

# ***NORTH CAROLINA REGISTER***

**VOLUME 30 • ISSUE 12 • Pages 1264 - 1387**

**December 15, 2015**

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## Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

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Raleigh, North Carolina 27609

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(919) 431-3080

### **Fiscal Notes & Economic Analysis and Governor's Review**

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Sarah Collins

scollins@nclm.org

### **Legislative Process Concerning Rule-making**

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

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**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2015 – December 2015

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
29:13	01/02/15	12/08/14	01/17/15	03/03/15	03/20/15	05/01/15	05/2016	09/29/15
29:14	01/15/15	12/19/14	01/30/15	03/16/15	03/20/15	05/01/15	05/2016	10/12/15
29:15	02/02/15	01/09/15	02/17/15	04/06/15	04/20/15	06/01/15	05/2016	10/30/15
29:16	02/16/15	01/26/15	03/03/15	04/17/15	04/20/15	06/01/15	05/2016	11/13/15
29:17	03/02/15	02/09/15	03/17/15	05/01/15	05/20/15	07/01/15	05/2016	11/27/15
29:18	03/16/15	02/23/15	03/31/15	05/15/15	05/20/15	07/01/15	05/2016	12/11/15
29:19	04/01/15	03/11/15	04/16/15	06/01/15	06/22/15	08/01/15	05/2016	12/27/15
29:20	04/15/15	03/24/15	04/30/15	06/15/15	06/22/15	08/01/15	05/2016	01/10/16
29:21	05/01/15	04/10/15	05/16/15	06/30/15	07/20/15	09/01/15	05/2016	01/26/16
29:22	05/15/15	04/24/15	05/30/15	07/14/15	07/20/15	09/01/15	05/2016	02/09/16
29:23	06/01/15	05/08/15	06/16/15	07/31/15	08/20/15	10/01/15	05/2016	02/26/16
29:24	06/15/15	05/22/15	06/30/15	08/14/15	08/20/15	10/01/15	05/2016	03/11/16
30:01	07/01/15	06/10/15	07/16/15	08/31/15	09/21/15	11/01/15	05/2016	03/27/16
30:02	07/15/15	06/23/15	07/30/15	09/14/15	09/21/15	11/01/15	05/2016	04/10/16
30:03	08/03/15	07/13/15	08/18/15	10/02/15	10/20/15	12/01/15	05/2016	04/29/16
30:04	08/17/15	07/27/15	09/01/15	10/16/15	10/20/15	12/01/15	05/2016	05/13/16
30:05	09/01/15	08/11/15	09/16/15	11/02/15	11/20/15	01/01/16	05/2016	05/28/16
30:06	09/15/15	08/24/15	09/30/15	11/16/15	11/20/15	01/01/16	05/2016	06/11/16
30:07	10/01/15	09/10/15	10/16/15	11/30/15	12/21/15	02/01/16	05/2016	06/27/16
30:08	10/15/15	09/24/15	10/30/15	12/14/15	12/21/15	02/01/16	05/2016	07/11/16
30:09	11/02/15	10/12/15	11/17/15	01/02/16	01/20/16	03/01/16	05/2016	07/29/16
30:10	11/16/15	10/23/15	12/01/15	01/15/16	01/20/16	03/01/16	05/2016	08/12/16
30:11	12/01/15	11/05/15	12/16/15	02/01/16	02/22/16	04/01/16	05/2016	08/27/16
30:12	12/15/15	11/20/15	12/30/15	02/15/16	02/22/16	04/01/16	05/2016	09/10/16

## 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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) 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 rul

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING



**NORTH CAROLINA**  
State Board of Elections

Mailing Address:  
P.O. Box 27255  
Raleigh, NC 27611-7255

Phone: (919) 733-7173  
Fax: (919) 715-0135

**KIM WESTBROOK STRACH**  
Executive Director

October 20, 2015

Mr. John Wallace  
3737 Glenwood Avenue, Suite 260  
Raleigh, North Carolina

Re: Request of the North Carolina Association of REALTORS® ("NCAR") and its affiliated political committees, North Carolina REALTORS® Political Action Committee ("RPAC") pursuant to N.C.G.S. § 163-278.23

Dear Mr. Wallace:

You have requested an advisory opinion regarding the practices by which NCAR and its affiliates collect contributions to RPAC and, more specifically, the proper payment and accounting of costs incurred by NCAR and its affiliates in their efforts to collect those contributions. You have also asked for confirmation that RPAC fundraising activities through NCAR affiliates are in compliance with Chapter 163 of the North Carolina general statutes. Finally, you have suggested that RPAC should report expenses borne by NCAR affiliates on behalf of the PAC as "administrative support."

The first part of this advisory opinion will address questions about "fundraising activities" that were raised by your letter and further explicated by counsel and other representatives from NCAR and RPAC during a meeting with Amy Strange and Joan Troy on January 29, 2015. The second part of this opinion will address your suggestion that the NCAR affiliates be permitted to provide "administrative support" to RPAC.

**Fundraising Activities**

**Transmittal Account Costs**

As you noted in your letter of January 16, 2013, then-executive director Gary Bartlett issued an advisory opinion on May 8, 2003 to Mr. John B. McMillan on behalf of NCAR and RPAC approving the use of "transmittal accounts" for the collection of contributions to RPAC. The State Board of Elections requires the use of transmittal accounts by parent entities in order to segregate PAC contributions from operating receipts prior to deposit into the PAC account. This administrative requirement ensures compliance with N.C.G.S. § 163-278.19(b). Given this prior approval of "transmittal accounts" operated by NCAR affiliates, it is appropriate for the costs incurred for the operation of the transmittal accounts to be paid by NCAR and reported by RPAC as administrative support from NCAR.

**Credit Card Fees**

A related question was posed regarding fees incurred for credit card transmittals of contributions. Many affiliates provide webpages that include a link by which webpage visitors may make

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441 N. Harrington Street • Raleigh, NC 27611-7255

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contributions to the PAC. According to Cady Thomas, Chief Lobbyist for NCAR, it is a "uniform practice" that these electronic transmissions are deposited directly by the e-commerce vendor into the RPAC Clearing Account with the fees having already been extracted by the vendor. Given that the local affiliate does not actually incur any costs associated with these e-commerce RPAC transactions, no contribution from the affiliate to the PAC occurs. In these circumstances, RPAC shall disclose the full contribution with the extracted fees reported as operating expenses.

**Membership Solicitation**

Your letter states that NCAR affiliates engage in activities that seek to encourage NCAR members to participate in NCAR activities and contribute to RPAC. During the aforementioned meeting of January 29, 2015, we were advised that these other activities include: the solicitation for PAC contributions during new member orientations and the post-orientation provision of PAC related information upon a member's request; the use of affiliate office space after business hours for fundraising events or for planning meetings for fundraising events; and the use of employees' volunteered time after business hours to plan or hold fundraising activities.

N.C.G.S. §163-278.14A(b)(3) explicitly exempts certain communications from regulation as a contribution or expenditure if the communication: "is distributed by any organization, association, or labor union solely to its members or to subscribers or recipients of its regular publications, or is made available to individuals in response to their request . . . ."

Further, N.C.G.S. §163-278.19(b) provides that it shall be lawful "for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject . . . ."

Given these statutory qualifications, we find no regulatory issue is triggered by the examples of an affiliate employee discussing or soliciting PAC membership or contributions during new member orientations or on subsequent occasions by request of the interested member or employee.

**Use of affiliate's office space after business hours for PAC related activities**

The test for whether the use of a business office space after business hours constitutes a contribution is whether that space is rented by the business to lessees. If the space in question is not otherwise offered by its occupant for lease or sublease on the market, then there is no market value to be assessed, and therefore no in-kind contribution occurs.

**Use of employee's personal time.**

An affiliate's employee may volunteer his or her time to support PAC-related activities without violating the law against business contributions provided that the employee's volunteering of time is not a condition of employment, that the volunteered activity does not take place during business hours, and that the employee is not reimbursed by the company for this expenditure of time and effort.

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**NCAR Affiliates as Parent Entity**

In response to our request for supplementary information in support of your contention that NCAR's local affiliates be permitted to offer administrative support to RPAC, you provided a letter (March 5, 2013) that detailed certain features of the bylaws under which local boards (among other groups) are admitted as members of NCAR. You envision the members as "co-parental entities" that should be allowed to provide administrative costs to support fundraising and other activities to encourage membership and support of RPAC.

N.C.G.S. §163-278.19(e) states that "...a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support...." The bylaws which you provided clearly show that NCAR affiliates are members of the professional association. The statute recognizes that a professional association would have employees and members who organize the political committee, but it only contemplates a single parent entity for the political committee.

In a similar manner, the definition of a "political committee" as found in N.C.G.S. §163-278.6(14) states, in relevant part, that a political committee "...[i]s created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b)...." Again, the statute refers to a single professional association as the creator of the political committee.

I disagree that N.C.G.S. §163-278.19 provides for the existence of multiple parent entities, and for that reason cannot approve your suggestion that expenses associated with activities such as "membership development, the organization and participation in fundraising events, and the encouragement of members to contribute to RPAC" may be paid for by NCAR affiliates, or paid for by their employees who would then be reimbursed by NCAR affiliates, or that such expenditures may be reported as administrative support items by RPAC.

You also asserted in your January 16, 2013 letter that it is the State Board's position that no employee of an NCAR affiliate can direct more than 20% of his or her time at work to "the actual solicitation of contributions to RPAC without reimbursement or payment by RPAC."

The North Carolina general statutes do not contemplate an acceptable amount of paid employee time that can be directed for the benefit of a PAC when the entity providing that employee time is not the parent entity of the PAC.

N.C.G.S. § 163-278.19(b) and (e) provide that the professional association can establish a separate segregated fund to be deemed a political committee and that a professional association (parent entity) may provide reasonable administrative support. In this case, the NCAR affiliates are not the parent entity of RPAC. Expenses incurred by these affiliates that benefit RPAC must be paid for by RPAC, since the affiliate is prohibited from contributing to RPAC pursuant to N.C.G.S. § 163-278.19(a).

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Any administrative support provided by NCAR to RPAC shall be reported by RPAC. Any expenses incurred by NCAR affiliates would not be considered administrative support, but rather would constitute in-kind contributions that must be reimbursed by RPAC to the NCAR affiliates.

This opinion is based upon the information provided in your letters, as well as our subsequent meetings and e-mails. If any information should change, you should consult with our office to ensure that this opinion would still be binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code. If you should have any questions, please do not hesitate to contact me or Amy Strange, Deputy Director- Campaign Finance.

Sincerely,



Kim Westbrook Strach  
Executive Director

cc: Mollie Masich, Codifier of Rules  
Amy Strange, Deputy Director-Campaign Finance and Operations



**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

**TITLE 04 – DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Commerce, Division of Employment Security intends to adopt the rule cited as 04 NCAC 24D .0404 and amend the rules cited as 04 NCAC 24A .0104; 24B .0601 and .0602.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
www.ncesc.com (Legal Tab)

**Proposed Effective Date:** April 1, 2016

**Public Hearing:**

**Date:** January 20, 2016

**Time:** 10:30 a.m. – 12:30 p.m.

**Location:** DES Main Campus, 700 Wade Avenue, Raleigh, NC 27605 (Room GB111, Daniels Bldg.)

**Reason for Proposed Action:** DES became subject to G.S. 150B, pursuant to G.S. 95-4(d) and Section 1, Session Law 2011-401 (Senate Bill 532). The intent of the Act was to reform the Employment Security Laws of North Carolina, including making DES subject to Rule Making under Article 2A of Chapter 150B of the North Carolina General Statutes. The changes were intended to improve transparency in the State's administration of the UI program. The Act requires the NC Dept of Commerce to adopt rules to ensure that the administration of the UI program and federal law provisions are properly implemented. Four new permanent rules/amendments are proposed for adoption to clarify and improve upon existing processes within DES. Specifically, this includes: reimbursing employer clarification and changes to overpayment determination appeals processes.

**Comments may be submitted to:** Jeremy L. Ray, Rule-making Coordinator/Staff Attorney, N.C. Dept. of Commerce, DES, P.O. Box 25903, Raleigh, NC 27611, phone (919) 707-1033, fax (919) 733-8745, email Jeremy.ray@nccommerce.com

**Comment period ends:** February 15, 2016

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m.

on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

**CHAPTER 24 - DIVISION OF EMPLOYMENT SECURITY**

**SUBCHAPTER 24A – GENERAL**

**SECTION .0100 – GENERAL**

**04 NCAC 24A .0104 ADDRESSES FOR FILING CLAIMS, APPEALS, EXCEPTIONS, REQUESTS OR PROTESTS**

(a) Claimants shall file a claim for unemployment insurance benefits by internet on DES's website, or by telephone.

- (1) The telephone number for filing a new initial claim is (877) 841-9617.
- (2) Claimants with a social security number ending in an odd number shall file weekly certifications on Monday and Wednesday through Saturday by dialing (888) 372-3453.
- (3) Claimants with a social security number ending in an even number shall file weekly certifications on Tuesday through Saturday by dialing (888) 372-3453.

(b) Appeals from a Determination by Adjudicator shall be filed with the Appeals Section by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1228.
- (3) The email address is des.public.appeals@nccommerce.com.
- (4) Any questions regarding the contents of a Determination by Adjudicator shall be directed to the Adjudication Unit by telephone to (919) 707-1410, facsimile at (919) 733-1127, or email at des.ui.customerservice@nccommerce.com.

(c) Appeals of a Non-Fraud Overpayment Determination (other than as provided in 04 NCAC 24B .0601(c)) shall be filed with the Benefits Integrity Unit by mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1369.
- (3) Any questions regarding the contents of a Non-Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369, or email at des.ui.bpc@nccommerce.com

(d) Appeals of a Fraud Overpayment Determination (other than as provided in 04 NCAC 24B .0601(c)) shall be filed with the Benefits Integrity Unit by mail, or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1369.
- (3) Any questions regarding the contents of a Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369, or email at des.ui.bpc@nccommerce.com.

(e) Appeals of a Monetary Determination shall be filed with the Monetary Revision Unit by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 715-3983.
- (3) The email address is des.ui.customerservice@nccommerce.com.
- (4) Any questions regarding the contents of a Monetary Determination shall be directed to the Monetary Revision Unit by telephone to (919) 707-1257, facsimile at (919) 715-3983, or email at des.ui.customerservice@nccommerce.com.

(f) Appeals of a Wage Transcript and Monetary Determination shall be filed with the Monetary Revision Unit by mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 715-3983.
- (3) Any questions regarding the contents of a Wage Transcript and Monetary Determination shall be directed to the Monetary Revision Unit by telephone to (919) 707-1257, facsimile at (919) 715-3983, or email at des.ui.customerservice@nccommerce.com.

(g) Petitions for Waiver of Overpayment shall be filed with the Benefits Integrity Unit by mail, or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1369.
- (3) Any questions regarding the contents of an overpayment determination shall be directed to the Benefit Payment Control Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369 or email at des.ui.bpc@nccommerce.com.

(h) Claimant appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter shall be filed with the Benefits Integrity Unit by mail, or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1369.
- (3) Any questions regarding the contents of a North Carolina Department of Revenue Offset Letter shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369, or email at des.ui.bpc@nccommerce.com.

(i) Employer appeals of a North Carolina Department of Revenue Offset Letter for outstanding tax debts shall be filed with and Tax Administration Section by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.
- (4) Any questions regarding the contents of a NCDOR Offset letter for outstanding tax debts shall be directed to the Tax Administration Section by telephone to (919) 707-1150, facsimile at (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.

(j) Claimant Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the Benefit Integrity Unit of mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 715-3983.
- (3) Any questions regarding TOP shall be directed to a Recovery Specialist by telephone to (919) 707-1338, or email at des.ui.bpc@nccommerce.com.

(k) Employer requests shall be filed with Employer Call Center (ECC) by mail, telephone, facsimile, or email.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The phone number is (919) 707-1150.
- (3) The facsimile number is (919) 715-0780.
- (4) The email address is des.tax.customerservice@nccommerce.com.

(l) Appeals from an Appeals Decision shall be filed with the Board of Review by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-0690.
- (3) The email address is des.ha.appeals@nccommerce.com.

(m) Requests for Post-Decision Relief or Reconsideration shall be filed with the Board of Review by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 715-7193.
- (3) The email address is BOR@nccommerce.com.

(n) Protests or appeals of a Tax Liability Determination shall be filed with the Tax Administration Section by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.

(o) Protests or appeals of a Tax Rate Assignment shall be filed with the Tax Administration Section by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.

(p) Protests or appeals of Audit Results shall be filed with the Tax Administration Section by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.

(q) Protests or appeals of Tax Assessments shall be filed with the Tax Administration Section by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.

(r) Exceptions to a Tax Opinion shall be filed with the Board of Review by mail, facsimile or email.

- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 715-7193.
- (3) The email address is BOR@nccommerce.com.

(s) Protests or appeals of benefit charges to an employer's account, or requests for non-charging shall be filed with the Employer Benefit Charges/Benefit Charges Unit by mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611-5903.
- (2) The facsimile number is (919) 733-1126.
- (3) All questions regarding non-charging shall be directed to the Employer Benefit Charges/Benefit Charges Unit at (919) 707-1279.

(t) Protests or appeals of a Denial of Seasonal Assignment shall be filed with the Tax Administration Section by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.

(u) Transmittal of interstate work search records and photo identification shall be filed with the Interstate Unit by mail, or facsimile.

- (1) The Mailing Address is Post Office Box 27967, Raleigh, North Carolina 27611.

- (2) The facsimile number is (919) 733-1370.
- (3) All questions regarding interstate work search requirements shall be directed to the Interstate Unit at (919) 707-1237.

*Authority G.S. 96-4; 96-14.1.*

**SUBCHAPTER 24B - BENEFITS**

**SECTION .0600 – UNEMPLOYMENT INSURANCE BENEFIT OVERPAYMENTS**

**04 NCAC 24B .0601 NOTICE REQUIREMENT FOR OVERPAYMENT**

A determination finding an overpayment of unemployment insurance benefits to a claimant shall contain:

- (1) the date the determination was mailed to the claimant;
- (2) reasons for the overpayment;
- (3) the statutory authority under G.S. 96-18(g)(3) for seeking repayment of the overpayment;
- (4) notice that the claimant may protest the overpayment determination and instructions on how to protest the overpayment determination as provided in 04 NCAC 24A .0104(c); and
- (5) notice that the claimant may file a request petition for waiver of the overpayment in the same manner as prescribed under Item (4) of this Rule, provided in 04 NCAC 24A .0104(g).
- (6) notice that the determination becomes final within 30 days from the date of mailing, unless:
  - (a) the claimant appeals the determination as provided in 04 NCAC 24A .0104(c) or (d), as applicable; or
  - (b) if the overpayment is created by an Appeals Decision or a Higher Appeals Decision that reverses an initial determination finding that the claimant was entitled to payment of unemployment insurance benefits (or otherwise disqualifying a previously-eligible claimant from receiving unemployment insurance benefits), the claimant shall be instructed that only the Appeals Decision or Higher Appeals Decision resulting in the overpayment (and not the related overpayment determination) shall be appealable, and that the same appeals decision provisions of 04 NCAC 24C .0212 shall apply to all such appeals.

*Authority G.S. 96-4; 96-18.*

**04 NCAC 24B .0602 BILL FOR REPAYMENT OF OVERPAYMENT**

(a) If a claimant does not protest an overpayment determination within 30 days, 30 days from the date of mailing, the determination of overpayment shall become final. DES shall mail

a bill to the claimant for the amount of the overpayment owed after a final determination or decision.

(b) The first bill shall contain:

- (1) the total amount of the overpayment; and
- (2) notice that repayment of an overpayment determined to be fraudulent shall not be waived.

(c) If an overpayment determination is created by an Appeals Decision or an Higher Appeals Decision that reverses an initial determination finding that the claimant was entitled to payment of unemployment insurance benefits (or otherwise disqualifying a previously-eligible claimant from receiving unemployment insurance benefits), the claimant may only appeal the Appeals Decision or Higher Appeals Decision resulting in the overpayment (and not the related overpayment determination) to the Board of the Review.

Authority G.S. 96-4; 96-18.

**SUBCHAPTER 24D - TAX ADMINISTRATION**

**SECTION .0400 - VOLUNTARY ELECTION AND PAYMENTS**

**04 NCAC 24D .0404 NONCHARGING FOR REIMBURSING EMPLOYERS**

(a) "Benefits paid through error," within the meaning of that phrase under G.S. 96-9.6(d), shall include only those benefits paid to an individual:

- (1) due to clerical, computer, or other similar error on the part of DES;
- (2) when the individual was never employed by the reimbursing employer;
- (3) when the individual remains employed by the reimbursing employer and benefits should not have been paid;
- (4) when there is error in payment of a claim where the individual was in service with a subsequent employer;
- (5) due to fraud;
- (6) when benefit charges have been assessed against an incorrect employer account; or
- (7) as a result of a DES decision which was ultimately reversed upon final adjudication.

(b) If a reimbursing employer has a deficit in its account as calculated pursuant to G.S. 96-9.6(e), then all benefits paid must be charged to the employer's account, notwithstanding whether the benefits were paid in error.

(c) Notwithstanding any other provision of law or rule, reimbursing employers are subject to the provisions of G.S. 96-11.4 and 04 NCAC 24D .0300.

Authority G.S. 96-4; 96-9.6.

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the NC Medical Care Commission intends to*

*readopt with substantive changes the rules cited as 10A NCAC 13D .2001, .2402, .2503, and .3201 and readopt without substantive changes the rules cited as 10A NCAC 13D .2210 and .2303.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <http://www2.ncdhhs.gov/dhsr/ruleactions.html>

**Proposed Effective Date:** July 1, 2016

**Public Hearing:**

**Date:** February 2, 2016

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

**Location:** Dorothea Dix Campus, Wright Building, Room 131, 1201 Umstead Drive, Raleigh, NC 27603

**Reason for Proposed Action:** Pursuant of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 13D, The Rules for the Licensing of Nursing Homes, six rules were determined as "Necessary With Substantive Public Interest," thus necessitating readoption. With input from stakeholders, substantial revisions have been made to Rule .2001 (Definitions) and Rule .3201 (Required Spaces) by updating these rules to contemporary standards and terminology. One of the several technical changes made in Rule .2210 was based on a comment received during the public comment period during the periodic review process. Revisions have been made to Rules .2303, .2402 and .2503 for the purpose of clarification of these rules.

**Comments may be submitted to:** Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2700, email [DHSR.RulesCoordinator@dhhs.nc.gov](mailto:DHSR.RulesCoordinator@dhhs.nc.gov)

**Comment period ends:** February 15, 2016

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 13 – NC MEDICAL CARE COMMISSION**

**SUBCHAPTER 13D – RULES FOR THE LICENSING OF NURSING HOMES**

**SECTION .2000 - GENERAL INFORMATION**

**10A NCAC 13D .2001 DEFINITIONS**

The following definitions will apply throughout this Subchapter:

- (1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
- (2) "Accident" means an unplanned or unwanted event resulting in the injury or wounding, no matter how slight, of a patient or other individual.
- ~~(3) "Accredited medical record technician" means a person trained in record maintenance and preservation, and accredited by the American Health Information Management Association.~~
- ~~(3) "Addition" means an extension or increase in floor area or height of a building.~~
- ~~(4) "Adequate" means, when applied to various services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.~~
- ~~(5)(4) "Administrator" means a person licensed by the North Carolina State Board of Examiners for Nursing Home Administrators who administers, manages, supervises, or is in general administrative charge of a nursing home, without regard to whether such individual has an ownership interest in such home or whether his or her functions and duties are shared with one or more individuals as defined in accordance with G.S. 90-276, Article 20, and who has authority for and is responsible for the overall operation of a facility. G.S. 90-274(4).~~
- (5) "Alteration" means any construction or renovation to an existing structure other than repair, maintenance, or addition.
- ~~(6) "Appropriate" means right, suitable or proper for the specified use or purpose, suitable or proper, when used as an adjective. When used as a transitive verb it means to set aside for some specified exclusive use.~~

- ~~(7)(6) "Brain injury long term care" means an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are Brain injury long term care is provided through a medically supervised interdisciplinary process and are is directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functions.~~
- ~~(8)(7) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time.~~
- ~~(9) "Case manager" means the individual responsible for the coordination of services, for a given patient, between disciplines so that the patient may reach optimal rehabilitation through the judicious use of resources.~~
- ~~(10)(8) "Combination facility" means a combination home as defined in G.S. 131E-101.~~
- ~~(11)(9) "Comprehensive, inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant improvement in activities of daily living—living, including bathing, dressing, grooming, transferring, eating, and using speech, language or other communication systems. A comprehensive, rehabilitation program utilizes a coordinated and integrated, interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psychosocial and cognitive deficits.~~
- ~~(12) "Convalescent care" means care given for the purpose of assisting the patient or resident to regain health or strength.~~
- ~~(13)(10) "Department" means the North Carolina Department of Health and Human Services.~~
- ~~(14) "Dietitian" means a person who is licensed according to G.S. 90, Article 25, or is registered by the Commission on Dietetic Registration (CDR) of the American Dietetic Association (ADA) according to the standards and qualifications as referenced in the second edition of the "Accreditation/Approval Manual for Dietetic Education Program," "The Registration Eligibility Application for Dietitians" and the "Continuing Professional Education" which are hereby incorporated by reference, including subsequent amendments and editions. Copies of the manual may be purchased from ADA Sales Order Department, 216 W. Jackson Blvd., Chicago, IL 60606-6995 for twenty one dollars and ninety five cents~~

- (~~15~~)(11) ~~(\$21.95), plus three dollars (\$3.00) shipping and handling.~~ "Director of nursing" means a registered nurse who has authority and direct responsibility for all nursing services and nursing care.
- (~~16~~)(12) ~~"Discharge" means a patient who physically relocates physical relocation of a patient to another health care setting setting, or is discharged home the discharge of a patient to his or her home, or relocated the relocation of a patient from a nursing bed to an adult care home bed bed, or from an adult care home bed to a nursing bed.~~
- (17) "Drug" means substances:
- (a) ~~recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;~~
  - (b) ~~intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;~~
  - (c) ~~intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and~~
  - (d) ~~intended for use as a component of any article specified in Subitems (a), (b), or (c) of this Subparagraph.~~
- (~~18~~)(13) "Existing facility" means a facility currently ~~licensed licensed, or~~ a proposed facility, a proposed addition to a licensed ~~facility facility,~~ or a proposed remodeled licensed facility that will be built according to plans design development drawings and specifications ~~which have been approved by the Department through the design development drawings stage for compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter, prior to the effective date of this Rule.~~
- (19) ~~"Exit conference" means the conference held at the end of a survey or investigation between the Department's representatives and the facility administration representative.~~
- (~~20~~)(14) "Facility" means a nursing facility or combination facility as defined in this Rule.
- (21) ~~"Finding" (when used in conjunction with the Nurse Aide program) means a determination by the Department that an allegation of patient abuse or neglect, or misappropriation of patient property has been substantiated.~~
- (22) ~~"HIV Unit" means designated areas dedicated to patients or residents known to have Human Immunodeficiency Virus disease.~~
- (~~23~~)(15) "Incident" means any ~~happening, accident, event event,~~ or occurrence ~~which that~~ is unplanned, or unusual unusual, ~~or unwanted~~ and has actually caused harm to a patient patient, or has the potential for harm.
- (~~24~~)(16) "Inpatient rehabilitation facility or unit" means a free-standing facility or a unit (unit pertains to contiguous dedicated beds and spaces) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9 to establish inpatient, rehabilitation beds and to provide a comprehensive, inpatient rehabilitation program.
- (~~25~~)(17) "Interdisciplinary" means an integrated process involving a ~~representative representatives~~ from appropriate disciplines of the health care team.
- (26) ~~"Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.~~
- (27) ~~"Licensed practical nurse" means a nurse who is licensed as a practical nurse under G.S. 90, Article 9A.~~
- (~~28~~)(18) "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license to operate the facility has been issued. The licensee is the legal entity ~~which that~~ is responsible for the operation of the business.
- (29) ~~"Medical consultations" means consultations which the rehabilitation physician, the attending physician or other authorized persons determine are necessary to meet the acute medical needs of the patient and do not include routine medical needs.~~
- (30) ~~"Medication" means drug as defined in Item (17) of this Rule.~~
- (~~31~~)(19) "Medication error rate" means ~~a discrepancy between what the measure of discrepancies between medication that was ordered for a patient by the health care provider and what medication that is actually administered.~~ administered to the patient. The medication error rate is calculated by dividing the number of errors observed divided by the surveyor by the opportunities for error error, multiplied times 100.
- (~~32~~)(20) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a patient's belongings or money without the patient's consent.
- (~~33~~)(21) "Neglect" means a failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.
- (~~34~~)(22) "New facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that ~~is constructed will be built~~ according to plans design development drawings and specifications approved by the Department ~~subsequent to for compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter after the effective date of this Rule. If determined by the~~

- Department that more than half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.
- (35)(23) "Nurse Aide" means a person who is listed on the N.C. Nurse Aide Registry and is in compliance with 42 CFR Part 483 which is incorporated by reference, including subsequent amendments, provides nursing or nursing-related services to patients in a nursing home. A nurse aide is not a licensed health professional. Nursing homes that participate in Medicare or Medicaid shall comply with 42 CFR Part 483.75(e) which is incorporated by reference, including subsequent amendments. Copies of the Code of Federal Regulations may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15202-7954 for thirty eight dollars (\$38.00) and may be purchased with a credit card by a direct telephone call to the G.P.O. at (202) 512-1800. The Code of Federal Regulations may be accessed at [http://www.access.gpo.gov/nara/cfr/waisidx\\_08/42cfr483\\_08](http://www.access.gpo.gov/nara/cfr/waisidx_08/42cfr483_08).
- (36) "Nurse aide trainee" means a person who has not completed an approved nurse aide training course and competency evaluation and is demonstrating knowledge, while performing tasks for which they have been found proficient by an instructor. These tasks shall be performed under the direct supervision of a registered nurse. The term does not apply to volunteers.
- (37)(24) "Nursing facility" means a nursing home as defined in G.S. 131E-101.
- (38) "Nurse in charge" means the licensed nurse to whom duties for a specified number of patients and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.
- (39) "Occupational therapist" means a person licensed in the State of North Carolina as an occupational therapist in accordance with the provisions of G.S. 90, Article 18D.
- (40) "Occupational therapist assistant" means a person licensed in the State of North Carolina as an occupational therapist assistant in accordance with the provisions of G.S. 90, Article 18D.
- (41) "On duty personnel" means personnel who are responsive to patient needs and physically present in the facility performing assigned duties.
- (42)(25) "Patient" means any person admitted for nursing care.
- (43) "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical care services to achieve intended medication outcomes and minimize negative effects of drug therapy.
- (44) "Pharmacist" means a person who is licensed to practice pharmacy in North Carolina.
- (45) "Physician" means a person licensed under G.S. 90, Article 1 to practice medicine in North Carolina.
- (46) "Proposal" means a Negative Action Proposal containing information that may ultimately be classified as violations.
- (47) "Provisional License" means an amended license recognizing significantly less than full compliance with the licensure rules.
- (48) "Psychologist" means a person licensed as a practicing psychologist in accordance with G.S. 90, Article 18A.
- (49) "Physiatrist" means a licensed physician who has completed a physical medicine and rehabilitation residency training program approved by the Accreditation Council of Graduate Medical Education or the American Osteopathic Association.
- (50) "Physical therapist" means a person licensed in the State of North Carolina as a physical therapist in accordance with the provisions of G.S. 90, Article 18B.
- (51) "Physical therapist assistant" means a person licensed in the State of North Carolina as a physical therapist assistant in accordance with the provisions of G.S. 90-270.24, Article 18B.
- (52) "Recreational therapist" means a person certified by the State of North Carolina Therapeutic Recreational Certification Board.
- (53) "Registered Nurse" means a nurse who is licensed as a registered nurse under G.S. 90, Article 9A.
- (54) "Registered Records Administrator" means a person who is registered by the American Health Information Management Association.
- (55) "Rehabilitation nurse" means a registered nurse licensed in North Carolina, with training, either academic or on the job, in physical rehabilitation nursing and at least one year experience in physical rehabilitation nursing.
- (56) "Rehabilitation aide" means an unlicensed assistant who works under the supervision of a registered nurse, licensed physical therapist or occupational therapist in accordance with the appropriate occupational licensure laws governing his or her supervisor and consistent with staffing requirements as set forth in Rule .3027 of this Subchapter. Any rehabilitation aide, who works in a nursing department and is under the supervision of a registered nurse, shall be listed on the North Carolina Nurse Aide Registry and have received additional staff training as listed in Rule .3028 of this Subchapter.

- (57) — "~~Rehabilitation physician~~" means a ~~physiatrist or a physician who is qualified, based on education, training and experience, regardless of specialty, to provide medical care to rehabilitation patients.~~
- (58)(26) "Remodeling" means alterations, renovations, rehabilitation work, repairs to structural systems, and replacement of building systems at a nursing facility ~~or combination facility.~~
- (27) "Repair" means reconstruction or renewal of any part of an existing building for the purpose of its maintenance.
- (59)(28) "Resident" means any person admitted for care to an adult care home part of a combination facility as defined in G.S. 131E-101.
- (60)(29) "Respite care" means services provided for persons admitted to a nursing facility a patient on a temporary basis, not to exceed 30 days.
- (61) — "~~Significant medication error~~" means an error which causes the patient discomfort or jeopardizes the health and safety of the patient. Factors to consider when determining significance of error include the patient's condition, the drug category (need titration of blood levels, etc.) and frequency of the error.
- (62) — "~~Single unit or unit dose package~~" means each dose of medication is individually packaged in a properly sealed and properly labeled container in accordance with the U.S. Pharmacopeia and professional standards.
- (63) — "~~Sitter~~" means an employee or volunteer who provides companionship and social interaction to a particular patient, usually on a private duty basis.
- (64) — "~~Social worker~~" means a person who meets the qualifications set forth in Rule .2802 of this Subchapter.
- (65) — "~~Speech and language pathologist~~" means a person licensed in the State of North Carolina as a speech and language pathologist in accordance with the provisions of G.S. 90, Article 22.
- (66) — "~~Supervisor in charge~~" (adult care home) means any employee to whom supervisory duties for the adult care home portion of a combination home have been delegated by either the administrator or director of nursing.
- (67)(30) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with rules as set forth in G.S. 131E-117 and applicable state and federal laws, rules and regulations. G.S. 131E-117, Subchapters 13D and 13F of this Chapter, and 42 CFR Part 483, Requirements for States and Long Term Care Facilities.
- (68) — "Unit dose system" means a drug distribution system in which each dose of medication is

~~contained in, and administered from, single unit or unit dose packages.~~

(69)(31) "Ventilator dependence" is defined as physiological dependency by a patient on the use of a ventilator for more than eight hours a day.

(70)(32) "Violation" means a ~~finding which directly relates to a patient's or resident's health, safety or welfare, or which creates a substantial risk that death or serious physical harm will occur. It is determined to be an infraction of failure to comply with the regulations, standards and requirements set forth in G.S. 131E - 117 and 131D - 21 or applicable state and federal laws, rules and regulations. Subchapters 13D and 13F of this Chapter, or 42 CFR Part 483, Requirements for States and Long Term Care Facilities, that directly relates to a patient's or resident's health, safety, or welfare, or which creates a substantial risk that death, or serious physical harm will occur.~~

Authority G.S. 131E-104.

**SECTION .2200 - GENERAL STANDARDS OF ADMINISTRATION**

**10A NCAC 13D .2210 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR MISAPPROPRIATION (READOPTIION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .2300 - PATIENT AND RESIDENT CARE AND SERVICES**

**10A NCAC 13D .2303 NURSE STAFFING REQUIREMENTS (READOPTIION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .2400 - MEDICAL RECORDS**

**10A NCAC 13D .2402 PRESERVATION OF MEDICAL RECORDS**

(a) A facility shall keep medical records on file for five years following the discharge of an adult patient.

(b) Notwithstanding Paragraph (c) of this Rule, if the patient is a minor when discharged from the nursing facility, ~~then~~ the records shall be kept on file until his or her 19th birthday and for the ~~timeframe~~ additional time specified in G.S. 1-17(b) for commencement of an action on behalf of a minor.

(c) If a facility discontinues operation, the licensee shall inform the Division of Health Service Regulation where its records are stored. ~~Records shall be stored with a business offering medical record storage and retrieval services for five years after the closure date.~~ For five years after a facility discontinues operations, records shall be stored with a business offering medical record storage and retrieval services.



(d) All medical records are confidential. ~~The A facility shall be compliant-comply~~ with 42 CFR Parts 160, 162 and 164 of the Health Insurance Portability and Accountability Act.

(e) At the time of the inspection, ~~the a~~ facility shall inform the surveyor of the name of any patient who has denied the Department access to his or her medical record pursuant to G.S. 131E-105.

*Authority G.S. 131E-104; 131E-105.*

**SECTION .2500 - PHYSICIAN'S SERVICES**

**10A NCAC 13D .2503 USE OF NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS**

(a) Any facility that employs nurse practitioners or physician assistants shall maintain the following information for each nurse practitioner and physician assistant:

- (1) verification of current approval to practice as a nurse practitioner by the Medical Board and Board of Nursing for each practitioner, or verification of current approval to practice as a physician assistant by the Medical Board for each physician assistant; and
- (2) a copy of ~~instructions or written protocols the job description or contract~~ signed by the nurse practitioner or physician assistant and the supervising physicians.

(b) The privileges of the nurse practitioner or physician assistant shall be defined by the facility's policies and procedures and shall be limited to those privileges authorized in 21 NCAC ~~32M and 24 NCAC 36 .0800~~ 36 .0802 and .0809 for the nurse practitioner or 21 NCAC 32S .0212 for the physician assistant.

*Authority G.S. 131E-104.*

**SECTION .3200 - FUNCTIONAL REQUIREMENTS**

**10A NCAC 13D .3201 REQUIRED SPACES**

(a) ~~In a facility, the floor area of a single bedroom shall not be less than 100 square feet and the floor area of a room for more than one bed shall not be less than 80 square feet per bed. The 80 square feet and 100 square feet requirements shall be exclusive of closets, toilet rooms, vestibules, or wardrobes. When a designated single room exceeds 159 net square feet in floor area, it shall remain a single bedroom and shall not be used as a multi-bedroom unless approved in advance by the Division as meeting the requirements of G.S. 131E, Article 9. A facility shall meet the following requirements for bedrooms:~~

- (1) Single bedrooms shall be provided with not less than 100 square feet of floor area;
- (2) Bedrooms with more than one bed shall be provided with not less than 80 square feet of floor area per bed;
- (3) Bedrooms shall have windows with views to the outdoors. The gross window area shall not be less than eight percent of the bedroom floor area required by Subparagraphs (1) and (2) of this Paragraph;

- (4) Each bedroom shall be provided with one closet or wardrobe per bed. In nursing facilities and the nursing home portion of combination facilities, the closet or wardrobe shall have clothing storage space of not less than 36 cubic feet per bed with one-half of this space for hanging clothes. In the adult care home portion of a combination facility, the closet or wardrobe shall have clothing storage space of not less than 48 cubic feet per bed with one-half of this space for hanging clothes; and

- (5) Floor space for closets, toilet rooms, vestibules or wardrobes shall not be included in the areas required by this Subparagraph.

(b) ~~The total space set aside for dining, activity, and other common use shall not be less than 25 square feet per bed for a nursing facility and 30 square feet per bed for the adult care home portion of a combination facility. Physical therapy, occupational therapy and rehabilitation space shall not be included in this total. A facility shall meet the following requirements for dining, activity and common use areas:~~

- (1) Nursing facilities and the nursing home portion of combination facilities shall have:

(A) a separate area or areas set aside for dining, measuring not less than 10 square feet per bed;

(B) a separate area or areas set aside for activities, measuring not less than 10 square feet per bed; and

(C) an additional dining, activity and common use area or areas, measuring not less than 5 square feet per bed. This area may be in a separate area or combined with the separate dining and activity areas required by Part (A) and (B) of this Subparagraph.

- (2) The adult care home portion of combination facilities shall have:

(A) a separate area or area set aside for dining, measuring not less than 14 square feet per bed; and

(B) a separate area or areas set aside for activities, measuring not less than 16 square feet per bed.

- (3) The dining room area or areas required by this Paragraph may be combined.

- (4) The activity area or areas in nursing facilities and the nursing home portion of combination facilities shall not be combined with the activity area or areas in the adult care home portion of combination facilities.

- (5) Floor space for physical, occupational and rehabilitation therapy shall not be included in the areas required by this Paragraph. Closets and storage units for equipment and supplies shall not be included in the areas required by this Paragraph.

- (6) Dining, activity, and common use areas shall be designed and equipped to provide accessibility

to both patients and residents confined to wheelchairs and ambulatory patients or residents.

(7) Dining, activity, and common use areas required by this Paragraph shall have windows with views to the outdoors. The gross window area shall not be less than eight percent of the required floor area required by Subparagraphs (1) and (2) of this Paragraph.

(8) For facilities designed with household units for 30 or fewer patients or residents, the dining and activity areas may be combined.

~~(e) In nursing facilities, included in the total square footage required by Paragraph (b) of this Rule, a separate dining area or areas with a minimum of 10 square feet per bed shall be provided and a separate activity area or areas with a minimum of 10 square feet per bed shall be provided. The remainder of the total required space for dining and activities square footage required by Paragraph (b) of this Rule may be in a separate area or combined with either of the separate dining and activity areas required by this Paragraph. If a facility is designed with patient and resident household units for 30 or less patients and residents, the dining and activity areas in the household units are not required to be separate.~~

~~(d) In combination facilities, included in the total square footage required by Paragraph (b) of this Rule, a separate dining area or areas with at least 14 square feet per adult care home bed shall be provided. The adult care home dining area or areas may be combined with the nursing facility dining area or areas. A separate activity area or areas for adult care home beds shall be provided with at least 16 square feet per adult care home bed. The adult care home activity area shall not be combined with the activity area or areas required for nursing beds.~~

~~(e) Dining, activity, and living space shall be designed and equipped to provide accessibility to both patients or residents confined to wheelchairs and ambulatory patients or residents. Dining, activity, and living areas required by Paragraph (b) of this Rule shall have windows with views to the outside. The gross window area shall not be less than eight percent of the floor area required for each dining, activity, or living space.~~

~~(f) Closets and storage units for equipment and supplies shall not be included as part of the dining, activity, and living floor space area required by Paragraph (b) of this Rule.~~

~~(g)(c) Outdoor areas for individual and group activities shall be provided and shall be accessible to patients and residents with physical disabilities. In the adult care portion of a combination facility, a nursing unit with a control mechanism and staff procedures as required by Rule .3404(f) of this Subchapter shall have direct access to an outdoor area.~~

~~(h) For nursing beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each occupant with a minimum of 36 cubic feet of clothing storage space at least half of which is for hanging clothes.~~

~~(i) For adult care home beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each adult care home resident with a minimum of 48 cubic feet of clothing storage space at least half of which is for hanging clothes.~~

~~(j)(d) Some means for patients and residents to lock personal articles within the facility shall be provided.~~

~~(k) A toilet room shall be directly accessible from each patient and resident room and from each central bathing area without going through the general corridor. One toilet room may serve two patient or resident rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided in each patient and resident room. One tub or shower shall be provided for each 15 beds not individually served. For each 120 beds or fraction thereof the following shall be provided:~~

~~(1) at least one bathtub or a manufactured walk in bathtub or a similar manufactured bathtub designed for easy transfer of patients and residents into the tub. All bathtubs must be accessible on three sides; and~~

~~(2) a roll-in shower designed and equipped for unobstructed ease of shower chair entry and use.~~

(e) A facility shall meet the following requirements for toilet rooms, tubs, showers and central bathing areas:

(1) A toilet room shall contain a toilet and lavatory. If a lavatory is provided in each bedroom, the toilet room is not required to have a lavatory.

(2) A toilet room shall be accessible from each bedroom without going through the general corridor.

(3) One toilet room may serve two bedrooms but not more than eight beds.

(4) One tub or shower shall be provided for each 15 beds not individually served by a tub or shower.

(5) For each 120 beds or fraction thereof, a central bathing area shall be provided with the following:

(A) a bathtub or a manufactured walk-in bathtub or a similar manufactured bathtub designed for easy transfer of patients and residents into the tub. Bathtubs shall be accessible on three sides. Manufactured walk-in bathtubs or a similar manufactured bathtubs shall be accessible on two sides;

(B) a roll-in shower designed and equipped for unobstructed ease of shower chair entry and use. If a bathroom with a roll-in shower designed and equipped for unobstructed ease of shower chair entry adjoins each bedroom in the facility, the central bathing area is not required to have a roll-in shower;

(C) a toilet and lavatory; and

(D) a cubicle curtain enclosing the toilet, tub and shower. A closed cubicle curtain at one of these plumbing fixtures shall not restrict access to the other plumbing fixtures.

(4)(f) For each nursing unit, or fraction thereof on each floor, the following shall be provided:

(1) a medication preparation area with a counter, a sink, a medication refrigerator, eye level medication storage, cabinet storage and a

~~double locked narcotic storage area under the visual control of nursing staff. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin; with:~~

- ~~(A) a counter;~~
- ~~(B) a double locked narcotic storage area under the visual control of nursing staff;~~
- ~~(C) a medication refrigerator;~~
- ~~(D) eye-level medication storage;~~
- ~~(E) cabinet storage; and~~
- ~~(F) a sink. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin;~~

(2) ~~a clean utility room with a counter, sink, and storage. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin; with:~~

- ~~(A) a counter;~~
- ~~(B) storage; and~~
- ~~(C) a sink. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin;~~

(3) ~~a soiled utility room with a counter, sink, and storage. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin. The soiled utility room shall be equipped for the cleaning and sanitizing of bedpans as required by 15A NCAC 18A .1312 Toilet: Handwashing: Laundry: And Bathing Facilities; with:~~

- ~~(A) a counter;~~

- ~~(B) storage; and~~
- ~~(C) a sink. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin. The soiled utility room shall be equipped for the cleaning and sanitizing of bedpans as required by 15A NCAC 18A .1312 Toilet: Handwashing: Laundry: And Bathing Facilities;~~

- (4) a nurses' toilet and locker space for personal belongings;
- (5) a soiled linen storage room. If the soiled linen storage room is combined with the soiled utility room, a separate soiled linen storage room is not required;
- (6) ~~a clean linen storage room; provided in one or more of the following:~~
  - ~~(A) a separate linen storage room;~~
  - ~~(B) cabinets in the clean utility room; or~~
  - ~~(C) a linen closet;~~
- (7) a nourishment station in an area enclosed with walls and doors which contains work space, cabinets and refrigerated storage, and a small stove, microwave oven, or hot plate. If a facility is designed with patient and resident household units, a patient and resident dietary area located within the patient and resident household unit may substitute for the nourishment station. The patient and resident dietary area shall include cooking equipment, a kitchen sink, refrigerated storage and storage areas and shall be for the use of staff, patients, residents, and families; with:
  - ~~(A) work space;~~
  - ~~(B) cabinets;~~
  - ~~(C) refrigerated storage; and~~
  - ~~(D) a small stove, microwave, or hot plate;~~
- (8) an audio-visual nurse-patient call system arranged to ensure that a patient's or resident's call in the facility readily notifies and directs staff to the location where the call was ~~activated; activated;~~
- (9) a control point located no more than 150 feet from the furthest patient or resident bedroom door with an area for charting patient and resident records, space for storage of emergency equipment and supplies, and nurse-patient call and alarm annunciation systems; and with:
  - (A) an area for charting patient and resident records;
  - (B) space for storage of emergency equipment and supplies; and

(C) nurse patient call and alarm annunciation systems; and

(10) a janitor's closet.

(g) If a facility is designed with patient or resident household units, a patient and resident dietary area located within the patient or resident household unit may substitute for the nourishment station. The patient or resident dietary area shall be for the use of staff, patients, residents, and families. The patient or resident dietary area shall contain:

- (1) cooking equipment;
- (2) a kitchen sink;
- (3) refrigerated storage; and
- (4) storage areas.

~~(h)~~ Clean linen storage shall be provided in a separate room from bulk supplies. ~~Clean linen for nursing units may be stored in closed carts, cabinets in the clean utility room, or a linen closet on the unit floor.~~

~~(i)~~ The kitchen area and laundry area each shall have a janitor's closet. Administration, occupational and physical therapy, recreation, personal care, and employee areas shall be provided janitor's closets and may share one as a group.

~~(j)~~ Stretcher and wheelchair storage shall be provided.

~~(k)~~ ~~Bulk~~ The facility shall provide patient and resident storage shall be provided at the rate of at least not less than five square feet of floor area per licensed bed. This storage space shall be either in the facility or within 500 feet of the facility on the same site. This storage space shall be in addition to the other storage space required by this Rule. This storage space shall:

- (1) be used by patients and residents to store out-of-season clothing and suitcases;
- (2) be either in the facility or within 500 feet of the facility on the same site; and
- (3) be in addition to the other storage space required by this Rule.

~~(l)~~ Office space shall be provided for business transactions. Office space shall be provided for persons holding the following positions:

- (1) administrator;
- (2) director of nursing;
- (3) social services director;
- (4) activities director; and
- (5) physical therapist.

~~(m)~~ Each combination facility shall provide a minimum of one residential washer and residential dryer in a location accessible by adult care home staff, residents, and residents' families.

Authority G.S. 131E-104; 42 CFR 483.70.

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0227.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://portal.ncdenr.org/web/wq/rules>

Proposed Effective Date: July 1, 2016

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Any person requesting that the Environmental Management Commission conduct a public hearing on any portion of this proposed rule must submit a written request to Elizabeth Kountis, Division of Water Resources, 1617 Mail Service Center, Raleigh, NC 27699-1617 by December 30, 2015. The request must specify which rule the hearing is being requested on. Mailed written requests must be postmarked no later than December 30, 2015.*

**Reason for Proposed Action:** *At the September 2015 Environmental Management Commission (EMC) meeting, the EMC approved rule amendments reflecting the reclassification of a portion of the Cape Fear River in New Hanover and Brunswick Counties to Class SC Sw with a water quality management plan. The rulemaking involved proposed amendments to 15A NCAC 2B .0227 and .0311 that had been publicly noticed in early 2015 and adopted in conjunction with each other. Then the Division of Water Resources (DWR) submitted the rule amendments to the Rules Review Commission (RRC), and RRC legal staff requested technical changes to 2B .0227 but not 2B .0311. The requested changes primarily addressed 2B .0227 rule language in existence prior to the rule amendments approved at the September 2015 EMC meeting, and DWR considered the requested changes for the purposes of clarity only. DWR responded to the requested technical changes with a revised version of 2B .0227 that EMC approved at its November 2015 meeting to go out to public notice unaccompanied by 2B .0311.*

*Revisions made to 2B .0227 in response to the requested technical changes, for which public comment is currently desired, appear underlined or ~~struck through~~ in the rule below whereas the September 2015 EMC approved amendments to 2B .0227, for which public comment has already been received, appear in italics in the rule below; the revisions due to the requested technical changes are as follows:*

1. *First Sentence in (b): Addition of "either in Rules .0601 - .0608 of this Subchapter that address the Goose Creek watershed (Yadkin Pee-Dee River Basin)" to address requested clarification of North Carolina waters deemed by the EMC as protected by a "water quality management plan"*
2. *Only sentence in (b)(1)(A): Removal of brackets around "as specified in 15A NCAC 2H .1005(2)(a)" to address requested grammatical change*
3. *First sentence in (b)(1)(B): Removal of parentheses around "such as non-industrial process cooling or seafood processing discharges" to address requested grammatical change*
4. *Only sentence in (b)(1)(C): Removal of entire sentence and "(C)" to address requested clarification of "reduced loading rates" and "increased buffer zones"*

*This condition is difficult to implement as there is no established process or criteria for determining the application rates or setbacks in this rule. In addition, DWR is not considering more restrictive application rates or setbacks for facilities located in any specific basins, or areas in the state, other than what is prescribed in the 2T rules. The 2T rules were adopted in 2006, after the 2B .0227 language regarding the Lockwood Folly River Area (Lumber River Basin) was adopted, and were intended to provide protection to water resources by means such as setbacks and application rate restrictions. Lastly, as part of the Session Law 2013-413 process, Rule 2L .0107 Compliance Boundary, will be reviewed for potential amendments to provide adequate protection to surface waters currently within the compliance boundary for a spray field.*

5. Only sentence in (b)(1) new (C): Replacement of "must" with "shall" to address requested grammatical change
6. Only sentence in (b)(1) new (D): Replacement of "where significant shellfish or submerged aquatic vegetation bed resources occur," with "if those activities would result in a reduction of the beds of submerged aquatic vegetation or a reduction of shellfish producing habitat as defined in 15A NCAC 03I .0101(B)(20)(A) and (B)," to address requested deletion or clarification of "significant"  
*A technical change was requested for the same existing language in 2B .0225 (c)(2) as part of a triennial review rulemaking about 15 years ago, and given the revision made to address that technical change request became effective in the North Carolina Administrative Code (NCAC), DWR recommended the same revision be made to 2B .0227.*
7. Only sentence in (b)(2)(A): Addition of "utilize" and replacement of "discharges" with "discharges in accordance with Rule .0406(e) of this Subchapter" to address requested clarification of the process for a "case-by-case" determination  
*DWR added the word "utilize" and a reference to 2B .0406(e) to the proposed rule to clarify the required determination process.*
8. Only sentence in (b)(2)(B): Removal of "on a case-by-case basis" to address requested clarification of the process for a "case-by-case" determination  
*This part of the proposed rule already references Rule 2B .0404, which states that "the staff shall also provide on a case-by-case basis for seasonal variation in the discharge of oxygen-consuming wastes" and that rule provides the criteria to do so. Because the "case-by-case" language is already provided in the referenced .0404 rule, DWR*

*recommended removal of "on a case-by-case bases" from the proposed rule.*

**Fiscal impact (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS**

**SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA**

**15A NCAC 02B .0227 WATER QUALITY MANAGEMENT PLANS**

(a) In implementing the water quality standards to protect the existing uses [as defined by Rule .0202 of this Section] of the waters of the state or the water quality which supports those uses, the Commission shall develop water quality management plans on a priority basis to attain, maintain or enhance water quality throughout the state. Additional specific actions deemed necessary by the Commission to protect the water quality or the existing uses of the waters of the state shall be specified in Paragraph (b) of this Rule. These actions may include anything within the powers of the Commission. The Commission may also consider local actions which have been taken to protect a waterbody in determining the appropriate protection options to be incorporated into the water quality management plan.

(b) All waters determined by the Commission to be protected by a water quality management plan are listed with specific actions either in Rules .0601- .0608 of this Subchapter that address the Goose Creek watershed (Yadkin Pee-Dee River Basin) or as follows:

- (1) The Lockwoods Folly River Area (Lumber River Basin), which includes all waters of the lower Lockwoods Folly River in an area extending north from the Intracoastal Waterway to a line extending from Genoes Point to Mullet Creek, shall be protected by the specific actions described in *Parts (A) through ~~(E)~~(D) of this Subparagraph.*
  - (A) New development activities within 575' of the mean high water line which require a Sedimentation Erosion Control Plan or a CAMA major development permit must comply with the low density option of the coastal Stormwater Runoff Disposal Rules ~~as specified in 15A NCAC 2H .1005(2)(a)~~ as specified in 15A NCAC 02H .1005(2)(a).

(B) New or expanded NPDES permits shall be issued only for non-domestic, non-industrial process type discharges (such as non industrial process cooling or seafood processing discharges). such as non-industrial process cooling or seafood processing discharges. A public hearing is mandatory for any proposed (new or expanded) NPDES permit to this protected area.

*dissolved oxygen of the receiving water to drop more than 0.1 mg/l below the modeled in-stream dissolved oxygen at total permitted capacity for all discharges.*

Authority G.S. 143-214.1; 143-215.8A.

\*\*\*\*\*

~~(C) New non discharge permits shall be required to meet reduced loading rates and increased buffer zones, to be determined on a case by case basis.~~

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 13A .0101-.0103 and .0106-.0108.*

~~(D)~~(C) New or expanded marinas ~~must shall~~ be located in upland basin areas.

**Link to agency website pursuant to G.S. 150B-19.1(c):** <http://portal.ncdenr.org/web/wm/proposed-rules>

~~(E)~~(D) No dredge or fill activities shall be allowed ~~where significant shellfish or submerged aquatic vegetation bed resources occur, if those activities would result in a reduction of the beds of submerged aquatic vegetation or a reduction of shellfish producing habitat as defined in 15A NCAC 031 .0101(b)(20)(A) and (B).~~ except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the protected area or maintenance dredging for activities such as agriculture.

**Proposed Effective Date:** July 1, 2016

**Public Hearing:**

**Date:** January 11, 2016

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

**Location:** ENR Building located at 217 W. Jones Street, Raleigh, NC 27603, Room 1210-Training Room

(2) *A part of the Cape Fear River (Cape Fear River Basin) comprised of a section of 18-(71) from upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut shall be protected by the Class SC Sw standards as well as the following site-specific action: All new individual NPDES wastewater discharges and expansions of existing individual NPDES wastewater discharges shall be required to provide treatment for oxygen consuming wastes as described in Parts (A) through (C) of this Subparagraph.*

**Reason for Proposed Action:** *The proposed changes to 15A NCAC 13A .0101, 15A NCAC 13A .0102, 15A NCAC 13A .0103, 15A NCAC 13A .0106, 15A NCAC 13A .0107, and 15A NCAC 13A .0108 would make the State Hazardous Waste Program equivalent to, consistent with, and no less stringent than the federal RCRA program, by incorporating federal changes that are being mandated.*

**Comments may be submitted to:** Ann Preston, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919) 707-8226, fax (919) 707-8226, email [denr.dwm\\_rules@ncdenr.gov](mailto:denr.dwm_rules@ncdenr.gov)

**Comment period ends:** February 15, 2016

(A) *Effluent limitations shall be as follows: BOD<sub>5</sub> = 5 mg/l, NH<sub>3</sub>-N = 1 mg/l and DO = 6 mg/l, or utilize site-specific best available technology on a case-by-case basis for industrial discharges. discharges in accordance with Rule .0406(e) of this Subchapter.*

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

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

(B) *Seasonal effluent limits for oxygen consuming wastes will be considered ~~on a case by case basis in accordance with Rule .0404 of this Subchapter.~~*

**Fiscal impact (check all that apply).**

**State funds affected** 15A NCAC 13A .0102, .0103 and .0106

(C) *Any new or expanded permitted pollutant discharge of oxygen consuming waste shall not cause the*

- Environmental permitting of DOT affected Analysis submitted to Board of Transportation**
- Local funds affected**
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4 15A NCAC 13A .0101, .0107, and .0108**

**CHAPTER 13 – SOLID WASTE MANAGEMENT**

**SUBCHAPTER 13A – HAZARDOUS WASTE MANAGEMENT**

**SECTION .0100 – HAZARDOUS WASTE**

**15A NCAC 13A .0101 GENERAL**

(a) The Hazardous Waste Section of the Division of Waste Management shall administer the hazardous waste management program for the State of North Carolina.

(b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following substitutions or exceptions shall apply:

- (1) ~~"Department of Environment and Natural Resources" shall be substituted for "Environmental Protection Agency" except in 40 CFR 262.51 through 262.54, 262.56, 262.57, and Part 124 where references to the Environmental Protection Agency shall remain without substitution;~~
- (2) ~~"Secretary of the Department of Environment and Natural Resources" shall be substituted for "Administrator," "Regional Administrator," "Assistant Administrator" and "Director" except for 40 CFR 262.55 through 262.57, 264.12(a), 268.5, 268.6, 268.42(b), 268.44, and Part 124 where the references to the Administrator, Regional Administrator, Assistant Administrator and Director shall remain without substitution.~~

When used in any of the federal regulations incorporated by reference throughout this Subchapter, except where the context requires references to remain without substitution (including with regard to forms, publications and regulations concerning international shipments, variances from land disposal restrictions and other program areas over which the federal government retains sole authority): "United States" shall mean the State of North Carolina; "Environmental Protection Agency," "EPA" and "Agency" shall mean the Department of Environmental Quality; and "Administrator," "Regional Administrator," "Assistant Administrator" and "Director" shall mean the Secretary of the Department of Environmental Quality. The North Carolina Solid Waste Management Act and other applicable North Carolina General Statutes shall be substituted for references to "the Solid Waste Disposal Act," "the Resource Conservation and Recovery Act" and "RCRA" where required by context.

(c) In the event that there are inconsistencies or duplications in the requirements of those Federal rules incorporated by reference throughout this Subchapter and the State rules set out in this Subchapter, the provisions incorporated by reference shall prevail except where the State rules are more stringent.

(d) 40 CFR 260.1 through 260.3 (Subpart A), "General," are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 260.11, "References", is incorporated by reference including subsequent amendments and editions.

(f) Copies of all materials in this Subchapter may be inspected or obtained as follows:

- (1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules must submit a written request to the Hazardous Waste Section, ~~PO Box 29603, 1646 Mail Services Center, Raleigh, N.C. 27611-9603-27699-1646. A check in the amount of fifteen dollars (\$15.00) made payable to The Hazardous Waste Section must be enclosed with each request.~~ Upon receipt of each request, individuals shall be placed on a mailing list to receive ~~notices for one year.~~ notices.
- (2) Material incorporated by reference in the Federal Register may be obtained from the ~~Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at a cost of seven hundred and sixty four dollars (\$764.00) per year. Federal Register materials are codified once a year in the Code of Federal Regulations and may be obtained at the above address for a cost of: 40 CFR 100-135 forty two dollars (\$42.00), 40 CFR 260-265 forty seven dollars (\$47.00) and 40 CFR 266-299, forty seven dollars (\$47.00), total one hundred thirty six dollars (\$136.00) U. S. Government Bookstore's website at <https://bookstore.gpo.gov/products/sku/769-004-0000-9?ctid=> for a cost of nine hundred twenty nine dollars (\$929.00).~~
- (3) The North Carolina Hazardous Waste Management Rules, ~~including the incorporated by reference materials~~ may be obtained from the Hazardous Waste Section at the cost to the Section.
- (4) All material is available for inspection at the Department of Environmental Quality, Hazardous Waste Section, ~~401 Oberlin Road, 217 West Jones Street, Raleigh, NC, NC and at [http://portal.ncdenr.org/web/wm/hw/rules/state\\_laws](http://portal.ncdenr.org/web/wm/hw/rules/state_laws).~~

*Authority G.S. 130A-294(c); 150B-21.6.*

**15A NCAC 13A .0102 DEFINITIONS**

(a) The definitions contained in G.S. 130A-290 apply to this Subchapter.

(b) 40 CFR 260.10 (Subpart B), Definitions, is incorporated by reference, including subsequent amendments and editions except that the Definitions for "Disposal", "Landfill", "Management or hazardous waste management", "Person", "Sludge", "Storage", and "Treatment" are defined by G.S. 130A-290 and are not incorporated by reference, ~~reference and the definitions definition~~ in 260.10 for "Contained" ~~"Facility"~~, ~~"Transfer Facility"~~, ~~"Hazardous secondary material"~~, ~~"Hazardous secondary material generated and reclaimed under the control of the generator"~~, ~~"Hazardous secondary material generator"~~, ~~"Intermediate facility"~~, and ~~"Land based unit"~~ are not incorporated by reference ~~is not incorporated by reference~~.

(c) ~~The following definitions shall be substituted for "Facility" and "Transfer Facility":~~ The following definition shall be substituted for "Contained":

- (1) ~~"Facility" means:~~
  - (A) ~~All contiguous land, structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).~~
  - (B) ~~For the purpose of implementing corrective action under 40 CFR 264.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).~~
  - (C) ~~Notwithstanding Part (B) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility.~~
- (2) ~~"Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.~~

"Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

- (1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials or hazardous constituents originating from the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a

permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;

- (2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
- (3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.
- (4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

(d) The following additional definitions shall apply throughout this Subchapter:

- (1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of ~~Environment and Natural Resources~~. Environmental Quality.
- (2) The "Department" means the Department of ~~Environment and Natural Resources (DENR)~~. Environmental Quality (DEQ).
- (3) "Division" means the Division of Waste Management (DWM).
- (4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.
- (5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the facility, but does not include any facility owned or operated by a generator of hazardous waste solely to recycle their own waste.

*Authority G.S. 130A 294(c); 150B-21.6.*

**15A NCAC 13A .0103 PETITIONS PART 260**

(a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with ~~15A NCAC 24B .0101~~. 15A NCAC 02I .0501.

(b) In applying the federal requirements incorporated by reference in this Rule, ~~"15A NCAC 24B .0101"~~ 15A NCAC 02I .0501 shall be substituted for references to 40 CFR 260.20.

(c) 40 CFR 260.21 through 260.43 (Subpart C), "Rulemaking Petitions," are incorporated by reference including subsequent amendments and ~~editions, editions except that 40 CFR 260.30(d), 260.30(e), 260.33(e), 260.34, 260.42 and 260.43 are not incorporated by reference.~~

*Authority G.S. 130A-294(c); 150B-21.6.*



**15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261**

- (a) 40 CFR 261.1 through 261.9 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions, ~~editions, except that 40 CFR 261.2(a)(2)(ii) and 40 CFR 261.4(a)(23), 261.4(a)(24), and 261.4(a)(25) are not incorporated by reference.~~
- (b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste", are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 261.30 through 261.37 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 261.190 through 261.200 (Subpart J) "Tank Systems" are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.
- (j) 40 CFR 261.1030 through 261.1049 (Subpart AA) "Air Emission Standards for Process Vents", are incorporated by reference including subsequent amendments and editions.
- (k) 40 CFR 261.1050 through 261.1079 (Subpart BB) "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.
- (l) 40 CFR 261.1080 through 261.1090 (Subpart CC) "Air Emission Standards for Tanks and Containers" are incorporated by reference including subsequent amendments and editions.
- ~~(m)~~ The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

*Authority G.S. 130A-294(c); 150B-21.6.*

**15A NCAC 13A .0107 STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE - PART 262**

- (a) 40 CFR 262.10 through 262.12 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 262.20 through 262.27 (Subpart B), "The Manifest", are incorporated by reference including subsequent amendments and editions, ~~editions, except that 262.24, 262.25, and 262.26 are not incorporated by reference.~~

- (c) 40 CFR 262.30 through 262.34 (Subpart C), "Pre-Transport Requirements", are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 262.40 through 262.44 (Subpart D), "Recordkeeping and Reporting", are incorporated by reference including subsequent amendments and editions. In addition, a generator shall keep records of inspections and results of inspections required by Section 262.34 for at least three years from the date of the inspection.
- (e) 40 CFR 262.50 through 262.58 (Subpart E), "Exports of Hazardous Waste", are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 262.60 (Subpart F), "Imports of Hazardous Waste", is incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 262.70 (Subpart G), "Farmers" is incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 262.80 through 262.89 (Subpart H), "Transfrontier Shipments of Hazardous Waste for Recovery within the OECD", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 262.89(e) is not incorporated by reference.
- (i) 40 CFR 262.200 through 262.216 (Subpart K), "Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities", is incorporated by reference including subsequent amendments and editions.
- (j) The appendix to 40 CFR Part 262 is incorporated by reference including subsequent amendments and editions.

*Authority G.S. 130A-294(c); 150B-21.6.*

**15A NCAC 13A .0108 STDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE – PART 263**

- (a) 40 CFR 263.10 through 263.12 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 263.20 through ~~263.22~~ 263.25 (Subpart B), "Compliance With the Manifest System and Record keeping", are incorporated by reference including subsequent amendments and editions.
- (c) Upon discovering a significant manifest discrepancy, the transporter must attempt to reconcile the discrepancy with the waste generator (e.g. with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the transporter must immediately submit to the Department a letter describing the discrepancy and attempts to reconcile it with a copy of the manifest or shipping paper at issue.
- (d) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a transporter actually transports. Significant discrepancies in quantity are: for bulk waste, variations greater than 10 percent in weight; and, for batch waste, any variation in piece count (e.g. a discrepancy of one drum in a truckload). Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis (e.g. waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper).

(e) 40 CFR 263.30 through 263.31 (Subpart C), "Hazardous Waste Discharges", are incorporated by reference including subsequent amendments and editions.

Authority G.S. 130A-294(c); 150B-21.6.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 11 – BOARD OF EMPLOYEE ASSISTANCE PROFESSIONALS

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Board of Employee Assistance Professionals intends to readopt without substantive changes the rules cited as 21 NCAC 11 .0104, .0108, .0111, and .0112.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: http://reports.oah.nc.us/ncac.asp.

Link to agency website pursuant to G.S. 150B-19.1(c): http://eapa.com/leap

Proposed Effective Date: May 1, 2016

Public Hearing:

Date: February 15, 2016

Time: 11:30 a.m.

Location: 1046 Washington Street, Raleigh, NC 27605

Reason for Proposed Action: The NCBEAP determined that these four rules, relating to license application, fees, disciplinary actions, and civil penalties would be of interest to the regulated public during the Existing Rules Review process. The NCBEAP has approximately 100 licensees. No comment was given and the agency is seeking readoption.

Comments may be submitted to: Jo Yarbrough, 3004 Mail Service Center, Raleigh, NC 27699, phone (919) 715-2319, fax (919) 508-0960, email jo.yarbrough@dhhs.nc.gov

Comment period ends: February 15, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4
No fiscal note required by G.S. 150B-21.3A(d)(2)

SECTION .0100 - ADMINISTRATION

21 NCAC 11 .0104 LICENSE APPLICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 11 .0108 DISCIPLINARY ACTION/HEARING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 11 .0111 FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 11 .0112 PENALTIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

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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 amend the rule cited as 21 NCAC 32T .0101.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncmedboard.org/about\_the\_board/rule\_changes

Proposed Effective Date: July 1, 2016

Public Hearing:

Date: March 14, 2016

Time: 5:00 p.m.

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

Reason for Proposed Action: The Board of Pharmacy and the Medical Board have proposed joint rule changes to the Clinical Pharmacist Practitioner rules, with two principal purposes: (1) to adjust the supervisory procedures to be more effective, in light of experience with the program; and (2) to shift the registration processing function to the Board of Pharmacy.

Comments may be submitted to: Wanda Long, Rules Coordinator, P.O. Box 20007, Raleigh, NC 27619, email rules@ncmedboard.org

Comment period ends: March 14, 2016 at 5:00 p.m.

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 32T - CLINICAL PHARMACIST PRACTITIONER

SECTION .0100 - CLINICAL PHARMACIST PRACTITIONER

21 NCAC 32T .0101 CLINICAL PHARMACIST PRACTITIONER

(a) Definitions as used in the Rule:

- (1) "Medical Board" means the North Carolina Medical Board.
(2) "Pharmacy Board" means the North Carolina Board of Pharmacy.
(3) "Joint Subcommittee" means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.
(4) "Clinical Pharmacist Practitioner or CPP" means a licensed pharmacist who is approved to provide drug therapy management under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.

(5) "Supervising Physician" means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written CPP agreement.

(6) "Primary Supervising Physician" means the licensed physician who shall provide on-going supervision, collaboration, consultation, and evaluation of the drug therapy management performed by the CPP as defined in the written CPP agreement.

(7) "Back-up Supervising Physician" means a licensed physician who shall provide supervision, collaboration, consultation, and evaluation of the drug therapy management performed by the CPP as defined in the written CPP agreement when the Primary Supervising Physician is not available.

(8) "Approval" means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.

(9) "Continuing Education or CE" is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.

(10) "Clinical Experience approved by the Boards" means work in a pharmacy practice setting which includes experience consistent with the following components as listed in Parts (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Parts (b)(1)(B) of this Rule.

(b) CPP application for approval.

(1) The requirements for application for CPP approval include that the pharmacist:

(A) has an unrestricted and current license to practice as a pharmacist in North Carolina;

(B) meets one of the following qualifications:

(i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Pharmacist as certified by the Commission for Certification in Geriatric Pharmacy, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards;

- (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement; or
  - (iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement;
  - (C) submits the required application and the fee to the ~~Medical-Pharmacy~~ Board;
  - (D) submits any information deemed necessary by the ~~Medical-Pharmacy~~ Board in order to evaluate the application; and
  - (E) has a signed supervising physician agreement.
- If for any reason a CPP discontinues working in the approved physician arrangement, the clinical pharmacist practitioner shall notify ~~both Boards~~ the Pharmacy Board in writing within ten days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.
- (2) All certificate programs referred to in Subpart (b)(1)(B)(i) of this Rule must contain a core curriculum including the following components:
    - (A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
    - (B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
    - (C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;
    - (D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and laboratory tests;
    - (E) referring patients to other health professionals as appropriate;
    - (F) administering medications;
    - (G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics of their medication and related therapy;
    - (H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
    - (I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;
    - (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;
    - (K) ordering of and educating patients regarding proper usage of devices, and durable medical equipment;
    - (L) providing emergency first care;
    - (M) retrieving, evaluating, utilizing, and managing data and professional resources;
    - (N) using clinical data to optimize therapeutic drug regimens;
    - (O) collaborating with other health professionals;
    - (P) documenting interventions and evaluating pharmaceutical care outcomes;
    - (Q) integrating pharmacy practice within healthcare environments;
    - (R) integrating national standards for the quality of healthcare; and
    - (S) conducting outcomes and other research.
  - (3) The completed application for approval to practice as a CPP shall be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.
    - (A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
    - (B) the application shall be denied; or
    - (C) the application shall be approved with restrictions.
- (c) Annual Renewal.

- (1) Each CPP shall register annually on or before December 31 ~~the anniversary of his or her birth date~~ by:
- (A) verifying a current Pharmacist license;
  - (B) submitting the renewal fee as specified in Subparagraph (j)(2) of this Rule;
  - (C) completing the ~~Medical-Pharmacy Board's~~ renewal form; and
  - (D) reporting continuing education credits as required by Paragraph (d) of this Rule, specified by the Medical Board.
- (2) If the CPP has not renewed within ~~30~~ 60 days of December 31, the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.
- (d) Continuing Education.
- (1) Each CPP shall earn 35 hours of practice relevant CE each year approved by the Pharmacy Board.
  - (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.
- (e) ~~The~~ A supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP; and shall review ~~and countersign~~ each order written by the ~~CPP, CPP~~ within seven days.
- (f) The written CPP agreement shall:
- (1) be approved and signed by ~~both the Primary Supervising Physician, and Back-Up Supervising Physicians~~ supervising physician and the CPP-CPP, and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
  - (2) be specific in regards to the physician, the pharmacist, the patient and the disease;
  - (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
  - (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
  - (5) include a pre-determined plan for emergency services;
  - (6) for the first six months of the CPP agreement, include a plan and schedule for monthly meetings to discuss practice-relevant clinic issues and quality improvement measures weekly quality control, review and countersignature of all orders written by the CPP in a face to face conference between the physician Primary Supervising Physician and CPP, and thereafter include a plan and schedule for meetings between the Primary Supervising Physician and CPP at least every six months to
- discuss practice-relevant clinical issues and quality improvement measures. Documentation of the meetings between the CPP and the Primary Supervising Physician shall: CPP;
- (A) identify clinical issues discussed and actions taken;
  - (B) be signed and dated by those who attended; and
  - (C) be retained by both the CPP and Primary Supervising Physician and be available for review by members or agents of either Board for five calendar years;
- (7) require that the patient be notified of the collaborative relationship; and
  - (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.
- (g) The supervising physician of the CPP shall:
- (1) be fully licensed with the Medical Board and engaged in clinical practice;
  - (2) not be serving in a postgraduate medical training program;
  - (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
  - (4) supervise no more than three pharmacists.
- (h) The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner".
- (i) The CPP may be censured or reprimanded or the CPP's approval may be restricted, suspended, revoked, annulled, denied or terminated by the Medical Board or the Pharmacy Board and the pharmacist may be censured or reprimanded or the pharmacist's license may be restricted, suspended, revoked, annulled, denied, or terminated by the Pharmacy Board, in accordance with provisions of G.S. 150B if either Board finds one or more of the following:
- (1) the CPP has held himself or herself out or permitted another to represent the CPP as a licensed physician;
  - (2) the CPP has engaged or attempted to engage in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
  - (3) the CPP has performed or attempted to provide medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
  - (4) The CPP commits any act prohibited by any provision of G.S. 90-85.38 as determined by the Pharmacy Board or G.S. 90-14(a)(1), (a)(3) through (a)(14) and (c) as determined by the Medical Board; or
  - (5) the CPP has failed to comply with any of the provisions of this Rule.

Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.

(j) Fees:

- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
- (2) The fee for annual renewal of approval, due at the time of annual renewal pursuant to Paragraph (c) of this Rule, ~~on the CPP's anniversary of birth date~~ is fifty dollars (\$50.00).
- (3) No portion of any fee in this Rule is refundable.

Authority G.S. 90-6(c); 90-18(c)3a; 90-18.4.

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CHAPTER 46 – NORTH CAROLINA BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .3101.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncbop.org/lawandrules.htm

Proposed Effective Date: July 1, 2016

Public Hearing:

Date: March 14, 2016

Time: 5:00 p.m.

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

Reason for Proposed Action: The Board of Pharmacy and the Medical Board have proposed joint rule changes to the Clinical Pharmacist Practitioner rules, with two principal purposes: (1) to adjust the supervisory procedures to be more effective, in light of experience with the program; and (2) to shift the registration processing function to the Board of Pharmacy.

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

Comment period ends: 5:00 p.m., March 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1).

The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

SECTION .3100 - CLINICAL PHARMACIST PRACTITIONER

21 NCAC 46 .3101 CLINICAL PHARMACIST PRACTITIONER

(a) Definitions. As used in this Rule:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Pharmacy Board" means the North Carolina Board of Pharmacy.
- (3) "Joint Subcommittee" means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.
- (4) "Clinical Pharmacist Practitioner or CPP" means a licensed pharmacist who is approved to provide drug therapy management, including controlled substances, under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.
- (5) "Supervising Physician" means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the ~~physician, patient, pharmacist and disease specific~~ written CPP agreement.
- (6) "Primary Supervising Physician" means the licensed physician who shall provide on-going supervision, collaboration, consultation, and evaluation of the drug therapy management performed by the CPP as defined in the written CPP agreement.

(7) "Back-Up Supervising Physician" means a licensed physician who shall provide supervision, collaboration, consultation, and evaluation of the drug therapy management performed by the CPP as defined in the written CPP agreement when the Primary Supervising Physician is not available.

(6)(8) "Approval" means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.

(7)(9) "Continuing Education or CE" is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.

(8)(10) "Clinical Experience approved by the Boards" means work in a clinical pharmacy practice setting which includes experience consistent with the components listed in Parts (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Parts (b)(1)(B) of this Rule.

(b) CPP application for approval.

(1) The requirements for application for CPP approval include that the pharmacist:

(A) has an unrestricted and current license to practice as a pharmacist in North Carolina;

(B) meets one of the following qualifications:

(i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Pharmacist as certified by the Commission for Certification in Geriatric Pharmacy or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards; or

(ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the

area of practice covered by the CPP agreement; or  
(iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement;

(C) submits the required application and the fee to the ~~Medical-Pharmacy Board~~;

(D) submits any information deemed necessary by the ~~Medical-Pharmacy Board~~ in order to evaluate the application; and

(E) has a signed supervising physician agreement.

If for any reason a CPP discontinues working in the approved physician arrangement, the CPP shall notify ~~both Boards~~ the Pharmacy Board in writing within 10 days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.

(2) All certificate programs referred to in Subpart (b)(1)(B)(i) of this Rule must contain a core curriculum including the following components:

(A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;

(B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;

(C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;

(D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and laboratory tests;

(E) referring patients to other health professionals as appropriate;

(F) administering medications;

(G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics

- of their medication and related therapy;
- (H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
- (I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;
- (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;
- (K) using, ordering, and instructing on the use of devices, and durable medical equipment;
- (L) providing emergency first care;
- (M) retrieving, evaluating, utilizing, and managing data and professional resources;
- (N) using clinical data to optimize therapeutic drug regimens;
- (O) collaborating with other health professionals;
- (P) documenting interventions and evaluating pharmaceutical care outcomes;
- (Q) integrating pharmacy practice within healthcare environments;
- (R) integrating national standards for the quality of healthcare; and
- (S) conducting outcomes and other research.
- (3) The completed application for approval to practice as a CPP shall be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.
- (A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
- (B) The application shall be denied; or
- (C) The application shall be approved with restrictions.
- (c) Annual Renewal.
- (1) Each CPP shall register annually on or before December 31 ~~the anniversary of his or her birth date~~ by:
- (A) verifying a current Pharmacist license;
- (B) submitting the renewal fee as specified in Subparagraph (j)(2) of this Rule;
- (C) completing the Medical-Pharmacy Board's renewal form; and
- (D) reporting continuing education credits as required by Paragraph (d) of this Rule, specified by the Medical Board.
- (2) If the CPP has not renewed within 30 60 days of December 31, the anniversary of the CPP's
- ~~birth date~~, the approval to practice as a CPP shall lapse.
- (d) Continuing Education.
- (1) Each CPP shall earn 35 hours of practice relevant CE each year approved by the Pharmacy Board.
- (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.
- (e) ~~The~~ A supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP and shall review ~~and countersign~~ each order written by the CPP. ~~CPP within seven days.~~
- (f) The written CPP agreement shall:
- (1) be approved and signed by ~~both the Primary Supervising Physician, any Back-Up Supervising Physicians~~ supervising physician and the CPP, CPP, and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
- (2) be specific in regard to the physician, the pharmacist, the patient and the disease;
- (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
- (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
- (5) include a pre-determined plan for emergency services;
- (6) for the first six months of the CPP agreement, include a plan and schedule for monthly meetings to discuss practice-relevant clinic issues and quality improvement measures weekly quality control, review and countersignature of all orders written by the CPP in a face to face conference between the physician-Primary Supervising Physician and CPP, and thereafter include a plan and schedule for meetings between the Primary Supervising Physician and CPP at least every six months to discuss practice-relevant clinical issues and quality improvement measures. Documentation of the meetings between the CPP and the Primary Supervising Physician shall;CPP;
- (A) identify clinical issues discussed and actions taken;
- (B) be signed and dated by those who attended; and
- (C) be retained by both the CPP and Primary Supervising Physician and be available for review by members or



agents of either Board for five calendar years;

- (7) require that the patient be notified of the collaborative relationship; and
- (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.

(g) ~~The~~ A supervising physician of the CPP shall:

- (1) be fully licensed with the Medical Board and engaged in clinical practice;
- (2) not be serving in a postgraduate medical training program;
- (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
- (4) supervise no more than three pharmacists.

(h) The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner".

(i) A CPP may be censured or reprimanded, and his or her approval may be restricted, suspended, revoked, annulled, denied or terminated by the Medical Board or the Pharmacy Board. The pharmacist may be censured or reprimanded, and the pharmacist's license may be restricted, suspended, revoked, annulled, denied, or terminated by the Pharmacy Board, in accordance with provisions of G.S. 150B if either Board finds one or more of the following:

- (1) the CPP has held himself or herself out, or permitted another, to represent the CPP as a licensed physician;
- (2) the CPP has engaged, or attempted to engage, in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
- (3) the CPP has performed, or attempted to provide, medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
- (4) the CPP commits any act prohibited by G.S. 90-85.38 as determined by the Pharmacy Board or G.S. 90-14(a)(1), (a)(3) through (a)(14) and (c) as determined by the Medical Board; or
- (5) the CPP has failed to comply with any of the provisions of this Rule.

Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.

(j) Fees:

- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
- (2) The fee for annual renewal of approval, due at the time of annual renewal pursuant to Paragraph (c) of this Rule, on the CPP's anniversary of birth date is fifty dollars (\$50.00).
- (3) No portion of any fee in this Rule is refundable.

Authority G.S. 90-6; 90-18; 90-18.4; 90-85.3; 90-85.18; 90-85.26A.

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**CHAPTER 58 – NORTH CAROLINA REAL ESTATE COMMISSION**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to amend the rules cited as 21 NCAC 58A .0103, .0108, .0113, .0116, .2104, and .2105; 58B .0102 and .0103.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
[www.ncrec.gov](http://www.ncrec.gov)

**Proposed Effective Date:** July 1, 2016

**Public Hearing:**

**Date:** January 13, 2016

**Time:** 9:00 a.m.

**Location:** NC Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609

**Reason for Proposed Action:**

**21 NCAC 58A .0103** – To amend the rule in Paragraph (a) to require brokers to update phone numbers and email addresses within 10 days of change and to clarify the use of assumed names by business entities or sole proprietorships in Paragraph (b). Staff Comment: The amendment is needed to keep the commission informed regarding changes in broker's contact information and clarify that use of assumed names by brokers are limited to business entities and sole proprietorships.

**21 NCAC 58A .0108** – To amend the rule to include requirements for brokers to maintain all records relied upon to determine square footage and all advertising records used to market property. Staff Comment: The amendment is needed to codify the requirement that brokers must keep all documentation used in determining square footage as stated in the NC Residential Square Footage Guidelines and to ensure brokers retain copies of all advertising documents pertaining to a marketed property.

**21 NCAC 58A .0113** – To amend the rule to require a broker who enters into a conciliation agreement or consent order with another agency to report it to the Commission. Staff Comment: The amendment is needed to widen the reporting requirement for brokers to include consent orders and conciliation agreements with other government agencies.

**21 NCAC 58A .0116** – To amend the rule in Paragraph (d) to clarify the text of the rule. Staff Comment: The amendment is needed to clarify a broker's responsibilities when a party to a real estate transaction has abandoned associated trust funds.

**21 NCAC 58A .2104** – To amend the rule governing brokers in military service to allow postponement of postlicensing

education. *Staff Comment:* The amendment is needed to correct the United States Code reference.

**21 NCAC 58A .2105** – To amend the rule governing brokers in military service to demonstrate his or her proof of eligibility for postponement of fees and education requirements. *Staff Comment:* The amendment is needed to correct the United States Code reference.

Time Shares:

**21 NCAC 58B .0102** – To amend the rule to increase the number of payment methods a time share project can submit an initial registration application fee. *Staff Comment:* The amendment is needed to allow time share projects the ability to pay registration fees by other methods in addition to a certified check.

**21 NCAC 58B .0103** – To amend the rule to include technical changes and to increase the number of payment methods a time share project can submit a renewal application fee. *Staff Comment:* The amendment is needed to allow time share projects the ability to pay renewal registration fees by other methods in addition to a certified check and to correct minor technical changes that are needed to clarify the text of the rule.

**Comments may be submitted to:** Melissa A. Vuotto, P.O. Box 17100, Raleigh, NC 27619-7100, phone (919) 875-3700, email RA@NCREC.GOV

**Comment period ends:** March 11, 2016

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

**SUBCHAPTER 58A - REAL ESTATE BROKERS**

**SECTION .0100 - GENERAL BROKERAGE**

**21 NCAC 58A .0103 BROKER NAME AND ADDRESS**

(a) Upon initial licensure and at all times thereafter, every broker shall ~~assure-ensure~~ that the Commission has on record the broker's current personal name, firm name, trade name, residence ~~address address, and firm address-address, telephone number, and email address.~~ Every broker shall notify the Commission in writing of each change of personal name, firm name, trade name, residence ~~address-address, and firm address-address, telephone number, and email address~~ within 10 days of said change. All addresses shall be sufficiently descriptive to enable the Commission to correspond with and locate the broker.

(b) Registration of Assumed Name. In the event that any ~~broker business entity~~ shall ~~advertise-operate~~ in any manner using a firm name different from the name under which the firm is licensed or a sole proprietorship operating under an assumed name which that does not set forth the surname of the ~~broker, owner of the sole proprietorship, the broker-business entity or sole proprietorship~~ shall first file the appropriate certificate with the office of the county register of deeds in each county in which the broker intends to engage in brokerage activities in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name. In no event shall an individual broker operate in any manner that would mislead a consumer as to the broker's actual identity or as to the identity of the firm with which he or she is affiliated.

(c) Business names. A broker shall not include the name of a provisional broker or an unlicensed person in the name of a sole proprietorship, partnership or business entity other than a corporation or limited liability company. No broker shall use a business name that includes the name of any active, inactive, or cancelled broker without the permission of that broker or that broker's authorized representative.

*Authority G.S. 55B-5; 66-68; 93A-3(c); 93A-6(a)(1).*

**21 NCAC 58A .0108 RETENTION OF RECORDS**

(a) Brokers shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, ~~completed-completed,~~ or terminated prior to its successful conclusion. The broker shall retain ~~such~~ records for three years after all funds held by the broker in connection with the transaction have been disbursed to the proper party or parties or the successful or unsuccessful conclusion of the transaction, whichever occurs later. However, if the broker's agency agreement is terminated prior to the conclusion of the transaction, the broker shall retain such records for three years after the termination of the agency agreement or the disbursement of all funds held by or paid to the broker in connection with the transaction, whichever occurs later.

(b) ~~Such records-Records~~ shall include copies of the following:

- (1) contracts of ~~sale, sale;~~
- (2) written ~~leases, leases;~~
- (3) agency ~~contracts, contracts;~~
- (4) ~~options, options;~~
- (5) offers to purchase;
- (6) trust or escrow ~~records, records;~~
- (7) earnest money ~~receipts, receipts;~~
- (8) disclosure ~~documents, documents;~~

- (9) ~~closing statements, statements;~~
- (10) ~~brokerage cooperation agreements, agreements;~~
- (11) ~~declarations of affiliation, affiliation;~~
- (12) ~~broker price opinions and comparative market analyses prepared pursuant to G.S. 93A, Article 6, including any notes and supporting documentation, and documentation;~~
- (13) ~~sketches, calculations, photos, and other documentation used or relied upon to determine square footage;~~
- (14) ~~advertising used to market a property; and~~
- (15) ~~any other records pertaining to real estate transactions.~~

- (3) Earnest money or tenant security deposits paid by means other than currency and received by a broker in connection with a pending offer to purchase or lease shall be deposited in a trust or escrow account no later than three days following acceptance of the offer to purchase or lease; the date of acceptance of the offer or lease shall be set forth in the purchase or lease agreement.
- (4) A broker may accept custody of a check or other negotiable instrument made payable to the seller of real property as payment for an option or due diligence fee, or to the designated escrow agent in a sales transaction, but only for the purpose of delivering the instrument to the seller or designated escrow agent. While the instrument is in the custody of the broker, the broker shall, according to the instructions of the buyer, either deliver it to the named payee or return it to the buyer. The broker shall safeguard the instrument and be responsible to the parties on the instrument for its safe delivery as required by this Rule. A broker shall not retain an instrument for more than three business days after the acceptance of the option or other sales contract.

(c) All ~~such~~ records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

*Authority G.S. 93A-3(c); 93A-9.*

**21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS**

Any broker who is convicted of any felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any other occupational license, or whose notarial commission is restricted, suspended, or revoked, shall file with the Commission a written report of such conviction or action within 60 days of the final judgment, order, or disposition in the case. A form for this report is shall be available from the Commission on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission and shall require the broker to set forth the broker's:

- (1) full legal name;
- (2) physical and mailing address;
- (3) real estate license number;
- (4) telephone number;
- (5) email address;
- (6) social security number;
- (7) date of birth; and
- (8) description of the criminal conviction and disciplinary action, including the jurisdiction and file number.

*Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2).*

**21 NCAC 58A .0116 HANDLING OF TRUST MONEY**

(a) Except as provided in Paragraph (b) of this Rule, all monies received by a broker acting in his or her fiduciary capacity (hereinafter "trust money") shall be deposited in a trust or escrow account as defined in Rule .0117(b) of this Section no later than three banking days following the broker's receipt of such monies.

- (b) Exceptions to the requirements of Paragraph (a):
- (1) All monies received by a provisional broker shall be delivered upon receipt to the broker with whom he or she is affiliated.
  - (2) All monies received by a non-resident commercial broker shall be delivered as required by Rule .1808 of this Subchapter.

(c) Prior to depositing trust money into a trust or escrow account that bears interest, the broker having custody over the money shall first secure written authorization from all parties having an interest in the money. Such authorization shall specify and set forth in a conspicuous manner how and to whom the interest shall be disbursed.

(d) In the event of a dispute between buyer and seller or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by the broker, the broker shall retain the deposit in a trust or escrow account until the broker has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the broker may deposit the disputed monies with the appropriate Clerk of Superior Court in accordance with the provisions of G.S. 93A-12.

(e) If it appears that one of the parties is unclear whether a party to a real estate transaction disputes a disbursement or has abandoned his or her claim to the any associated trust funds, other than a residential tenant security deposit, being held by a broker pursuant to a written agreement, the broker may disburse the money to the other claimant according to the written agreement. Before doing so, however, the broker must first make a reasonable effort to notify the absent party by sending written notice by first-class mail to the party's last known address, and provide that party with providing an opportunity for that party to renew his or her claim to the funds. If the party does not respond within 30 days, the broker may disburse the money to the other claimant if authorized to do so by the written agreement. If there is no written agreement, or the written agreement is silent as to the distribution of funds, the broker shall dispose of the abandoned funds in compliance with G.S. 116B, Article 4.

(f) Tenant security deposits shall be disposed of in accordance with G.S. 42-50 through 56 and G.S. 42A-18.

~~(e)(g)~~ A broker may transfer an earnest money deposit from his or her trust or escrow account to the closing attorney or other settlement agent no more than 10 days prior to the anticipated settlement date. A broker shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

~~(f)(h)~~ A broker shall not disburse trust money to or on behalf of a client in an amount exceeding the balance of trust money belonging to the client and held in the trust account.

~~(g)(i)~~ Every broker shall safeguard any money or property of others that comes into the broker's possession in a manner consistent with the Real Estate License Law and Commission rules. A broker shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that it was intended for, or permit or assist any other person in the conversion or misapplication of such money or property.

Authority G.S. 93A-3(c); 93A-6.

**SECTION .2100 - BROKERS IN MILITARY SERVICE**

**21 NCAC 58A .2104 POSTPONEMENT OF POSTLICENSING EDUCATION**

A broker described by ~~21 NCAC 58A Rule .2101 of this Section~~ who is a provisional broker shall not be required to complete any ~~post licensing postlicensing~~ education required to be completed during the period to be disregarded under 26 U.S.C. ~~5708-7508~~ until the 180th day following the ending of such period. The broker's license shall not be placed on inactive status or cancelled for his or her failure to complete the required ~~post licensing postlicensing~~ education prior to the deadline established in this Rule.

Authority G.S. 93A-3(c); 93B-15(b).

**21 NCAC 58A .2105 PROOF OF ELIGIBILITY**

It shall be the responsibility of every broker eligible for the postponement of fees and education requirements established by this ~~section~~ Section to demonstrate his or her eligibility and the beginning and ending of the time to be disregarded as described in 26 U.S.C. ~~5708-7508~~.

Authority G.S. 93A-3(c); 93B-15(b).

**SUBCHAPTER 58B – TIME SHARES**

**SECTION .0100 – TIME SHARE PROJECT REGISTRATION**

**21 NCAC 58B .0102 REGISTRATION FEE**

(a) ~~Every application for time share project registration must be accompanied by a certified check made payable to the North Carolina Real Estate Commission.~~ For the initial registration or subsequent registration of a time share project by a developer proposing to sell or develop 16 or more time shares, the fee is one thousand dollars (\$1,000). For an initial or subsequent registration of a time share project in which the developer proposes to sell 15 or fewer time shares, the fee is seven hundred

dollars (\$700.00). For any time share registration by a homeowner association for the purpose of re-selling time shares in its own project which it has acquired in satisfaction of unpaid assessments by prior owners, the fee is four hundred fifty dollars (\$450.00).

(b) Payment of application fees for time share registration shall be made to the Commission by certified check, money order, debit card, or credit card. Applications for registration not accompanied by the appropriate fee shall not be considered by the Commission.

(c) In the event a properly completed application filed with the Commission is denied for any reason, or if an incomplete application is denied by the Commission or abandoned by the developer prior to a final decision by the Commission, the amount of two hundred fifty dollars (\$250.00) shall be retained by the Commission from the application fee and the balance refunded to the applicant developer.

Authority G.S. 93A-51; 93A-52.

**21 NCAC 58B .0103 RENEWAL OF TIME SHARE PROJECT REGISTRATION**

~~(a) Every developer desiring the renewal of a time share project registration shall apply for the same in writing upon a form provided by the Commission during the month of June. A developer seeking a renewal of a time share project registration shall submit a complete renewal application during the month of June on a form available on the Commission's website at www.ncrec.gov that requires the developer to set forth:~~

- (1) the time share's project name, registration number, and mailing address;
- (2) the developer's name, telephone number, and email address;
- (3) the full legal name of brokers that are associated with the time share project and their real estate license numbers;
- (4) the name of all exchange programs associated with the time share project along with a current copy of the Exchange Disclosure Report pursuant to G.S. 93A-48;
- (5) the name, address, email address, telephone number, real estate broker license number if applicable, and the assignment date for each of the following:
  - (A) managing entity;
  - (B) marketing entity;
  - (C) registrar pursuant to G.S. 93A-58(a);
  - (D) independent escrow agent pursuant to G.S. 93A-42(a); and
  - (E) project broker pursuant to G.S. 93A-58(c);
- (6) a certification that the information contained in the registration filed with the Commission is accurate and current on the date of the renewal application; and
- (7) notarized signature(s) by either:
  - (A) two executive officers of the corporation developer;

- (B) two managers of the limited liability company developer;
- (C) the sole proprietor of the sole proprietor developer;
- (D) the general partner of the partnership developer; or
- (E) the developer's attorney.

~~(b) Every such renewal application shall be accompanied by a certified check made payable to the North Carolina Real Estate Commission in the amount of eight hundred dollars (\$800.00). The developer shall submit a nonrefundable fee of eight hundred dollars (\$800.00) payable to the North Carolina Real Estate Commission by certified check, money order, debit card, or credit card.~~

~~(c) To renew the time share project registration, the properly completed A complete renewal application shall be accompanied by the prescribed fee must and shall be received at the Commission's office prior to the expiration of the certificate of registration. registration as described in G.S. 93A-52(d).~~

~~(b) Applications for the renewal of a time share project registration shall be signed by the developer, by two executive officers of the developer, or by the developer's attorney at law and shall certify that the information contained in the registration filed with the Commission is accurate and current on the date of the renewal application.~~

~~(d) Making a false certification on a time share project registration renewal application shall be grounds for disciplinary action by the Commission.~~

Authority G.S. 93A-51; 93A-52(d).

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**CHAPTER 61 - NORTH CAROLINA RESPIRATORY CARE BOARD**

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the North Carolina Respiratory Care Board intends to readopt without substantive changes the rule cited as 21 NCAC 61 .0202.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): [www.ncrcb.org](http://www.ncrcb.org)

**Proposed Effective Date:** July 1, 2016

**Public Hearing:**

**Date:** January 14, 2016

**Time:** 9:00 a.m.

**Location:** 125 Edinburgh South, Suite 100, Cary, NC 27511

**Reason for Proposed Action:** *The rule with the determination of necessary with substantive public interest during the Rules Review process requires readoption pursuant to G.S. 150B-21.3A.*

**Comments may be submitted to:** William L. Croft PhD, RRT, RCP, 125 Edinburgh South, Suite 100, Cary, NC 27511

**Comment period ends:** February 15, 2016

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

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

**21 NCAC 61 .0202 EXEMPTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Rule-making Agency:** Environmental Management Commission

**Rule Citation:** 15A NCAC 13A .0102, .0103, and .0106

**Effective Date:** December 1, 2015

**Date Approved by the Rules Review Commission:** November 19, 2015

**Reason for Action:** A recent federal regulation. Cite: Federal Register Vol. 80 No. 8, 1694 "2015 DSW Rule" Effective Date: July 13, 2016.

The NC Environmental Management Commission has determined that temporary rulemaking to amend these Rules is necessary due to recent changes to applicable federal regulations. On 30 October 2008, EPS promulgated a final rule concerning the Definition of Solid Waste, 73 Fed. Reg. 64668 (Oct. 30, 2008) ("2008 DSW Rule"), which various entities subsequently challenged through litigation, including claims that the rule contained significant regulatory gaps that could result in harm to human health and environment and could have a disproportionate impact on minority and low-income populations. On 13 January 2015, the United States Environmental Protection Agency (EPA) promulgated a revised final rule concerning the Definition of Solid Waste, 80 Fed. Reg. 1694 (Jan 13, 2015) ("2015 DSW Rule") that became effective on 13 July 2015. The 2015 DSW Rule retains certain changes originally made in the 2008 DSW Rule but "revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of [RCRA]." Its purpose "is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material." *Id.* at 1694.

The United States Environmental Protection Agency (EPA) has authorized North Carolina to operate the State Hazardous Waste Program in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. 6901 to 6922k). Because the State Hazardous Waste Program is federally delegated, EPA continues to exercise oversight-including the ability to revoke program authorization-to ensure consistency with RCRA. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the Federal program. RCRA 3006(b), 42 U.S.C. 6926(b); 40 C.F.R. 271.4.

The Act instructs the Department to "cooperate...with...the federal government...in the formulation and carrying out of a

solid waste management program," including a program for the management of hazardous waste "designed to protect the public health, safety, and welfare; [and to] preserve the environment." N.C.G.S. 130A-294(a)(2), (b). The Act mandates the adoption of rules to implement that program. N.C.G.S. 130A-294(b). The Rules largely adopt and incorporate the applicable federal regulations by reference.

Because of the new federal change effective 13 July 2015, it is necessary under the temporary rulemaking requirements process to condense the comment period and hearing requirements in order to align these Rules with federal law pursuant to G.S. 150B-21.1(a)(4).

**CHAPTER 13 – SOLID WASTE MANAGEMENT**

**SUBCHAPTER 13A – HAZARDOUS WASTE MANAGEMENT**

**SECTION .0100 – HAZARDOUS WASTE**

**15A NCAC 13A .0102 DEFINITIONS**

(a) The definitions contained in G.S. 130A-290 apply to this Subchapter.

(b) 40 CFR 260.10 (Subpart B), Definitions, is incorporated by reference, including subsequent amendments and editions except that the Definitions for "Disposal", "Landfill", "Management or hazardous waste management", "Person", "Sludge", "Storage", and "Treatment" are defined by G.S. 130A-290 and are not incorporated by reference, ~~reference and the definitions definition~~ in 260.10 for "Contained" ~~"Facility", "Transfer Facility", "Hazardous secondary material", "Hazardous secondary material generated and reclaimed under the control of the generator", "Hazardous secondary material generator", "Intermediate facility", and "Land based unit" are not incorporated by reference~~ is not incorporated by reference.

(c) ~~The following definitions shall be substituted for "Facility" and "Transfer Facility": The following definition shall be substituted for "Contained":~~

(1) ~~"Facility" means:~~

(A) ~~All contiguous land, structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).~~

(B) ~~For the purpose of implementing corrective action under 40 CFR 264.101, all contiguous property~~

~~under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).~~

~~(C) Notwithstanding Part (B) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility.~~

~~(2) "Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.~~

"Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

(1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials or hazardous constituents originating from the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;

(2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

(d) The following additional definitions shall apply throughout this Subchapter:

(1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of ~~Environment and Natural Resources~~ Environmental Quality.

(2) The "Department" means the Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality (DEQ).

(3) "Division" means the Division of Waste Management (DWM).

(4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.

(5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the facility, but does not include any facility owned or operated by a generator of hazardous waste solely to recycle their own waste.

*History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. September 1, 1979; Amended Eff. June 1, 1989; June 1, 1988; February 1, 1987; October 1, 1986; Transferred and Recodified from 10 NCAC 10F .0002 Eff. April 4, 1990; Amended Eff. April 1, 1993; October 1, 1990; August 1, 1990; Recodified from 15A NCAC 13A .0002 Eff. December 20, 1996; Amended Eff. August 1, 2000; Temporary Amendment Eff. January 1, 2009; Amended Eff. July 1, 2010; Temporary Amendment Eff. December 1, 2015.*

**15A NCAC 13A .0103 PETITIONS PART 260**

(a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with ~~15A NCAC 24B .0101~~ 15A NCAC 02I .0501.

(b) In applying the federal requirements incorporated by reference in this Rule, "~~15A NCAC 24B .0101~~" 15A NCAC 02I .0501 shall be substituted for references to 40 CFR 260.20.

(c) 40 CFR 260.21 through 260.43 (Subpart C), "Rulemaking Petitions," are incorporated by reference including subsequent amendments and ~~editions, editions, except that 40 CFR 260.30(d), 260.30(e), 260.33(e), 260.34, 260.42 and 260.43 are not incorporated by reference.~~

*History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. June 1, 1988; May 1, 1987; January 1, 1986; October 1, 1985; Transferred and Recodified from 10 NCAC 10F .0028 Eff. April 4, 1990; Amended Eff. April 1, 1993; November 1, 199; October 1, 1990; Recodified from 15A NCAC 13A .0003 Eff. December 20, 1996; Amended Eff. August 1, 2000; Temporary Amendment Eff. January 1, 2009; Amended Eff. July 1, 2010; Temporary Amendment Eff. December 1, 2015.*

**15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261**

(a) 40 CFR 261.1 through 261.9 (Subpart A), "General", are incorporated by reference including subsequent amendments and ~~editions, editions, except that 40 CFR 261.2(a)(2)(ii) and 40 CFR~~

~~261.4(a)(23), 261.4(a)(24), and 261.4(a)(25) are not incorporated by reference.~~

(b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste", are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 261.30 through 261.37 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 261.190 through 261.200 (Subpart J) "Tank Systems" are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded

Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.

(j) 40 CFR 261.1030 through 261.1049 (Subpart AA) "Air Emission Standards for Process Vents", are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 261.1050 through 261.1079 (Subpart BB) "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 261.1080 through 261.1090 (Subpart CC) "Air Emission Standards for Tanks and Containers" are incorporated by reference including subsequent amendments and editions.

~~(m)~~ The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

*History Note: Authority G.S. 130A-294(c); 150B-21.6;*

*Eff. November 19, 1980;*

*Amended eff. June 1, 1988; February 1, 1988; December 1, 1987;*

*August 1, 1987;*

*Transferred and Recodified from 10 NCAC 10F .0029 Eff. April 4, 1990;*

*Amended Eff. January 1, 1996; April 1, 1993; February 1, 1992; December 1, 1990;*

*Recodified From 15A NCAC 13A .0006 Eff. December 20, 1996;*

*Amended Eff. April 1, 2007; August 1, 2000;*

*Temporary Amendment Eff. January 1, 2009;*

*Amended Eff. July 1, 2010;*

*Temporary Amendment Eff. December 1, 2015.*



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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission November 19, 2015 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Jay Hemphill  
Jeffrey A. Poley

**Appointed by House**

Garth Dunklin (Chair)  
Stephanie Simpson (2<sup>nd</sup> Vice Chair)  
Anna Baird Choi  
Jeanette Doran  
Danny Earl Britt, Jr.

**COMMISSION COUNSEL**

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

**RULES REVIEW COMMISSION MEETING DATES**

December 17, 2015	January 21, 2016
February 18, 2016	March 17, 2016

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**RULES REVIEW COMMISSION MEETING  
MINUTES**

***November 19, 2015***

The Rules Review Commission met on Thursday, November 19, 2015, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Danny Earl Britt, Jr., Bobby Bryan, Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, and Stephanie Simpson.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:03 a.m. with Chairman Dunklin presiding.

Chairman Dunklin introduced Campbell Law School student Ann Heath.

OAH Chief Administrative Law Judge, the Honorable Julian Mann, III, addressed the Commission, and introduced Court of Appeals Judge, the Honorable Robert N. Hunter, Jr.

Judge Hunter addressed the Commission, and administered the oath of office to new Commissioner Danny Earl Britt, Jr.

Chairman Dunklin read into the record the following statement of economic interest for:

Danny Earl Britt, Jr., which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because he is the owner and Managing Partner of The Britt Law Firm, PC. Should any employees or partners of the aforesaid firm, or any of the firm's current or former clients, come before the Commission for official action, Mr. Britt should exercise appropriate caution in the performance of his public duties. This could include recusing himself to the extent that those interests would influence or could reasonably appear to influence his actions.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the October 15, 2015 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**Environmental Management Commission**

15A NCAC 02B .0227 and .0311 – The rules were withdrawn at the request of the agency. No action was required by the Commission.

**Property Tax Commission**

17 NCAC 11 .0216 and .0217 – The agency responded by letter, and will address the objections by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

**Board of Massage and Bodywork Therapy**

21 NCAC 30 .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, and .1015 - There has been no response by the agency on these Rules pursuant to G.S. 150B-21.12, therefore no action was required by the Commission.

**LOG OF FILINGS (PERMANENT RULES)**

**Child Care Commission**

10A NCAC 09 .2006 and .2007 were unanimously approved.

The Commission voted to extend the period of review for 10A NCAC 09 .2001, .2002, .2003, .2004, and .2005 in accordance with G.S. 150B-21.10. They did so in response to a request from the Child Care Commission to extend the period of review in order to address Staff Opinions.

**Board of Cosmetic Art Examiners**

The rules were withdrawn at the request of the agency. No action was required by the Commission.

**Onsite Wastewater Contractors and Inspectors Certification Board**

All rules were unanimously approved.

Prior to the discussion of the rules from the Onsite Wastewater Contractors and Inspectors Certification Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal representation to the Board, including consultation on rulemaking.

**Board of Pharmacy**

21 NCAC 46 .1417 was unanimously approved.

**Veterinary Medical Board**

21 NCAC 66 .0108 was unanimously approved.

**Building Code Council**

All rules were unanimously approved.

**LOG OF RULES (TEMPORARY RULES)**

**Environmental Management Commission**

All rules were unanimously approved.

**EXISTING RULES REVIEW**

**DHHS – Division of Health Service Regulation**

10A NCAC 14J - The Commission unanimously approved the report as submitted by the agency.

**Commission for Public Health**

10A NCAC 46 – The Commission unanimously approved the report as submitted by the agency.

10A NCAC 48 – The Commission unanimously approved the report as submitted by the agency.

**Department of Labor**

13 NCAC 15 – The Commission unanimously approved the report as submitted by the agency.

13 NCAC 20 – The Commission unanimously approved the report as submitted by the agency.

**Department of Environmental Quality, transferred to Department of Natural and Cultural Resources**

15A NCAC 12H – The Commission unanimously approved the report as submitted by the agency.

**Board of Agriculture**

02 NCAC 37 - As reflected in the attached letter, the Commission voted to schedule re-adoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than March 31, 2017.

Prior to the discussion of the rules from the Board of Agriculture, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning the re-adoption date for rules because of the potential appearance of a conflict of interest.

**Soil and Water Conservation**

02 NCAC 59C – As reflected in the attached letter, the Commission voted to schedule re-adoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than March 31, 2017.

02 NCAC 59E – As reflected in the attached letter, the Commission voted to schedule re-adoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than March 31, 2017.

02 NCAC 59F – As reflected in the attached letter, the Commission voted to schedule re-adoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than March 31, 2017.

02 NCAC 59G – As reflected in the attached letter, the Commission voted to schedule re-adoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than March 31, 2017.

Prior to the discussion of the rules from the Soil and Water Conservation, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning the re-adoption date for rules because of the potential appearance of a conflict of interest.

**Board of Agriculture**

02 NCAC 60 – As reflected in the attached letter, the Commission voted to schedule re-adoption of these rules pursuant to G.S. 150B-21.3A(c)(2) no later than March 31, 2017.

Prior to the discussion of the rules from the Board of Agriculture, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning the re-adoption date for rules because of the potential appearance of a conflict of interest.

**Environmental Management Commission**

15A NCAC 02B – As reflected in the attached letter, the Commission voted to schedule re-adoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than October 31, 2019.

15A NCAC 02H – As reflected in the attached letter, the Commission voted to schedule re-adoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than October 31, 2019.

15A NCAC 02T – As reflected in the attached letter, the Commission voted to schedule re-adoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than October 31, 2019.

15A NCAC 02U – As reflected in the attached letter, the Commission voted to schedule re-adoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than October 31, 2019.

Prior to the discussion of the rules from the Environmental Management Commission, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning the readoption date for rules because of the potential appearance of a conflict of interest.

**Water Pollution Control System Operator Certification Commission**

15A NCAC 08 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than November 30, 2018.

**Water Treatment Facility Operators Certification Board**

15A NCAC 18D – As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than November 30, 2018.

**Department of Transportation**

19A NCAC 06 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than December 31, 2017.

**Board of Employee Assistance Professionals**

21 NCAC 11 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than January 31, 2017.

**Respiratory Care Board**

21 NCAC 61 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than December 31, 2016.

Commissioner Currin was not present during the vote.

**Social Work Certification & Licensure Board**

21 NCAC 63 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than February 28, 2017.

Prior to the discussion of the rules from the Social Work Certification & Licensure Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the readoption date for rules because her law firm provides legal representation to the Board, including consultation on rulemaking.

Commissioner Currin was not present during the vote.

**COMMISSION BUSINESS**

Commissioners and Commission Counsel discussed consistency in review of rules pursuant to G.S. 150B-2(8a)d.

Commissioners and Commission Counsel amended 26 NCAC 05 .0211 to reflect all waivers granted by the Rules Review Commission thus far.

At 11:07 a.m., Chairman Dunklin ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the State Board of Education against the Rules Review Commission.

The Commission came out of closed session and reconvened at 12:03 p.m.

The meeting adjourned at 12:03 p.m.

The next regularly scheduled meeting of the Commission is Thursday, December 17<sup>th</sup> at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

November 2015

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
Derek Wagner	Agriculture
Carey Kullif	DHSR
R M Smith	NCDOI - NCBCC
Jonathan Loftis	NCVMB
Thomas Mickey	NCVMB
Bethany Burgeon	NC DOJ
Jane Gilchrist	NC DOL
Nadine Pfeiffer	DHSR
Jennifer Everett	DEQ
Elizabeth Kirk	NCBMBT
Curt Puntan	NCBOP
Micki Lilly	NC Social Work Board
Seval Webb	NCHBA
PAIGE WORSHAM	NCACC
Julie Wowsley	NCDEQ
Ann Preston	NCDEQ
Bob MARTIN	NC DPH
Jay Frick	DEQ
STEVE REID	DEQ
DEBRA ALSTON	NCDEQ
Isabel Villa-Francia	NCAR





STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 19, 2015

Christina L. Waggett, Rulemaking Coordinator  
Department of Agriculture & Consumer Services,  
1001 Mail Service Center  
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 02 NCAC 37, 59, 60

Dear Mrs. Waggett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 19, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than March 31, 2017.

Please note that the rules set forth in 02 NCAC 59D and 02 NCAC 59H are not subject to this readoption date. 02 NCAC 59D and 02 NCAC 59H are scheduled for a separate periodic review date of January 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

cc: Tina Hlabse

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
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Clerk's Office  
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fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

11/5/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 01, 2015 through June 30, 2016  
Agriculture, Board of  
Total: 58**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>	<b>APO Review Date</b>
<a href="#">02 NCAC 37 .0201</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 37 .0203</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0101</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0201</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0202</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0205</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0302</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0401</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0402</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0603</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0604</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0605</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0701</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0702</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0804</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0805</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .0901</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1003</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1004</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1005</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1006</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1007</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1008</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1009</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1010</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1011</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1012</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1013</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1014</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1015</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1016</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1017</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1018</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1019</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1020</a>	Necessary with substantive public interest	September 19, 2015

<http://rats.Reports/RRC/periodicRuleReview.pl?Type=RRCdetermination&Determination=Necessary%20with%20substantive%20public%20interest&bCo...> 1/2



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RRC Determination - Periodic Rule Review

<a href="#">02 NCAC 60B .1021</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1022</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1023</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1024</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1025</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1026</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1027</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1028</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1029</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1030</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1031</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60B .1032</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0101</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0102</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0201</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0202</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0203</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0204</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0205</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0206</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0207</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0208</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 60C .0209</a>	Necessary with substantive public interest	September 19, 2015

11/5/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 01, 2015 through June 30, 2016  
Soil and Water Conservation Commission  
Total: 12**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>	<b>APO Review Date</b>
<a href="#">02 NCAC 59C .0303</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59E .0101</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59E .0102</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59E .0103</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59E .0104</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59E .0105</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59F .0106</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59G .0101</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59G .0102</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59G .0103</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59G .0104</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">02 NCAC 59G .0105</a>	Necessary with substantive public interest	September 19, 2015



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 19, 2015

Jennifer Everett, Rulemaking Coordinator  
Department of Environmental Quality  
1601 Mail Service Center  
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 02B, 02H, 02T, 02U**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 19, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than October 31, 2019.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

11/5/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 01, 2014 through January 30, 2015  
Environmental Management Commission  
Total: 373**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>	<b>APO Review Date</b>
<a href="#">15A NCAC 02B .0101</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0103</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0104</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0106</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0108</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0110</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0201</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0202</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0203</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0204</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0205</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0206</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0208</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0211</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0212</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0214</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0215</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0216</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0218</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0219</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0220</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0221</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0222</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0223</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0224</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0225</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0226</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0227</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0228</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0229</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0230</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0231</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0232</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0233</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0234</a>	Necessary with substantive public interest	December 20, 2014

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11/5/2015

RRC Determination - Periodic Rule Review

<a href="#">15A NCAC 02B .0235</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0236</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0237</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0238</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0239</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0240</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0241</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0242</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0243</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0244</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0248</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0249</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0250</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0251</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0252</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0255</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0256</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0257</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0258</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0259</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0260</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0261</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0262</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0263</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0264</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0265</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0267</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0268</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0269</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0270</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0271</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0272</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0273</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0274</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0275</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0276</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0277</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0278</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0279</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0280</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0281</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0282</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0301</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0302</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0303</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0304</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0305</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0306</a>	Necessary with substantive public interest	December 20, 2014

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 2/9

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RRC Determination - Periodic Rule Review

<a href="#">15A NCAC 02B .0307</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0308</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0309</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0310</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0311</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0312</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0313</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0314</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0315</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0316</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0317</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0402</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0403</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0404</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0406</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0407</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0501</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0502</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0503</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0504</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0505</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0506</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0508</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0601</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0602</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0603</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0604</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0605</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0606</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0607</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0608</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02B .0609</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0101</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0102</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0103</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0105</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0106</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0107</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0108</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0109</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0111</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0112</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0113</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0114</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0115</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0116</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0117</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0118</a>	Necessary with substantive public interest	December 20, 2014

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&Determination=Necessary%20with%20substantive%20public%20interest&bCo...> 3/9

11/5/2015

RRC Determination - Periodic Rule Review

<a href="#">15A NCAC 02H .0120</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0121</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0124</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0125</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0126</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0127</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0138</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0139</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0140</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0141</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0142</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0150</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0151</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0152</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0153</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0154</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0223</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0224</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0401</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0402</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0403</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0404</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0405</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0406</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0407</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0501</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0502</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0503</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0504</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0506</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0507</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0801</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0802</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0803</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0804</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0805</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0806</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0807</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0808</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0809</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0810</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0901</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0902</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0903</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0904</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0905</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0906</a>	Necessary with substantive public interest	December 20, 2014

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<a href="#">15A NCAC 02H .0907</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0908</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0909</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0910</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0912</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0913</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0914</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0915</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0916</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0917</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0918</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0919</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0920</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0921</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .0922</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1001</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1002</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1003</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1005</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1006</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1007</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1008</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1009</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1010</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1011</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1012</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1013</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1014</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1015</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1016</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1017</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1020</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1101</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1102</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1103</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1104</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1105</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1106</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1107</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1108</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1109</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1110</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1111</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1201</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1202</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1203</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1204</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1205</a>	Necessary with substantive public interest	December 20, 2014

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCDeterminations&Determination=Necessary%20with%20substantive%20public%20interest&bCo...> 5/9



11/5/2015

RRC Determination - Periodic Rule Review

<a href="#">15A NCAC 02H .1206</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1301</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1302</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1303</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1304</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02H .1305</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0101</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0102</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0103</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0104</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0105</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0106</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0107</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0108</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0109</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0110</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0111</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0112</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0113</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0114</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0115</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0116</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0117</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0118</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0120</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0201</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0203</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0204</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0301</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0302</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0303</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0304</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0305</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0306</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0401</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0402</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0403</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0404</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0405</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0501</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0504</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0505</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0506</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0507</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0508</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0601</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0604</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0605</a>	Necessary with substantive public interest	December 20, 2014

<http://rats/Reports/RRC/periodicRuleReview.pl?Type=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 6/9

11/5/2015

RRC Determination - Periodic Rule Review

<a href="#">15A NCAC 02T .0606</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0607</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0701</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0702</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0704</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0705</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0706</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0707</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0708</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0801</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0804</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0805</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .0806</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1001</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1003</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1004</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1005</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1006</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1007</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1008</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1101</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1102</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1103</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1104</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1105</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1106</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1107</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1108</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1109</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1110</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1111</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1201</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1202</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1203</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1204</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1205</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1206</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1207</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1208</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1209</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1301</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1302</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1303</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1304</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1305</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1306</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1307</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1308</a>	Necessary with substantive public interest	December 20, 2014

<http://rals/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&ssDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 7/9

11/5/2015

RRC Determination - Periodic Rule Review

<a href="#">15A NCAC 02T .1309</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1401</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1402</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1403</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1404</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1501</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1502</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1503</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1504</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1505</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1506</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1507</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1601</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1602</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1604</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1605</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1606</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1607</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02T .1608</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0101</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0102</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0103</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0104</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0105</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0106</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0107</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0108</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0109</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0110</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0111</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0112</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0113</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0114</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0115</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0116</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0117</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0120</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0201</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0202</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0301</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0401</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0402</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0403</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0501</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0601</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0701</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0801</a>	Necessary with substantive public interest	December 20, 2014
<a href="#">15A NCAC 02U .0802</a>	Necessary with substantive public interest	December 20, 2014

<http://rats/Reports/RRC/periodicRuleReview.pl?Type=RRCdetermination&Determination=Necessary%20with%20substantive%20public%20interest&bCo...> 8/9

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**RULES REVIEW COMMISSION**

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11/5/2015

RRC Determination - Periodic Rule Review

[15A NCAC 02U .0901](#)

Necessary with substantive public interest

December 20, 2014

[15A NCAC 02U .1101](#)

Necessary with substantive public interest

December 20, 2014

[15A NCAC 02U .1401](#)

Necessary with substantive public interest

December 20, 2014

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCDetermination&aDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 9/9



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 19, 2015

Jennifer Everett, Rulemaking Coordinator  
Department of Environmental Quality  
1601 Mail Service Center  
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 15A NCAC 08

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 19, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

11/12/2015

RRC Determination - Periodic Rule Review

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RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 01, 2014 through June 30, 2016

Water Pollution Control System Operator Certification Commission  
Total: 23

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<a href="#">15A NCAC 08F .0203</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0401</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0405</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0406</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0407</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0501</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0502</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0503</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0504</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0505</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08F .0506</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0102</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0201</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0204</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0301</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0302</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0304</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0306</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0307</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0505</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0701</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0801</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 08G .0803</a>	Necessary with substantive public interest	July 26, 2015



STATE OF NORTH CAROLINA  
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Mailing address:  
6714 Mail Service Center  
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Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 19, 2015

Jennifer Everett, Rulemaking Coordinator  
Department of Environmental Quality  
1601 Mail Service Center  
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 18D**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 19, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

11/12/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 01, 2014 through June 30, 2016  
Water Treatment Facility Operators Certification Board  
Total: 9**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>	<b>APO Review Date</b>
<a href="#">15A NCAC 18D .0105</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 18D .0201</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 18D .0203</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 18D .0205</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 18D .0206</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 18D .0307</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 18D .0308</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 18D .0309</a>	Necessary with substantive public interest	July 26, 2015
<a href="#">15A NCAC 18D .0701</a>	Necessary with substantive public interest	July 26, 2015





STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:  
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Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 19, 2015

Helen Landi, Rulemaking Coordinator  
Department of Transportation  
1501 Mail Service Center  
Raleigh, North Carolina 27699-150

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 19A NCAC 06

Dear Ms. Landi:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 19, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

11/19/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
January 01, 2014 through April 30, 2016  
Transportation, Department of  
Total: 31**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>	<b>APO Review Date</b>
<a href="#">19A NCAC 06B .0402</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06B .0405</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06B .0406</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06B .0410</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06B .0411</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06B .0413</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0107</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0108</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0109</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0110</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0111</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0112</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0123</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0124</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0125</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0126</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0127</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0129</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0134</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0301</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0304</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0401</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0403</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0408</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0502</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0503</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0703</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0704</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0705</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06C .0706</a>	Necessary with substantive public interest	October 24, 2015
<a href="#">19A NCAC 06D .0203</a>	Necessary with substantive public interest	October 24, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?Type=RRCdetermination&Determination=Necessary%20with%20substantive%20public%20interest&bCo...> 1/1



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 19, 2015

Barden Culbreth, Rulemaking Coordinator  
Employee Assistance Professionals  
Randolph E. Cloud & Assoc  
Post Office Box 10972  
Raleigh, North Carolina 27605

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 21 NCAC 11

Dear Mr. Culbreth:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 19, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than January 31, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

11/9/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 01, 2015 through June 30, 2016  
Employee Assistance Professionals, Board of  
Total: 4**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>	<b>APO Review Date</b>
<a href="#">21 NCAC 11 .0104</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">21 NCAC 11 .0108</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">21 NCAC 11 .0111</a>	Necessary with substantive public interest	September 19, 2015
<a href="#">21 NCAC 11 .0112</a>	Necessary with substantive public interest	September 19, 2015



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 19, 2015

William L. Croft, Rulemaking Coordinator  
Respiratory Care Board  
125 Edinburgh South Drive, Suite 100  
Cary, North Carolina 27511

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 21 NCAC 61

Dear Mr. Croft:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 19, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2016.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Roles Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

11/5/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 01, 2014 through June 30, 2016  
Respiratory Care Board  
Total: 1**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>	<b>APO Review Date</b>
<u>21 NCAC 61 .0202</u>	Necessary with substantive public interest	August 22, 2015

<http://rsts/Reports/RRC/periodicRuleReview.pl?%Type=RRCdetermination&aDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 1/1



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 19, 2015

Micki Lilly, Rulemaking Coordinator  
Social Work, Certification & Licensure Board  
Post Office Box 1043  
Asheboro, North Carolina 27204

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 21 NCAC 63

Dear Ms. Lilly:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 19, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than February 28, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

Administration 919/431-3000 fax:919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

11/5/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 01, 2014 through June 30, 2016  
Social Work Certification and Licensure Board  
Total: 5**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>	<b>APO Review Date</b>
<a href="#"><u>21 NCAC 63 .0102</u></a>	Necessary with substantive public interest	September 19, 2015
<a href="#"><u>21 NCAC 63 .0204</u></a>	Necessary with substantive public interest	September 19, 2015
<a href="#"><u>21 NCAC 63 .0211</u></a>	Necessary with substantive public interest	September 19, 2015
<a href="#"><u>21 NCAC 63 .0401</u></a>	Necessary with substantive public interest	September 19, 2015
<a href="#"><u>21 NCAC 63 .0505</u></a>	Necessary with substantive public interest	September 19, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 1/1



**LIST OF APPROVED PERMANENT RULES  
November 19, 2015 Meeting**

**CHILD CARE COMMISSION**

<u>Contested Cases: Record</u>	10A NCAC 09 .2006
<u>Contested Cases: Exceptions to Recommended Decision</u>	10A NCAC 09 .2007

**ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD**

<u>Definitions</u>	21 NCAC 39 .0101
<u>Schedule of Certification Fees</u>	21 NCAC 39 .0301
<u>Onsite Wastewater Contractor or Inspector Examinations</u>	21 NCAC 39 .0401
<u>Requirements</u>	21 NCAC 39 .0601
<u>Approval of Continuing Education Courses</u>	21 NCAC 39 .0602
<u>Revocation, or Suspension of Certification</u>	21 NCAC 39 .0701
<u>Code of Ethics</u>	21 NCAC 39 .0801
<u>General Requirements</u>	21 NCAC 39 .1002
<u>General Exclusions of an Inspection</u>	21 NCAC 39 .1004
<u>Minimum On-Site Wastewater System Inspection</u>	21 NCAC 39 .1006

**PHARMACY, BOARD OF**

<u>Remote Medication Order Processing Services</u>	21 NCAC 46 .1417
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**VETERINARY MEDICAL BOARD**

<u>Fees</u>	21 NCAC 66 .0108
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**BUILDING CODE COUNCIL**

<u>2012 NC Building Code/Required Separation of Occupancies</u>	508.4
<u>2012 NC Building Code/Fire Walls</u>	706
<u>2012 NC Building Code/Exterior Area for Assisted Rescue</u>	1007.7
<u>2012 NC Building Code/Recreational and Sports Facilities</u>	1109.14
<u>2012 Energy Conservation Code/Fenestration</u>	402
<u>2012 NC Fire Code/Sky Lanterns</u>	308.1.6.3
<u>2012 NC Residential Code/Existing Structures</u>	R102.7
<u>2012 NC Residential Code/Garage Separation</u>	R302.6
<u>2012 NC Residential Code/Hazardous Locations</u>	R308.4
<u>2012 NC Residential Code/Vertical Egress</u>	R311.4
<u>2012 NC Residential Code/Ground Vapor Retarder</u>	R408.2
<u>2012 NC Residential Code/Bracing Methods</u>	Table R602.10.1
<u>2012 NC Residential Code/Adhered Stone or Masonry Veneer ...</u>	R703.12

LIST OF APPROVED TEMPORARY RULES  
November 19, 2015 Meeting

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Definitions</u>	15A NCAC 13A .0102
<u>Petitions - Part 260</u>	15A NCAC 13A .0103
<u>Identification and Listing of Hazardous Wastes - Part 261</u>	15A NCAC 13A .0106

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
November 19, 2015  
Necessary with Substantive Public Interest**

<b>HHS - Health Service Regulation, Division of</b>	10A NCAC 14J .1001	15A NCAC 12H .0105
10A NCAC 14J .0101	10A NCAC 14J .1002	15A NCAC 12H .0201
10A NCAC 14J .0102	10A NCAC 14J .1201	15A NCAC 12H .0202
10A NCAC 14J .0103	10A NCAC 14J .1202	15A NCAC 12H .0203
10A NCAC 14J .0201	10A NCAC 14J .1203	15A NCAC 12H .0204
10A NCAC 14J .0203	10A NCAC 14J .1207	15A NCAC 12H .0205
10A NCAC 14J .0204	10A NCAC 14J .1210	15A NCAC 12H .0206
10A NCAC 14J .0301	10A NCAC 14J .1212	15A NCAC 12H .0207
10A NCAC 14J .0302	10A NCAC 14J .1213	15A NCAC 12H .0208
10A NCAC 14J .0303	10A NCAC 14J .1214	15A NCAC 12H .0301
10A NCAC 14J .0402	10A NCAC 14J .1215	15A NCAC 12H .0302
10A NCAC 14J .0403	10A NCAC 14J .1218	15A NCAC 12H .0303
10A NCAC 14J .0404	10A NCAC 14J .1219	15A NCAC 12H .0304
10A NCAC 14J .0405	10A NCAC 14J .1225	15A NCAC 12H .0305
10A NCAC 14J .0501	10A NCAC 14J .1226	15A NCAC 12H .0306
10A NCAC 14J .0601		15A NCAC 12H .0307
10A NCAC 14J .0702	<b>Environment and Natural Resources, Department of</b>	15A NCAC 12H .0308
10A NCAC 14J .0705	15A NCAC 12H .0103	15A NCAC 12H .0401
10A NCAC 14J .0904	15A NCAC 12H .0104	15A NCAC 12H .0402
		15A NCAC 12H .0403

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
November 19, 2015  
Necessary without Substantive Public Interest**

<b>HHS - Health Service Regulation, Division of</b>	10A NCAC 14J .1101	10A NCAC 14J .1303
10A NCAC 14J .0202	10A NCAC 14J .1102	10A NCAC 14J .1304
10A NCAC 14J .0304	10A NCAC 14J .1204	10A NCAC 14J .1305
10A NCAC 14J .0305	10A NCAC 14J .1206	10A NCAC 14J .1306
10A NCAC 14J .0401	10A NCAC 14J .1208	10A NCAC 14J .1401
10A NCAC 14J .0701	10A NCAC 14J .1209	10A NCAC 14J .1501
10A NCAC 14J .0703	10A NCAC 14J .1211	10A NCAC 14J .1502
10A NCAC 14J .0704	10A NCAC 14J .1216	10A NCAC 14J .1503
10A NCAC 14J .0801	10A NCAC 14J .1217	10A NCAC 14J .1504
10A NCAC 14J .0901	10A NCAC 14J .1220	10A NCAC 14J .1505
10A NCAC 14J .0902	10A NCAC 14J .1221	10A NCAC 14J .1506
10A NCAC 14J .0903	10A NCAC 14J .1222	10A NCAC 14J .1507
10A NCAC 14J .0905	10A NCAC 14J .1223	10A NCAC 14J .1508
10A NCAC 14J .1003	10A NCAC 14J .1224	10A NCAC 14J .1509
10A NCAC 14J .1004	10A NCAC 14J .1301	10A NCAC 14J .1510
	10A NCAC 14J .1302	10A NCAC 14J .1511

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10A NCAC 14J .1512  
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**Public Health, Commission for**

10A NCAC 46 .0201  
10A NCAC 46 .0203  
10A NCAC 46 .0204  
10A NCAC 46 .0205  
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10A NCAC 48B .1303  
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10A NCAC 48B .1306  
10A NCAC 48B .1307  
10A NCAC 48B .1308

**Labor, Department of**

13 NCAC 15 .0101  
13 NCAC 15 .0102  
13 NCAC 15 .0103  
13 NCAC 15 .0104  
13 NCAC 15 .0106  
13 NCAC 15 .0107  
13 NCAC 15 .0201  
13 NCAC 15 .0202  
13 NCAC 15 .0203  
13 NCAC 15 .0204  
13 NCAC 15 .0205  
13 NCAC 15 .0206  
13 NCAC 15 .0207  
13 NCAC 15 .0301  
13 NCAC 15 .0302  
13 NCAC 15 .0303  
13 NCAC 15 .0304  
13 NCAC 15 .0305  
13 NCAC 15 .0306

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***RULES REVIEW COMMISSION***

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13 NCAC 15 .0307	13 NCAC 15 .0420	13 NCAC 15 .0701
13 NCAC 15 .0308	13 NCAC 15 .0421	13 NCAC 15 .0702
13 NCAC 15 .0309	13 NCAC 15 .0422	13 NCAC 15 .0703
13 NCAC 15 .0401	13 NCAC 15 .0423	13 NCAC 15 .0704
13 NCAC 15 .0402	13 NCAC 15 .0424	13 NCAC 15 .0705
13 NCAC 15 .0403	13 NCAC 15 .0425	13 NCAC 15 .0706
13 NCAC 15 .0404	13 NCAC 15 .0426	13 NCAC 20 .0101
13 NCAC 15 .0405	13 NCAC 15 .0427	13 NCAC 20 .0201
13 NCAC 15 .0406	13 NCAC 15 .0428	13 NCAC 20 .0202
13 NCAC 15 .0407	13 NCAC 15 .0429	13 NCAC 20 .0203
13 NCAC 15 .0408	13 NCAC 15 .0430	13 NCAC 20 .0301
13 NCAC 15 .0409	13 NCAC 15 .0431	13 NCAC 20 .0304
13 NCAC 15 .0410	13 NCAC 15 .0432	13 NCAC 20 .0305
13 NCAC 15 .0411	13 NCAC 15 .0433	13 NCAC 20 .0306
13 NCAC 15 .0412	13 NCAC 15 .0434	13 NCAC 20 .0401
13 NCAC 15 .0413	13 NCAC 15 .0435	13 NCAC 20 .0402
13 NCAC 15 .0414	13 NCAC 15 .0436	13 NCAC 20 .0501
13 NCAC 15 .0415	13 NCAC 15 .0437	13 NCAC 20 .0502
13 NCAC 15 .0416	13 NCAC 15 .0438	13 NCAC 20 .0503
13 NCAC 15 .0417	13 NCAC 15 .0440	13 NCAC 20 .0601
13 NCAC 15 .0418	13 NCAC 15 .0502	13 NCAC 20 .0602
13 NCAC 15 .0419	13 NCAC 15 .0503	

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
November 19, 2015  
Unnecessary**

**Public Health, Commission for**

10A NCAC 46 .0101  
10A NCAC 46 .0102  
10A NCAC 46 .0202  
10A NCAC 46 .0212

**Environment and Natural Resources, Department of**

15A NCAC 12H .0101  
15A NCAC 12H .0102

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge  
JULIAN MANN, III*

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

**ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
Chief's Inc. v. Alcoholic Beverage Control Commission	13 ABC 18939	02/19/15	
NC Alcoholic Beverage Control Commission v. Partnership T/A Poor Boys	14 ABC 07103	08/21/15	30:08 NCR 918
American Legion, T/A Linton J Sutton Post 223-1 v. Alcoholic Beverage Control Commission	14 ABC 03686	12/23/14	
Alcoholic Beverage Control Commission v. AMH Diana Market Corp., T/A Green's Market	14 ABC 05071	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07115	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07116	01/14/15	
The Geube Group, Michael K Grant Sr. v. Alcoholic Beverage Control Commission	14 ABC 08696	02/16/15	
Alcoholic Beverage Control Commission v. Bhavesh Corp T/A K and B Foodmart	14 ABC 09023	02/04/15	
Alcoholic Beverage Control Commission v. Greenleaf Food and Beverage Inc T/A Bunker Jacks	14 ABC 09037	03/07/15	
Alcoholic Beverage Control Commission v. S.D.C. Group Inc T/A Perkeo Wine Bistro	14 ABC 09039	02/09/15	
Alcoholic Beverage Control Commission v. Alquasem Mustafa Salameh T/A KP Mini Mart	14 ABC 09231	02/04/15	
Alcoholic Beverage Control Commission v. Ash and Z Inc T/A 5 <sup>th</sup> Ave Speedmart	15 ABC 00355	04/22/15	
Alcoholic Beverage Control Commission v. Monterrey Mexican Restaurant Inc T/A Monterrey Mexican Restaurant	15 ABC00393	04/07/15	
Alcoholic Beverage Control Commission v. Woodlawn Restaurant and Lounge, LLC T/A O'Hara's Restaurant and Lounge	15 ABC 04355	09/03/15	
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Board of Architecture v. Anthony Hunt	14 BOA 04954	03/03/15	30:01 NCR 77
<b><u>BOARD OF BARBER EXAMINERS</u></b>			
Arthur Donald Darby Jr v. Board of Barber Examiners - Staff	14 BBE 04565	12/05/14	
<b>BOARD OF FUNERAL SERVICES</b>			
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Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 07597	02/23/15	
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 08028	02/23/15	
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Robert Payne, P.G. v. NC Board for the Licensing of Geologists	14 BOG 03255	06/11/15	30:07 NCR 780

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Hog Slat, Inc v. Department of Commerce 13 COM 20122 12/05/14

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Kimberly H. Oliver v. Victims Compensation Commission 13 CPS 14371 04/17/15 30:03 NCR 354

Jose Guadalupe Munoz Nunez v. Victims Compensation Commission 14 CPS 02633 02/16/15  
 Anne Marie Brandt v. NC Department of Public Safety 14 CPS 05077 08/18/15 30:08 NCR 924  
 Jack Norris v. Victims Compensation Commission 14 CPS 06019 03/30/15 30:01 NCR 89  
 Yessika Murga Martinez v. Crime Victims Compensation Commission 14 CPS 07544 05/29/15  
 Joanne Sanon v. Department of Public Safety 14 CPS 07995 01/16/15  
 Bonnie Hall v. Crime Victims Compensation Commission 14 CPS 08618 01/23/15

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 Kenneth Terrell Ford v. DHHS, Division of Facility Services 13 DHR 10745 05/04/15 30:03 NCR 360  
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 A+ Residential Care, Daniel Saft v. NCDHHS, Division of Health Service Regulation 13 DHR 19835 05/22/15  
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 Bernita Webster v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry 14 DHR 05566 03/10/15 30:02 NCR 229  
 First Image Grace Court/RHCC and Shirley Williams v. DHHS, Division of Health Service Regulation 14 DHR 06332 02/12/15  
 Carrie's Loving Hands, Felicia McGee v. NCDHHS, Division of Health Service Regulation, Certification 14 DHR 06565 02/13/15  
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 A United Community LLC v. Alliance Behavioral Healthcare as legally authorized contractor of and agent for NC Department of Health and Human Services 14 DHR 06837 07/20/15 30:08 NCR 930  
 Brenda Buck v. NCDHHS, Division of Health Service Regulation 14 DHR 07027 01/02/15  
 Humble Beginnings Child Care Inc v. Division of Child Development and Early Education 14 DHR 07029 05/22/15  
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Sandra Kay Laney Stewart v. Medicaid Estate Recovery, Glana M Surles	15 DHR 03057	07/23/15	
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Seon M. Oh, Express international Trading Inc. d/b/a Southside Fish and Grocery V. Nutrition Services, WIC Program, DHHS	15 DHR 03419	07/16/15	
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Bannor Michael Macgregor v. Durham County Department of Health, Environmental Health Division 14 EHR 02900 04/13/15

Brian T Jackson, Rosemary Jackson v. NCDHHS, Environmental Health Section, Doug Mevey and/or Harry Lewis 14 EHR 02843 01/13/15

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Filed

STATE OF NORTH CAROLINA  
2015 OCT 30 AM 9:54  
COUNTY OF CUMBERLAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DHR 08147

Office of

Administrative Hearings

CMS Agency, Inc., )  
)  
Petitioner, )  
)  
vs. )  
)  
North Carolina Department )  
of Health and Human Services )  
and Eastpointe Human Services )  
LME/PHP, )  
)  
Respondents. )

**FINAL DECISION**

This contested case was heard before the Honorable Donald W. Overby, Administrative Law Judge, on July 27, 2015, in Cumberland County, North Carolina.

**APPEARANCES**

For Petitioner: J. Scott Flowers and Deanna Coleman  
Hutchens Law Firm  
4317 Ramsey Street  
Fayetteville, North Carolina 28302

For Respondent NC: Rajeev K. Premakumar  
Department of Health Assistant Attorney General  
and Human Services N.C. Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602

For Respondent: Jose A. Coker and Dharmi B. Tailor  
Eastpointe Human The Charleston Group  
Services LME/PHP 201 Hay Street, Suite 2000  
Fayetteville, North Carolina 28302

**STATUTES AND RULES**

42 C.F.R. § 438

N.C.G.S. § 108A

N.C.G.S. § 108C

**EXHIBITS**

**Admitted for Petitioner:**

Exhibit No.	Date	Document
1	May 20, 2013	Procurement Contract effective January 1, 2013
2	October 17, 2012	CMS Agency, Inc. Articles of Incorporation
3.	May 17, 2013	Procurement Contract Amendment
4		Philadelphia Indemnity Insurance Company, Common Policy Declarations
5		Philadelphia Indemnity Insurance Company, Common Policy Declarations
6	September 16, 2013	Carolina Mutual Insurance, Inc., Worker's Compensation Statement
7	November 11, 2013	Carolina Mutual Insurance, Inc., Policy Cancellation Notice
8	March 27, 2014	Travelers, Workers Compensation and Employers Liability Policy
9	December 11, 2013	ProviderConnect – Billing Statement
10	July 7, 2014	Procurement Contract effective

		July 1, 2014
11	July 7, 2014	Eastpointe letter to Petitioner
12	July 11, 2014	Petitioner's appeal to Eastpointe
13	July 15, 2014	Email from Tammy Segura to C. Price-Sprague
14	July 14, 2015	Emails between Sheilla Redd, Tammy Segura, and Karen Salacki
15	July 23, 2014	Petitioner's appeal to Eastpointe
16	September 3, 2014	Eastpointe Provider Dispute Resolution Letter to Petitioner
17	February 6, 2015	Acord Certificate of Liability Insurance
18	July 24, 2015	Acord Certificate of Liability Insurance
19	March 4, 2015	Eastpointe's Response to Petitioner's Interrogatories
20	March 4, 2015	Eastpointe's Response to Petitioner's Request for Production of Documents
21	March 4, 2015	Provider Approvals/Payments/ Adjustments by Date of Service for Petitioner
22	September 17, 2014	Eastpointe letter to Petitioner

**Admitted for Eastpointe:**

Exhibit No.	Date	Document
1	December 12, 2012	Contract between NC DHHS/DMA and Eastpointe
2		Procurement Contract, Appendix

		G Template from NCDHHS
3	May 17, 2013	Procurement Contract Amendment
4	September 25, 2012	Acord Certificate of Liability Insurance 2012-2013
5	June 30, 2014	Acord Certificate of Liability Insurance 2013-2014
6	August 21, 2014	Provider Approvals/Payments/ Adjustments for Petitioner for Dates of Service 9/16/2013-02/14/2014
7	August 13, 2014	Eastpointe Provider Operations Manual

**WITNESSES**

**Called by Petitioner:**

Tammy Segura, President of CMS Agency, Inc.

Sheilla Redd, Commercial Lines Account Manager at Insurance Service Center

**Called by Eastpointe:**

Karen Salacki, Chief of External Operations for Eastpointe

**ISSUES**

1. Whether Eastpointe deprived Petitioner of property, exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it charged Petitioner \$209,515.21 as a result of a lapse in coverage for professional liability insurance, general liability insurance, and worker's compensation insurance as required by Petitioner's procurement contract with Eastpointe and Eastpointe's contract with the Division of Medical Assistance.

2. Whether Eastpointe properly conducted its Reconsideration Review of Petitioner's internal appeal to Eastpointe.

3. Whether Petitioner is entitled to reasonable attorney's fees pursuant to N.C.G.S. § 150B-33(b)(11).

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, along with documents and exhibits received and admitted into evidence and the entire record in this proceeding, the undersigned administrative law judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

**FINDINGS OF FACT**

1. Petitioner is a North Carolina corporation organized and existing under the laws of the State of North Carolina that provides mental health, developmental disabilities, and substance abuse services to Medicaid recipients within the catchment area of Eastpointe.

2. Respondent North Carolina Department of Health and Human Services ("DHHS") is the single state agency responsible for operating the State's Medicaid Plan under N.C.G.S. § 180A-54.

3. Respondent Eastpointe Human Services LME/PHP ("Eastpointe") is a managed care organization ("MCO") that manages, coordinates, facilitates, and monitors the provision of state and federal Medicaid-funded mental health, intellectual, and developmental disabilities and substance abuse services for members in Eastpointe's catchment area. The catchment area includes Bladen, Columbus, Duplin, Edgecombe, Greene, Lenoir, Nash, Robeson, Sampson, Scotland, Wayne, and Wilson counties.

4. NCDHHS delegates responsibilities to manage the 1915(b)/(c) Medicaid Waiver to MCOs such as Eastpointe.

5. On December 12, 2012, Eastpointe entered into a contract with DHHS's Division of Medical Assistance ("DMA") pursuant to which Eastpointe was to operate a capitated Prepaid Inpatient Health Plan ("PIHP") for Medicaid enrollees in accordance with 42 C.F.R. Part 438 (the "DMA Contract"). The term of the DMA Contract was January 1, 2013 through December 31, 2014.

***FIRST AND SECOND CONTRACTS***

6. Pursuant to its duties under the DMA Contract, Eastpointe entered into a contract with Care Management Services, a sole proprietorship and CMS's predecessor in interest, on



January 18, 2013 for CMS to provide services to Medicare enrollees (the "First CMS Contract"). The term of the First CMS Contract was January 1, 2013 through June 30, 2014. The First CMS Contract was amended on May 17, 2013 to replace Care Management Services with CMS, the corporate entity, as the provider there under.

7. The First CMS Contract is a template contract provided to Eastpointe by DMA. DMA requires Eastpointe to use this contract template in its contracts with providers such as CMS. There is no arm's length negotiation of the terms of the contract. Any provider wanting to participate in Eastpointe's catchment area must accept the terms as presented.

8. Appendix G, paragraph 9, of the First CMS Contract required CMS to purchase and maintain professional liability insurance, comprehensive general liability insurance, automobile liability insurance, workers' compensation insurance, and "tail" coverage in the amounts set forth therein. Appendix G, paragraph 9(e)i. states, "Any loss of insurance shall justify the termination of this Contract in the LME/PIHP's sole discretion." Appendix G of the First CMS Contract sets forth a very specific remedy for Eastpointe in the event there is a lapse in insurance by the provider, and it does not state that Eastpointe is authorized to recoup funds from CMS for a lapse in insurance.

9. The First CMS Contract, Art. I, Section 4(a) through (k) sets forth the "Controlling Authority" which sets forth the laws and regulations governing the First CMS Contract. There is no law or regulation specifically referenced in the Controlling Authority that deals with insurance. The closest it comes is in Section 4(c) which refers to the "State laws and regulations denominated in Appendix G." There are no state laws or regulations specifically referenced in Appendix G that refer to insurance. Thus, any remedy for a lapse of insurance must be set forth in particularity within the confines of the contract itself—and it is.

10. Art. II, Section 5(b) of the First CMS Contract states in part:

If the LME/PIHP determines CONTRACTOR has failed to comply with Controlling Authority and has been reimbursed for a claim or a portion of a claim that the LME/PIHP determines should be disallowed, or that CONTRACTOR has been paid for a claim that was fraudulently billed to the LME/PIHP, the LME/PIHP will provide thirty (30) days notice to the CONTRACTOR of the intent to recoup funds.

11. Since there has been no showing that Petitioner failed to comply with the laws and regulations of the "Controlling Authority", this provision for recoupment does not apply.

12. The First CMS Contract does not further define which violations of Controlling Authority allow for a recoupment.

13. Neither Eastpointe nor DHHS/DMA has promulgated or published any rules advising which violations of Controlling Authority by a provider shall be deemed to allow or require a recoupment.

14. There is no provision in the First CMS Contract that states that a violation of the First CMS Contract will allow Eastpointe to recoup funds from CMS earned under a future contract between CMS and Eastpointe.

15. Pursuant to Eastpointe's duties under its Contract with DMA, Eastpointe entered into a second contract with CMS on July 7, 2014 for CMS to provide services to Medicare enrollees (the "Second CMS Contract"). The term of the Second CMS Contract was July 1, 2014 through June 30, 2015.

16. Like the First CMS Contract, the Second CMS Contract was the same template contract provided to Eastpointe by DMA, and included all of the same material terms without arm's length negotiation. There is no provision in the Second CMS Contract authorizing Eastpointe to recoup funds due under the Second CMS Contract for a breach of the First CMS Contract.

17. On July 7, 2014, Eastpointe gave CMS a notice of recoupment. The notice provided in part:

After review of your insurance coverage it is the determination of Eastpointe that you had the following gap(s) in your insurance: General Liability, Professional Liability and Worker's Comp from July 1, 2013 through February 15, 2014.

Attached you will see a payment detail for these timeframes. The total recoupment due to Eastpointe is \$324,312.70. Failure to submit payment for this full amount within thirty (30) days of receipt of this communication will result in recoupments of future payments for your organization.

18. The July 7, 2014 notice advised CMS that it could appeal this decision by sending written notice of appeal to Eastpointe within twenty-one (21) calendar days of receipt. The notice stated that CMS must "submit in writing any supporting documentation as to why this decision should be reversed."

19. The July 7, 2014 notice did not inform CMS that Eastpointe would only consider Certificates of Insurance as proper evidence of insurance coverage.

20. Eastpointe had entered into a contract with DHHS/DMA on December 2012 ("DMA Contract"). (R. Ex. 1) That contract provided in part "EASTPOINTE shall require Network Providers to submit certificates of coverage to EASTPOINTE." (Emphasis added)

21. Testimony from Respondent stated that DMA had previously specifically advised Eastpointe that Eastpointe could not accept insurance declarations from providers and that certificates of insurance coverage ("COIs") are required. (T. p. 148:15-22; 163:15-18)

22. The small but perceptible distinction between the DMA contract and what Eastpointe was allegedly told is the distinction between certificates of coverage and certificates of insurance. It would seem that the critical point would be for the provider to demonstrate that indeed it has the required insurance coverage without regard to what label is placed on it, much like courts accept Orders with findings of fact that are more conclusions of law, but are usually accepted without regard to label.

23. The distinction is of no consequence because whether it is a more generic certificate of coverage or the specific certificate of insurance, neither was communicated to the Petitioner. Petitioner was not privy to nor a party to the contract nor conversations between Respondent and

DMA. Petitioner was sending what she thought was sufficient to answer the question of insurance, but was being rejected by Respondent. There was no way for Petitioner to know that what was being sent to Respondent was not sufficient.

24. The First CMS Contract uses the specific language of "Certificates of Insurance" in Appendix G, Section 9 (c)(i). That proviso requires the Petitioner to provide the COI to show that Eastpointe has been named as an additional insured, and that it must be provided prior to entering into the contract. There is no evidence that such COIs were ever provided prior to entering the contracts or that there was ever any problem in this regard.

25. Appendix G, Section 9 is the same section that provides the specific remedy for a violation of the insurance requirements, which is termination in the sole discretion of Eastpointe.

26. The recoupment amount set forth in the July 7, 2014 notice was the entire amount paid by Eastpointe to CMS during the period of the alleged insurance lapse. There is no question that all services were provided and provided adequately by CMS for which it had previously been paid by Eastpointe during the alleged lapse period.

27. Upon receipt of the July 7, 2014 notice, Tammy Segura ("Ms. Segura"), principal of CMS, contacted her insurance agent, Sheilla Redd of Insurance Service Center ("Ms. Redd"), and requested Ms. Redd provide her with evidence of insurance during the alleged lapse period.

28. In response, Ms. Redd sent the following documents to Ms. Segura (the "Insurance Documents") as proof of insurance:

(a) A Declaration Page from Travelers Property Casualty Company ("Travelers") for a workers' compensation policy, with the policy period being March 8, 2014 to March 8, 2015;

(b) A Declaration Page from Philadelphia Insurance Companies ("Philadelphia") for an insurance policy that provided insurance for commercial property, commercial general liability, commercial auto, and professional liability coverage for the policy period December 4, 2012 to December 4, 2013;

(c) A Declaration Page from Philadelphia for an insurance policy that provided insurance for commercial property, commercial general liability, commercial auto, and professional liability coverage for the policy period December 4, 2013 to December 4, 2014; and,

(d) A Notice of Cancellation of a workers' compensation policy from Isurity effective November 4, 2013.

29. The Declaration Pages contained in the Insurance documents were issued by Travelers and Philadelphia. The declaration pages are only issued after CMS had paid the policy premium and contemporaneous with the policy being issued. At least one half of the total premium must be paid before the declaration pages are issued.

30. According to Ms. Segura, the declaration pages are more accurate and more reliable than the COIs.

31. Ms. Redd sent Ms. Segura an email dated July 11, 2014 attaching the policy declarations. Ms. Segura forwarded this email to Karen Salacki ("Salacki") at Eastpointe. (P. Ex. 14) Ms. Salacki responded to Ms. Segura stating she needed to follow the appeal instructions contained in the letter. (P. Ex. 14) Ms. Salacki did not forward the information to Eastpointe's Grievance and Appeals Department. (T. p. 154:21-23) According to Respondent, typically Ms. Salacki does not forward that information because there is a "firewall" between her department and the Grievance and Appeals Department (T. p. 155:2-7; 159:24-25, 160:1-4) At some point apparently Eastpointe's Grievance and Appeals Department did receive and consider, but reject, the information attached to Ms. Segura's email. (T. p. 205:14-25, 206, 207:1; P. Ex. 16)

32. Ms. Segura had been in contact with Ms. Salacki previously and used that contact as the person to whom she felt the information should go. A firewall might be a useful and necessary part of the procedure, but it is hard to understand how merely forwarding information received by one department to another department can be any form of officious interloping with the affairs of the other. There does not seem to be anything that could be read into the giving of information from one department to the other. Such a hard and fast internal process "rule" means that the left hand does not know what the right hand of the same body is doing, which has the potential for causing serious consequences for providers, and which could be avoided by merely passing the information along.

33. CMS did not have a lapse in its insurance coverage for its commercial property, commercial general liability, commercial auto, or professional liability coverage. CMS did have a lapse in its workers' compensation policy from November 4, 2013 to March 8, 2014.

34. The total amount paid to CMS by Eastpointe from November 4, 2013 to March 7, 2014 was \$159,923.92

35. On July 23, 2014, CMS timely appealed the July 7, 2014 notice of recoupment in accord with instructions provided in the letter. Eastpointe received CMS's appeal on July 25, 2014. Included in its appeal, CMS provided Eastpointe with the Insurance Documents received from Ms. Redd.

36. Eastpointe did not request any further information from Ms. Segura. Eastpointe never specifically asked CMS for a Certificate of Insurance.

37. On September 3, 2014, Eastpointe gave notice to CMS of its final decision with regard to the recoupment. In the September 3, 2014 notice, Eastpointe advised CMS that the recoupment amount had been adjusted to \$209,515.21.

38. Although Eastpointe claimed that it reviewed the Insurance Documents in its September 3, 2014 notice, Eastpointe, refused to consider any document other than a Certificate of Insurance as evidence of insurance. CMS had no way of knowing that a Certificate of Insurance was the only documentation that Eastpointe would consider.

39. In the September 3, 2014 notice, Eastpointe did not advise CMS how it determined the amount of \$209,515.21 was owed. Eastpointe did not advise which insurance policies had allegedly lapsed or the period of time in which the alleged lapse occurred.

**SEPTEMBER 3, 2014 AMENDED CONTRACT**

40. Together with the September 3, 2014 notice, Eastpointe provided CMS with an Amended Contract, which purported to unilaterally amend the First CMS Contract to eliminate September 16, 2013 through February 14, 2014 from the contract period. The September 3, 2014 notice stated, "Enclosed you will find your agency's amended contract to reflect the date adjustment for non-coverage of insurance."

41. CMS never approved or executed the Amended Contract.

42. Eastpointe's witness at first said that the reason for this amended contract was to minimize Eastpointe's potential liability. (Tr. pps. 244-252) Section 12.3 of the contract between DMA and Eastpointe allows for DMA to sanction Eastpointe in the event Eastpointe or one of its providers substantially fails to comply with the terms of the contract between Eastpointe and DMA. Sanctions include the possibility of Eastpointe being terminated from the contract with DMA.

43. Thus, the after-the-fact contract amendment that Eastpointe is trying to put in place is primarily to protect Eastpointe.

44. But this ruse also gives Eastpointe another avenue as a means to try to collect money from CMS. By voiding out the contract, then Eastpointe says that CMS received money improperly because there is no contract for that period of time. There is no question the services were rendered. There is no question about the quality of services. Eastpointe is trying to create a hole where none previously existed with the two-pronged purpose of covering its own behind with DMA, as well as creating a hole when there was no contract and ordering the provider to pay that money back.

45. Perhaps most interesting of all, Eastpointe's representative says that by voiding out the contract in this manner for the time that CMS allegedly did not have insurance, actually means that there is no time in which CMS is out of compliance. More succinctly—CMS is in compliance at all times the contract is in effect. This creates a very strange dichotomy: on the one hand, Eastpointe spends considerable effort to convince this Tribunal that the terms of the contract allow for recoupment, but on the other hand Eastpointe says that CMS is actually in compliance for the entire time the contract is in effect because Eastpointe has created a hole.

46. There is nothing in law or contract to allow this unilateral un-doing of a contract. This attempt to amend the contract after the fact is void *ab initio*. This unilateral un-doing is a very conscious effort to deceive by creating a situation to its own benefit after the fact. Such an act and its implications are very, very concerning legally to this Tribunal.

47. To say that this is just the way Eastpointe has done business is of no consequence. It merely means that somehow it has been allowed to get away with this ruse for some time without having been called on it. It does not make such a process okay. Eastpointe, in essence, adopted and implemented an un-promulgated policy whereby Eastpointe sought to unilaterally amend its contracts with providers.

48. Subsequent to the filing of CMS' petition, and prior to a Preliminary Injunction being issued by this Court, Eastpointe deducted \$6,647.84 from payments due CMS under the Second CMS Contract as part of the claimed recoupment.

49. Eastpointe properly conducted its Reconsideration Review of Petitioner's internal appeal to Eastpointe. No procedural questions were raised by Petitioner.

BASED UPON the foregoing Findings of Fact, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the subject matter of this contested case and over the parties named therein pursuant to Chapters 108C and 150B of the North Carolina General Statutes.
2. To the extent the Findings of Fact contain Conclusions of Law, or the Conclusions of Law contain Findings of Fact, they should be so considered without regard to the given labels.
3. N.C.G.S. § 108C-12 requires this Court to issue a "final decision within 180 days of the date of filing of the appeal with the Office of Administrative Hearings." *See* N.C.G.S. § 108C-12. "The time to make a final decision shall be extended in the event of delays caused or requested by the Department." *Id.*
4. Because Eastpointe requested a continuance, the time for making the final agency decision was extended by request of the Department. *See* N.C. Gen. Stat. § 108C-12. Therefore, this final decision is timely. *See id.*
5. At all times relevant herein, Eastpointe acted as the agent of DHHS, within the course and scope of its authority, with regard to its actions towards CMS set forth above.
6. The First CMS Contract does not authorize Eastpointe to recoup funds from CMS for a lapse in insurance coverage.
7. The First CMS Contract does not authorize Eastpointe to recoup funds due and owing under the Second CMS Contract for a lapse in insurance that occurred during the First CMS Contract.
8. The Second CMS Contract does not authorize Eastpointe to recoup funds from CMS for a lapse in insurance coverage.
9. The Second CMS Contract does not authorize Eastpointe to recoup funds due and owing under the Second CMS Contract for a lapse in insurance that occurred during the First CMS Contract.
10. Eastpointe's unilateral amendment of the First CMS Contract to allow Eastpointe to recoup funds from CMS was not authorized by the First or Second CMS Contract.
11. A unilateral amendment to a contract is generally not allowed by basic principles of contract law.

12. Because Eastpointe determined that CMS had a lapse in insurance, Eastpointe has attempted to unilaterally amend its contract with CMS to eliminate from the contract the period during which Eastpointe believed CMS had a lapse in insurance, then initiated recoupment from CMS on the basis that the payments made to CMS were paid during a period where no contract existed between the parties.

13. Respondents have not promulgated a rule to implement Respondent's interpretation of any controlling authority that would allow for a unilateral amendment of its provider contracts, nor followed the procedures required for public hearing, determination of fiscal costs, or review by the Rules Review Commission before a rule becomes effective and codified.

14. Pursuant to the North Carolina Administrative Procedure Act, Chapter 150B (the "APA"), and specifically G.S. 150B-2(8a), "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency." G.S.150B-(8a)(c) defines nonbinding interpretive statements as "statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule." Respondents' interpretations that were not adopted as a rule are "nonbinding." Respondents' interpretation of the provider contractual provisions and the "Controlling Authority" set forth therein are nonbinding interpretative statements.

15. Respondents are not exempted from Article 2A of Chapter 150B.

16. Pursuant to N.C. Gen. Stat. § 150B-18, an interpretative statement made by Respondents is not valid unless it is adopted in substantial compliance with the APA. G.S. 150B-18 specifically and affirmatively prohibits the enforcement of a nonbinding interpretative statement. It is quoted as follows:

An agency shall not seek to implement or enforce against any person a policy, guideline, or other nonbinding interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other nonbinding interpretive statement has not been adopted as a rule in accordance with this Article.

17. To the extent a unilateral amendment of provider contracts to allow for redefining the contract period and recoupment of payments made during the amended non-contract period is not prescribed by applicable federal or North Carolina law, and not allowed by the terms of the contract itself, such methods must be adopted as a rule as defined in G.S. 150B-2(8a).

18. To the extent a unilateral amendment of provider contracts to allow for redefining the contract period and recoupment of payments made during the amended non-contract period is not prescribed by applicable federal or North Carolina law, allowed by the terms of the contract, or properly adopted as a rule pursuant to the APA, such method does not carry the force of law.

19. To the extent a unilateral amendment of provider contracts to allow for redefining the contract period and recoupment of payments made during the amended non-contract period is not prescribed by applicable federal or North Carolina law, allowed by the terms of the contract, or properly adopted as a rule, such denial is invalid as contrary to law.

20. There is nothing in law or contract to allow this unilateral amendment of the contract. This attempt to amend the contract after the fact is void *ab initio*.

21. Because Eastpointe attempted to recoup payments from CMS by unilaterally amending the First CMS Contract to remove the lapse period from the contract without legal authority to do so, such amendment and recoupment was erroneous.

22. There is no unjust enrichment for Petitioner by the ruling in this Decision. There is no windfall.

22. Respondents, in seeking to bind CMS to their interpretation and a unilateral amendment to the First CMS Contract, exceeded Respondents' authority, failed to use proper procedure, and failed to act as required by law.

23. Eastpointe acted erroneously by seeking to unilaterally amend the First CMS Contract, by seeking to recoup payments due under the Second CMS Contract, by failing to promulgate APA rules to determine when a provider contract may be unilaterally amended and when Eastpointe may recoup funds from a provider, and by recouping from CMS \$6,647.84. Petitioner is entitled to receive \$6,647.84 from Eastpointe as reimbursement for the unlawful recoupment.

24. Petitioner failed to show that Respondent acted arbitrarily or capriciously and is therefore not entitled to reasonable attorney fees.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

**DECISION**

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines Respondent did deprive Petitioner of property, exceeded its authority or jurisdiction, failed to act as required by law or rule in its decision to charge Petitioner in the amount of \$209,515.21 as the result of a lapse in coverage for professional liability insurance, general liability insurance, and worker's compensation insurance. Respondent's decision is hereby **REVERSED**.

Respondents shall not recoup any funds from Petitioner for the alleged lapse of insurance. Respondent Eastpointe shall pay to Petitioner the amount of \$6,647.84 for the funds already recouped by Eastpointe from Petitioner. Respondent Eastpointe shall reimburse to Petitioner its filing fees as Petitioner is the prevailing party. Petitioner's request for reasonable attorney fees is **DENIED**.

**IT IS SO ORDERED.**

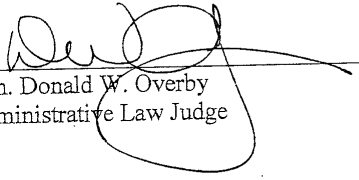
**NOTICE**

Pursuant to N.C.G.S. § 150B-45, any party wishing to appeal the final decision of the



Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of the county in which the person aggrieved by the administrative decision resides. The appealing party must file the petition within thirty (30) days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule, 26 NCAC 03.012, and the Rules of Civil Procedure, N.C.G.S. 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C.G.S. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Pursuant to N.C.G.S. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within thirty (30) days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 30<sup>th</sup> day of October, 2015.

  
Hon. Donald W. Overby  
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA

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IN THE OFFICE OF

ADMINISTRATIVE HEARINGS

COUNTY OF VANCE

14 DOJ 08258

OFFICE OF  
ADMIN HEARINGS

CAROL BERNICE MANNING, )  
 Petitioner, )  
 )  
 v. )  
 )  
 N.C. SHERIFFS' EDUCATION )  
 AND TRAINING STANDARDS )  
 COMMISSION, )  
 Respondent. )

**PROPOSAL FOR DECISION**

**THE ABOVE-ENTITLED MATTER** was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals.

The Respondent submitted proposals and argument to the Clerk's Office of the Office of Administrative Hearings on July 7, 2015 which was received by the Undersigned on July 8, 2015. The Undersigned held the record open for seven additional business days for further submissions. During that time, Petitioner submitted a letter of reference from Sgt. J. L. Alston, where Sgt. Alston stated that Petitioner was a dedicated individual with a strong sense of duty who cared about the quality of her work at all times. The record was closed on July 17, 2015.

**APPEARANCES**

Petitioner: Carol Bernice Manning, *Pro Se*  
 131 Kitts Landing Lane, Lot 4  
 Henderson, North Carolina 27537

Respondent: Matthew L. Boyatt, Assistant Attorney General  
 Attorney for Respondent  
 NC Department of Justice  
 9001 Mail Service Center  
 Raleigh, North Carolina 27699-9001

**ISSUE**

Has Petitioner committed or been convicted of the felony offense of Larceny by Employee thereby supporting Respondent's finding of probable cause to deny Petitioner's justice officer certification?

**EXHIBITS**

Petitioner's Exhibits 1-3 were introduced and admitted.

Respondent's Exhibits 1-8 were introduced and admitted.

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following **FINDINGS OF FACT**. In making the **FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

**FINDINGS OF FACT**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and Petitioner received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission. (Respondent's Exhibit 1)
2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has the authority granted under the North Carolina General Statutes and the North Carolina Administrative Code to certify justice officers and to deny, revoke, or suspend such certification.
3. Petitioner is an applicant for detention officer certification through the Vance County Sheriff's Office.
4. 12 NCAC 10B. 0204(a) states the Sheriffs' Commission shall deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of a felony.

5. On May 28, 1998, Petitioner was charged with the felony offense of larceny by employee in violation of N.C.G.S. § 14-74 in Vance County, North Carolina, case number 1998 CR 005459. (Respondent's Exhibit 3)

6. Petitioner was a cashier at the Wal-Mart retail store in Henderson, North Carolina from 1996 until her dismissal in May of 1998. Petitioner was dismissed from Wal-Mart in May 1998 upon the accusation that she had stolen a television valued at \$500.00.

7. On or about May 28, 1998, Petitioner was at work at Wal-Mart in Henderson when she was approached by loss prevention. Petitioner was accused of stealing a television from Wal-Mart and was advised that Wal-Mart possessed video surveillance of the theft. Though she never saw the video, Petitioner admitted at that time that she stole a \$500.00 television from Wal-Mart. Petitioner made this admission both verbally and in writing. This caused Petitioner to be charged with the offense of larceny by employee and also caused Petitioner to be dismissed from Wal-Mart. Petitioner testified at this hearing that she "stupidly admitted to stealing in writing to something I did not do."

8. Petitioner asserts that she purchased the television from Wal-Mart as a gift for her mother and that she admitted to guilt in 1998 to put the matter behind her. Petitioner admitted that she would have been provided with a receipt from Wal-Mart had she purchased the television. Petitioner could not account for why she did not disclose this information to Wal-Mart in 1998 when she was accused of the theft.

9. Petitioner was allowed to enter into a deferred prosecution agreement. (Respondent's Exhibit 4) Petitioner was placed on supervised probation for one (1) year and was ordered to pay the costs of court, in addition to a community service fee for probation. (Respondent's Exhibit 4)

10. Petitioner also paid restitution to Wal-Mart. In July of 1999, Petitioner issued a money order to Wal-Mart Stores in the amount of \$500.00. (Respondent's Exhibit 5)

11. Petitioner's "Larceny by Employee" offense was dismissed following Petitioner's completion of the Deferred Prosecution Program. (Respondent's Exhibit 3 and Petitioner's Exhibit 2)

12. On April 30, 2014, Petitioner's Petition for Expunction under N.C.G.S. § 15A-145 and 146 was granted. As ordered by the Court, "any and all entries relating to the petitioner's apprehension, charge, trial or conviction and any civil revocation of his/her drivers license resulting from the criminal charge shall be expunged from the records of the court." As further stated in the Court's Order, "all law enforcement agencies, the Division of Adult Correction, the division of Motor Vehicles, and any other State or local government agency identified on Side One and on any attachment to this petition shall expunge from all official records any entries relating to the person's conviction. . ." (Petitioner's Exhibit 3)

13. Petitioner's Exhibit 1 is a letter from the Supervising Attorney of Legal Aid of North Carolina, Inc., informing Petitioner that "expunction of a criminal record means the record is destroyed and you may now truthfully indicate that the expunged charge never occurred."

**BASED UPON** the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law.

**CONCLUSIONS OF LAW**

1. In accordance with the granting of the Petition and subsequent Order of Expunction by Superior Court Judge Paul Ridgeway, any and all entries relating to the Petitioner's apprehension, charge, trial or conviction resulting from the criminal charge of Larceny by Employee has been expunged from the records of the court.
2. In accordance with the granting of the Petition and subsequent Order of Expunction by Superior Court Judge Paul Ridgeway, all law enforcement agencies and other relevant government entities have expunged from all official records any entries relating to the Petitioner's commission or conviction of Larceny by Employee.
3. No Evidence exists in any law enforcement department, district attorney's office or the General Court of Justice that Petitioner in this matter committed or was convicted of the offense of Larceny by Employee.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Proposal for Decision.

**PROPOSAL FOR DECISION**

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

Based on those conclusions and the totality of all evidence, including testimony and exhibits provided at the above-captioned case, the Undersigned holds that there is no probable cause to believe that Petitioner committed the felony offense of Larceny by Employee. The Undersigned holds that the Petitioner's request for certification as a Justice Officer should be allowed.


**NOTICE**

The agency making the Final Decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

**IT IS SO ORDERED.**

This is the 17th day of August, 2015.

  
Augustus B. Elkins II  
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA

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IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

14 DOJ 09954

OFFICE OF  
ADMIN HEARINGS

STEVEN JOSEPH O'BYRNE,

Petitioner,

v.

N.C. SHERIFFS' EDUCATION  
AND TRAINING STANDARDS  
COMMISSION,

Respondent.

PROPOSAL FOR DECISION

On December 15, 2014, pursuant to N.C. Gen. Stat. § 150B-40(e), Respondent requested the designation of an Administrative Law Judge to preside at a contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes. On May 26, 2015, Administrative Law Judge Melissa Owens Lassiter heard this case in Raleigh, North Carolina. On July 30, 2015, Respondent filed a draft Proposal for Decision with the Office of Administrative Hearings.

APPEARANCES

Petitioner: E. Lee Turner, Jr.  
Attorney at Law  
P.O. Box 990  
Raleigh, North Carolina 27602

Respondent: Matthew L. Boyatt, Assistant Attorney General  
Attorney for Respondent  
NC Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

ISSUE

Is Respondent's proposed denial of Petitioner's application for certification for the criminal offense of larceny by employee in violation of N.C.G.S. § 14-74 supported by sufficient evidence presented at the administrative hearing?

**WITNESSES**

For Petitioner: Petitioner, Petitioner's father - Daniel O'Byrne

For Respondent: Petitioner

**EXHIBITS ADMITTED INTO EVIDENCE**

For Petitioner: None

For Respondent: 1 - 4

**FINDINGS OF FACT**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and Petitioner received, by mail, Respondent's proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on October 27, 2014. (Respondent's Exhibit 1)

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. In 2014, Petitioner applied for deputy certification through the Wake County Sheriff's Office.

4. Petitioner attended Pitt Community College from 2006 through 2009. Petitioner earned an Associate in Arts Degree in Criminal Justice from Pitt Community College in 2009, and then attended East Carolina University where he earned a Bachelor of Arts degree in Criminal Justice.

5. 12 NCAC 10B. 0204(a)(1) states Respondent shall deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of a felony. The denial of Petitioner's application for certification is based on Petitioner having committed the offense of "Larceny by Employee" in January 2010, in violation of N.C. Gen. Stat. § 14-74.

6. The events which gave rise to the Commission's proposed denial of Petitioner's application for certification occurred when Petitioner was a student at East Carolina University, and twenty-two years old. At that time, Petitioner was employed at the University Book Exchange (hereinafter "Book Exchange") in Greenville, North Carolina. (Respondent's Exhibit 3, p.8) Petitioner worked at the University Book Exchange from August 2008 until Petitioner was fired in January 2010. Petitioner worked



approximately 30 to 35 hours a week, and was paid \$6.75 per hour. At the time of Petitioner's termination from employment, he was paid \$7.50 an hour.

7. While Petitioner's job title was a "customer service representative" at the Book Exchange, Petitioner was essentially a stock person. (Respondent's Exhibit 3, p.8) When Petitioner began his employment, his duties primarily consisted of restocking books that had been returned to the Book Exchange. As his employment progressed, Petitioner assumed other duties, including but not limited to helping customers find the correct textbooks for class, and keeping track of book orders "coming in & going out of the warehouse." (Respondent's Exhibit 3, p. 8) Petitioner had access to all the books. However, Petitioner had no supervisory duties, and no access to the registers.

8. During the time Petitioner worked at the Book Exchange, Petitioner had an acquaintance named Benjamin Akins. Mr. Akins was a former roommate of Petitioner's friend. Petitioner and Mr. Akins made an arrangement whereby Petitioner would steal a book from his employer, and would then give the book to Mr. Akins. Mr. Akins would in turn take the book back to the Book Exchange in order to sell it back for cash. Once paid by the Book Exchange, Mr. Akins would then pay Petitioner a portion of the money for the returned book.

9. In January 2010, Petitioner was working on the date in question. Following his shift, Petitioner selected a book from the Book Exchange's stock, and exited the premises. Petitioner provided the book to Mr. Akins, who then sold the book back to the Book Exchange the following day.

10. When Petitioner returned to work, Petitioner's supervisor, Yvonne Perry confronted Petitioner, and asked him if he had anything to do with the book. Perry knew that the book at issue was one of several books that were no longer being used by East Carolina University, and was slated to be returned to the publisher. Petitioner immediately accepted responsibility, and admitted that he stole the book in question so that it could be sold back to the Book Exchange for cash. At the contested case hearing, Petitioner was unsure if Atkins paid him any money Atkins received for reselling the book to the Book Exchange.

11. Petitioner was unaware if Mr. Aikens had sold approximately 39 books back to the Book Exchange in a five (5) month period. Petitioner thought that 39 books was not an unusually high number of books for an individual to sell back in a five (5) month period. Petitioner indicated that the January 2010 incident was the first time he had taken a book from the Book Exchange to give to Mr. Akins so that Akins could sell it back, and provide Petitioner with a portion of the money.

12. Petitioner's supervisor immediately terminated Petitioner from employment for theft. Petitioner was not charged criminally for stealing the book from the Book Exchange.

13. In January 2010, Petitioner's parents were withholding financial support, because Petitioner's grades were suffering.

14. Petitioner's father, Daniel O'Byrne, testified at the administrative hearing, Mr. O'Byrne opined that Petitioner has always been a good and respectful person. Petitioner's father believes that Petitioner's actions in stealing the book from the Book Exchange to obtain financial benefit were out of character. Petitioner was not raised in such a manner, and was not the type of child that would get into trouble.

15. In September of 2012, the Wake County Sheriff's Office hired Petitioner. Petitioner has worked for the Wake County Sheriff's Office since then in the Wake County Courts. In 2013, Petitioner completed Basic Law Enforcement Training, and graduated at the top of his class. Three of Petitioner's coworkers at Wake County Sheriff's Office support his application for certification.

16. At the contested case hearing, Petitioner admitted that he knew what he had done was wrong when he stole the book, but did not know it was a felony. If he had known, he would not have taken the book. He made a mistake while attending college, and acknowledged that his actions were irresponsible and immature. After being fired, Petitioner moved back home to remove himself from that environment. He commuted to Greenville two to three times a week, attended ECU until he graduated, and worked part-time. Petitioner wants to be a law enforcement officer, loves his job, and is very good at his job. At the time of the hearing, Petitioner was twenty-seven years old, married, owned his own home, and his wife was expecting their first child.

17. The only evidence Respondent presented at the contested case hearing supporting the charge that Petitioner committed "Larceny by an Employee" was Petitioner's own admission. Respondent failed to present any evidence from its investigator, or anyone from the University Book Exchange corroborating Petitioner's testimony that he stole a book from his employer in order for his acquaintance to resell the book to the Book Exchange for cash.

18. Nonetheless, the evidence at hearing proved that Petitioner intentionally stole a book from his employer after the employer had entrusted Petitioner with the stocking and tracking of books during Petitioner's job at the Book Exchange. Petitioner was given direct access and control over book merchandise entering the Book Exchange. Petitioner stole a book with the purpose of defrauding the Book Exchange, and in order to receive financial benefit. Petitioner stole the book from his employer so that Petitioner's acquaintance, Benjamin Akins, could sell the book back to the Book Exchange for cash. Mr. Akins did in fact sell the stolen book back to the Book Exchange.

19. Based on the evidence presented at hearing, Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204 (a)(1) and 12 NCAC 10B .0205.

**CONCLUSIONS OF LAW**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on October 27, 2014.

2. Pursuant to 12 NCAC 10B. 0204(a)(1), the Commission shall deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a felony. 12 NCAC 09G .0102 "DEFINITIONS" provides:

The following definitions apply throughout this Subchapter only:

(1) 'Commission of an offense' means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.

3. The elements of "Larceny by an Employee," as defined by N.C. Gen.Stat. § 14-74, are:

(1) the defendant was an employee of the owner of the stolen goods; (2) the goods were entrusted to the defendant for the use of the employer; (3) the goods were taken without the permission of the employer; and (4) the defendant had the intent to steal the goods or to defraud his employer.

*State v. Frazier*, 142 N.C.App. 207, 209, 541 S.E.2d 800, 801 (2001). Unlike common law larceny, "[l]arceny by an employee requires *lawful possession*." *State v. Brown*, 56 N.C.App. 228, 231, 287 S.E.2d 421, 424 (1982).

4. N.C.G.S. § 14-74 requires that "larceny by employee" be committed in violation of a trust relationship between the employee and the employer. *State v. Bullin*, 34 N.C.App. 589, 592, 239 S.E.2d 278, 280 (1977). *State v. Morris*, 156 N.C.App. 335, 576 S.E.2d 391 (N.C.App., 2003).

5. All elements of larceny must be established by sufficient competent evidence, and evidence that raises a mere suspicion, conjecture, and possibility is insufficient foundation for a verdict. *State v. Delk*, 194 S.E. 94 (N.C., 1937)

6. The evidence presented at the hearing established that Petitioner committed "Larceny by an Employee" within the meaning of N.C.G.S. § 14-74. Petitioner intentionally stole property that had been entrusted to Petitioner by the Book Exchange in January 2010 in order to defraud his employer. Specifically, Petitioner's intent was to receive financial gain by providing the stolen book to an acquaintance, who would then sell the book back to the Book Exchange for cash. There was sufficient evidence

presented at hearing to permit a reasonable mind to conclude that a trust relationship existed between defendant and his employer. Pursuant to 12 NCAC 10B .0204(a)(1), there is sufficient evidence in the record to support Respondent's denial of Petitioner's application for certification based on Petitioner having committed the felony offense of "Larceny by Employee" in January 2010.

7. As the applicant for certification, Petitioner has the burden of proof in the case at bar. Petitioner has shown that his actions in January 2010 were due to Petitioner's lack of judgment, and immaturity as a twenty-two year old college student. Petitioner has also shown sufficient remorse for such actions, and exhibited maturity and responsibility the past five years.

8. There are sufficient mitigating circumstances in this case that support a lesser sanction be imposed in lieu of a complete denial of Petitioner's certification for application. However, the "shall" language in 12 NCAC 10B .0204(a)(1) requires Respondent deny a justice officer certification when Respondent finds an applicant for certification has committed or performed the acts necessary to satisfy the elements of a specified felony offense.


**PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent **DENY** Petitioner's application for justice officer certification based on Petitioner having committed the felony offense of "Larceny by Employee" in violation of N.C.G.S. § 14-74.

**NOTICE**

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this contested case. That Agency is required to give each party an opportunity to file Exceptions to this Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C.G.S. § 150B-40(e).

This 31<sup>st</sup> day of August 2015.

  
Melissa Owens Lassiter  
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

2015 OCT 22 AM 11:02

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 EDC 07610

TPS Publishing, Inc.  
Petitioner

OFFICE OF  
ADMIN HEARINGS

vs.

NC State Board of Education  
Respondent

FINAL DECISION

Pursuant to N.C. Gen. Stat. § 115C-85 *et seq* and N.C. Gen. Stat. § 150B-23, on October 7, 2014, Petitioner filed a petition for a contested case hearing at the Office of Administrative Hearings appealing Respondent's decision not to recommend Petitioner's textbook materials for Grades 6, 7, and Algebra I (Grade 9) for Adoption and Evaluation in North Carolina. On June 15, June 17-18, and August 17, 2015, Administrative Law Judge Melissa Owens Lassiter heard this contested case at the Office of Administrative Hearings in Raleigh, North Carolina.

On September 30, 2015, the undersigned issued an Order ruling that Respondent did not act erroneously in deciding not to include Petitioner's textbook materials for Grades 6, 7, and Algebra I (Grade 9) on the 2014-2015 North Carolina's approved textbook list. Respondent filed a proposed Final Decision with the Office of Administrative Hearings on October 14, 2015.

**APPEARANCES**

For Petitioner: Andrew Norris, TPS Publishing Inc., 24307 Magic Mtn Parkway #62, Valencia, CA 91355

For Respondent: Tiffany Lucas, Assistant Attorney General, NC Department of Justice, PO Box 629, Raleigh, NC 27602

**APPLICABLE STATUTES**

N.C. Gen. Stat. § 115C-85 *et seq*; N.C. Gen. Stat. § 150B-23 *et seq*  
16 N.C.A.C. 6D.0205, .0206, .0207, and .0208.

**FINDINGS OF FACT**

**Background**

1. For more than 40 years, the North Carolina General Statutes have set forth very specific mandates and guidelines for the adoption of textbooks for use in North Carolina's public schools. N.C. Gen. Stat. § 115C-85 *et seq.* Pursuant to N.C. Gen. Stat. § 115C-85, adoption of textbooks for use in North Carolina's public schools is under the general jurisdiction of the North Carolina State Board of Education.

2. The State Board of Education is charged with adopting standards for each subject taught in North Carolina's public schools. After the State Board of Education adopts a set of standards for a new subject, the State Board of Education selects textbooks that align with those standards. N.C. Gen. Stat. § 115C-85.

3. N.C. Gen. Stat. § 115C-87 & 88 provide that a Textbook Commission, a 23-member commission appointed by the Governor, is responsible for evaluating textbooks, and recommending to the State Board of Education which textbooks should be included on the State-approved textbook list. The members must represent various segments of the educational community, and serve four-year terms. Members of the North Carolina Department of Public Instruction ("DPI") who are well-versed in standards, curriculum, the bidding process, and the overall needs of the education community train Textbook Commission members.

4. The State Board of Education further defines a comprehensive, detailed process for requesting bids to ensure there are no conflicts of interest, that publishers comply with requirements, that the process adheres to stringent timelines, and that the review of textbooks is as impartial as possible. See N.C. Gen. Stat. § 115C-89.

5. In addition to Textbook Commission members, the Commission appoints Regional Advisory Committee evaluators ("evaluators") who are assigned the task of performing an in-depth review of each and every textbook that is submitted for bid. N.C. Gen. Stat. § 115C-88.

6. Before 2010, it was not unusual that multiple content areas were the focus of the textbook selection and adoption cycle during the same year. For example, the agency might be selecting and adopting Grades K-5 mathematics textbooks in the same year as Grades K-12 arts education textbooks, and then selecting and adopting Grades

6-12 science textbooks the next year. Approximately every five years thereafter, with the development and implementation of new standards in a specific content area, the selection and adoption cycle for textbooks aligned with the new standards for the content area would begin again.

7. In 2010, with the State's adoption of the Common Core State Standards in K-12 Mathematics and K-12 English Language Arts ("Common Core"), DPI began developing a new set of standards across the board for all content areas. After the adoption of Common Core, the content focus area for the 2010-2011 textbook adoption cycle was English/Language Arts.

8. DPI did not conduct a textbook adoption cycle in 2011 or 2012.

9. In 2013, career and technical education (CTE) was the content area focus of the textbook adoption cycle. In the midst of the CTE selection and adoption cycle, Governor McCrory took office. Since the terms of the Textbook Commission members were scheduled to expire, DPI obtained special permission from Governor McCrory to allow the sitting Textbook Commission members to remain seated until the agency completed the adoption cycle for CTE.

10. After the completion of the CTE selection and adoption cycle, and during the time DPI was developing a new invitation to bid for the State Board of Education's approval, the Governor's office was filling vacancies on the Textbook Commission for the 2014-2015 selection and adoption cycle. During this transition period, Charles Gaffigan, a longstanding member of the Commission, acted as the Commission chair. Dr. Dan Novey, Superintendent at the Carteret County Schools System, was appointed to the Commission, and elected chair in July 2014.

11. K-12 mathematics was the content area focus for the 2014-2015 textbook adoption cycle. On or about February 28, 2014, the Textbook Commission members participated in a planning meeting, and received initial training for the upcoming adoption cycle. (Respondent's Ex. 1, Bates 000221)

12. On or around March 7, 2014, DPI invited textbook publishers to submit textbooks/programs on a bid proposal in response to the *2014 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina ("Invitation to Submit")* that DPI

had developed, and the State Board of Education had approved. (Respondent's Ex. 1, Bates 000221)

13. Petitioner TPS Publishing Inc. ("TPS Publishing") was one of several textbook publishers who received the 2014 *Invitation to Submit* from DPI.

14. The *Invitation to Submit* included a page titled, "Tentative Schedule for 2014-2015 Adoption Process." Among other important things, the Tentative Schedule encouraged all publishers who were submitting bids in response to the *Invitation to Submit* to attend a preliminary publishers' meeting scheduled for March 13, 2014. (Respondent's Ex. 1, Bates 000221)

15. The *Invitation to Submit* further stated that "[a]ll bid submissions must be submitted on *Bid Proposal Forms* and received by 5:00 pm. (EST) in the Office of Textbook Adoption Services[]" on or before April 8, 2014. The *Invitation to Submit* required publishers to submit the bid proposal forms both electronically and by hard copy. In addition, the *Invitation to Submit* set forth that, "[i]t is the responsibility of the submitting publisher to assure accuracy and completeness of all information on the bid form." Pursuant to the *Invitation to Submit*, publishers were required to deliver bid submission samples and correlations identified on the bid proposal form to the North Carolina Textbook Warehouse and Textbook Commission selected sites no earlier than June 10, 2014, and no later than June 14, 2014. (Respondent's Ex. 1)

16. On or around March 13, 2014, DPI hosted a preliminary publishers' meeting, at which, publishers received additional information and explanations about the 2014-2015 adoption process. Publishers were given the opportunity to ask questions about the process, including about the instructions and information provided in the *Invitation to Submit*, before submitting their bid proposal forms and bid submission samples and correlations. (Respondent's Ex. 1, Bates 000221)

17. After the March 13, 2014 publishers' meeting, DPI e-mailed updated presentation materials from the meeting, including a "Frequently Asked Questions" ("FAQ") document, to the textbook publishers, including TPS Publishing. One of the questions in the FAQ document stated: "For evaluation purposes, does the material have to be in final format?" The answer provided in response was: "Materials do not have to



be in final format for the evaluations, but all print materials must be in a format where pages will not come apart.” (Petitioner’s Ex. 8)

18. On or around March 27, 2014, the members of the Textbook Commission attended a meeting where DPI curriculum consultants trained Commission members on K-12 mathematics content standards. In addition, before conducting the actual review and evaluation of textbooks, members of the Textbook Commission received comprehensive training on the textbook selection and adoption process, including specific training on how to use the evaluation instruments in evaluating the textbook materials submitted by publishers for consideration, the legal requirements for being a Textbook Commission member, and the ethics requirements imposed on all State commission or board members. (Respondent’s Ex. 1, Bates 000221-22)

19. April 8, 2015 was the deadline for textbook publishers to submit sealed bid proposals in response to the *Invitation to Submit*. The Office of Textbook Adoption Services staff opened the sealed bids on April 9, 2014. (Respondent’s Ex. 1, Bates 000221) Sylvia Moore, a DPI staff member, compiled the information submitted by all textbook publishers into a spreadsheet, and forwarded such information to the acting Chair of the Textbook Commission, Charles Gaffigan. Mr. Gaffigan assigned a Bid ID Number to each textbook or set of textbook materials identified by the publishers on the bid proposal forms.

20. Mr. Gaffigan, and the other Textbook Commission members began the process of hiring and assigning evaluators to review textbooks. In hiring evaluators to review textbooks, the Textbook Commission considered the credentials of the prospective evaluators, the total number of textbooks identified on the bid proposal forms submitted by the textbook publishers, the number of textbooks that had been designated for a particular grade or course on the bid proposal forms submitted by textbook publishers, and the content area expertise of the Textbook Commission members.

21. As part of the 2014-2015 textbook adoption cycle, TPS Publishing submitted a bid proposal form identifying the following ten sets of textbook materials for adoption by the State Board of Education for use at grade levels kindergarten through nine:

- (1) *Grade K Student and Teacher Print and Digital Kit with manipulatives;*

- (2) *Grade 1 Student and Teacher Print and Digital Kit with manipulatives;*
- (3) *Grade 2 Student and Teacher Print and Digital Kit with manipulatives;*
- (4) *Grade 3 Student and Teacher Print and Digital Kit with manipulatives;*
- (5) *Grade 4 Student and Teacher Print and Digital Kit with manipulatives;*
- (6) *Grade 5 Student and Teacher Print and Digital Kit with manipulatives;*
- (7) *Grade 6 Student and Teacher Print and Digital Kit with manipulatives;*
- (8) *Grade 7 Student and Teacher Print and Digital Kit with manipulatives;*
- (9) *Grade 8 Student and Teacher Print and Digital Kit with manipulatives; and*
- (10) *Algebra I/Math 1 Student and Teacher Print kit with manipulatives and Algebra I/Math 1 Student and Teacher digital kit with manipulatives (Grade 9).*

22. After submitting its sealed bid proposal, TPS Publishing timely submitted its textbook sample materials for review by the Textbook Commission and the evaluators. On or around July 20, 2014, TPS Publishing, along with all other submitting textbook publishers, was given the opportunity to present its textbook materials submissions to the Textbook Commission and the evaluators. (Respondent's Ex. 1, Bates No. 000221-000222) Thereafter, the evaluators assigned to review the publishers' textbook materials reviewed and considered those materials.

23. At issue in this contested case are the textbook materials TPS Publishing submitted for Grade 6, Grade 7, and Algebra I (Grade 9), which textbook materials were assigned Bid No.(s) 62, 63, and 72, respectively.

24. Four evaluators reviewed Petitioner's Grade 6 textbook materials submitted under Bid No. 62. Three of the four evaluators voted not to recommend Petitioner's materials for inclusion on the State-approved textbook list. Six evaluators reviewed Petitioner's Grade 7 textbook materials submitted under Bid No. 63. Four of the six evaluators voted not to recommend Petitioner's materials for inclusion on the State-approved textbook list. Eight evaluators reviewed Petitioner's Algebra I/Grade 9 textbook materials submitted under Bid No. 72. Seven of the eight evaluators voted not to recommend Petitioner's materials for inclusion on the State-approved textbook list. The evaluators documented their findings and concerns regarding Petitioner's materials on evaluation instruments. (Respondent's Ex. 3)

25. Textbook Commission members also reviewed the materials submitted by TPS Publishing. The “non-negotiable 2” criterion on the evaluation instruments required the publisher’s “materials meaningfully connect the Standards for Mathematical Content and the Standards for Mathematical Practice.” Several Textbook Commission members commented that Petitioner’s Grade 6 textbook materials, submitted as Bid No. 62, lacked connections between content standards and mathematical practices. (See *e.g.* Respondent’s Ex. 3, Bates No. 000070)

26. Several Textbook Commission members also remarked that while Petitioner’s Grade 7 textbook materials, submitted as Bid No. 63, would be good or excellent as a “supplemental” resource, they ultimately voted against the materials being included on the State-approved textbook list. (Respondent’s Ex. 2)

27. Dr. Jennifer Curtis is the K-12 Section Chief of Mathematics at DPI. As K-12 Section Chief, Mathematics, Dr. Curtis implements policies, supervises content consultants, and consults with various sections at DPI and school districts regarding math content knowledge. Before working for DPI, Dr. Curtis was a math supervisor for a large North Carolina school district, where she supervised over 100 secondary math teachers. Dr. Curtis was also a middle school math teacher and a high school math teacher earlier in her career. As Section Chief, Dr. Curtis is extremely knowledgeable about the content that North Carolina math teachers are required to teach in their classrooms.

28. At hearing, Dr. Curtis opined that although TPS Publishing’s Grade 7 textbook materials may have been acceptable as a supplemental resource for teachers, such materials were nonetheless deficient in satisfying the non-negotiable evaluation criteria indicating alignment with the NC Standard Course of Study. As a result, Petitioner’s Grade 7 textbook materials failed to demonstrate that its materials were appropriate for use as a primary resources for a classroom teacher. (Respondent’s Ex. 9-16)

29. Finally, many of the Textbook Commission members found that the content of Petitioner’s Algebra I/Grade 9 textbook materials, submitted as Bid No. 72, did not sufficiently cover the major work of the grade/course for which it was offered, *i.e.*, less than 85% of the standards were sufficiently covered. (Respondent’s Ex. 2) In addition, many of the Textbook Commission members noted that although the materials might be

acceptable as a supplemental resource, they still should not be included on the State-approved textbook list. (*Id*) At hearing, Mr. Gaffigan and Dr. Curtis described the specific standards the evaluators determined were not sufficiently covered in Petitioner's materials, and about the detrimental effects on teachers and students because Petitioner had not sufficiently covered the standards in its materials.

30. In addition to documenting the foregoing concerns about the substance of the textbook materials submitted under Bid No.(s) 62, 63, and 72, some Textbook Commission members noted specific concerns about the quality of the print materials submitted by TPS as Bid No. 62. Specifically, several Textbook Commission members noted there were at least 11 pages in the print materials with jumbled text at the top of each page which made it difficult or impossible to read. (Respondent's Ex. 2, Bates No. 000008, 000013, 000014, 000016, 000017, 000018, 000021, 000023)

31. After reviewing the textbook materials, evaluators and Textbook Commission members discussed the merits and deficiencies of the textbooks that had been submitted for consideration. After such deliberation, a quorum of the Textbook Commission met to vote on whether to recommend the textbook materials associated with Bid No.(s) 62, 63 and 72 to the State Board of Education for inclusion on the "approved" textbooks list. (Respondent's Ex. 6) The Textbook Commission voted 11-4 not to recommend Bid No. 62 textbook materials for adoption. The Textbook Commission voted 11-3 not to recommend Bid No. 63 textbook materials for adoption. The Textbook Commission voted 12-3 not to recommend Bid No. 72 textbook materials for adoption. (Respondent's Ex. 6, Bates No. 000492)

32. All textbook publishers for whom the Textbook Commission voted not to recommend textbook materials for adoption were notified of the Textbook Commission's decision, and given the opportunity to participate in a "reconsideration" process as set forth in the *Invitation to Submit*. (Respondent's Ex. 4; Respondent's Ex. 1, Bates 000231)

33. After being notified that several of its textbooks materials were not going to be recommended to the State Board of Education for adoption, Petitioner participated in the reconsideration process. At the conclusion of the reconsideration process, the Textbook Commission moved some of TPS Publishing's textbook materials that the Textbook Commission had initially voted not to recommend for adoption, to the

“recommended” list. (Respondent’s Ex. 6, Bates No. 000486-000487) For example, initially, the Textbook Commission voted not to recommend Petitioner’s Grade K Student and Teacher Print and Digital Kit with Manipulatives under Bid No. 33 to the State Board of Education for adoption. However, after TPS Publishing participated in the reconsideration process, the Textbook Commission voted again, and voted to recommend such materials for adoption. Ultimately, the SBE voted to include those materials on the State-approved textbook list. (See Respondent’s Ex. 6, Bates No. 000486 and Respondent’s Ex. 8, Bates 000393)

34. Likewise, TPS Publishing participated in the reconsideration process for its textbook materials associated with Bid No.(s) 62, 63, and 72 – the textbooks at issue in this contested case. After reconsidering Petitioner’s textbook materials, the Textbook Commission voted again on each set of textbook materials associated with Bid No.(s) 62, 63, and 72. The Textbook Commission voted 8-5 not to recommend Bid Nos. 62 and 63 textbook materials for adoption. The Textbook Commission voted 11-2 not to recommend Petitioner’s Bid No. 72 textbook materials for adoption. (Respondent’s Ex. 6, Bates 000492)

35. On or around September 2, 2014, the Textbook Commission compiled a list of recommended textbooks/instructional materials for Mathematics K-12 for adoption by the State Board of Education, and submitted such list to the State Board of Education as required by law. (Respondent’s Ex. 8)

36. At its regularly scheduled meeting in September 2014, the State Board of Education heard a presentation by Textbook Commission members Charles Gaffigan and Dr. Dan Novey concerning the 2014-2015 textbook selection and adoption cycle. After the presentation, the State Board of Education voted to approve the list of textbooks and instructional materials recommended by the Textbook Commission. On or about September 5, 2014, the State Board notified all textbook publishers in writing of the list of approved materials. (Respondents’ Ex. 8)

#### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in

this matter. To the extent the Findings of Fact contain Conclusions Of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to their given labels.

2. The relevant inquiry for the undersigned is to determine the applicability of N.C. Gen. Stat. § 150B-23 to the facts herein.

3. Petitioner bears the burden of proving by a preponderance of the evidence that Respondent deprived Petitioner of property, and Respondent acted erroneously when it voted not to recommend Petitioner's textbooks for Grades 6 and 7, and Algebra I (Grade 9) be placed on the State-approved textbook list. *Surgical Care Affiliates, LLC v. N.C. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015).

4. N.C. Gen. Stat. § 150B-34(a) provides that an Administrative Law Judge shall decide a contested case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency, with respect to facts and inferences within the specialized knowledge of the agency

5. Respondent is entitled to a presumption that it acted in good faith in not adopting the math textbook materials at issue for inclusion on the State-approved textbook list. In accordance with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that:

public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption.

(See also *Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619)

6. The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S.E. 2d 285, 289 (1995), *aff'd*, 343 N.C. 119, 468 S.E.2d 57 (1996); *Comm'r of Ins. V. Fire Ins. Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). "It is more than a scintilla or a permissible

inference.” *Lackey v. Dept. of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982).

7. In weighing evidence which detracts from the agency decision, “[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand.” *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983) (citations omitted).

8. N.C. Gen. Stat. § 115C-85 *et seq.* expressly authorizes the State Board of Education to select and adopt textbooks needed for instructional purposes at each instructional level, and on all subject matters required by law to be taught in elementary and secondary schools of North Carolina. The State Board of Education is also authorized by statute to prescribe criteria against which proposed textbooks shall be evaluated.

9. In this case, DPI invited textbook publishers to submit textbook materials on a bid proposal form in response to the State Board of Education’s approved 2014 *Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina*. DPI included the evaluation instrument, that evaluators of the submitted textbook materials would use, in the *Invitation to Submit* that DPI sent to all textbook publishers.

10. For all of the textbook materials at issue in this contested case, the evaluators and Textbook Commission members considered and evaluated the materials against the standards adopted in North Carolina for math in Grades 6 and 7, for the course Math I/Algebra I. The evaluators that reviewed the materials were certified in the content area of math. In addition, several members of the Textbook Commission that reviewed materials submitted by textbook publishers were certified in the content area of math, and had experience teaching math in North Carolina public schools. In addition, the evaluators and Textbook Commission members that reviewed and evaluated math textbook materials as part of the 2014-2015 textbook selection and adoption cycle were trained by Dr. Jennifer Curtis, K-12 Math Section Chief, or by her staff regarding the evaluation instrument to be used in evaluating textbook submissions. The majority of the evaluators and Textbook Commission members that reviewed the textbook materials associated with Bid No.(s), 62, 63, and 72 found substantive deficiencies in the materials, and concluded that the materials did not sufficiently conform to the Standard Course of

Study and approved objectives for the specific grades or courses for which they were offered.

12. The undersigned rejects TPS Publishing's contention that Textbook Commission members improperly penalized it during the evaluation process because of "formatting" problems with the print materials, as opposed to basing their recommendations on substantive deficiencies in the materials. There was substantial evidence presented at the hearing in this matter that, as a general rule, evaluators and Textbook Commission members evaluated textbook materials with an eye toward determining whether the materials submitted conformed to the standards for the grade levels or courses for which they were offered. With respect to the materials submitted under Bid No.(s) 62, 63, and 72, the Textbook Commission found deficiencies and evidence that the materials did not conform to the Standard Course of Study and approved objectives for the grades and courses for which the materials were offered. Although some members of the Textbook Commission commented upon the misprints in the textbooks, there was substantial evidence presented at the hearing that the basis for the Textbook Commission's recommendation not to adopt the materials, was the substantive deficiencies in the materials.

13. Moreover, in light of guidance provided by DPI to textbook publishers that "[m]aterials do not have to be in final format for the evaluations, but all print materials must be in a format where pages will not come apart[,]" it is evident that reviewers did not require textbook publishers to submit textbooks in the final, bound format in which they would be bound if ultimately adopted by the State Board of Education for inclusion on the State-approved list. However, that did not mean that textbook publishers could submit textbooks for review with misprints, and not expect reviewers to take such misprints into account as a factor when evaluating those materials.

14. The undersigned also rejects TPS Publishing's contention that because the textbook materials at issue in this dispute were adopted in other states, the State Board of Education acted erroneously in not including those materials on the State-approved textbook list in North Carolina. Substantial evidence was presented at the hearing concerning the well-established and multi-layered textbook selection and adoption process in this State, and how it was applied in this case. Petitioner has failed to carry



its burden of proving that the Respondent acted erroneously in considering Petitioner's textbook materials at issue in this dispute.

15. It must be noted that the Textbook Commission's decision not to recommend TPS Publishing's Grade 6, Grade 7, and Algebra I (Grade 9) textbooks for adoption, and the State Board of Education's decision not to adopt those textbooks do not preclude TPS Publishing from selling the textbooks at issue to schools and school districts in the state. Schools and school districts are free to purchase materials that are not on the State-approved textbook list, and they are free to do so with State dollars. It is true that a benefit of a textbook being on the State's "adopted" list is that it is an endorsement by the State that the textbook was vetted by content area specialists in the field and education professionals, who ultimately concluded that the textbook was appropriate for teaching the Standard Course of Study for the particular subject and grade for which it was offered. However, for the materials at issue here, that did not happen.

16. Respondent in this case found that the textbook materials at issue did not sufficiently align with the standards for math in Grades 6, 7 and the course Algebra I, and as such, could not endorse them by putting them on the "approved" textbook list.

17. Respondent's actions were not arbitrary or capricious. Nor did Respondent act erroneously, exceed its authority or jurisdiction, fail to use proper procedure, or fail to act as required by law or rule.

18. Petitioner has failed to carry the burden of proof assigned to it by law, and as such, Petitioner's claims are hereby denied.

**FINAL DECISION**

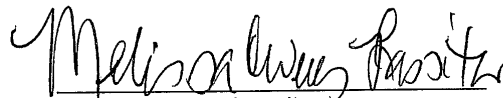
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that the Textbook Commission and the State Board of Education exercised their authority lawfully and with due deliberation in deciding not to adopt Petitioner's Grade 6, Grade 7 and Algebra I (Grade 9) textbook materials for inclusion on the State Board of Education's "approved" textbook list. Therefore, Respondent's decision in that matter is hereby **AFFIRMED**.

**NOTICE**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party **must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.**

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This 27<sup>th</sup> day of October, 2015.

  
Melissa Owens Lassiter  
Administrative Law Judge

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

FILED

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
2015 OCT -7 AM 11:13 14 EDC 10060

SHERRY-LYNN AMARAL, Petitioner,	OFFICE OF ADMIN HEARINGS
v.	<b><u>Final Decision</u></b>
DPI NC FINANCIAL LICENSURE & BUSINESS SERVICES LICENSURE SECTION, Respondent.	

This matter came before Senior Administrative Law Judge Fred Gilbert Morrison Jr on July 16, 2015, in Raleigh, North Carolina. Having heard and considered testimony and other evidence presented, the following final decision is rendered.

**APPEARANCES**

For Petitioner: Amy Folk  
Attorney for Petitioner  
Womble, Carlyle, Sandridge, and Rice, LLP  
2530 Meridian Parkway  
Durham, NC 27713

For Respondent: Tiffany Y. Lucas  
Assistant Attorney General  
North Carolina Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699

**ISSUE**

Whether Petitioner demonstrated by a preponderance of the evidence that Respondent's findings, inferences, or decision were arbitrary, capricious, or unsupported by substantial evidence when determining Petitioner's Master's degree was not in an education or subject area directly related to her area of licensure and current teaching assignment thus denying her a salary on the master's level salary schedule.

**STATUTE TO BE CONSIDERED**

N.C. Gen. Statute §150BC-296(a); 115C-296; and State Board of Education Policy QP-A-006.

**WITNESSES**

For Petitioner: Sherry-Lynn Amaral

For Respondent: Toya Kimbrough  
David Fairall

**EXHIBITS ADMITTED INTO EVIDENCE**

For Petitioner: Exhibits 1 through 3

For Respondent: Exhibits 1 through 10

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact and Conclusions of Law. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

BASED UPON the foregoing and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

**FINDINGS OF FACT**

1. N.C. Gen. Statute §115C-296(a) provides, in pertinent part, as follows:

The State Board of Education shall have entire control of licensing all applicants for teaching positions in all public schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all licenses and shall determine and fix the salary for each grade and type of license which it authorizes. ....

2. Pursuant to this authority, the State Board of Education has adopted policy QP-A-006, entitled "Policies related to Experience/Degree Credit for Salary Purposes."

3. This policy recognizes that educators employed by the North Carolina public schools may be awarded salary credit for past experience as well as for possession of certain graduate degrees.

4. In order to receive salary credit for a graduate degree, the degree must be from an accredited institution, be in an area that applies to fifty per cent or more of the teacher's school day assignment, and be "in an education or subject area directly related to existing area of licensure and current teaching assignment or instructional support responsibilities."

5. The Licensure Specialist for the Department of Public Instruction (“DPI”) testified that the phrase “directly related” and word “relevant” were one and the same when applying the policy for granting salary credit.

6. The Appeals Panelist testified that to determine whether a master’s degree is directly related, he focuses on the subject matter content of the license, the subject area of the courses being taught, and the courses taken. If the content of a graduate level class is used to teach the content of course then it would be directly related. He specifically looked at whether the teacher had taken 18 or more hours of content-specific course work while getting the master’s degree that were related to the courses the teacher now teaches.

7. Petitioner is currently employed as a Career and Technical Education teacher in the North Brunswick school district. Petitioner is licensed to teach and teaches courses in Health Science Occupations. These courses are designed to introduce students to careers in health care, enable students to expand their understanding of financing and trends of health care agencies, fundamentals of wellness, legal and ethical issues, concepts of teamwork, and effective communication, and apply what they have learned in a health care facility.

8. Petitioner holds a bachelor's degree in Business, a Registered Nurse Diploma, and a Master's degree in Business Administration with a Health Care concentration, which included an independent study on treatment of terminally ill, ethical and financial issues in healthcare and the Patient Self Determination Act (patient’s right to die). Petitioner’s master’s courses at University of Connecticut in Long Term Healthcare exempted her from course work in her master’s in business administration with a concentration in healthcare and contributed to her credits for her healthcare concentration.

9. Petitioner is paid on the bachelor's degree pay scale with credit for her work experience.

10. On April 30, 2014, Petitioner applied for salary credit for a graduate degree. With that application was a Request for Authorization of Graduate Pay (Respondent Ex. 4, pgs. 4-5), in which Flora Johnson, Human Resources’ Supervisor for the North Brunswick Schools, certified that the Petitioner's "assignment qualifies her for placement on the graduate salary schedule." Ms. Johnson also wrote, “She has completed a master’s degree and her concentration was in health care. She is a health occupations teacher. She has done a cross reference as to how the courses she took for her masters are related to the course of study she is currently teaching.” As mentioned by Ms. Johnson, Petitioner also provided a cross reference called a “Cross-walk” detailing how the material covered in each class Petitioner took obtaining her master’s degree directly relates to each of the Health Science Occupation state mandated course objectives.

11. On May 16, 2014, Petitioner’s request for salary credit for a graduate degree was denied by the licensure specialist because her “Master’s in Business Administration was not considered directly related to teaching Health Occupations Education.”

12. Licensure Specialist Toya Kimbrough testified that while licensure specialists can access the state mandated course objectives for Health Occupation, they do use not those objectives as a

reference when reviewing an application to determine whether a master's degree is directly related to the courses she teaches.

13. Additionally, Licensure Specialist Kimbrough testified that a master's degree in Health Administration or Health Care Management would be relevant to teaching Health Science Occupations classes.

14. On July 29, 2014, Petitioner appealed Respondent's decision to deny her request for salary credit for a graduate degree, again providing the "Cross-walk," and on October 21, 2014, was denied by an appeals panel.

15. The Appeals Panelist David Fairall testified that the state mandated course objectives were just small pieces of the course. Additionally, he did not give weight to objectives that were broad and could apply to any occupations class.

16. Applying this system to review the Petitioner's graduate courses, Appeals Panelist Fairall stated he found 9 course credits (12 if he stretched) of content specific course work directly related to the courses taught in the Health Science Occupations Program. He disregarded her 12 credits of master's course work at University of Connecticut when making his determination. Additionally, while the Health Care Financial Management and Accounting course was directly related, he found the pre-requisite course, Financial Management, not directly related. Additionally, he found master's courses on professional writing, organizational behavior, and the service industry unrelated to the area of health care occupations.

17. Petitioner testified at the hearing using the "Cross-walk" and demonstrated which courses from her graduate degree provided her with the knowledge and insight to teach each state mandated objective for the course she teaches. She offered multiple examples of subject areas covered during her master's program that are identical to the state mandated objectives for her Health Science Occupation courses.

18. Of the state mandated course of objectives for Health Science and Nursing Fundamentals, 25 of the 32 objectives focused on material discussed and learned during her master's program.

19. Petitioner disagrees with the assessment that her master's course work is not related to the courses she teaches and testified that she applies what she learned in graduate school daily to the courses she teaches.

20. Respondent denied Petitioner's request for graduate pay because her degree was not considered directly related to the subject matter she teaches. *See* Respondent's Exhibit 3. Petitioner has a Master of Business Administration with a Health Care concentration from RPI, the Lally School of Business in Hartford, Connecticut. Petitioner's area of licensure is Health Science Education – Registered Nurse (also listed as Health Occupations Education – Registered Nurse (720)). Petitioner's teaching assignment is a Career and Technical Education teacher in Health Science Occupations (also listed as Health Care Occupations). Applying the first part of the "directly related" criteria, Petitioner passed the "content area" or "subject matter" test. Her graduate degree is in the subject area of Business Administration with a Health Care concentration,

Petitioner is licensed in Health Occupations Education, and Petitioner is assigned to teach Health Care Occupations (she teaches Nursing Fundamentals and Health Science II). Petitioner's graduate degree is in a subject area that she is both licensed in and assigned to teach. Therefore, Petitioner has satisfied the first part of the "directly related" criteria.

21. Next, at least eighteen hours of content specific coursework from the total coursework required for Petitioner's master's degree must be directly relevant to her particular area of licensure and subject matter being taught in order to be deemed "directly related". Petitioner's course work for her Long-Term Healthcare Management Certificate from the University of Connecticut should not be used in the "directly related" analysis as this was only a graduate level certificate program and not a master's or higher degree as required by TCP-A-006. Furthermore, the courses Petitioner completed at the University of Connecticut did not show up as transfer credits on her transcript for her MBA at RPI, the Lally School of Business. Notwithstanding, Petitioner provided ample evidence of direct relevance between the subject matter of her Master of Business Administration with a Healthcare concentration degree coursework with the subject matter she teaches in Health Care Occupations. *See* Petitioner's Exhibits 1-3.

22. The descriptions for the Health Care Occupations classes taught by Petitioner encompass the direct skills gained by Petitioner during her coursework for her master's degree. The course description of Nursing Fundamentals states, "English language arts, mathematics, and science are reinforced." The course description of Health Science II states, "[t]his course is designed to help students expand their understanding of financing and trends of health care agencies, fundamentals of wellness, legal and ethical issues, concepts of teamwork, and effective communication. . . . English language arts and science are reinforced in this course." *See* Petitioner's Exhibit 1, p.7. Petitioner also provided the detailed "unpacked content outline" for Health Science II and the "course blueprint" for Nursing Fundamentals which listed the specific objectives taught to the students. She then indicated which of her master's coursework directly related to the subject matter she teaches. *See* Petitioner's Exhibit 1, pgs. 8-22. Petitioner's chart also shows how her content specific coursework for her Master of Business Administration with a Health Care concentration is "directly related" to the objectives taught in her Health Care Occupations courses. *See* Petitioner's Exhibits, p.5-6. Based on this evidence, Petitioner has at least eighteen semester hours of content specific coursework from the total coursework required for her Master of Business Administration with a Health Care concentration that are directly relevant to her particular area of licensure and subject matter being taught in Health Care Occupations. Petitioner has satisfied the second part of the "directly related" criteria.

#### **CONCLUSIONS OF LAW**

1. The Petitioner bears the burden of proving the claims alleged in the Petition by a preponderance of evidence. *Peace v. Employment Sec. Comm'n.*, 349 N.C. 315, 507 S.E.2d 272 (1998).

2. The State Board of Education has the constitutional power "to supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. Art IX, § 5. This power includes the power to "regulate the grade [and] salary...of teachers." *Guthrie v. Taylor*, 279 N.C. 703, 709, 185 S.E. 2d 193, 198 (1971), cert. denied, 406 U.S. 920, 32 L.Ed.2d

119 (1972). The State Board has the specific duty "to certify and regulate the grade and salary of teachers and other school employees." N.C. Gen. Stat. § 115C-12(9)a.; Guthrie at 711.

3. Petitioner has met her burden of demonstrating that Respondent has deprived her of property or has otherwise substantially prejudiced her rights by denying her a salary on the master's level salary schedule.

4. The course descriptions from Petitioner's Master's in Business Administration with a concentration in Health Care provide substantial evidence that subject areas in which she received her master's degree are directly related to the Health Science Occupations classes she teaches.

5. The Respondent's decision that the Petitioner's Master's degree in Business Administration with a concentration in Health Care was not directly related to her teaching assignment was erroneous when considering the ample evidence provided to the appeals panel by Petitioner.

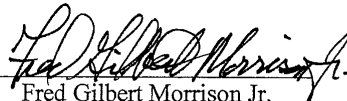
**FINAL DECISION**

Respondent's decision to deny the Petitioner approval for graduate pay is hereby Reversed.

**NOTICE**

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 7th day of October, 2015.

  
Fred Gilbert Morrison Jr.  
Senior Administrative Law Judge