation of license shall request an FSMB Data Bank inquiry report be submitted to the Board.

*Authority G.S. 90-6; 90-13.*

**21 NCAC 32B .1105 CME**

An applicant for reactivation shall submit documentation of continuing medical education (CME) obtained in the past three years.

*Authority G.S. 90-6; 90-13.*

**SECTION .1200 – REINSTATEMENT OF FULL LICENSE****21 NCAC 32B .1201 APPLICATION FORMS**

An applicant for reinstatement of a license which has been inactive for longer than the past calendar year, or which has been surrendered, revoked or suspended, shall complete the Board's application forms requesting information regarding the applicant's personal, education, and professional background.

*Authority G.S. 90-6; 90-13.*

**21 NCAC 32B .1202 LETTERS OF RECOMMENDATION**

An applicant for reinstatement of license shall request that three letters of recommendation be submitted to the Board on his behalf. The letters shall be originals addressed to the Board and shall contain the original signature of the author. One of the letters shall be from someone who has known the applicant for a period of 10 years. Two of the letters shall be from physicians and shall be on Board forms. Recommendations shall not be from relatives.

*Authority G.S. 90-6; 90-13.*

**21 NCAC 32B .1203 FEE**

A fee of three hundred and eighty eight dollars (\$388.00) is due at the time of application. In the event the applicant does not appear for a scheduled personal interview, licensure is denied or the application is withdrawn, no portion of the fee may be refunded.

*Authority G.S. 90-6; 90-13.*

**21 NCAC 32B .1204 PERSONAL INTERVIEW**

An applicant may be required to appear in person for an interview with the Executive Director, a Board member, or the full Board upon verification of all credentials.

*Authority G.S. 90-6; 90-13.*

**21 NCAC 32B .1205 ROUTINE INQUIRIES**

An applicant for reinstatement of license shall request the following reports be submitted to the Board:

- (1) Reports from all relative state Medical Boards or agencies in which the applicant has ever held a medical license indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probation shall be mailed directly from other state boards or agencies to the Board.
- (2) An AMA Physician Profile (requested by applicant of AMA).
- (3) FSMB Data Bank inquiry (requested by applicant of FSMB).
- (4) AOIA Physician Profile (requested by applicant of AOIA) if applicant is an osteopathic physician.
- (5) Reports from National Practitioner Data Bank (NPDB) and Healthcare Integrity and Protection Data Bank (HIPDB) (requested by applicant).

*Authority G.S. 90-6; 90-13.*

**21 NCAC 32B .1206 ECFMG CERTIFICATION**

An applicant for reinstatement of license who is a graduate of a medical school not approved by LCME or AOA shall furnish an original ECFMG Certification Status Report of a currently valid standard certificate of ECFMG. ECFMG certification may be waived by the Board if the applicant has either:

- (1) Passed the ECFMG examination and successfully completed an approved Fifth Pathway Program (original ECFMG Certification Status Report from the ECFMG required); or
- (2) Been licensed in another state on the basis of written examination prior to the establishment of ECFMG in 1958.

*Authority G.S. 90-6; 90-13.*

**21 NCAC 32B .1207 TEN-YEAR QUALIFICATION**

The Board may issue a license without examination to any applicant who has met one of the following qualifications within the past 10 years:

- (1) National Board of Medical Examiners certification;
- (2) National Board of Osteopathic Medical Examiners certification;
- (3) Examination for license testing general medical knowledge;
- (4) Passage of SPEX examination with a score of at least 75;
- (5) Passage of COMVEX examination with a score of at least 75;

- (6) Passage of COMLEX examination with a score of at least 75;
- (7) Certification or re-certification from a specialty board recognized by the ABMS or the AOA; or certification or re-certification with added qualifications from a specialty or subspecialty board recognized by the ABMS or AOA;
- (8) Completion of formal postgraduate medical education as required under Rule .0313 of this Chapter;
- (9) At the Board's discretion and not as a matter of right, the Board may accept a current AMA Physician's Recognition Award or acceptable AOA CME to satisfy this requirement.

Authority G.S. 90-6; 90-13.

## TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to amend the rules cited as 23 NCAC 02C .0210; 02D .0202; 02E .0405.*

**Proposed Effective Date:** February 1, 2008

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

### **Reason for Proposed Action:**

**23 NCAC 02C .0210** – *The State Board seeks to amend the Administrative Code to require colleges to offer some preference to veterans in their hiring processes.*

**23 NCAC 02D .0202** – *The State Board seeks to amend its rules to permit students to drop courses without penalty prior to the census dates so long as the students adds equal or greater number of credit hours as the student drops.*

**23 NCAC 02E .0405** – *The State Board seeks to clarify its intent that Public Safety Training Courses be offered by colleges only when the training doesn't supplant other courses offered by authorized direct delivery agents, when enrollment for the training is open, and when the college maintains supervisory rights over the courses, curriculum, and instructors.*

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

*be post marked by 11:59 p.m. on the last day of the comment period.*

**Comments may be submitted to:** *David J. Sullivan, 5001 MSC, Raleigh, NC 27699-5001, phone (919) 807-6961, fax (919) 807-7171, email sullivanand@nccommunitycolleges.edu*

**Comment period ends:** November 16, 2007

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

### **Fiscal Impact:**

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

## CHAPTER 02 - COMMUNITY COLLEGES

### SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

#### SECTION .0200 - PERSONNEL

#### **23 NCAC 02C .0210 LOCAL COLLEGE PERSONNEL POLICIES**

(a) Each local board of trustees shall adopt, publish, and implement personnel policies, consistent with all applicable statutes, rules, and regulations, addressing the following issues:

- (1) Adverse weather;
- (2) Annual leave (vacation);
- (3) Drug and alcohol use;
- (4) Civil leave;
- (5) Communicable disease;
- (6) Compensatory leave;
- (7) Definitions of the employment categories and benefits for each:
  - (A) Full-time permanent,
  - (B) Part-time permanent,
  - (C) Full-time temporary, and
  - (D) Part-time temporary;
- (8) Disciplinary action addressing suspension and dismissal;
- (9) Educational leave (reference 23 NCAC 02D .0103);

- (10) Employee evaluation process;
- (11) Employee grievance procedures;
- (12) Employee personnel file;
- (13) Hiring procedures (describing procedures used for employment of both full- and part-time employees);
- (14) Leave transfer;
- (15) Leave without pay;
- (16) Longevity pay plan (reference 23 NCAC 02D .0109);
- (17) Military leave (reference 23 NCAC 02D .0104);
- (18) Nepotism (reference 23 NCAC 02C .0204);
- (19) Non-reappointment;
- (20) Other employee benefits;
- (21) Political activities of employees (reference 23 NCAC 02C .0208);
- (22) Professional development;
- (23) Reduction in force;
- (24) Salary determination methods for full- and part-time employees that address at least the following:
  - (A) Provisions and criteria for salary determination,
  - (B) Requirements for annual salary review, and
  - (C) Establishment of salary formulas, ranges, or schedules;
- (25) Sexual harassment;
- (26) Tuition exemption (reference 23 NCAC 02D .0202);
- (27) Sick leave consistent with provisions of the State Retirement system;
- (28) Secondary Employment that addresses conflict with the employee's primary job responsibilities and institutional resources (the local board of trustees shall approve or disapprove any secondary employment of the president; the president or any member of the college's senior administration designated by the president shall approve or disapprove secondary employment of all full-time employees); and
- (29) Shared leave consistent with provisions of the Office of State Personnel (reference 25 NCAC 01E .1301 through 25 NCAC 01E .1307).
- (30) Providing a preference for veterans, as defined in G.S. 128-15, in hiring decisions.

(b) Each local board of trustees shall submit copies of these policies, including amendments, to the NC Community College System President's office upon adoption.

*Authority G.S. 115D-5; 115D-20; 115D-25.3.*

**SUBCHAPTER 02D - COMMUNITY COLLEGES:  
FISCAL AFFAIRS**

**SECTION .0200 - STANDARD STUDENT FEES**

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

(a) Tuition:

- (1) Student Residence Classification. The classification of students for tuition purposes shall be made pursuant to G.S. 115B-2, 115D-39, 116-143.1, 116-143.3, and 116-143.5.
- (2) Tuition Rates In-State:
  - (A) A general and uniform tuition rate is established by the State Board as set by the Legislature for full-time curriculum students per semester or term for North Carolina residents.
  - (B) A North Carolina resident who is a part-time student shall pay a per credit hour rate for curriculum instruction, as established by the State Board, for any semester or term as set by the Legislature.
- (3) Learning Laboratory. No tuition fees charged.
- (4) Tuition Creditable Upon Transfer of Student. When a student has paid the required tuition at a college and is given permission to transfer to another college within the system during the academic semester for which the tuition was paid, the college from which the student transfers shall issue to him a statement certifying the amounts of tuition that have been paid, and the college to which he is transferring shall accept such certificate in lieu of requiring payment again. [Also, see 23 NCAC 02D .0323(b)(2) which provides information regarding reporting student hours in membership.]
- (5) Tuition Student Enrolled in More Than One College. Where a student desires to enroll for the same semester at two or more colleges of the system, the total amount of tuition and fees may be paid to the student's "home" college. "Home" college is defined as the college which the student initially registers for classes. The "home" college shall, in that case, assume responsibility for arranging with the other college or colleges for enrolling the student in appropriate classes without further charge. Such arrangement shall be made by exchange of letters between the colleges involved. Student membership hours for instruction received shall, in any event, be reported by the college in which the respective instruction occurred.
- (6) Tuition Rates Out-of-State:
  - (A) Any full-time curriculum student who is an out-of-state resident shall pay tuition fees as established by the State Board for each semester or term as set by the Legislature.
  - (B) An out-of-state resident who is a part-time student shall pay a per

credit hour rate for curriculum instruction as established by the State Board as set by the Legislature.

(7) Tuition Waivers:

- (A) Individuals in the categories set forth in G.S. 115D-5(b) shall be exempt from tuition for specialized training courses only, unless otherwise permitted under this Rule.
- (B) College Staff Members. Full-time college staff members employed for a 9, 10, 11, or 12 month term may enroll in one curriculum or extension course per semester, as well as the summer term, in the system without payment of tuition or registration fee.
- (C) Basic Law Enforcement Training Program (BLET) for law enforcement officers. All law enforcement officers employed by a municipal, county, state, or federal law enforcement agency when taking courses in a state-mandated BLET training program, are exempt from tuition payment. Also, trainees shall be exempt from BLET class tuition if a letter of sponsorship from a state, county, or municipal law enforcement agency is on file at the college.
- (D) Individuals meeting the criteria set forth in G.S. 115B-2 shall not be charged tuition.
- (E) High school students taking courses pursuant to Paragraph (c) (concurrent enrollment) and Paragraph (e) (cooperative high school programs) of 23 NCAC 02C .0305 of this Chapter shall not be charged tuition.
- (F) Patients in state alcoholic rehabilitation centers shall not be charged tuition.
- (G) Juveniles committed to the Department of Juvenile Justice and Delinquency Prevention shall not be charged tuition.
- (H) Prison inmates shall not be charged tuition.

(b) Pre-Enrollment Deposit. The local board of trustees may establish a pre-enrollment deposit up to a maximum of fifteen dollars (\$15.00). The pre-enrollment deposit, if established, shall be required only when a prospective student has made application for admission and has been accepted. This advance payment is not refundable unless the class(es) fails to materialize or a refund is required by the death of the student. This advance payment shall be deposited to the State Treasurer and credited against the full tuition due from the student during the regular registration period. For the purposes of this Rule, any tuition refund granted shall not include the pre-enrollment deposit of the

student unless a refund is granted when a class fails to materialize or because of the student's death.

(c) Late Enrollment Fee. A late enrollment fee up to five dollars (\$5.00) may be charged curriculum students registering after the specific closing date of registration, with such fees becoming state funds.

(d) Tuition Refunds. A tuition refund shall not be made from state funds except under the following circumstances:

~~(1) A refund shall not be made except under the following circumstances:~~

~~(A) A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) of the academic semester or term as noted in the college calendar. Also, a student is eligible for a 100 percent refund if the class in which the student is officially registered is cancelled due to insufficient enrollment.~~

~~(B) A 75 percent refund shall be made if the student officially withdraws from the class(es) prior to or on the official 10 percent point of the semester.~~

~~(C) For classes beginning at times other than the first week (seven calendar days) of the semester a 100 percent refund shall be made if the student officially withdraws from the class prior to the first class meeting. A 75 percent refund shall be made if the student officially withdraws from the class prior to or on the 10 percent point of the class.~~

~~(D) A 100 percent refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75 percent refund shall be made if the student officially withdraws from a contact hour class on or before the tenth calendar day of the class.~~

~~(2) To comply with applicable federal regulations regarding refunds, federal regulations supersede the state refund regulations stated in this Rule.~~

(1) For any course or courses which begin during the first week (seven calendar days) of a semester:

(A) A 100 percent refund shall be made to the student for any course from which the student officially withdraws prior to the first day of class(es) of the academic semester or term as noted in the college calendar.

(B) A 100 percent refund shall be made to the student for any course in which

- the student is officially enrolled when the course is cancelled by the college.
- (C) A 100 percent refund shall be made to the student for any course or courses from which the student officially withdraws when the student officially enrolls in a course or courses from which the student officially withdraws. This 100 percent refund shall be granted only when the withdrawal(s) and enrollment(s) occur on or after the first day of class(es) of the academic semester or term as noted in the college calendar and on or before the census date.
- (D) A 75 percent refund shall be made if the student officially withdraws from a course or courses on or before the census date and the student is ineligible for a 100 percent refund for a course.
- (2) For any course or courses beginning at times other than the first week (seven calendar days) of a semester:
- (A) A 100 percent refund shall be made if the student for any course or courses from which the student officially withdraws prior to the first class meeting of the college.
- (B) A 100 percent refund shall be made to the student for any course in which the student is officially enrolled when the course is cancelled by the college.
- (C) A 100 percent refund shall be made to the student for any course in which the student is officially enrolled when the course is cancelled by the college.
- (D) A 75 percent refund shall be made if the student is ineligible for a 100 percent refund and the student officially withdraws from a course during or after the first class meeting and on or before the census date.
- (3) For contact hour courses:
- (A) A 100 percent refund shall be made if the student officially withdraws from a contact hour course prior to the first day of class(es) of the academic semester or term as noted in the college catalog.
- (B) A 100 percent refund shall be made to the student if a course in which the student is officially enrolled is cancelled by the college.
- (C) A 100 percent refund shall be granted if a student withdraws from a contact hour course and enrolls in a contact hour course on or after the first day of classes and on or before the tenth calendar day of the course.
- (D) A 75 percent refund shall be made if the student is ineligible for a 100 percent refund or credit and officially withdraws from a contact hour course on or before the tenth calendar day of the course.
- ~~(3)~~(4) Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester may be refunded to the estate of the deceased.
- ~~(4)~~(5) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt local refund policies.
- ~~(e)~~(6) Military Tuition Refund. Upon request of the student, each college shall:
- ~~(4)~~(A) Grant a full refund of tuition and fees to military reserve and National Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and
- ~~(2)~~(B) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.
- (e) Additional Rules for Tuition Refunds:
- (1) As used in Paragraph (d) of this Rule, the term "census date" is defined as the official 10 percent point of any semester, term, or course as noted in the college calendar.
- (2) For the purpose of Paragraph (d) of this Rule, a student is ineligible for a 100% refund except when withdrawals and enrollments are granted by a single college.
- (3) To comply with applicable federal regulations regarding refunds, federal regulations

supersede the state refund regulations stated in this Rule.

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

## SUBCHAPTER 02E – EDUCATIONAL PROGRAMS

### SECTION .0400 - INDUSTRIAL SERVICES

#### 23 NCAC 02E .0405 TRAINING FOR PUBLIC SAFETY AGENCIES

##### (a) Training for Public Law Enforcement Agencies.

- (1) When a college is an accredited and designated direct delivery agency for initial certification training for public law enforcement agencies and funds 50% or greater of the instructional cost and the school director's salary, the college shall report the hours generated from the instruction for full budget FTE when the training is delivered in accordance with all other budget FTE and program requirements. For the purposes of this Subparagraph, the college must maintain supervisory responsibilities for the director, the instructors, and the curriculum, and recruitment, registration and enrollment for any training course shall be open to all who meet the college entrance requirements and shall not be limited or restricted to the members, employees, associates, or trainees of any one direct delivery agent.

- (2) When a public law enforcement agency external to a college is the accredited and designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.

(A) A college shall provide initial certification law enforcement training for an accredited and designated direct delivery public law enforcement agency under a written agreement. The agreement shall:

- (i) confirm that the public law enforcement agency does not have the funds to provide the training;
- (ii) designate the source of funds for the training;
- (iii) list the courses to be taught;
- (iv) state the total hours of instruction to be delivered; and
- (v) be signed by the president or the president's designee, and

the senior official of the public law enforcement agency.

- (B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.

- (3) A college may deliver in-service training for designated direct delivery public law enforcement agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budget FTE and program requirements. A college providing in-service training for public law enforcement agencies is not subject to Subparagraph (a)(1) or (a)(2) of this Rule.

##### (b) Training for Public Fire and Rescue Agencies.

- (1) When a college is a designated direct delivery agency for initial certification training for public fire and rescue services agencies and funds 50% or greater of the instructional cost, the college shall report hours generated from instruction for full budget FTE when the training is offered in accordance with all other budget FTE and program requirements. For the purposes of this Subparagraph, the college must maintain supervisory responsibilities for the director, the instructors, and the curriculum, and recruitment, registration and enrollment for any training course shall be open to all who meet the college entrance requirements and shall not be limited or restricted to the members, employees, associates, or trainees of any one direct delivery agent.

- (2) When a public fire and rescue agency external to a college is the designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.

(A) A college shall provide initial fire and rescue training for a designated direct delivery public fire and rescue agency under a written agreement. The agreement shall:

- (i) confirm that the public fire and rescue agency does not have the funds to provide the training;

- (ii) designate the source of funds for the training;
    - (iii) list the courses to be taught;
    - (iv) state the total hours of instruction to be delivered; and
    - (v) be signed by the president or the president's designee, and the senior official of the public fire and rescue agency.
  - (B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.
  - (3) A college may deliver in-service training for public designated direct delivery fire and rescue agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budgetary FTE and program requirements. A college providing in-service training for public fire and rescue agencies is not subject to Subparagraph (b)(1) or (b)(2) of this Rule.
- (c) Training for Emergency Medical Services Agencies.
- (1) When a college is a designated direct delivery agency for initial certification training for public emergency medical services training and funds 50% or greater of the instructional costs, the college shall report hours generated from instruction for full budget FTE when the training is offered in accordance with all other budget FTE and program requirements. For the purposes of this Subparagraph, the college must maintain supervisory responsibilities for the director, the instructors, and the curriculum, and recruitment, registration and enrollment for any training course shall be open to all who meet the college entrance requirements and shall not be limited or restricted to the members, employees, associates, or trainees of any one direct delivery agent.
  - (2) When a public emergency medical services agency external to a college is the designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.
    - (A) A college shall provide initial emergency medical services training for a direct delivery public emergency medical services agency under a written agreement. The agreement shall:
      - (i) confirm that the public emergency medical services agency does not have the funds to provide the training;
      - (ii) designate the source of funds for the training;
      - (iii) list the courses to be taught;
      - (iv) state the total hours of instruction to be delivered; and
      - (v) be signed by the president or the president's designee, and the senior official of the emergency medical services agencies.
  - (B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.
  - (3) A college may deliver in-service training for designated direct delivery public emergency medical services agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budgetary FTE and program requirements. A college providing in-service training for public emergency medical services agencies is not subject to Subparagraphs (c)(1) or (c)(2) of this Rule.

*Authority G.S. 115D-5.*

## TITLE 25 – DEPARTMENT OF STATE PERSONNEL

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rules cited as 25 NCAC 01N .0501 - .0504.*

**Proposed Effective Date:** February 1, 2008

**Public Hearing:**

**Date:** October 10, 2007

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

**Location:** Officer of State Personnel, Administration Building, 3<sup>rd</sup> floor, 116 West Jones Street, Raleigh, NC

**Reason for Proposed Action:** *This is a new policy requiring all agencies to establish worksite wellness programs.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person may object to these proposed rules by one of the following methods: A written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; An e-mail to peggy.oliver@ncmail.net; A telephone call to Peggy Oliver at (919) 807-4832.*

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

**Comment period ends:** *November 16, 2007*

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

**Fiscal Impact:**

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

**CHAPTER 01 - OFFICE OF STATE PERSONNEL**

**SUBCHAPTER 01N - WORKPLACE ENVIRONMENT  
AND HEALTH**

**SECTION .0500 - WORKSITE WELLNESS**

**25 NCAC 01N .0501 POLICY**

In partnership with the State Health Plan and the Office of State Personnel, each agency shall create and participate in a Worksite Wellness program. The Worksite Wellness initiatives shall address the primary components of a healthy lifestyle including healthy eating, physical activity, tobacco cessation and stress management.

*Authority G.S. 126-4.*

**25 NCAC 01N .0502 ADMINISTRATION**

The Office of State Personnel and the State Health Plan, in collaboration with the North Carolina Division of Public Health, shall guide and assist agencies in the development of a comprehensive Worksite Wellness Program for State employees.

*Authority G.S. 126-4.*

**25 NCAC 01N .0503 WELLNESS LEADER**

- (a) Each agency head shall designate a Wellness Leader at the management level who has direct access to the agency head.
- (b) In collaboration with management and employees, the Wellness Leader shall create a Worksite Wellness infrastructure, overseeing the development and implementation of employee wellness policies and committees, and providing ongoing assessment/monitoring of the effectiveness of Worksite Wellness Programs.

*Authority G.S. 126-4.*

**25 NCAC 01N .0504 WELLNESS COMMITTEES**

- (a) Each agency shall establish a wellness committee infrastructure. A wellness committee is a team of employees that meet formally and have identified aims, goals, and implementation strategies to encourage healthy behaviors at the workplace, advocate for policy change, and create health-friendly work environments.
- (b) The committee shall be comprised of employees who represent a cross section of the employee population. Multiple committees may be necessary depending on the size and number of locations of the agency.
- (c) Committees shall elect a wellness chair or co-chairs to conduct meetings and lead activities.

*Authority G.S. 126-4.*



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

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

**Senior Administrative Law Judge**  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Sammie Chess Jr.  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby

Beecher R. Gray  
A. B. Elkins II  
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
ABC Commission v. La Fiesta Mexicana II, Inc., T/A La Fiesta Mexicana	07 ABC 0149	Gray	04/19/07	
ABC Commission v. NK Group, Inc., T/A NK Food Mart,	07 ABC 0163	Overby	04/18/07	
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/decisions">www.ncoah.com/decisions</a> .				
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Pricilla McAllister v. Crime Victims Compensation Commission	06 CPS 1166	Webster	06/14/07	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>				
Hanson Hill Rest Home and Faiger Blackwell v. DHHS, DFS, Adult Care Licensure Section	03 DHR 0945	Overby	04/16/07	
Kristen Valerie Kennedy v. Div. of Mental Health/Development Disabilities/ Substance Abuse Services at Dix	06 DHR 0984	Mann	05/08/07	
Eyvette Abbott, Robbie Wilson Community Services, Inc., v. DHHS (DMH/ DD/SAS)	06 DHR 1139	Webster	06/06/07	
Amran Hussein, Trading as Laurinburg Food Mart v. DHHS, Div. of Public Health	06 DHR 1569	Webster	04/17/07	
James Hampton for South Haven Assisted Living v. DHHS, DFS, Mental Health Licensure and Certification Section	06 DHR 1783	Gray	04/23/07	
Burnell Yancey, Jr. v. DHHS, Div. of Medical Assistance	06 DHR 1817	Elkins	05/29/07	22:01 NCR 82
Nidal Dahir, DHHS, Division of Public Health	06 DHR 1916	Lassiter	05/14/07	
Mary K. Short for Kathryn M. Short v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse	06 DHR 2282	Gray	05/18/07	
Egusta Ford v. DMA, Third Party Recovery	06 DHR 2364	Gray	05/14/07	
Annette L. Gwynn v. DHHS, Division of Medical Assistance	07 DHR 0030	Webster	06/08/07	
John A. Millan and Cornelia D. Millan v. DHHS	07 DHR 0031	Gray	05/23/07	
Doris Durden/MID #945-63-2642K v. DHHS	07 DHR 0055	Overby	06/04/07	
Rita Amirahmadi v. DHHS, Division of Medical Assistance	07 DHR 0250	Elkins	06/05/07	
Linda S. Little, Littles Day Care	07 DHR 0266	Overby	05/23/07	
Kareem S. Scott v. DHHS, DFS	07 DHR 0300	Webster	05/11/07	
Peter Emeka Nwankwo v. DHHS	07 DHR 0355	Overby	05/04/07	
Geraldine Fenner v. DHHS	07 DHR 0367	Overby	05/23/07	
Annette L. Gwyn v. DHHS/Division of Medical Assistance	07 DHR 0382	Lassiter	04/16/07	
Jessie Duncan v. DHHS	07 DHR 0424	Elkins	06/08/07	
Leonard Atkins Jr. v. Rowan County DSS (Ms. Tate)	07 DHR 0464	Gray	06/07/07	
Visitacion T Uy v. DHHS/Division of Medical Assistance	07 DHR 0489	Overby	05/10/07	
Dorothy Sue Johnson v. DHHS, DFS	07 DHR 0502	Webster	06/15/07	
Robin E. Peacock, Bridging to Success, Inc v. DHHS, DFS, Mental Health Licensure Section	07 DHR 0510	Gray	05/30/07	
Samantha A. Amerson v. DHHS	07 DHR 0578	Overby	06/15/07	

## CONTESTED CASE DECISIONS

Anna Trask v. DHHS, Health Care Personnel Registry	07 DHR 0661	Overby	06/15/07		
<b><u>DEPARTMENT OF JUSTICE</u></b>					
Travis Dan Williams v. Criminal Justice Education and Training Standards Commission	06 DOJ 1198	Webster	04/26/07		
Robert Anthony Wilson v. DOJ, Company Police Program	06 DOJ 1508	Gray	02/16/07		
Jeremy Shayne Pearce v. DOJ, Campus Police Program	06 DOJ 2424	Overby	04/16/07		
Andre Cornelius Patterson v. Private Protective Services Board	07 DOJ 0003	Gray	05/18/07		
David Keith Shelton v. Private Protective Services Board	07 DOJ 0011	Morrison	03/29/07		
Larry Talbert v. Private Protective Services Board	07 DOJ 0036	Morrison	04/05/07		
Patricia Ann Davis v. Criminal Justice Education and Training Standards Commission					
Patricia Ann Davis v. Criminal Justice Education and Training Standards	07 DOJ 0045	Gray	04/03/07		
Antonio Jose Coles v. Sheriffs' Education and Training Standards Comm.	07 DOJ 0142	Overby	04/03/07		
Jeffrey S. Moore v. Private Protective Services Board	07 DOJ 0468	Morrison	06/08/07		
<b><u>DEPARTMENT OF TRANSPORTATION</u></b>					
Citizens for the Preservation of Willis Landing, Kenneth M. Seigler v. DOT	07 DOT 0175	Gray	03/27/07		
<b><u>DEPARTMENT OF STATE TREASURER</u></b>					
Sparkle Nicole Jones v. DST and Denise Virginia Lee and Arthur E. Seay, III	05 DST 1612	Gray	05/23/07		
Charles R. Franklin, Jr. v. DST, Retirement Systems Division	06 DST 1672	Overby	05/14/07	22:01 NCR	85
<b><u>EDUCATION, STATE BOARD OF</u></b>					
Billy Ray Brown v. Department of Public Instruction	02 EDC 1272	Webster	06/14/07		
Lynn C. Sasser v. Board of Education	06 EDC 0044	Elkins	05/04/07		
Karen Stallings v. Board of Education	06 EDC 1725	Elkins	05/08/07	22:01 NCR	90
Phyllis Simms v. Board of Education	06 EDC 1780	Elkins	04/02/07		
April Williams Compton v. National Board Certification Committee Public Schools of NC	06 EDC 1816	Webster	05/18/07		
Ms. Victoria L. Ruffin v. Board of Education	06 EDC 2218	Overby	06/01/07		
Connie R. Austin v. Dept. of Public Instruction	06 EDC 2270	Elkins	04/02/07		
Merredith Page v. Board of Education	07 EDC 0056	Webster	04/19/07		
<b><u>DEPT. OF ENVIRONMENT AND NATURAL RESOURCES</u></b>					
George A. Jenkins, Jr, d/b/a Lake Juno Park, Inc., v. Dept. of Environmental Health	05 EHR 1161	Lassiter	02/16/07		
Robert D. Bryant v. DENR, Division of Coastal Management and Stanley L. McCauley	05 EHR 2185	Chess	02/16/07		
Wildcat Investments LLC, James Cook v. Cherokee County Health Depart.	06 EHR 0631	Gray	04/23/07		
Randy Dockery v. Cherokee County Health Department	06 EHR 0728	Gray	04/23/07		
Alan Raper v. Cherokee Health Department	06 EHR 0873	Gray	04/23/07		
Christopher Perry v. Caldwell County Health Department	06 EHR 1010	Elkins	06/05/07		
Robert Don Foster v. DENR, Div. of Coastal Management	06 EHR 1833	Morrison	05/11/07	22:01 NCR	95
Andrew Price v. DENR, Div. of Coastal Management and William F. Canady	06 EHR 1834	Morrison	05/11/07	22:01 NCR	95
Conrad McLean v. DENR/Division of Air Quality	06 EHR 2243	Gray	05/03/07		
Terry Collins v. DENR, Division of Waste Management	06 EHR 2414	Gray	05/01/07		
Paul A. Stennett v. DENR, Public Water Supply Section	07 EHR 0170	Overby	05/04/07		
Daniel R. Wroblewski v. DENR and Coastal Management	07 EHR 0217	Overby	05/08/07		
<b><u>GOVERNOR'S OFFICE</u></b>					
Jerry W. Conner (NCDOC#0085045) and James A. Campbell (NCDOC# 0063592) v. Council of State	07 GOV 0238	Morrison	08/09/07	22:04 NCR	280
James Edwards Thomas and Marcus Robinson and Archie Lee Billings v. Council of State	07 GOV 0264	Morrison	08/09/07	22:04 NCR	280
<b><u>DEPARTMENT OF INSURANCE</u></b>					
Toni W. Goodwin v. Teachers and State Employees Comprehensive Major Medical Plan	06 INS 1016	Overby	05/07/07		
Larry Miller v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1236	Overby	04/11/07		
Randall A. Meder v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1413	Overby	07/16/07	22:04 NCR	264
Barbara Smith Pearce v. State Health Plan	07 INS 0008	Overby	07/12/07	22:04 NCR	273
<b><u>OFFICE OF STATE PERSONNEL</u></b>					
Willie G. Shaw v. Division of Forest Resources	05 OSP 0414	Overby	04/13/07		
Deona R. Hooper v. NCCU	06 OSP 1071	Lassiter	04/25/07		
Patrice Bernard v. NC A&T State University	06 OSP 1550	Elkins	06/05/07		
Angelia Davis v. UNC-Charlotte	06 OSP 1908	Gray	03/08/07		

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**CONTESTED CASE DECISIONS**

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Keith Dial v. Dept. of Juvenile Justice and Delinquency Prevention	06 OSP 2346	Gray	04/20/07
Larry L. Deyton v. Mitchell County Commission Board	06 OSP 2415	Gray	04/19/07
Rose M. Baltezore v. City of Brevard	07 OSP 0009	Gray	04/03/07
Dorothy H. Williams v. John Umstead Hospital	07 OSP 0265	Lassiter	04/24/07
Pei Wang v. UNC-Chapel Hill	07 OSP 0273	Lassiter	04/19/07
Candace R. Berguson v. Caswell County DSS and Mr. Jeff Earp, County Manager	07 OSP 0294	Lassiter	04/20/07
Shannon Harris Tadlock v. Wilson County, Department of Public Health	07 OSP 0491	Lassiter	05/07/07
Patricia G. Flanigan v. Fayetteville State University	07 OSP 0503	Overby	05/10/07
Tobias M. Guilluame v. FSU Police & Public Safety	07 OSP 0565	Overby	05/10/07
<b><u>SECRETARY OF STATE</u></b>			
Mary C. Brandon v. Department of the Secretary of State	06 SOS 1839	Elkins	04/02/07
Samuel Abraham , pro-se v. SOS, General Counsel Ann Wall	07 SOS 0224	Overby	04/27/07
Mr. Tim Rhodes, President, Event Marketing Services, Inc. v. SOS	07 SOS 0374	Overby	06/14/07
<b><u>UNC HOSPITALS</u></b>			
Kenneth Trivette v. UNC Hospitals	06 UNC 2014	Elkins	04/02/07
Mark A. Parrish v. UNC Hospitals	06 UNC 2406	Elkins	06/15/07