

# *The* **NORTH CAROLINA REGISTER**

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**IN ADDITION**

**NPDES Permits Notice**

**PROPOSED RULES**

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**Electrolysis Examiners, Board of**

**Environment, Health, and Natural Resources**

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**Insurance**

**Justice**

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**ISSUE DATE: APRIL 1, 1992**

**Volume 7 • Issue 1 • Pages 1-105**



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# **INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE**

## **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

## **ADOPTION AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the *North Carolina Administrative Code* (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

## **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

## **NORTH CAROLINA ADMINISTRATIVE CODE**

The *North Carolina Administrative Code* (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

# NORTH CAROLINA REGISTER



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*Publication Schedule*  
 (January 1992 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date
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01/02/92	12/09/91	12/16/91	01/17/92	02/01/92	02/20/92	04/01/92
01/15/92	12/20/91	12/31/91	01/30/92	02/14/92	02/20/92	04/01/92
02/03/92	01/10/92	01/17/92	02/18/92	03/04/92	03/20/92	05/01/92
02/14/92	01/24/92	01/31/92	02/29/92	03/15/92	03/20/92	05/01/92
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11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93

\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.



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

STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION  
POST OFFICE BOX 29535  
RALEIGH, NORTH CAROLINA 27626-0535

**PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL NPDES PERMITS**

Public notice of intent to issue State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater associated with the following activities:

1. NPDES General Permit No. NCG030000 for the point source discharges of stormwater runoff associated with industrial activities classified as Fabricated Metal Products [Standard Industrial Classification Code (SIC) 34], Industrial and Commercial Machinery (SIC 35), Electronic Equipment (SIC 36), Transportation Equipment (SIC 37), Measuring and Analyzing Instruments (SIC 38), and establishments primarily engaged in the wholesale trade of metal waste and scrap, iron and steel scrap, and nonferrous metal scrap (hereafter referred to as the metal waste recycling industry). This General Permit is applicable only to stormwater discharges from areas at the facilities described above where materials or material handling equipment are exposed to stormwater with the following exceptions. Point source discharges of stormwater runoff associated with industrial activities classified as Ship Building and Repair facilities (SIC 373), Structural Fabricated Metal (SIC 3441), and the wholesale trade dealing in metal waste recycling (a portion of SIC 5093) are covered regardless of material or material handling equipment exposure. Also included in this General Permit are stormwater discharges from areas at the facilities described above which are used for vehicle maintenance activities.
2. NPDES General Permit No. NCG040000 for the point source discharges of stormwater runoff associated with industrial activities classified as Timber Products (SIC 24). This General Permit is applicable to stormwater discharges from areas at these facilities which are directly related to manufacturing, processing or raw materials storage areas at the industrial plant. Also included in this General Permit are stormwater discharges from areas at the facilities described above which are used for vehicle maintenance activities. The following activities shall not have coverage under this General Permit: Wood Kitchen Cabinets (SIC 2434), Wood Preserving (SIC 2492), and Logging (SIC 241).
3. NPDES General Permit No. NCG050000 for the point source discharges of stormwater runoff associated with industrial activities classified as Apparel and Other Finished Products Made from Fabrics and Similar Materials (SIC 23), Printing, Publishing, and Allied Industries (SIC 27), Converted Paper and Paperboard Products (SIC 267), Paperboard Containers and Boxes (SIC 265), Miscellaneous Manufacturing Industries (SIC 39), Leather and Leather Products (SIC 31), and Rubber and Miscellaneous Products (SIC 30). This General Permit is applicable to stormwater discharges from areas at the facilities described above where materials or material handling equipment are exposed to stormwater. Also included in this General Permit are stormwater discharges from areas at the facilities described above which are used for vehicle maintenance activities. The following activities shall not have coverage under this General Permit: Leather Tanning and Finishing (SIC 311) and Tires and Inner Tubes (SIC 301).
4. NPDES General Permit No. NCG060000 for the point source discharges of stormwater runoff associated with industrial activities classified as Food and Kindred Products (SIC 20), Tobacco Products (SIC 21), Soaps, Detergents and Cleaning Preparations; Perfumes; Cosmetics and Other Toilet Preparations (SIC 284), Drugs (SIC 283), and Public Warehousing and Storage (SIC 4221 - 4225). This General Permit is applicable only to stormwater discharges from areas at the facilities described above where materials or material handling equipment are exposed to stormwater with the following exceptions. Point source discharges of stormwater runoff associated with industrial activities classified as Soaps, Detergents and Cleaning Preparations; Perfumes; Cosmetics and Other Toilet Preparations (SIC 284) are covered regardless of material or material handling equipment exposure. Also included

in this General Permit are stormwater discharges from areas located at the facilities described above which are used for vehicle maintenance activities.

5. NPDES General Permit No. NCG070000 for the point source discharges of stormwater runoff associated with industrial activities classified as Stone, Clay, Glass, and Concrete Products (SIC 32). This General Permit is applicable to stormwater discharges from areas at the facilities which are directly related to manufacturing, processing or raw materials storage areas at the industrial plant. Also included in this General Permit are stormwater discharges from areas at the facilities described above which are used for vehicle maintenance activities. Point source discharges of stormwater associated with industrial activities classified as Ready-Mixed Concrete (SIC 3273) shall not have coverage under this General Permit.

6. NPDES General Permit No. NCG090000 for the point sources discharges of stormwater runoff associated with industrial activities classified as Paints, Varnishes, Lacquers, Enamels, and Allied Products (SIC 285). This General Permit is applicable to stormwater discharges from areas at the facilities described above where materials or material handling equipment are exposed to stormwater. Also included in this General Permit are stormwater discharges from areas at the facilities described above which are used for vehicle maintenance activities.

7. NPDES General Permit No. NCG100000 for the point source discharges of stormwater runoff associated with industrial activities classified as Used Motor Vehicle Parts (SIC 5015) and Automobile Wrecking for Scrap (a portion of SIC 5093). This General Permit is applicable to stormwater discharges from areas at these facilities which are directly involved in the industrial activities. Also included in this General Permit are stormwater discharges from areas at the facilities described above which are used for vehicle maintenance activities. The following activities shall not have coverage under this General Permit: establishments primarily engaged in the metal waste recycling industry.

8. NPDES General Permit No. NCG110000 for the point source discharges of stormwater runoff associated with industrial activities classified as Treatment Works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, with a design flow of 1.0 million gallons per day or more, or required to have an approved pretreatment program under Title 40 Code of Federal Regulations (CFR) Part 403, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility. This General Permit is applicable to all stormwater discharges at these facilities. Also included in this General Permit are stormwater discharges from areas at the facilities described above which are used for vehicle maintenance activities.

9. NPDES General Permit No. NCG120000 for the point source discharges of stormwater runoff associated with industrial activities classified as Landfills that have a permit issued by the North Carolina Division of Solid Waste Management under the provisions and requirements of North Carolina General Statute Chapter 130A - 294. This General Permit is applicable to all stormwater discharges from areas at these facilities which are directly related to industrial activity. Also included in this General Permit are stormwater discharges from areas at the facilities described above which are used for vehicle maintenance activities. The following activities shall not have coverage under this General Permit: stormwater discharges from open dumps or hazardous waste disposal sites and discharges of wastes (including leachate) to the waters of the state.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to issue State NPDES General Permits for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permits and Fact Sheets concerning the draft Permits are available by writing or calling:

Ms. Coleen Sullins, Supervisor  
Stormwater Group  
Water Quality Planning

*IN ADDITION*

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N.C. Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535

Telephone (919) 733-5083

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than April 30, 1992. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Environmental Management finds a significant degree of public interest in any proposed permit issuance.

The draft Permits, Fact Sheets and other information are on file at the Division of Environmental Management, 512 N. Salisbury Street, Room 625-C, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information on file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Numbers, NCG030000, NCG040000, NCG050000, NCG060000, NCG070000, NCG090000, NCG100000, NCG110000, or NCG120000.

Date: March 11, 1992

George T. Everett, Director  
Division of Environmental Management



TITLE 1 - DEPARTMENT OF  
ADMINISTRATION

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt rule(s) cited as 1 NCAC 4G .0223.*

*The proposed effective date of this action is August 1, 1992.*

*Instructions on how to demand a public hearing (must be requested in writing within 15 days of notice): To demand a public hearing, contact David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003. Telephone: (919) 733-7232.*

*Reason for Proposed Action: To assist the state in the processing of its recyclable surplus paper.*

*Comment Procedures: Any interested person may request information, permission to be heard or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003. Telephone: (919) 733-7232.*

CHAPTER 4 - AUXILIARY SERVICES

SUBCHAPTER 4G - SURPLUS PROPERTY

SECTION .0200 - STATE SURPLUS PROPERTY

.0223 SURPLUS PAPER

All state agencies processing recyclable paper through the Division of State Surplus Property for disposition as surplus paper must remove the following contaminant materials: plastic materials (i.e. plastic folders, notebooks), metals (excluding paper clips and staples), photographs, microfiche, microfilm, tape, glue-based labels, and window or sticky-backed envelopes.

*Statutory Authority G.S. 130A-309.14; 143-64.9(C).*

TITLE 10 - DEPARTMENT OF HUMAN  
RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that DHR Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 50A .0305.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted at 1:30 p.m. on April 30, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.*

*Reason for Proposed Action: To conform with Social Services Commission rules.*

*Comment Procedures: Written comments concerning this amendment must be submitted by April 30, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.*

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50A - GENERAL PROGRAM  
ADMINISTRATION

SECTION .0300 - APPEALS

.0305 APPEAL DECISION

(a) The hearing officer shall make a tentative decision which shall be ~~sent to~~ served upon the county department and the appellant by certified mail. Decisions proposing to reverse the county department's action shall be sent by certified mail to the county department while decisions affirming the county department's actions will be sent by certified mail to the appellant.

(b) The county and the appellant may present oral and written argument, for and against the decision. Written argument may be submitted to or contact made with the Chief Hearing officer to request a hearing for oral argument.

(c) If the Chief Hearing Officer is not contacted within 10 calendar days of the date the notice of the tentative decision is signed, the tentative decision shall become final.

(d) If the party that requested oral argument fails to appear at the hearing for oral argument, the tentative decision becomes final.

(e) If oral and written arguments are presented, such arguments shall be considered and a final decision shall be rendered.

(f) The final decision shall be mailed to the appellant and the county by certified mail.

(g) A decision upholding the appellant shall be put into effect within two weeks after receipt of the final decision.



## PROPOSED RULES

Authority G.S. 108A-54; 108A-79; 42 C.F.R. 431.244; 42 C.F.R. 431.245; 42 C.F.R. 431.246.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Human Resources, Division of Economic Opportunity intends to adopt rule(s) cited as 10 NCAC 51G .0101 - .0105, .0201 - .0202, .0301 - .0303.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on May 1, 1992 at the Division of Economic Opportunity, 2413 Crabtree Blvd., Suite 119, Raleigh, North Carolina 27604.*

*Reason for Proposed Actions: To provide the Department the authority and a methodology for the distribution and administration of Head Start Bond Funds.*

*Comment Procedures: Comments may be submitted in writing or may be presented orally at the public hearing. Oral presentations which exceed three minutes are requested to have a written copy to be filed with the hearing clerk. Further details of the proposed rules may be obtained by writing or calling: Ms. Edith A. Hubbard, Director, Division of Economic Opportunity, 2413 Crabtree Blvd., Suite 119, Raleigh, NC 27604. Phone No. (919) 733-2633.*

*Editor's Note: These Rules have been filed as temporary rules effective on May 2, 1992 for a period of 180 days to expire on October 29, 1992.*

### CHAPTER 51 - DIVISION OF ECONOMIC OPPORTUNITY

#### SUBCHAPTER 51G - HEAD START BOND FUND PROGRAM

#### SECTION .0100 - GENERAL PROVISIONS

##### .0101 SCOPE

The Head Start Bond Fund Program provides state financial assistance to North Carolina's 44 Head Start grantees for the payment of the cost of acquiring, constructing, reconstructing, renovating, equipping and improving Head Start classrooms. Funds are being made available to assist Head Start grantees in providing new and improving existing classroom facilities.

Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).

##### .0102 ELIGIBLE GRANT RECIPIENTS

Eligible grant recipients for Head Start Bond Program funds are North Carolina's 44 Head Start program operators currently receiving Head Start funds authorized under the Head Start Act, Title VI of the Omnibus Budget Reconciliation Act of 1981, as amended.

Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).

##### .0103 ELIGIBLE COSTS

Implementation of the Head Start Bond Fund Program shall be in conformity with Chapter 760 of Senate Bill 930 under the 1991 Session of the General Assembly of North Carolina. Eligible costs may include:

- (1) The acquisition of Head Start classroom facilities including, without limitation, the acquisition of land;
- (2) The purchase, transporting and installation of modular classroom units. Costs associated with the installation of a modular unit are:
  - (a) acquisition of land,
  - (b) electrical and plumbing, including sewer connection or septic tank installation,
  - (c) heating, air conditioning and ventilation,
  - (d) underpinning,
  - (e) steps and handicap ramp,
  - (f) fencing as required by law, and
  - (g) sprinkler system and smoke alarm system.
- (3) Renovation or construction costs of the classroom facility including any general, electrical, plumbing, heating, air conditioning and ventilation costs relative to the renovation or construction;
- (4) Architect fees for the preparation of drawings and specifications for the project;
- (5) Costs of advertisement for renovation or construction bids;
- (6) The cost of grading as would be considered normal for new classroom facilities including seeding, sprigging or sodding of the site and the planting of trees and shrubs;
- (7) Classroom renovation or expansion costs necessary to meet local and state safety and health requirements;
- (8) The costs of equipping or improving Head Start classroom facilities to meet Head Start needs; and
- (9) Other costs associated with renovation, purchase or construction of classroom facilities deemed necessary and approved by the Division.

*Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).*

**.0104 INELIGIBLE COSTS**

Grant funds may not be used to pay direct or indirect administrative or staff costs in connection with the project.

*Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).*

**.0105 CRITERIA FOR GRANT AWARDS**

(a) Each of North Carolina's 44 Head Start grantees may submit an application for funds. Grant applications are to document the need for additional classroom space or the need to improve or equip existing classroom facilities. The application should include:

- (1) a statement supporting why funds are needed;
- (2) a commitment from other resources beyond the grant request for development of the total project;
- (3) the endorsement of the county in which the proposed project is or will be located;
- (4) a description of the anticipated impact in the community;
- (5) specific activities to be completed including a schedule of events.

(b) The Department may elect not to fund any applicant experiencing management, fiscal or other problems in meeting the Head Start Program Performance Standards as determined by the Department of Health and Human Services, Office of Children, Youth, and Families.

*Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).*

**SECTION .0200 - APPLICATION REQUIREMENTS**

**.0201 GENERAL PROVISIONS**

(a) Head Start program operators are required to submit applications in a manner prescribed by the Division. Funding will be based on information contained in the application, thus applications must contain sufficient information for the Department to evaluate them.

(b) Applicants must comply with all applicable state laws, regulations, rules and guidelines issued by the Department.

*Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).*

**.0202 SIZE OF GRANTS**

The maximum amount that each Head Start grantee may apply for is thirty-six thousand three hundred and sixty four dollars (\$36,364).

*Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).*

**SECTION .0300 - ADMINISTRATIVE POLICIES AND PROCEDURES**

**.0301 GENERAL PROVISIONS**

(a) The provisions of Subchapters 51B, 51C and 51G of this Chapter shall govern administration of funds by grant recipients under the Head Start Bond Fund Program, except that in the case of conflicts among the provisions of Subchapters 51B, 51C and 51G, the provisions of Subchapter 51G shall govern.

(b) Funds shall not be used to supplant other federal, state and local funds available for project activities.

(c) Agencies funded under this program must comply with the requirements of Chapter 143, Article 8 concerning public bidding for construction and acquisition of equipment.

(d) Modular classroom unit purchase and installation, renovation and construction activities financed with Head Start Bond Fund Program funds must be performed in accordance with the requirements of applicable state and local regulatory agencies.

(e) Head Start classroom facilities purchased, renovated or constructed with Head Start Bond Fund Program funds must be used for Head Start purposes for not less than 10 years after purchase or completion of the project.

(f) The site on which a modular classroom is placed or a facility to be renovated or constructed must be owned by the applicant agency. In lieu of ownership, the applicant agency must present evidence of long-term lease of site or facility for a minimum of 10 years.

(g) Title to real property shall vest in the non-profit corporations, the public agency, the county wherein the facilities are located, or in another public agency.

*Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).*

**.0302 ACCOUNTABILITY**

The recipient shall maintain separate program and fiscal records to ensure financial accountability for funds received and expended under the Head Start Bond Fund Program.

*Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).*



**.0303 REIMBURSEMENT STANDARDS**

(a) All payments of Head Start Bond Fund Program funds to recipients must be for costs incurred during the grant period. Recipients will not receive payment for costs incurred prior to approval of the grant agreement.

(b) Payment of funds will be made on an as needed basis. Requests for funds under the Head Start Bond Fund Program must be made on forms prescribed by the Division. Requests for funds shall be supported by copies of invoices paid, or to be paid with grant funds. The submission of contracts to support invoices may be required, at the Department's discretion.

*Statutory Authority G.S. 143B-10; 143B-276; 143B-277; 143-323(d).*

**TITLE 11 - DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 1 .0103, .0106, .0201, .0204, .0301, .0401 - .0403, .0603; adopt rule(s) cited as 11 NCAC 1 .0209, .0413 - .0430; and repeal rule(s) cited as 11 NCAC 1 .0203, .0405, .0407 - .0411.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on April 20, 1992 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

**Reasons for Proposed Actions:**

*11 NCAC 1 .0103, .0106, .0201, .0204, .0301, .0401 - .0403, .0603 - To reflect changes in the Department's structure and to make corresponding amendments and repeals to conform with contested case hearing rules.*

*11 NCAC 1 .0209, .0413 - .0430 - To update departmental rules in contested case hearings and petitions for rule-making.*

*11 NCAC 1 .0203, .0405, .0407 - .0411 - Reflects changes in Department's structure and to conform with contested case hearing rules.*

*Comment Procedures: Written comments may be sent to Bill Hale, Hearings Division, P.O. Box*

*26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Bill Hale or Ellen Sprengel at (919) 733-4529.*

**CHAPTER 1 - DEPARTMENTAL RULES**

**SECTION .0100 - GENERAL PROVISIONS**

**.0103 LOCATION AND MAILING ADDRESS**

(a) Location. The primary location of the North Carolina Department of Insurance is the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The Engineering and Building Codes Division is located at 410 N. Boylan Avenue, Raleigh, North Carolina 27603. The Fire and Rescue Division is and the State Fire and Rescue Commission are located at 111 Seaboard Ave., Raleigh, North Carolina 27611. 27603. The Eastern Regional Office is located at 405 Middle St., Room 107, New Bern, North Carolina 28560. The Western Regional Office is located at 49 North Market Square, Suite 210, 537 College Street, Asheville, North Carolina 28801.

(b) Mailing Address. The mailing address for the North Carolina Department of Insurance is Post Office Box 26387, Raleigh, North Carolina 27611. The mailing address for the Eastern Regional Office is Post Office Box 336, New Bern, North Carolina 28560. The mailing address for the Western Regional Office is Post Office Box 1688, Asheville, North Carolina 28802.

(c) The Department shall have normal working hours between 8:00 a.m. and 5:00 p.m., Monday through Friday. Legal holidays will be observed as recommended by the N.C. State Personnel Commission.

*Statutory Authority G.S. 58-2-1.*

**.0106 ORGANIZATION OF THE DEPARTMENT**

(a) In order to carry out effectively its functions and purposes, the Department is divided into several divisions, including, but not limited to the following:

- (1) administration division,
- (2) legal hearings division,
- (3) company admissions division,
- (4) financial evaluation division,
- (5) consumer information division,
- (6) engineering and building codes division,
- (7) fire property and casualty division,
- (8) fire and rescue division,
- (9) investigations division,
- (10) agent services division,
- (11) life accident life and health division,
- (12) special services division,

- (13) state property fire insurance fund and risk management division,
- (14) personnel division,
- (15) budget division,
- (16) field audit division,
- (17) self-insured workers' compensation division,
- (18) market conduct division,
- (19) actuarial services division,
- (20) North Carolina Fire and Rescue Commission,
- (21) Seniors Health Insurance Information Program (SHIIP),
- (22) Medical Database Commission,
- (23) information systems division.

*Statutory Authority G.S. 58-2-25; 58-2-40.*

#### SECTION .0200 - DEPARTMENTAL RULES

##### .0201 LOCATION OF AND INSPECTION OF DEPARTMENTAL RULES

(a) Location of Departmental Rules. All rules for the department and all codes, standards and rules adopted by reference are located in the Legal Hearings Division of the Department of Insurance.

(b) Inspection of Rules. Any person desiring to inspect the rules of the department shall so notify the Deputy Commissioner of the North Carolina Department of Insurance in charge of the Legal Hearings Division.

*Statutory Authority G.S. 58-2-40; 150B-21.*

##### .0203 PETITION FOR ADOPTION; AMENDMENT OR REPEAL OF RULES

(a) Right to Petition. Any interested person may petition the Commissioner to promulgate, amend, or repeal a departmental rule.

(b) Form of Petition. The petition shall be in writing, signed by the petitioning party or parties and must include the address of the petitioning party. In addition, the petition shall contain the following information:

- (1) a draft of the proposed rule, amendment or repeal and a summary thereof;
- (2) the reason(s) for the proposal;
- (3) the effect on existing rules or orders or both;
- (4) any data showing the probable effect of the proposal on existing practices in the area involved, including cost; and
- (5) the names of those most likely to be affected by the proposal with addresses if reasonably known.

(c) Address for Petition. Petitions shall be addressed to: Commissioner of Insurance, AT-

TENTION: Deputy Commissioner, Legal Division, P.O. Box 26387, Raleigh, North Carolina 27611.

(d) Disposition of Petition. Upon receipt of a petition, the Commissioner will make a study of the facts stated in the petition and any additional information he deems relevant. The Department's disposition of the petition will be made in one of the following forms within 30 days of receipt of the petition:

- (1) a written denial of the proposal setting forth the reasons for such denial; or
- (2) a written communication to the petitioner indicating the Department's plan to initiate rule-making procedures pursuant to G.S. 150B-12.

*Statutory Authority G.S. 58-2-40; 150B-12.*

##### .0204 NOTICE OF RULE-MAKING HEARINGS

Notice of rule-making hearings will be given in accordance with the provisions of North Carolina General Statutes, Chapter 150B-12, Part 2 of Article 2A of General Statute Chapter 150B.

*Statutory Authority G.S. 150B-21.1; 150B-21.2; 150B-21.4; 150B-21.5.*

##### .0209 INSTRUCTIONS FOR FILING A PETITION FOR RULE-MAKING

(a) Any person may petition the Department to adopt a new rule, or amend or repeal an existing rule by submitting a rulemaking petition to the Department. The petition must be titled "Petition for Rulemaking", must be in writing, must be signed by the person submitting the petition, and must include the following information:

- (1) the name and address of the person submitting the petition;
- (2) a citation to any rule for which an amendment or repeal is requested;
- (3) a draft of any proposed rule or amended rule;
- (4) an explanation of why the new rule or amendment or repeal of an existing rule is requested and the reason for the request;
- (5) the effect of the new rule, amendment, or repeal on existing rules or orders, or both, and on the procedures of the Department;
- (6) any other information the person submitting the petition considers relevant.

(b) The Commissioner must decide whether to grant or deny a petition for rulemaking within 30 days of receiving the petition. In making his decision, the Commissioner will consider the infor-



mation submitted with the petition and any other relevant information.

(c) When the Commissioner denies a petition for rulemaking, he must send written notice of the denial to the person who submitted the request. The notice must state the reason for the denial. When the Commissioner grants a rulemaking petition, he must initiate rulemaking proceedings and send written notice of the proceedings to the person who submitted the request.

Statutory Authority G.S. 58-2-40(1); 150B-20.

## SECTION .0300 - DECLARATORY RULINGS

### .0301 DECLARATORY RULINGS: GENERAL INFORMATION

To acquire a declaratory ruling as provided in G.S. 150B-17, the procedures set forth in this Section shall be strictly adhered to. Declaratory rulings pursuant to G.S. 150B-4 will be issued by the Department only on the validity of a rule of the Department or on the applicability of a rule or order of the Department to stipulated facts. A declaratory ruling will not be issued on a matter requiring an evidentiary proceeding.

Statutory Authority G.S. 58-2-40(1); 150B-4.

## SECTION .0400 - ADMINISTRATIVE HEARINGS

### .0401 RIGHT TO HEARING

Whenever the Department acts in such a way as to affect the rights, duties or privileges of a specific identified party, the party may appeal for a final decision by the Department in accordance with this Section and Article 3A of G.S. General Statute Chapter 150B.

Statutory Authority G.S. 58-2-40; 150B-38.

### .0402 INFORMAL SETTLEMENT

(a) Before a hearing request under 11 NCAC 1 .0401 can be acted upon, a person must first make an effort to resolve the matter with the Department informally and must attend and participate in any scheduled meetings or conferences.

(b) A proposed settlement, including a stipulated statement of facts, shall be set forth in writing by the Department. If the proposed settlement is agreed to by all parties to the matter, it shall represent the final disposition of the matter and shall be signed by all parties to the matter or their legal representatives. If the proposed settlement is not agreed to and signed by

all parties, then the matter shall proceed as outlined in 11 NCAC 1 .0404. 11 NCAC 1 .0413.

Statutory Authority G.S. 58-2-40; 150B-38.

### .0403 REQUEST FOR HEARING

(a) A request for an administrative hearing under 11 NCAC 1 .0401 must be in writing and must contain the following information:

- (1) name and address of the person requesting the hearing,
- (2) a concise statement of the departmental action being challenged,
- (3) a concise statement of the manner in which the petitioner is aggrieved, and
- (4) a clear and specific demand for a public hearing.

(b) The request for hearing shall be filed with: Commissioner of Insurance, ATTENTION: Deputy Commissioner, Legal Hearings Division, Post Office Box 26387, Raleigh, North Carolina 27611.

Statutory Authority G.S. 58-2-40; 150B-38.

### .0405 NOTICE OF HEARING

Notice of a public hearing shall be given in writing to the appropriate parties in advance of the hearing date as required by the law applicable to the hearing being held.

Statutory Authority G.S. 58-2-50; 150B-23.

### .0407 INTERVENTION IN AN ADMINISTRATIVE HEARING

(a) A petition to intervene may be permitted if timely and if the petition meets the criteria set forth in G.S. 1A-1, Rule 24(b).

(b) In addition, the Commissioner, in his discretion, may allow intervention or limited intervention when:

- (1) Similar rights will be affected;
- (2) Intervention will not confuse issues;
- (3) Issues are the same or similar;
- (4) Intervention is in the public interest; and
- (5) Intervention will not prejudice the rights of parties.

(c) A petition to intervene shall contain the name of the petitioner, the title of the hearing, the date and time of the hearing, if known, and the grounds for intervention. The petition for intervention shall be addressed to all parties affected thereby and to the Commissioner of Insurance, ATTENTION: Deputy Commissioner, Legal Division, P.O. Box 26387, Raleigh, North Carolina 27611.

(d) If the Commissioner allows intervention, notice of that decision shall be issued promptly

to all parties and to the petitioner. Notification will include a statement of any limitation of time, subject matter, evidence, or other limitations imposed on the intervenor. If the Commissioner's decision is to deny intervention, the petitioner will be notified promptly.

*Statutory Authority G.S. 150B-38; 1A-1.*

#### .0408 DEPOSITIONS

The Department may allow the use of depositions only when attendance at a hearing would work a hardship on a person otherwise available to be subpoenaed as a witness, and such hardship is so great as to be unreasonable in light of the testimony that person may be expected to give. In such a case, a deposition will be taken in accordance with the North Carolina Rules of Civil Procedure. All necessary rulings as to whether a deposition will be allowed or as to methods of securing a deposition are within the power and discretion of the hearing officer.

*Statutory Authority G.S. 150B-28; 1A-1.*

#### .0409 SUBPOENAS

(a) Any hearing officer may issue subpoenas in the name of the Department.

(b) Subpoenas requiring the attendance of witnesses, or reproduction of documents, evidence or things will be issued promptly by a hearing officer after receipt of a written request from a party to a contested case for such subpoena.

(c) Except as may be otherwise stated in a particular subpoena a party or person receiving a subpoena from the Department may object thereto by filing a written objection to the subpoena with the Deputy Commissioner, Legal Division, P.O. Box 16387, Raleigh, North Carolina 27611.

*Statutory Authority G.S. 150B-38; 150B-39.*

#### .0410 SERVICE OF SUBPOENAS

Subpoenas shall be served as the officer issuing the subpoena shall direct. Subpoenas may be directed to be served by any of the following methods:

- (1) by an employee of the Department; or
- (2) by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena pre-pays the sheriff's service fee.

Subpoenas will be issued in duplicate with a "Return of Service" form attached to each copy. The person serving the subpoena shall fill out the "Return of Service" form for each copy and promptly return one copy of the subpoena, with

the attached "Return of Service" form completed.

*Statutory Authority G.S. 150B-38; 150B-39.*

#### .0411 OBJECTION TO A SUBPOENA

(a) Except as may be otherwise stated in a particular subpoena, a party or person receiving a subpoena from the Department may object thereto by filing a written objection to the subpoena with the Deputy Commissioner, Legal Division, P.O. Box 26387, Raleigh, N.C. 27611. An objection to a subpoena must include a concise but complete statement of reasons why the subpoena should be revoked or modified. These reasons may include any reason in law for holding the subpoena invalid.

(b) The objection shall be served upon the Commissioner and the party who requested the subpoena. Service shall be in accordance with the North Carolina Rules of Civil Procedure.

(c) The party requesting the subpoena may file a written response to the objection. The response shall be served in like manner as the objection.

(d) After receipt of the objection and response thereto, the hearing officer shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify all other parties of a hearing, to be scheduled as soon as practicable, at which time evidence and testimony regarding the objection and response may be presented.

*Statutory Authority G.S. 150B-38; 150B-39; 150B-40.*

#### .0413 DEFINITIONS

The definitions contained in G.S. 150B-2 are incorporated in this Section by reference. In addition to those definitions, the following definitions apply to this Section:

- (1) "File or filing" means to place or the placing of the paper or item to be filed into the care and custody of the hearing officer, and acceptance thereof by him. All documents filed with the hearing officer, except exhibits, shall be in duplicate in letter size 8 1/2" by 11".
- (2) "Hearing officer" means either the Commissioner or a member of the Commissioner's staff appointed by the Commissioner under G.S. 58-2-55.
- (3) "Party" means the Department, the licensee, or an intervenor who qualifies under 11 NCAC 1.0425.
- (4) "Service or serve" means personal delivery or, unless otherwise provided by law or rule,



delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the person to be served at his or her last known address. A certificate of service by the person making the service shall be appended to every document requiring service under this Section. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0414 GENERAL PROVISIONS

Governed by the principles of fairness, uniformity, and punctuality, the following general provisions apply to this Section:

- (1) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes apply in contested cases before the Commissioner unless another specific statute or rule provides otherwise.
- (2) The Department may supply, at the cost for copies specified in G.S. 58-6-5(3), forms for use in contested cases.
- (3) Every document filed with the hearing officer shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.
- (4) Except as otherwise provided by statute, the rules contained in this Section govern the conduct of contested case hearings under Chapter 58 of the General Statutes.
- (5) The content and the manner of service of the notice of hearing shall be as specified in G.S. 150B-38(b) and (c).
- (6) Venue in a contested case shall be determined in accordance with G.S. 150B-38(e).
- (7) Hearings shall be conducted, as nearly as practical, in accordance with the practice in the Trial Division of the General Court of Justice.
- (8) Ex parte communications in a contested case are governed by G.S. 150B-40(d).

(9) This Section and copies of all matter adopted by reference in this Section are available from the Department at the cost established in G.S. 58-6-5(3).

(10) The rules of statutory construction contained in Chapter 12 of the General Statutes apply in the construction of this Section.

(11) Unless otherwise provided in a specific statute, time computations in contested cases under this Section are governed by G.S. 1A-1, Rule 6.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0415 ORDER FOR PREHEARING STATEMENTS

The hearing officer may serve all parties with an order for prehearing statements together with, or after service of, the notice of hearing. Every party thus served shall, within 30 days after service, file the requested statements setting out the party's present position on the following:

- (1) The nature of the proceeding and the issues to be resolved;
- (2) A brief statement of the facts and reasons supporting the party's position on each matter in dispute;
- (3) A list of proposed witnesses with a brief description of his or her proposed testimony;
- (4) A description of what discovery, if any, the party will seek to conduct prior to the contested case hearing and an estimate of the time needed to complete discovery;
- (5) Venue considerations;
- (6) Estimation of length of the hearing;
- (7) The name, address, and telephone number of the party's attorney, if any; and
- (8) Other special matters.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0416 DUTIES OF THE HEARING OFFICER

In conjunction with the powers in this Section, in General Statute Chapter 58, and in Article 3A of General Statute Chapter 150B, the hearing officer shall perform the following duties, consistent with law:

- (1) Hear and rule on motions;
- (2) Grant or deny continuances;
- (3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
- (4) Examine witnesses when deemed to be necessary to make a complete record and to aid in the full development of material facts in the case;

- (5) Make preliminary, interlocutory, or other orders as deemed to be appropriate;
- (6) Recommend a summary disposition of the case or any part thereof when there is no genuine issue as to any material fact or recommend dismissal when the case or any part thereof has become moot or for other reasons; and
- (7) Apply sanctions in accordance with 11 NCAC 1 .0423.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

**.0417 CONSENT ORDER; SETTLEMENT;  
STIPULATION**

Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement, or consent order at any time during the proceedings. Parties may enter into such agreements on their own or may ask for a settlement conference with the hearing officer to promote consensual disposition of the case.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

**.0418 SETTLEMENT CONFERENCE**

(a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

(b) Upon the request of any party, the hearing officer shall assign the case to another hearing officer appointed by the Commissioner under G.S. 58-2-55 for the purpose of conducting a settlement conference. Unless the parties and the other hearing officer agree, a unilateral request for a settlement conference does not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the hearing officer. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

(c) All parties shall attend or be represented at a settlement conference. Parties or their representatives shall be prepared to participate in settlement discussions.

(d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

(e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in 11 NCAC 1 .0415.

(f) If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the hearing officer presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the hearing officer who is assigned to hear the case.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

**.0419 PREHEARING CONFERENCE**

(a) The purpose of the prehearing conference is to simplify the issues to be determined; to obtain stipulations in regard to foundations for testimony or exhibits; to obtain stipulations of agreement on undisputed facts or the application of particular laws; to consider the proposed witnesses for each party; to identify and exchange documentary evidence intended to be introduced at the hearing; to determine deadlines for the completion of any discovery; to establish hearing dates and locations if not previously set; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(b) Upon the request of any party or upon the hearing officer's own motion, the hearing officer may hold a prehearing conference before a contested case hearing. The hearing officer may require the parties to file prehearing statements in accordance with 11 NCAC 1 .0415. A prehearing conference on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the hearing officer. Venue for purposes of a prehearing conference shall be determined in accordance with G.S. 150B-38(e).

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

**.0420 CONSOLIDATION OF CASES**

(a) The hearing officer may order a joint hearing of any matters at issue in contested cases involving common questions of law or fact or multiple proceedings involving the same or related parties, or may order the cases consolidated or make other orders to reduce costs or delay in the proceedings.



(b) A party requesting consolidation shall serve a petition for consolidation on all parties to the cases to be consolidated and shall file the original with the hearing officer, together with a certificate of service showing service on all parties as herein required. Any party objecting to the petition shall serve and file his objections within 10 days after service of the petition for consolidation.

(c) Upon determining whether cases should be consolidated, the hearing officer shall serve a written order on all parties that contains a description of the cases for consolidation and the reasons for the decision.

(d) Nothing contained in this Rule prohibits the parties from stipulating and agreeing to a consolidation, which shall be granted upon submittal of a written stipulation, signed by every party, to the hearing officer.

(e) Following receipt of a notice of or order for consolidation, any party may petition for severance by serving it on all other parties and filing with the hearing officer at least seven days before the first scheduled hearing date. If the hearing officer finds that the consolidation will prejudice any party, he shall order the severance or other relief that will prevent the prejudice from occurring.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0421 DISCOVERY

(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties are obligated to exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.

(b) Any means of discovery available pursuant to the North Carolina Rules of Civil Procedure, G.S. 1A-1, is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the hearing officer to obtain an order compelling discovery. In the disposition of the motion, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy are significant enough to warrant the discovery. In ruling on a motion for discovery, the hearing officer shall recognize all privileges recognized at law.

(c) When a party serves another party with a request for discovery, that request need not be filed with the hearing officer but shall be served upon all parties.

(d) The parties shall immediately commence to exchange information voluntarily, to seek access as provided by law to public documents, and to exhaust other informal means of obtaining discoverable material.

(e) All discovery shall be completed no later than the first day of the hearing. The hearing officer may shorten or lengthen the period for discovery and adjust hearing dates accordingly and, when necessary, allow discovery during the pendency of the hearing.

(f) No later than 15 days after receipt of a notice requesting discovery, the receiving party shall:

- (1) move for relief from the request;
- (2) provide the requested information, material or access; or
- (3) offer a schedule for reasonable compliance with the request.

(g) Sanctions for failure of a party to comply with an order of the hearing officer made pursuant to this Rule shall be as provided for by G.S. 1A-1, Rule 37, to the extent that a hearing officer may impose such sanctions, and 11 NCAC 1 .0423.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0422 SUBPOENAS

(a) Subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be issued in accordance with G.S. 150B-39(c) and G.S. 1A-1 Rule 45.

(b) A subpoena shall be served in the manner provided by G.S. 150B-39(c) and G.S. 1A-1, Rule 45. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. A party seeking an order imposing sanctions for failure to comply with any subpoena issued under this Rule must prove proper service of the subpoena.

(c) Objections to subpoenas shall be heard in accordance with G.S. 150B-39(c) and G.S. 1A-1, Rule 45.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0423 SANCTIONS

(a) If a party fails to appear at a hearing or fails to comply with an interlocutory order of the hearing officer, the hearing officer may:

- (1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed to be proved without further evidence;
- (2) Dismiss or grant the motion or petition;
- (3) Suppress a claim or defense; or
- (4) Exclude evidence.

(b) In the event that any party, attorney at law, or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the hearing officer may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0424 MOTIONS

(a) Any application to the hearing officer for an order shall be by motion, which shall be in writing unless made during a hearing, and must be filed and served upon all parties not less than 10 days before the hearing, if any, is to be held either on the motion or the merits of the case. The nonmoving party has 10 days after the date of service of the motion to file a response, which must be in writing. Motions practice in contested cases before the Commissioner are governed by Rule 6 of the General Rules of Practice for the Superior and District Court.

(b) If any party desires a hearing on the motion, he shall make a request for a hearing at the time of the filing of his motion or response. A response shall set forth the nonmoving party's objections. All motions in writing shall be decided without oral argument unless an oral argument is directed by the hearing officer. When oral argument is directed by the hearing officer, a motion shall be considered submitted for disposition at the close of the argument. A hearing on a motion will be directed by the hearing officer only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of a hearing, shall be in writing and shall be served upon all parties of record not less than five days before a hearing, if any, is held.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0425 INTERVENTION

(a) Any person not named in the notice of hearing who desires to intervene in a contested case as a party shall file a timely motion to intervene and shall serve the motion upon all existing parties. Timeliness will be determined by the hearing officer in each case based on circumstances at the time of filing. The motion shall show how the movant's rights, duties, or privileges may be determined or affected by the contested case; shall show how the movant may be directly affected by the outcome or show that the movant's participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate movant's statutory right to intervene if one exists.

(b) Any party may object to the motion for intervention by filing a written notice of objections with the hearing officer within five days after service of the motion if there is sufficient time before the hearing. The notice of objection shall state the party's reasons for objection and shall be served upon all parties. If there is insufficient time before the hearing for a written objection, the objection may be made at the hearing.

(c) When the hearing officer deems it to be necessary to develop a full record on the question of intervention, he may conduct a hearing on the motion to determine specific standards that will apply to each intervenor and to define the extent of allowed intervention.

(d) The hearing officer shall allow intervention upon a proper showing under this Rule, unless he finds that the movant's interest is adequately represented by one or more parties participating in the case or unless intervention is mandated by statute, rule, or court decision. An order allowing intervention shall specify the extent of participation permitted the intervenor and shall state the hearing officer's reason. An intervenor may be allowed to:

- (1) File a written brief without acquiring the status of a party;
- (2) Intervene as a party with all the rights of a party; or
- (3) Intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0426 CONTINUANCES

(a) As used in this Rule, "good cause" includes death or incapacitating illness of a party, repre-



sentative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is clearly necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the hearing officer have agreed to a new hearing date or the parties have agreed to a settlement of the case that had been or is likely to be approved by the final decision maker.

(b) As used in this Rule, "good cause" does not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; or failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(c) A request for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing to the hearing officer and shall be served upon all parties of record. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within five days before a hearing shall be denied unless the reason for the request could not have been ascertained earlier.

(d) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing officer shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient.

(e) A continuance shall not be granted if granting it would prevent the case from being concluded within any statutory or regulatory deadline.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0427 RIGHTS AND RESPONSIBILITIES OF

#### PARTIES

(a) A party has the right to present evidence, rebuttal testimony, and argument with respect to the issues of law and policy, and to cross-examine witnesses, including the author of a document prepared by, on behalf of, or for use of the Department and offered in evidence.

(b) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their needs become evident to the requesting party. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the hearing officer or agreed upon at a prehearing conference.

(c) The hearing officer shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the hearing officer shall simultaneously send a copy to all other parties.

(d) All parties have the continuing responsibility to notify the hearing officer of their current addresses and telephone numbers.

(e) A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(f) With the approval of the hearing officer, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the hearing officer.

(g) Before issuing a recommended decision, the hearing officer may order any party to submit proposed findings of fact and written arguments. Before issuing a final decision, the Commissioner may order any party to submit proposed findings of fact and written arguments.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

#### .0428 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the hearing officer's own motion, the hearing officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

**.0429 EVIDENCE**

(a) The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes govern in all contested case proceedings, except as provided otherwise in this Section and G.S. 150B-41.

(b) The hearing officer may admit all evidence that has probative value. Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The hearing officer may, in his discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will require undue consumption of time or create substantial danger of undue prejudice or confusion.

(c) Contemporaneous objections by a party or a party's attorney are not required in the course of a hearing to preserve the right to object to the consideration of evidence by the hearing officer in reaching a decision or by the court upon judicial review.

(d) All evidence to be considered in the case, including all records and documents or true and accurate photocopies thereof, shall be offered and made a part of the record in the case. Except as provided in Paragraph (f) of this Rule, factual information or evidence that is not offered shall not be considered in the determination of the case. Documentary evidence incorporated by reference may be admitted only if the materials so incorporated are available for examination by the parties.

(e) Documentary evidence in the form of copies or excerpts may be received in the discretion of the hearing officer or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised about the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy instead of the original.

(f) The hearing officer may take notice of judicially cognizable facts by entering a statement of the noticed fact and its source into the record. Upon a timely request, any party shall be given the opportunity to contest the facts so noticed through submission of evidence and argument.

(g) A party may call an adverse party; or an officer, director, managing agent, or employee of the State or any local government, of a public or private corporation, or of a partnership or association or body politic that is an adverse party; and may interrogate that party by leading questions and may contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's

counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*

**.0430 OFFICIAL RECORD**

(a) The official record of a contested case is available for public inspection upon reasonable request. The hearing officer may, upon good cause shown and consistent with law, order part or all of an official record sealed.

(b) The official record shall be prepared in accordance with G.S. 150B-42.

(c) Contested case hearings shall be recorded either by a recording system or a professional court reporter using stenomask or stenotype.

(d) Transcript costs incurred by the Department shall be charged to or apportioned equally among the party or parties requesting a transcript.

(e) Any other costs incurred by the Department when using a professional court reporter shall be charged to or apportioned equally among the requesting party or parties.

(f) A 24-hour cancellation notice is required in all cases. The party or parties responsible for the cancellation shall be liable for any cancellation fees.

(g) Transcripts of proceedings during which oral evidence is presented will be made only upon request of a party. Transcript costs shall include the cost of an original for the Department. An attorney requesting a transcript on behalf of a party is a guarantor of payment of the cost. Cost shall be determined under supervision of the hearing officer who, in cases deemed to be appropriate by him, may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any excess shall be returned to the party that submitted it.

(h) Copies of tapes are available upon written request at a cost of five dollars (\$5.00) per tape.

(i) Copies of Department hearings tapes or Non-Department certified transcripts from those tapes are not part of the official record.

Note: Rule 5.3(B) of the Rules of Professional Conduct permits an attorney to advance or guarantee expenses of litigation provided the client remains ultimately liable for such expenses.

*Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).*



## PROPOSED RULES

### SECTION .0600 - GENERAL DEPARTMENTAL POLICIES

#### .0603 FACSIMILE COUNTERSIGNATURE NOT VALID

If a countersignature of an insurance policy is required pursuant to the ~~retaliatory provisions of G.S. 58-615(i), G.S. 58-33-60,~~ the use by an agent of a facsimile signature for countersignature shall not constitute a legal signature and such facsimile countersignature of policies is not valid.

Statutory Authority G.S. 58-2-40; 58-33-30(i); 58-33-60.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 5A .0501 - .0505, .0507 - .0508, .0510.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted at 2:00 p.m. on April 28, 1992 at the Fire and Rescue Division, Conference Room, 111 Seaboard Ave., Raleigh, N.C. 27603.*

*Reason for Proposed Action: Amendments necessary to bring the procedures up to date with current industry standards regarding fire equipment, procedures and operations, and to make technical and clarifying changes.*

*Comment Procedures: Written comments may be sent to Tim Bradley, Fire and Rescue Division, 111 Seaboard Ave., Raleigh, N.C. 27603. Oral presentations may be made at the public hearing. Anyone having questions should call Tim Bradley at (919) 733-2142, or Ellen Sprengel at (919) 733-4529.*

### CHAPTER 5 - FIRE AND RESCUE SERVICES DIVISION

#### SUBCHAPTER 5A - FIRE AND RESCUE

### SECTION .0500 - INITIAL CERTIFICATION AND RE-INSPECTION OF FIRE DEPARTMENTS

#### .0501 PURPOSE

The purpose of this Section is to set forth the minimum requirements that a fire department must meet in order to qualify for eligibility for death benefits under G.S. 143-166.1 and the

North Carolina Firemen's Pension Fund under ~~G.S. 148-38~~ G.S. 58-86-25 and for initial recognition in insurance premiums for a responding fire department. Upon meeting these requirements, a fire district will be given a rating of "9S".

Statutory Authority G.S. 58-2-40; 58-86-25.

#### .0502 QUALIFICATIONS

All fire departments previously certified as of the effective date of this Rule are automatically certified and hereby declared eligible for benefits under ~~148-38~~ G.S. 58-86-25 and G.S. 143-166.1.

Statutory Authority G.S. 58-2-40; 58-86-25; 143-166.1.

#### .0503 ESTABLISHMENT OF FIRE DEPARTMENT

All fire departments wishing to become qualified ~~after the effective date of these Rules~~ shall meet the following criteria:

- (1) The fire department shall be incorporated under Chapter 55A of the General Statutes ~~of the State of North Carolina~~ or be operated by a city, county, or sanitary district as a division of that governmental unit.
- (2) If the fire department is incorporated, it shall operate under a contract with either a city, county, or sanitary district or any combination thereof.
- (3) Boundaries defining the area of responsibility shall be established by a County Board of Commissioners for areas outside municipalities pursuant to G.S. 153A-233.
- (4) The fire department shall provide the Department of Insurance with a map and description of its initial or revised fire district.

Statutory Authority G.S. 58-2-40; 58-86-25; 143-166.1.

#### .0504 PERSONNEL

~~The fire department shall have a minimum of 10 firefighters and shall keep a roster containing the names, social security numbers of all personnel, attendance records of firemen at fires and other emergencies, as well as attendance records at business meetings and training meetings. In addition to the 10 firefighters, the fire department shall have 3 traffic control persons as members.~~

Upon initial certification, the fire department shall have a minimum of 20 personnel, with two designated as traffic control and 18 designated as firefighters. At the time of re-inspection, a fire department shall maintain 20 personnel or show through documentation that an average of 12

persons have responded on each of the last 20 structure fires. A roster of personnel containing names, social security numbers, and attendance of business meetings and training meetings shall be kept.

Statutory Authority G.S. 58-2-40; 58-86-25; 143-166.1.

#### .0505 TRAINING AND MEETING REQUIREMENTS

All members shall comply with the training requirements of ~~G.S. 143-38~~ G.S. 58-86-25. All fire departments shall provide ~~4~~ four hours ~~monthly~~ of drills and ~~meetings~~ meetings each month, for a total of 48 hours per year. Each fireman shall attend at least 36 hours of drills and meetings in each calendar year.

Statutory Authority G.S. 58-2-40; 58-86-25; 143-166.1.

#### .0507 RECORDS AND DOCUMENTS

In addition to personnel records, records shall be kept on dates, times and locations of emergencies, inventory of equipment, and maintenance of apparatus. The following documents shall be submitted to the Department of Insurance: roster, charter, service test report, current map and description, an inventory of protective clothing (if necessary), and verification from the county approving the fire district boundaries.

Statutory Authority G.S. 58-2-40; 58-86-25; 143-166.1.

#### .0508 APPARATUS

##### (a) Pumper.

- (1) ~~Fire~~ The fire department shall have an approved pumper (automotive fire apparatus equipped with a fire pump and tank). To be approved, the fire department pumper must be certified by Underwriters Laboratories, Inc., and constructed in accordance with the National Fire Protection Association pamphlet 1901 - Standard for Automotive Fire Apparatus. The apparatus shall not be loaded beyond limits certified by the "Gross Vehicle Weight" label attached to vehicle. ~~Not the vehicle; nor shall the vehicle be modified in a manner which that would invalidate this certification.~~
- (2) The pump shall have a rated capacity of not less than 500 gallons per minute at 150 pounds per square inch net pump pressure.

- (3) The pumper shall be equipped with at least a ~~300~~ 500 gallon tank. (~~Recommended size - 500 gallons.~~)

- (4) ~~At the time of this qualification inspection, if more than one year has passed since U.L. Certification, the fire department shall conduct a standard service test and shall submit the results of the test to the Fire & Rescue Services Division of the N.C. Department of Insurance. The Department of Insurance recommends that the standard service test be run annually. A complete and accurate service test must have been performed on the "first responding" pumper during the 12-month period before the inspection. If the pumper has been purchased as new within the 12-month period before the inspection, the U.L. Certificate meets this requirement.~~

##### (b) Tanker.

- (1) ~~Fire~~ The fire department shall have a motorized tank truck of at least 1000 gallons capacity or at least enough to equal 1500 gallons total for pumper and tanker. It is recommended that the capacity not exceed 1500 gallons.

- (2) ~~Tanker~~ The tanker shall be equipped with ~~a suitable means for~~ the necessary hose for filling the tank and transferring water to the pumper.

- (3) ~~Tankers~~ The tanker, when fully loaded, shall not exceed the Gross Vehicle Weight limits as certified on the label attached to vehicle. ~~Not the vehicle; nor shall the vehicle be modified in a manner which that would invalidate this certification.~~ All tankers shall ~~meet applicable provisions stated in NFPA 1901 concerning tank baffling.~~ be appropriately baffled.

- (c) Equipment. The following shall be carried on responding fire department vehicles:

##### (1) Pumper:

- (A) ~~Pumper~~ The pumper shall be equipped with 2 - 150' 1-1/2" hose lines with fog nozzles attached;
- (B) One booster reel and one pre-connected hose or three pre-connected hose lines;
- (C) Suction hose - size necessary to flow the capacity of pumper - 2 - 10' sections;
- (D) ~~Two~~ Four OSHA approved self-contained breathing apparatus in good working condition;
- (E) ~~Protective~~ OSHA approved protective clothing for all firefighters including helmet, coat, pants, boots, and gloves; and reflective clothing and recommended helmet for traffic control personnel;

- (F) + - One 12' roof ladder;
  - (G) + - One 24' extension ladder;
  - (H) + - One axe;
  - (I) + One claw tool (Halligan Tool can replace claw tool and crowbar);
  - (J) + One crowbar (Halligan Tool can replace crowbar and claw tool);
  - (K) + One pike pole;
  - (L) + Two ~~electric~~ Two portable hand lights;
  - (M) 100 feet of 1/2" rope;
  - (N) + Two shovels;
  - (O) + Two Class B-C portable extinguishers;
  - (P) + One First Aid kit; and
  - (Q) + One bolt cutter.
- (2) Tanker. ~~Tanker~~ The tanker shall be equipped with necessary suction hose for filling tank and hose for transferring water to pumper.

Statutory Authority G.S. 58-2-40; 58-86-25; 143-166.1.

#### .0510 INSPECTION

Personnel from the Fire and Rescue Services Division of the North Carolina Department of Insurance shall perform a field inspection to determine whether the initial certification requirements have been met. Any persons or fire departments needing more information on obtaining certification under this Section should contact:

Fire and Rescue Services Division  
N.C. Department of Insurance  
430 N. Salisbury Street  
111 Seaboard Avenue  
Raleigh, North Carolina 27611 27603  
(919) 733-2142

Statutory Authority G.S. 58-2-40; 58-86-25; 143-166.1.

\* \* \* \* \*

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 8 .0911.

The proposed effective date of this action is July 1, 1992.

The public hearing will be conducted at 9:00 a.m. on April 21, 1992 at the Manufactured Housing Board, 410 N. Boylan Avenue, Raleigh, N.C. 27611.

*Reason for Proposed Action:* To adopt testing requirements for salesmen of manufactured housing.

*Comment Procedures:* Written comments may be sent to Owen Tharrington, c/o Manufactured Housing Board, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Owen Tharrington at (919) 733-3901 or Ellen Sprekel at (919) 733-4529.

## CHAPTER 8 - ENGINEERING AND BUILDING CODES

### SECTION .0900 - MANUFACTURED HOUSING BOARD

#### .0911 SALESMAN EXAM; TEMPORARY LICENSE; LICENSE TRANSFER; FEES

(a) A salesman's license shall be issued to any applicant upon receipt by the Board of a properly executed application, receipt of the applicant of a passing grade (70 percent of a possible 100 percent) on a written examination administered by the Board, and qualification of the applicant for licensure, except as follows:

(1) Those persons holding a Registered Housing Specialist certification from the North Carolina Manufactured Housing Institute on or before June 30, 1992, are exempt from the examination requirement.

(2) Any person holding a valid salesman's license on or before June 30, 1992, may renew his license each year until July 1, 1994, without examination, if he meets the requirements for license renewal and his renewal application is properly executed. If he allows his license to lapse, he must apply for a license under new license application requirements.

(3) Any salesman who has been tested and licensed under this Section and whose license has lapsed is not required to be re-tested if he re-applies for licensing within 12 months after the expiration of the lapsed license.

(b) A temporary salesman's license will be issued for a period of 90 days to a person upon request of the employing dealer. The holder of a valid salesman's or temporary salesman's license is authorized to sell manufactured homes only for the dealer with whom he is employed as shown on the application. A temporary salesman's license shall not be renewed.

(c) A salesman's license is valid only as long as the person remains employed with the dealer



shown on the application. A salesman must apply for a new salesman's license if he changes or transfers from one dealer to another. In lieu of applying for a new license, the salesman may transfer his license from one dealership to another upon application from the new dealer and the salesman and approval of the Board. When a salesman leaves employment with a dealer, the dealer shall report this fact to the Board within 10 days thereafter.

(d) The fee for a salesman's or temporary salesman's license shall be twenty five dollars (\$25.00). The temporary salesman's license fee shall apply toward the salesman's license fee if both licenses are issued in the same license year. The fee for a salesman's license transfer application shall be fifteen dollars (\$15.00).

Statutory Authority G.S. 143-143.10; 143-143.11.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 10 .0602 - .0603, .1601; and repeal rule(s) cited as 11 NCAC 10 .0601.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on April 21, 1992 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

### *Reasons for Proposed Actions:*

11 NCAC 10 .0601 - *Language is contained in the Statute.*

11 NCAC 10 .0602 - .0603, .1601 - *To make technical corrections.*

*Comment Procedures: Written comments may be sent to Charles Swindell, Property and Casualty Division, 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Charles Swindell at (919) 733-3368.*

## CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

### SECTION .0600 - CONSENT TO RATE

#### .0601 GENERAL INFORMATION

For those lines of insurance subject to the provisions of Articles 12B, 13C, and 38 of Chapter 58 of the General Statutes of North Carolina a rate in excess of that promulgated by the North Carolina Rate Bureau, or rating organization or filed by a company on its own behalf may be charged on a specific risk with the knowledge and written consent of the insured, and with proper notice to and, where required by statute, approval of the commissioner.

Statutory Authority G.S. 58-124.23 (b); 58-131.39 (c).

#### .0602 CONSENT TO RATE PROCEDURES: RATE BUREAU COVERAGES

(a) An application to effect consent to rate on a specific risk of "essential" coverage, as identified in Regulation .0402 of this Chapter, coverage subject to Article 36 of General Statute Chapter 58, in excess of the rate promulgated by the North Carolina Rate Bureau, shall include, but not be limited to, the following:

- (1) a description of the insurance proposed, including primary and excess limits, the amount of coverage, the property insured, the deductible and any other factor used for rating, where applicable;
- (2) the rate and premium ~~which that~~ would be charged without application of consent to rate;
- (3) the proposed rate and premium;
- (4) the percent increase. The rate to be charged will be presumed reasonable if it does not exceed 250 percent of the rate ~~which that~~ would be charged without application of consent to rate. Any proposed rate in excess of 250 percent must be explained fully and may be disapproved by the commissioner. (This is not required for and does not apply to "~~essential~~" automobile nonfleet private passenger motor vehicle physical damage insurance);
- (5) a statement that the rate charged does not exceed the rate ~~which that~~ would be applicable if the applicant had been charged 550 percent of the rate with no ~~driving record~~ Safe Driver Incentive Plan points. Any proposed rate in excess of 550 percent must be explained fully, submitted individually, and may be disapproved by the Commissioner. (This is required for "~~essential~~" automobile nonfleet private passenger motor vehicle physical damage insurance only);
- (6) the names and addresses of the insurer, the writing agent, and the insured;



- (7) the effective date of the proposed rate;
- (8) the policy period;
- (9) the policy number;
- (10) the reason for the surcharge may be required; and
- (11) a letter signed by the insured acknowledging and consenting to the proposed rate (not required to be submitted to the Commissioner for "~~essential~~" automobile nonfleet private passenger motor vehicle physical damage insurance). If coverage for the specific risk written on consent to rate is available through a residual market (FAIR Plan, Beach Plan, North Carolina Reinsurance Facility, North Carolina Workers Compensation Insurance Plan), a statement signed by the insured acknowledging that fact must also be submitted.

All such applications must be forwarded directly to the Commissioner for approval.

(b) Such applications involving non-standard automobile physical damage insurance may be recorded on a form approved by the Commissioner and must be forwarded at frequent intervals to the Commissioner for approval. A letter signed by each insured acknowledging and consenting to the proposed rate shall be retained in the insurer's office and be made available to the Commissioner upon request. A separate letter with the insured's signature must be obtained for each policy period.

(c) All applications for approval of consent to rate received more than 90 days after the effective date of the proposed rates will be disapproved and construed as effective at the rates ~~which that~~ would be charged without application of consent to rate on the effective date.

*Statutory Authority G.S. 58-2-40 (1); 58-36-30 (b).*

**.0603 CONSENT TO RATE PROCEDURES:  
COMMERCIAL COVERAGES**

(a) An application to effect consent to rate on a specific risk of "~~non-essential~~" coverage, as identified in Rule .0403 of this Chapter, coverage subject to Article 40 of General Statute Chapter 58, in excess of the rate promulgated by a licensed rating organization or filed by a company on its own behalf shall include, but not be limited to, the following:

- (1) a description of the insurance proposed, including primary and excess limits, the amount of coverage, the property insured, the deductible and any other factor used for rating, where applicable;

- (2) the rate and premium ~~which that~~ would be charged without application of consent to rate;
- (3) the proposed rate and premium;
- (4) the percent increase. The rate to be charged will be presumed reasonable if it does not exceed 250 percent of the rate ~~which that~~ would be charged without application of consent to rate. Any proposed rate in excess of 250 percent must be explained fully and may be ~~returned~~ disapproved by the Commissioner;
- (5) the names and addresses of the insurer, the writing agent, and the insured;
- (6) the effective date of the proposed rate;
- (7) the policy period;
- (8) the policy number;
- (9) the reason for the surcharge; and,
- (10) a letter signed by the insured acknowledging and consenting to the proposed rate (not required to be submitted to the commissioner for "~~non-essential~~" automobile physical damage insurance). If coverage for the specific risk written on consent to rate is available through a residual market (FAIR Plan, Beach Plan, North Carolina Reinsurance Facility, North Carolina Workers Compensation Insurance Plan), a statement signed by the insured acknowledging that fact must also be submitted.

All such applications must be forwarded directly to the commissioner.

(b) Such applications involving non-standard automobile physical damage insurance may be recorded on a form approved by the commissioner and must be forwarded to the commissioner at frequent intervals. A letter signed by each insured acknowledging and consenting to the proposed rate shall be retained in the insurer's office and be made available to the Commissioner upon request.

(c) All applications for consent to rate received more than 90 days after the effective date of the proposed rates will be rejected and construed as effective at the rates ~~which that~~ would be charged without application of consent to rate on the effective date.

*Statutory Authority G.S. 58-2-40 (1); 58-40-30 (c).*

**SECTION .1600 - PROSPECTIVE LOSS COSTS  
FILINGS**

**.1601 PURPOSE; SCOPE; APPLICABILITY**

(a) This Section specifies the system under which rating organizations and their participating

insurers that elect to adopt a prospective loss cost system will operate. Under this system, rating organizations shall not develop or file advisory final rates; but shall develop and file advisory prospective loss costs and supporting actuarial and statistical data. Each insurer must independently and individually determine and file the rates it will use. Rating organizations will continue to develop and file rules, relativities, and supplementary rating information on behalf of their participating insurers.

(b) 11 NCAC 10 .1603 applies when a rating organization files advisory prospective loss costs. 11 NCAC 10 .1604 applies when a rating organization files supplementary rating information. 11 NCAC 10 .1603 and 11 NCAC 10 .1604 both apply when a rating organization files both advisory prospective loss costs and supplementary rating information. Each of these submittals shall be treated separately because different procedures will apply.

(c) Nothing in this Section requires rating organizations to cease filing advisory rates or prevents their participating insurers from adopting such rates. Rating organizations that desire to file rates shall complete a rate filing questionnaire according to 11 NCAC 10 .1107.

(d) This Section does not apply to nonfleet private passenger motor vehicle, homeowners, farmowners, or dwelling fire insurance.

Statutory Authority G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-41-50; 58-45-45; 58-46-55.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 12 .0552.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on April 21, 1992 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Reason for Proposed Action: Clarify coverage required under insurance contracts.*

*Comment Procedures: Written comments may be sent to Sue Goff, Life and Health Division, 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral*

*presentations may be made at the public hearing. Anyone having questions should call Sue Goff at (919) 733-5060 or Ellen K. Sprenkel at (919) 733-4529.*

## CHAPTER 12 - LIFE AND HEALTH DIVISION

### SECTION .0500 - ACCIDENT AND HEALTH: GENERAL NATURE

#### .0552 TEMPOROMANDIBULAR JOINT DYSFUNCTION

Policies providing surgical, medical and in-hospital benefits may not be excluded when treatment for temporomandibular joint dysfunction is caused by disease or accident. However, treatment performed by prosthesis placed directly on the teeth may be excluded. Policies providing surgical, medical, or in-hospital benefits may not exclude benefits for surgical treatment of temporomandibular joint dysfunction (TMJ) nor limit benefits for surgical treatment of TMJ any more restrictively than for surgery on any other joint of the body; provided, however, nonsurgical treatment of TMJ may be excluded or may be subject to a lifetime maximum dollar amount.

Statutory Authority G.S. 58-2-40; 58-3-130; 58-51-1; 58-51-95; 58-63-15(7); 58-65-85.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 12 .1101 - .1119.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on April 16, 1992 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Reason for Proposed Action: To implement legislation enacted by the 1991 General Assembly which became effective January 1, 1992.*

*Comment Procedures: Written comments may be sent to Leonard Wood, Department of Insurance, 401 Glenwood Ave., Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Leonard Wood at (919) 733-9154 or Ellen Sprenkel at (919) 733-4529.*



CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .1100 - MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

.1101 PURPOSE AND SCOPE

The purpose of this Section is to implement the provisions of Article 49 of General Statute Chapter 58 and to regulate the issuance of a license and the operation of a MEWA as provided in that Article. The definition of "multiple employer welfare arrangement" or "MEWA" contained in G.S. 58-49-30(a) is incorporated herein by reference.

Statutory Authority G.S. 58-2-40(1); 58-49-30; 58-49-35; 58-49-40; 58-49-50; 58-49-55; 58-49-60; 58-49-65.

.1102 GENERAL ELIGIBILITY

(a) Each MEWA shall provide to the Commissioner adequate documentation that the exemption under Section 501(c) of the Internal Revenue Code has been granted, or that the MEWA will operate solely for the benefit of the members of the MEWA. Any profits from the operation of the MEWA shall be invested in securities as allowed by G.S. 58-7-160 through G.S. 58-7-200, and the interest or other profits accrued or received thereon shall be used to provide rate stability or provide other such benefits for the members to which the trustees and the Commissioner agree; and the trust agreement shall so state.

(b) Each MEWA shall be established by a trade association, industry association, or professional association of employers or professionals. The association shall not be a combination of trades, industries, or professions; nor shall there be a combination within the trades, industries, or professions.

(c) As used in this Rule:

- (1) "Industry association" means member employers who are in the same major group code, as defined by the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget; unless restricted by Subparagraph (c)(2) or (3) of this Rule.
- (2) "Professional association" means member employers who are of the same type of profession, such as physicians, dentists, accountants, lawyers, or architects; but is not limited to those professions. However, the profession must be one that is recognized by the required licensing agency.

(3) "Trade association" means member employers who are in the same type of trade, such as plumbers or electricians; and any others that are trade designations as recognized by the required licensing agency.

(d) The feasibility study required by G.S. 58-49-50(7) shall disclose all material assumptions.

Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-50.

.1103 FILING REQUIREMENTS

(a) All communications and filings must be made with the Compliance Officer, Technical Services Group, North Carolina Department of Insurance, P.O. Box 26387, Raleigh, N.C. 27611. To apply for licensure, in addition to the information required by G.S. 58-49-50, the following items pertaining to the MEWA must be submitted:

- (1) Form MEWA-1 entitled "Application for License for Multiple Employer Welfare Arrangement (MEWA);"
- (2) Form MEWA-2 entitled "Financial Statement", which shall contain the information required by G.S. 58-49-50(8);
- (3) Signed and notarized biographical affidavits by all trustees of the MEWA on Form MEWA-3 entitled "Biographical Questionnaire", which shall contain information to enable the Commissioner to determine if such persons satisfy the criteria specified in G.S. 58-49-40(e);
- (4) A complete list of names, addresses and telephone numbers of participating employers and the number of employees covered by the MEWA; and
- (5) A statement of the reasons for applying for a North Carolina MEWA license; a description of exactly how the MEWA proposes to develop and supervise its operations in North Carolina; the name, title, and qualifications of the person who will be responsible for the MEWA's operation in North Carolina (the managing general agent if the MEWA is domiciled outside of North Carolina); and the location of and a description of the office facilities that will be provided by the MEWA in North Carolina.

(b) All forms may be obtained from the Compliance Officer. Every application must contain a certification that any changes to the information required by G.S. 58-49-50 and this Rule shall be reported to the Commissioner.

(c) During the pendency of an application, the MEWA shall keep all required information,



statements, documents, and materials current and factual.

(d) An application for a license is not complete until the MEWA has satisfied the Commissioner that the MEWA is in compliance with all of the requirements of Article 49 of General Statute Chapter 58 and this Section. The Commissioner is not required to process an incomplete application.

(e) All financial information required by G.S. 58-49-50 and this Section shall be prepared in accordance with statutory accounting principles.

(f) Any change in the information required by Article 49 of General Statute Chapter 58 or by this Section shall, unless otherwise specified in that Article or in this Section, be reported to the Commissioner within two business days after such change.

*Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-50; 58-49-60.*

#### **.1104 FINANCIAL**

(a) A MEWA may participate in a cash management program as long as the MEWA has direct access to its funds at all times and the depository or custodian maintains a separate accounting for each account. The depository or custodian must be a solvent national or state bank, savings and loan association, or trust company.

(b) No surplus note(s) or the interest thereon shall be paid or repaid without the specific written approval of the Department. If there is more than one surplus note, each note shall have its own unique identification number in the upper left hand corner of each page of the document.

*Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-60.*

#### **.1105 ADMINISTRATIVE, PROVIDER, AND MANAGEMENT CONTRACTS**

(a) As used in this Rule, "fees" means any compensation, including but not limited to, cash or other assets of a MEWA that are transferred for either contracted or noncontracted services that are rendered to the sponsoring association or the MEWA.

(b) A MEWA is prohibited from paying any fees, other than for reimbursement of specific expenses, to its sponsoring association unless the services rendered to the MEWA are available to the MEWA from persons other than the sponsoring association.

(c) The fees for such services shall not be in excess of what would be charged in an arms length transaction. Reasonable fees may also be

determined by comparing those charged to other MEWAs in North Carolina.

(d) A MEWA shall give the Commissioner written notification of any proposed change to a management or administrative contract at least 45 days before the effective date of such change.

*Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-50.*

#### **.1106 ANNUAL REPORT**

A request for an extension of time to file an annual report must be made in writing and filed with the Department no later than 15 days before the due date of the annual report. Any request for extension received less than 15 days before the due date of the annual report shall be denied except in instances of death or disability of key personnel or destruction of records by fire or by another event clearly out of the MEWA's control.

*Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-60.*

#### **.1107 EXAMINATION BY THE DEPARTMENT**

If the Department determines that the records of a MEWA are not adequate to make a determination of solvency or insolvency, the Department may take any action, administrative or otherwise, available to the Department as if the MEWA were insolvent.

*Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-55; 58-49-65.*

#### **.1108 POWER OF ATTORNEY**

A power of attorney appointing an individual to receive service of legal process must be submitted by every MEWA on Form MEWA-4 entitled "Power of Attorney". Such individual shall be a resident of North Carolina and either a corporate official of the MEWA or the MEWA's managing general agent for the State; and must be readily accessible and available for service. Both the residential and business addresses of such individual must be provided. Any change in the power of attorney after issuance of the MEWA's license must be reported to the Commissioner within two business days after the effective date of the change.

*Statutory Authority G.S. 58-2-40(1); 58-16-30; 58-49-40; 58-49-50.*

#### **.1109 FIDELITY BOND**

The fidelity bond required by G.S. 58-49-50(5) shall be issued only by a surety company licensed

to transact insurance in North Carolina. The bond shall be in an amount equal to no less than 10 percent of the funds or assets of the MEWA that are managed or handled annually, subject to the minimum and maximum amounts stated in G.S. 58-49-50(5). The MEWA shall notify the Commissioner of any change to the bond, including termination, change in bond amount, or change in bonded MEWA employee, within two business days after the effective date of the change.

Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-50.

#### .1110 SALES AND MARKETING

Any person who solicits memberships for a MEWA shall solicit only eligible member employers of the sponsoring association; and only if that person is appointed to solicit by the Board of Trustees of the MEWA. The sponsoring association shall provide the representative with a list of eligible member employers that are not in the MEWA.

Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-50.

#### .1111 DISCLOSURE

Any person who advertises or solicits coverage on behalf of a MEWA or who in any manner secures, helps, or aids in the planning or administration of coverage with any MEWA, shall prominently disclose in writing to every employer being solicited for participation the information specified in G.S. 58-49-25 and 58-49-40(b); and provide such employer with a statement, if applicable, as to which provisions of North Carolina insurance statutes and rules, such as mandated benefits, freedom of choice of providers, continuation or conversion privileges, pre-existing conditions limitations, or premium rate revision guarantees, are not afforded by the MEWA.

Statutory Authority G.S. 58-2-40(1); 58-49-25; 58-49-40; 58-49-50.

#### .1112 CLAIMS PAYMENTS

In order to assure that all valid claims for payments for benefits provided are paid within a reasonable time, the following standards apply:

- (1) Each MEWA shall pay within 30 days of receipt by the MEWA or its administrator, if applicable, all valid claims for benefits.
- (2) If the MEWA requires additional information, the MEWA shall request such additional information in writing within the

30-day period; and upon receipt of the additional information, the claim shall be paid within 30 days of receipt of the additional information.

- (3) If the claim is denied, the MEWA shall provide the reason or reasons for the denial in writing to the claimant and the claimant's health care provider.

Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-50.

#### .1113 DISSOLUTION

Any application to dissolve a MEWA must be made on Form MEWA-5 entitled "Application for Dissolution". An application for dissolution will not be considered to have been received by the Commissioner until it has been completed to his satisfaction. Such application shall be filed with the Commissioner at the same time the MEWA files articles of dissolution with the Secretary of State of North Carolina, a copy of which articles shall accompany the application.

Statutory Authority G.S. 58-2-40(1); 58-49-40; 58-49-50.

#### .1114 DEFINITIONS

As used in this Rule and in 11 NCAC 12 .1115, 11 NCAC 12 .1116, and 11 NCAC 12 .1117, the following terms have the meanings ascribed to them:

- (1) "Claims accrued" means that portion of claims incurred on or prior to the valuation date that result in liability of the MEWA for the payment of benefits for medical services that have been rendered on or prior to the valuation date, and for the payment of benefits for days of hospitalization and days of disability that have occurred on or prior to the valuation date, that the MEWA has not paid as of the valuation date, but for which it is liable, and will have to pay after the valuation date. This liability is sometimes referred to as a liability for accrued benefits.
- (2) "Claims reported" means when a MEWA has been informed that a claim has been incurred, if the date reported is on or prior to the valuation date, the claim is considered as a reported claim for annual statement purposes.
- (3) "Claims unaccrued" means that portion of claims incurred on or before the valuation date that result in liability of the MEWA for the payment of benefits for medical services expected to be rendered after the valuation date, and for benefits expected to be payable for days of hospitalization and days of disa-



bility occurring after the valuation date. This liability is sometimes referred to as a liability for unaccrued benefits.

- (4) "Claims unreported" means when a MEWA has not been informed, on or before the valuation date, concerning a claim that has been incurred on or prior to the valuation date, the claim is considered as an unreported claim for annual statement purposes.
- (5) "Claim reserves" mean reserves or liabilities held for claims incurred on or before the valuation date, but unpaid as of the valuation date. Claim reserves include both reported and unreported claims. Claim reserves are established for both accrued and unaccrued benefits.
- (6) "Incurred date" means the date that a claim is determined to be a liability of the MEWA. For example, the charges for inpatient hospital and physician visits in hospitals would be assigned an incurred date equal to the date of admission; outpatient hospital charges would be assigned an incurred date equal to the date of service; surgical expenses would be assigned an incurred date equal to the date of the surgery.
- (7) "Unearned premium reserves" mean reserves established for premiums received that produce insuring periods extending beyond the valuation date.

Statutory Authority G.S. 58-2-40; 58-49-40; 58-49-60.

#### .1115 MINIMUM RESERVE STANDARDS

(a) The following two categories of reserves shall be established by every MEWA:

- (1) Claim reserves; and
- (2) Premium reserves.

(b) The adequacy of a MEWA's health insurance reserves shall be determined on the basis of the two categories combined; however, the standards in this Rule and in 11 NCAC 12.1116 and .1117 emphasize the importance of determining appropriate reserves for each category separately.

(c) When a MEWA determines that adequacy of its health insurance reserves requires reserves in excess of these minimum standards, such increased reserves shall be held and shall be considered the minimum reserves for that MEWA.

Statutory Authority G.S. 58-2-40; 58-49-40; 58-49-60.

#### .1116 CLAIM RESERVES

(a) Minimum claim reserves are required for all incurred but unpaid claims, which include claims accrued and claims unaccrued.

(b) For the current year exposures, where historical claim information is either not available or not credible, the minimum claim reserve shall be calculated in the following manner:

- (1) Calculate the total earned premium as of the end of a valuation period for each policy form, group of policy forms, master contract, or group of master contracts.
- (2) Multiply the total earned premium by the expected incurred loss ratio for each policy form, group of policy forms, master contract, or group of master contracts. The sum of the results of these multiplications is referred to as the "total incurred claims".
- (3) Subtract from the total incurred claims the total amount of claims paid as of the end of a valuation period. The result of this subtraction is the total "minimum" amount that shall be added to the claim reserves established at the beginning of the valuation period.
- (4) The calculations in Subparagraphs (b)(1) and (2) of this Rule may give recognition to duration.

(c) For later years of exposures, where historical claim information is available and credible, the minimum reserve shall be calculated using any generally accepted or reasonable actuarial claim runoff method. Claim runoff schedules shall be developed by using appropriate incurred dates and paid dates for claims. Adequacy of the claim reserves shall be determined in the aggregate.

(d) Appropriate claim expense reserves are required with respect to the estimated expense of settlement of all incurred but unpaid claims. Claim settlement expenses shall include both allocated and unallocated expenses.

(e) All claim reserves for prior valuation periods shall be tested for adequacy and reasonableness along the lines of claim runoff schedules in accordance with the statutory financial statement including consideration of any residual unpaid liability.

(f) Each MEWA shall develop a follow-up study comparing its previous reserve estimates against subsequent claims actually paid together with the remaining estimated liability as of the valuation date. The results of this study shall be filed with the Actuarial Service Division of the Department by March 1 of each calendar year.

Statutory Authority G.S. 58-2-40; 58-49-40; 58-49-60.



**.1117 PREMIUM RESERVES**

(a) Unearned premium reserves are required for all MEWAs with respect to the period of coverage for which premiums, other than premiums paid in advance, have been paid beyond the date of valuation.

(b) If premiums due and unpaid are carried as an asset, such premiums must be treated as premiums in force, subject to unearned premium reserve determination. The value of the unpaid commissions and the cost of collection associated with due and unpaid premiums must be carried as an offsetting liability.

(c) The minimum unearned premium reserve with respect to any contract is the pro rata gross unearned modal premium that applies to the premium period beyond the valuation date.

(d) MEWAs may employ suitable approximations or estimates, including groupings, averages, and aggregate estimation, in computing premium reserves. Such approximations or estimates shall be tested periodically to determine their continuing adequacy and reliability.

*Statutory Authority G.S. 58-2-40; 58-49-40; 58-49-60.*

**.1118 MAXIMUM NET RETENTION STANDARD**

(a) The specific maximum net retention limit for any MEWA, associated with the period of time that the excess insurance coverage is in force, shall be calculated in the following manner:

- (1) Determine the total expected dollar value of claims.
- (2) Determine the total surplus at the beginning of the period of time that the excess insurance coverage is scheduled to be in force.
- (3) Multiply Subparagraph (a)(1) of this Rule by five percent and add that product to Subparagraph (a)(2) of this Rule.
- (4) Multiply the result of the calculation in Subparagraph (a)(3) of this Rule times itself.
- (5) Multiply Subparagraph (a)(1) of this Rule by the number 3.4.
- (6) Divide the product of the calculation in Subparagraph (a)(4) of this Rule by the product of the calculation in Subparagraph (a)(5) of this Rule.

(b) The specific maximum net retention limit shall not exceed the lesser of:

- (1) The amount in Subparagraph (a)(6) of this Rule;
- (2) Twenty-five thousand dollars (\$25,000); or

(3) The specific maximum net retention limit determined by or for the MEWA in accordance with sound actuarial principles.

(c) The aggregate maximum net retention shall not exceed the lesser of:

- (1) One hundred twenty-five percent of Subparagraph (a)(1) of this Rule; or
- (2) The aggregate maximum net retention limit determined by or for the MEWA in accordance with sound actuarial principles.

(d) The Commissioner may approve a specific maximum net retention limit or an aggregate maximum net retention limit or both in excess of those calculated pursuant to this Rule, upon application to the Commissioner and the Commissioner's determination that the increase would not inhibit the ability of the MEWA to perform its present and future contractual obligations to policyholders and participants under the MEWA's plan.

*Statutory Authority G.S. 58-2-40; 58-49-40(c).*

**.1119 DESCRIPTION OF FORMS**

(a) Form MEWA-1 includes the MEWA's name, address, board of trustees, articles of incorporation, copy of the benefits' contract, audited financial statement, actuarial statement, and other pertinent information.

(b) Form MEWA-2 includes a balance sheet, statement of income (expenses and surplus), statement of changes in financial position, schedule of investments, and other pertinent information.

(c) Form MEWA-3 includes the trustee's complete name, office held, date and place of birth, current address (business and residential), education, employment history, criminal investigations or charges, and other pertinent information.

(d) Form MEWA-4 includes a signed statement by officials of the MEWA appointing the Commissioner of Insurance as the MEWA's true and lawful attorney upon whom legal process shall be served.

*Statutory Authority G.S. 58-2-40; 58-16-30; 58-49-20; 58-49-30; 58-49-40; 58-49-50; 58-49-60.*

**TITLE 12 - DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alarm Systems Licensing Board intends to amend rule(s) cited as 12 NCAC 11 .0202.*

*The proposed effective date of this action is August 3, 1992.*

*The public hearing will be conducted at 11:00 a.m. on May 1, 1992 at the State Bureau of Investigation, Conference Room, 3320 Old Garner Road, Raleigh, NC 27626-0500.*

*Reason for Proposed Action: To impose a six month waiting period before re-examination after having two unsuccessful attempts at the examination.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until the hearing. Written comments must be delivered to or mailed to: Mr. James F. Kirk, NC Alarm Systems Licensing Board, 3320 Old Garner Road, P.O. Box 29500, Raleigh, NC 27626-0500.*

#### CHAPTER 11 - N.C. ALARM SYSTEMS LICENSING BOARD

##### SECTION .0200 - PROVISIONS FOR LICENSEES

##### .0202 EXPERIENCE REQUIREMENTS FOR LICENSE

(a) Applicants for an alarm system license must meet the following minimum requirements which are additional to those specified in G.S. Chapter 74D:

- (1) Establish to the Board's satisfaction two year's experience within the past five years in an alarm systems business as defined in G.S. 74D-2(a); alarm systems installation and service or;
- (2) Successfully pass an oral or written examination deemed by the Board to measure an individual's knowledge and competence in the alarm systems business; and
- (3) Successfully complete either the SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical

Contractors and maintain said license at all times while licensed by the Alarm Systems Licensing Board.

(b) Any applicant who takes the examination administered by the Board under 12 NCAC 11 .0202(a)(2) and who does not successfully complete said examination after two attempts, must wait six months before being allowed to take the examination again.

(c) ~~(b)~~ Applicants engaged exclusively in monitoring or responding to alarms may be issued a limited license which authorizes the performance of monitoring and responding functions only. Applicants for such a limited license shall not be required to meet the experience requirements of 12 NCAC Chapter 11 .0202(a).

Statutory Authority G.S. 74D-5.

#### TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2(f) that the N.C. Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10B .0203, .0209; 10C .0205, .0305; 10D .0003 - .0004 with changes from the proposed text noticed in the Register, Volume 6, Issue 18, pages 1323 - 1366.*

*The proposed effective date of this action is July 1, 1992.*

*Comment Procedures: Interested persons may present their views in writing from April 1, 1992 to May 1, 1992. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 North Salisbury Street, Raleigh, NC 27604-1188.*

*Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.*

#### CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

##### SUBCHAPTER 10B - HUNTING AND TRAPPING

##### SECTION .0200 - HUNTING

##### .0203 DEER (WHITE-TAILED)

- (a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule are closed to deer hunting.

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**PROPOSED RULES**

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(b) Open Seasons (All Lawful Weapons)

- (1) Male Deer With Visible Antlers. Male deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

- (A) Monday on or nearest October 15 to January 1 in the following counties and parts of counties:

Beaufort	Duplin	Lenoir	Pitt
Bertie	Edgecombe	Martin	Richmond**
Bladen	Franklin	Nash	Robeson
Brunswick	Gates	New Hanover	<u>Sampson</u>
Camden	Greene	Northampton	<u>Scotland**</u>
Carteret	Halifax	Onslow	Tyrrell
Chowan	Hertford	Pamlico	Vance
Columbus*	Hoke	Pasquotank	Warren
Craven	Hyde	Pender	Washington
Currituck	Jones	Perquimans	Wayne
Dare			Wilson

Cumberland: That part south of NC 24 or east of I-95.

Harnett: That part west of NC 87.

Johnston: All of the county except that part south of US 70 and west of I-95.

Moore\*\*: All of the county except that part north of NC 211 and west of US 1.

~~Sampson: All of the county except that part west of NC 242 and north of US 13.~~

Wake: That part north of I-40.

\*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

\*\*See 15A NCAC 10D .0003 ~~(d)~~ (e) (2) for seasons on Sandhills Game Land.

- (B) Monday of Thanksgiving week to ~~second~~ third Saturday after Thanksgiving Day in the following counties and parts of counties:

Alexander	Davie	Iredell	Watauga
Alleghany	Forsyth	Lincoln	Wilkes
Ashe	Gaston	Stokes	Yadkin
Catawba	<del>Davie</del>	Surry	

~~Mecklenburg: That part north of US 74 except Cowan's Ford Waterfowl Refuge.~~

- (C) Monday of Thanksgiving week to third Saturday after Thanksgiving Day in the following counties and parts of counties:

Avery	Clay	Jackson	Polk
Buncombe	Cleveland	Macon	Rutherford
Burke	Graham	Madison	Swain
Caldwell	Haywood	McDowell	Transylvania
Cherokee	Henderson	Mitchell	Yancey

- (D) Monday before Thanksgiving week to January 1 in the following counties and parts of counties:

Alamance	Granville	Person
Anson	Guilford	Randolph
Cabarrus	Lee	Rockingham
Caswell	<u>Mecklenburg</u>	Rowan
Chatham	Montgomery	Stanly
Davidson	Orange	Union
Durham		

Cumberland: That part north of NC 24 and west of I-95.



Harnett: That part east of NC 87.

Johnston: That part south of US 70 and west of I-95.

Moore: That part north of NC 211 and west of US 1.

~~Sampson: That part west of NC 242 and north of US 13.~~

Wake: That part south of I-40.

- (2) Deer of Either Sex. Deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph:

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the first Saturday in October to January 1 in those parts of Hyde, Tyrrell and Washington Counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Camden, Gates and Pasquotank Counties known as the Dismal Swamp National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge and those parts of Anson and Richmond Counties known as Pee Dee National Wildlife Refuge.

(B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Monday on or nearest October 15 to January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.

(C) Second Saturday in October for youth either sex deer hunting by permit only on a designated portion of Belews Creek Steam Station in Stokes County.

(D) The second Saturday in December in all of Buncombe, Catawba, Cleveland, Haywood, Henderson, Lincoln, Madison, Mitchell, Polk, Rutherford and Transylvania and Yancey Counties and the following parts of counties:

Avery: That part south of the Blue Ridge Parkway.

~~(E) Wednesday of the week following Thanksgiving in all of Catawba, Cleveland, Forsyth, Mitchell, and Rutherford Counties; and in the following parts of Counties:~~

~~Alleghany: All of the county except game lands.~~

~~Ashe: All of the county except game lands.~~

~~Avery: That part south of the Blue Ridge Parkway, except game lands.~~

~~Burke: All of the county except game lands.~~

~~Caldwell: All of the county except game lands.~~

~~Cumberland: That part south of SR 1700, west of SR 1802, west of US 301 and east of the Cape Fear River.~~

~~Davidson: That part north of I-85, except game lands.~~

~~McDowell: All of the county except game lands.~~

~~Mecklenburg: That part west of I-77, south of NC 73, east of the Catawba River, and north of NC 16 and SR 2004 except for the Cowan's Ford Waterfowl Refuge.~~

~~Rowan: That part west of US 52, except game lands.~~

~~Washington: That part east of NC 32 and south of US 64.~~

~~(F) (E) Wednesday and Thursday Friday and Saturday of the week following Thanksgiving in all of Dare County, Iredell and Surry Counties and in the following parts of counties:~~

~~Alexander: All of the county except game lands.~~

~~Cabarrus: That part west of US 52 and south of a line formed by NC 49 from the Mecklenburg County line to Mount Pleasant and east of SR 1006 from Mount Pleasant to the Rowan County line.~~

~~Davie: All of the county except game lands.~~

~~Davidson: That part north of I-85, except game lands.~~

~~Mecklenburg: That part north of US 74.~~

~~Rowan: That part west of US 52, except game lands.~~

~~Moore: That part north of NC 211, except game lands.~~

~~Scotland: That part north of US 74, except game lands.~~

~~Union: That part south of US 74 and NC 75.~~

~~Stokes: All of the county except game lands.~~

~~Tyrrell: That part south of US 64.~~

~~Wilkes: All of the county except game lands.~~

## *PROPOSED RULES*

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(F) (~~G~~) Wednesday to Saturday of the week following Thanksgiving in all of ~~Alamance, Camden, Caswell, Chatham, Durham, Granville, Cumberland, Greene, Lee, Orange, Pasquotank, Person, Rockingham, Wake, and Wilson~~ Counties and in the following parts of counties:

~~Columbus: That part west of a line formed by US 74, SR 1005, and SR 1125.~~

~~Cumberland: That part east of I-95 and south of NC 24.~~

~~Currituck: That part north and west of the Intracoastal Waterway.~~

~~Franklin: That part west of US 1.~~

~~Guilford: That part north of a boundary formed by I-40 and I-85.~~

~~Johnston: That part north of US 70 and or west of I-95.~~

~~Moore: That part south of NC 241, All of the county except on game lands.~~

~~Nash: That part south of US 64.~~

~~Perquimans: That part south of US 17 and east of Perquimans River.~~

~~Randolph: That part south of US 64 and west of US 220, except on game lands.~~

~~Richmond: That part east of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line, except on game lands.~~

~~Robeson: That part east of I-95.~~

~~Stanly: That part west of US 52.~~

~~Tyrrell: That part south of US 64.~~

~~Washington: That part east of NC 32 and south of US 64.~~

~~Wayne: That part north of US 70.~~

(G) (~~H~~) Wednesday of the week following Thanksgiving to Saturday of next succeeding week in all of ~~Alamance, Caswell, Chatham, Franklin, Guilford, Lee, Orange, Person, Randolph, Rockingham, and Hyde, Vance and Warren~~ Counties and in the following parts of counties:

~~Anson: All of the county except game lands.~~

~~Cabarrus: That part east of US 52.~~

~~Carteret: All of the county except game lands.~~

~~Chowan: That part north of US 17.~~

~~Columbus: That part west of US 74, SR 1005, and SR 1125.~~

~~Currituck: That part south and east of the Intracoastal Waterway, except the Outer Banks.~~

~~Davidson: That part south of I-85, except on game lands.~~

~~Durham: All of the county except Butner-Falls of Neuse Game Land.~~

~~Edgecombe: That part south of US 64.~~

~~Franklin: That part east of US 1.~~

~~Granville: All of the county except Butner-Falls of Neuse Game Land.~~

~~Johnston: That part south of US 70 and east of I-95.~~

~~Lenoir: That part west of NC 11.~~

~~Montgomery: All of the county except on game lands.~~

~~Nash: That part north of US 64.~~

~~Richmond: That part west of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line.~~

~~Robeson: That part east of I-95.~~

~~Rowan: That part east of US 52, except on game lands.~~

~~Stanly: That part east of US 52, except game lands.~~

~~Washington: That part west of NC 32 and south of US 64.~~

~~Wayne: That part south of US 70.~~

(H) (~~I~~) Monday of Thanksgiving week to the third Saturday after Thanksgiving Day in that part of Buncombe County east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of SR 3503, NC 280 and SR 3501.

(I) (~~J~~) Wednesday of the week following Thanksgiving to January 1 in all of Brunswick, Hertford, Gates, Northampton, ~~and Pitt, and Warren~~ Counties, and in the following parts of counties:

~~Beaufort: All of the county except game lands.~~

~~Bertie: All of the county except Roanoke River Wetlands and Roanoke River National Wildlife Refuge.~~

~~Bladen: All of the county except game lands.~~

~~Chowan: That part south of US 17.~~

~~Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.~~

~~Craven: All of the county except game lands.~~

~~Duplin: All of the county except game lands.~~

Edgecombe: That part north of US 64.

Halifax: All of the county except Roanoke River Wetlands.

Hyde: All of the county except game lands.

Jones: All of the county except game lands.

Lenoir: That part east of NC 11.

Martin: All of the county except Roanoke River Wetlands.

New Hanover: That part north of US 74.

Onslow: All of the county except game lands.

Pamlico: All of the county except game lands.

Pender: All of the county except game lands.

Perquimans: All of the county except that part that lies both south of US 17 and east of the Perquimans River.

Sampson: That part south of NC 24.

(J) The second Wednesday after Thanksgiving to the third Saturday after Thanksgiving in all of Alexander, Davie, Iredell, Stokes, Surry, and Wilkes Counties.

(K) The third Friday after Thanksgiving to the third Saturday after Thanksgiving in all of Alleghany, Ashe, Burke, Caldwell, Cleveland, Forsyth, McDowell, Rutherford, Watauga, and Yadkin Counties.

(L) In those counties or parts of counties listed in Paragraph (b)(2)(I), except on game lands, one antlerless deer may be taken during that part of the regular gun season in which no other either sex season is open and must be tagged with the antlerless only deer tag.

(3) Game Lands Either-Sex Hunts. On the hunt dates indicated, deer of either sex may be taken by permittees engaged in managed hunts conducted on game lands in accordance with 15A NCAC 10D .0003 ~~(d)~~ (e) (4) and (5).

(c) Open Seasons (Bow and Arrow)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:

(A) Monday on or nearest September 10 to the fourth Saturday thereafter in the counties and parts of counties having the open season for male deer specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land.

(B) Monday on or nearest September 10 to the second Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (B) of Subparagraph (b)(1) of this Rule.

(C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (C) of Subparagraph (b)(1) of this Rule.

(D) Monday on or nearest September 10 to the third Saturday before Thanksgiving in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

(A) Dogs may not be used for hunting deer during the bow and arrow season.

(B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.

(C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle-Loading Rifles and Shotguns)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms during the following seasons:

(A) Monday on or nearest October 8 to the following Saturday in the counties and parts of counties having the open seasons for male deer specified by Items (A) and (C) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land.

(B) Monday to Saturday of the week preceding Thanksgiving week in the counties and parts of counties having the open seasons for male deer specified by Item (B) of Subparagraph (b)(1) of this Rule.

(C) Monday to Saturday of the second week before Thanksgiving week in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.



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### (2) Restrictions

(A) Only male deer with visible antlers may be taken during the muzzle-loading firearms season except that:

(i) On the last day of the established muzzle-loading firearms season a maximum of two antlerless deer may be substituted for an equal number of antlered deer when taken in that part of any county listed in this Subparagraph that has an established gun either-sex deer season:

Alexander	Catawba	McDowell
Alleghany	Cleveland	Mitchell
Ashe	Davie	Rutherford
Avery	Forsyth	Stokes
Burke	Iredell	Surry
Caldwell	Mecklenburg	Wilkes

(ii) In those areas with an established gun either-sex deer season in counties or parts of counties listed in Paragraph (b)(1)(A) or (D) of this Rule a maximum of two antlerless deer may be substituted for an equal number of antlered deer and one additional antlerless deer is permitted without substitution.

(A) Deer of either sex may be taken during muzzle-loading firearms season in those counties or parts of counties listed in Parts (A) and (D) of Subparagraph (b)(1) of this Rule and deer of either sex may be taken on the last day of muzzle-loading firearms season in those counties or parts of counties listed in Part (B) and (C) of Subparagraph (b)(1) of this Rule.

(B) Dogs may not be used for hunting deer during the muzzle-loading firearms seasons.

(C) Pistols may not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) Bag Limits: Daily, two; possession, five; one of which must be antlerless; Season, five; one of which must be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin.

(1) Male Deer With Visible Antlers. Daily, two; possession, four; season, four.

(2) Antlerless Deer. Where antlerless deer may be lawfully taken, a maximum of two antlerless deer may be substituted for an equal number of antlered deer in the limits contained in Subparagraph (1) of this Paragraph. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin.

(3) In those areas with an established gun either-sex deer season in counties and parts of counties listed in Paragraph (b)(1)(A) or (D) of this Rule, one additional antlerless deer is permitted without substitution when taken during a gun either-sex, bow and arrow or muzzle-loading firearms season. In those counties or parts of counties listed in Paragraph (b)(2)(k), this one additional antlerless deer may be taken during any part of the gun deer season except on game lands where this deer cannot be taken during any part of a gun season not open to either sex deer hunting. When taken during the regular gun season this additional antlerless deer must be tagged with the antlerless only deer tag.

(f) Kill Reports. The carcass of each deer shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

*Statutory Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.*

### .0209 WILD TURKEY (BEARDED TURKEYS ONLY)

(a) Open Season: Second Saturday in April to Saturday of the fourth week thereafter on bearded turkeys in the following counties: Alleghany, Ashe, ~~Buncombe~~, Caswell, Cherokee, Clay, Durham, Graham, Granville, Haywood, Henderson, Hyde, Macon, ~~McDowell~~, ~~Mitchell~~, Orange, Person, Polk, Rockingham, ~~\*\* Scotland~~, Swain, Transylvania, and in the following portions of counties:

Alamance: All of the county except that part south of I-85 and west of NC 87.

Anson: That part east of US 52 and north of US 74.

~~\*\* Bertie~~: That part west of a line formed by NC 45 from the Hertford County line to Colerain, NC 42 to Powellsville, US 13 to US 17 South, US 17 South to SR 1500, SR 1500 to NC 308, and NC 308 to the Washington County line.

Bladen: That part south of NC 701 and east of a line formed by NC 210, NC 53, SR 1730.

Brunswick: That part north of US 74-76.

Buncombe: All of the county except that part north and east of a boundary formed by US 19 23, I-240, and I-40.

Burke: That part north of I-40.

~~Caldwell: That part west of US 321.~~

Carteret: That part west of US 70 and north of NC 24.

Chatham: That part north of US 64.

Chowan: That part south of US 17.

Columbus: That part south of US 74 and west of NC 410 and that part north of NC 87.

Craven: That part west of US 70, and south of SR 1101 and that part north of the Neuse River, south of a line formed by US 17 and US 17 Business, and east of a line formed by SR 1440 and SR 1441.

\*\* Halifax: That part north of NC 903 and east of I-95.

Hoke: That part south and west of NC 211.

Jackson: That part south of US 74 except the portion bounded on the north by NC 281, on the west by NC 107, and on the south by US 64.

Johnston: That part south of US 70 and I-95 and east of US 701.

Madison: All of the county except that part east of SR 1434 and NC 212, north of SR 1318, US 23 and SR 1503.

\*\* Martin: That part north of a boundary formed by US 64 from the Washington County line to Williamston, north of NC 125 from Williamston to the junction with NC 142, and north of NC 142 to the Edgecombe County line.

McDowell: That part north of US 70 and that part south of I-40.

Mitchell: That part north and west of a boundary formed by NC 197, NC 226, and NC 261.

Montgomery: That part south of NC 24 27. All of the county except that part North of NC 24 27 and east of NC 134.

\*\* Moore: That part south of NC 211.

Northampton: That part south of a boundary formed by US 158 from the Halifax County line to Jackson, NC 305 from Jackson to Rich Square, US 258 from Rich Square to NC 308, and NC 308 to the Bertie County line.

Onslow: All of the county except that part east of a line formed by US 17, SR 1434 and SR 1442.

Pender: That part west of US 421.

Perquimans: That part south of US 17.

\*\* Richmond: That part north of US 74.

Robeson: That part east of I-95 and south of US 74.

Rutherford: That part west of US 221.

Surry: That part west of I-77.

~~Swain: All of the county except that part south of US 19 and west of NC 28.~~

~~Transylvania: All of the county except that part west of US 178, and south of US 64.~~

Watauga: That part north and east of US 321.

Wilkes: That part north of NC 268.

Yancey: That part north of US 19E and east and north of US 19W.

**\*\*The Sandhills Game Land in Richmond, Scotland, and Moore Counties and the Roanoke River Wetlands in Bertie, Halifax, and Martin Counties are closed to turkey hunting except by holders of special permits authorizing turkey hunting. Such permits are issued by authorized representatives of the Wildlife Resources Commission.**

(b) Bag Limits: Daily, one; possession, two; season, two.

(c) Dogs Prohibited. It is unlawful to use dogs for hunting turkeys.

(d) Kill Reports. The carcass of each wild turkey shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

*Statutory Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2.*

#### SUBCHAPTER 10C - INLAND FISHING REGULATIONS

##### .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. On game lands located in western North Carolina certain waters are ~~classified and~~ designated as public mountain trout waters and classified as wild trout waters or hatchery supported waters. For specific classifications see Subparagraphs (1) and (2) of Paragraph (a) of this Rule. Other streams, portions of streams, and bodies of water which are not located on game lands are designated within this Rule as public mountain trout waters and are classified as hatchery supported trout waters or wild trout waters. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

(1) Hatchery Supported Trout Waters. The hatchery supported public mountain trout waters are designated in this Subparagraph under the counties where located. Where specific watercourses are listed indentation indicates the watercourse named is tributary to the next preceding watercourse named and not so indented. The designation applies to the entire watercourse or impoundment named, including tributaries when on game lands,

## PROPOSED RULES

except as otherwise indicated in parentheses following the name. Other clarifying information may also be included parenthetically:

(A) Alleghany County:

New River (not trout water)  
Little River (Whitehead to McCann Dam)  
Crab Creek  
Brush Creek (except where posted against trespass)  
Little Pine Creek  
Big Pine Creek  
Little Glade Creek  
Laurel Branch  
Big Glade Creek  
Bledsoe Creek  
Pine Swamp Creek  
South Fork Little River (except where posted against trespass)  
South Fork New River (not trout water)  
Prather Creek  
Cranberry Creek  
Piney Fork  
Meadow Fork  
Yadkin River (not trout water)  
Roaring River (not trout water)  
East Prong Roaring River (that portion on Stone Mountain State Park) Delayed Harvest Waters regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.  
Stone Mountain Creek

(B) Ashe County:

New River (not trout waters)  
North Fork New River (Watauga Co. line to Sharp Dam)  
Helton Creek (Virginia State line to New River)  
Big Horse Creek (SR 1361 bridge to Tuckerdale)  
Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)  
Big Laurel Creek  
Three Top Creek (portion not on game lands)  
Hoskins Fork (Watauga County line to North Fork New River)  
South Fork New River (not trout waters)  
Cranberry Creek (Alleghany County line to New River)  
Nathans Creek  
Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)  
Trout Lake  
Roan Creek  
North Beaver Creek

South Beaver Creek (headwaters to Ashe Lake)

Pine Swamp Creek (all forks)

Old Fields Creek

Call Creek (West Prong Old Fields Creek)

Mill Creek (except where posted against trespass)

(C) Avery County:

Nolichucky River (not trout waters)  
North Toe River (headwaters to Mitchell County line, except where posted against trespass)  
Plumtree Creek  
Roaring Creek  
Squirrel Creek  
Horse Creek  
Elk River (SR 1306 crossing to Tennessee State line)  
Elk River (Lees-McRae College boundary line to NC 194 bridge at Heaton, except where posted against trespass)

~~Cranberry Creek~~

Catawba River (not trout water)

Johns River (not trout water)

Wilson Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (4) of Paragraph (a) of this Rule]

Rockhouse Creek

Gragg Prong

Webb Prong

~~Andrews Creek~~ Buck Timber Creek  
[not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

~~Carey~~ Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Boyde Coffey Lake

Archie Coffey Lake

Linville River (Sloop Dam to Blue Ridge Parkway boundary line)

Milltimber Creek

Linville River [Land Harbor line (below dam) to Ben Aldridge line, except Bob Miller property]

(D) Buncombe County:

~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~

French Broad River (not trout water)

Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)



- Dillingham Creek (Corner Rock Creek to Big Ivy Creek)  
 Stony Creek  
 Mineral Creek  
~~Carter Creek (portion not on game lands)~~  
 Corner Rock Creek  
 Reems Creek (Woodfin Watershed dam to US 19-23 bridge, except where posted against trespass)  
 Swannanoa River (SR 2702 bridge near Ridgecrest to Sayles Bleachery in Asheville, except where posted against trespass)  
Bent Creek  
Lake Powhatan  
 Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:  
 Catawba River (not trout water)  
 South Fork Catawba River (not trout water)  
 Henry Fork (lower Morganton watershed line downstream to SR 1919 at Ivy Creek)  
 Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.  
 Johns River (not trout water)  
 Parks Creek (not trout water)  
 Carroll Creek (game lands above SR 1405)  
 Linville River (first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)
- (F) Caldwell County:  
 Catawba River (not trout water)  
 Johns River (not trout water)  
 Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)  
 Estes Mill Creek (not trout water)  
 Thorpe Creek (falls to NC 90 bridge)  
 Mulberry Creek (not trout water)  
 Boone Fork (not Hatchery Supported trout water)  
 Boone Fork Pond
- (G) Cherokee County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~  
 Hiwassee River (not trout water)  
~~Shuler Creek (headwaters to Tennessee line, except where posted against trespass)~~  
~~North Shoal Creek (Crane Creek) (headwaters to SR 1325)~~
- Persimmon Creek  
 Davis Creek  
~~Bald Creek~~  
 Beaver Dam Creek (headwaters to SR 1326 bridge)  
 Valley River  
 Hyatt Creek  
 Webb Creek  
 Junaluska Creek (bridge at U.S. Forest Service road 440, Section No. 4, to Valley River)
- (H) Clay County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~  
 Hiwassee River (not trout water)  
 Fires Creek (bear sanctuary line to SR 1300)  
 Tusquitee Creek (headwaters to lower SR 1300 bridge)  
~~Tuni Creek~~  
Chatuge Lake (not trout water)  
 Shooting Creek (headwaters to US 64 bridge at SR 1338)  
 Hothouse Branch  
 Vineyard Creek
- (I) Graham County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~  
 Little Tennessee River (not trout water)  
 Calderwood Reservoir (Cheoah Dam to Tennessee State line)  
 Cheoah River (not trout water)  
 Yellow Creek  
 West Buffalo Creek  
Santeelah Reservoir (not trout water)  
Santeelah Creek (Johns Branch to mouth)  
~~Huffman Creek (Little Buffalo Creek)~~  
 Squalla Creek  
~~South Fork Squalla Creek~~  
 Big Snowbird Creek (old railroad junction to mouth)  
~~Mountain Creek (headwaters to SR 1138 bridge)~~  
 Long Creek (headwaters to lower bridge on SR 1127) (portion not on game lands)  
 Tulula Creek (headwaters to lower bridge on SR 1211)  
 Franks Creek  
 Cheoah Reservoir  
Fontana Reservoir (not trout water)  
 Stecoah Creek  
 Sawyer Creek  
 Panther Creek
- (J) Haywood County:

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~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~

Pigeon River (not trout water)

Hurricane Creek

Cold Springs Creek

Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)

Jonathans Creek - upper [SR 1307 bridge (west) to SR 1302 bridge]

Hemphill Creek

West Fork Pigeon River (headwaters to Champion International property line)

### (K) Henderson County:

~~All streams located on game lands, except those listed in Subparagraph (2) Paragraph (a) of this Rule.~~

Broad River (not trout water)

Rocky Broad River (one-half mile north of Bat Cave to Rutherford County line)

Green River - upper (mouth of Bob Creek to mouth of Rock Creek)

Green River - lower (Lake Summit Dam to Polk County line) [not hatchery supported trout water. See Subparagraph (a)(2) of this Rule.]

~~Camp Creek (Polk County line to SR 1919)~~ (SR 1919 to Polk County line)

Big Hungry River

Little Hungry River

### (L) Jackson County:

~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~

Tuckasegee River (confluence with West Fork Tuckasegee River to bridge at Wilmont)

Scott Creek (entire stream, except where posted against trespass)

~~Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)~~

~~North Fork Scott Creek~~

Savannah Creek (Headwaters to Bradley's Packing House on NC 116)

Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)

Cullowhee Creek (Tilley Creek to Tuckasegee River, except portion posted for Western Carolina University outdoor classroom)

Bear Creek Lake

Wolf Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Wolf Creek Lake

Balsam Lake

Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Tanasee Creek Lake

West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)

Little Glenville Lake

Shoal Creek (Glenville Reservoir pipeline to mouth)

### (M) Macon County:

~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~

Little Tennessee River (not trout water)

Nantahala River (Nantahala Dam to Swain County line) Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.

Queens Creek Lake

~~Roaring Fork Creek (US Forest Service property line to mouth)~~

Burningtown Creek

Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672)

Ellijay Creek (except where posted against trespass)

Skitty Creek (not trout water)

Cliffside Lake

Cartoogechaye Creek (US 64 bridge to Little Tennessee River)

Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)

Savannah River (not trout water)

Big Creek (base of falls to Georgia State line)

### (N) Madison County:

~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~

French Broad River (not trout water)

Shut-In Creek

Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line)

Meadow Fork Creek (except Little Creek)

Roaring Fork

~~Little Creek~~

Max Patch Pond

Mill Ridge Pond

Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)

- Shelton Laurel Creek (headwaters to NC 208 bridge)  
~~Big Creek (headwaters to lower game land boundary)~~  
 Mill Creek  
 Spillcorn Creek  
 Puncheon Fork (Hampton Creek to Big Laurel Creek)
- (O) McDowell County:  
 Catawba River (not trout water)  
 Buck Creek (not trout water)  
 Little Buck Creek (game land portion)  
 Curtis Creek (fish barrier to US 70 bridge)  
 Newberry Creek (game land portion)  
 North Fork Catawba River (headwaters to North Cove School, SR 1569)  
 Armstrong Creek (Cato Toller line downstream to upper Greenlee line)  
 Mill Creek (upper railroad bridge to Old Fort Dam, except where posted against trespass)
- (P) Mitchell County:  
 Nolichucky River (not trout water)  
 Big Rock Creek (headwaters to fishing club property above A.D. Harrel farm)  
 Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)  
 Cane Creek (SR 1219 to Nolichucky River)  
 Grassy Creek (East Fork Grassy Creek to mouth)  
 East Fork Grassy Creek  
 North Toe River (Avery County line to SR 1121, Altapass Road)
- (Q) Polk County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~  
 Broad River (not trout water)  
 North Pacolet River (Pacolet Falls to NC 108 bridge)  
 Fork Creek (Fork Creek Church on SR 1128 to North Pacolet River)  
 Big Fall Creek (portion below water supply reservoir)  
 Green River (~~Henderson County line~~ Fishstop Falls to mouth of Brights Creek)  
~~Oatin Creek (Grease Creek) (Upper Hulbert Cove Road bridge on SR 1142 to existing Lake Adger water level, except where posted against trespass)~~  
 Laurel Branch  
 Little Cove Creek  
 Big Cove Creek
- ~~Rixhaven Creek~~  
 Camp Creek [Henderson County line (top of falls) to Green River]  
 Fulloms Creek (SR 1154 to Green River)
- (R) Rutherford County:  
 Broad River (not trout water)  
 Rocky Broad River (Henderson County line to head of rapids at Goose Pond Hole, except where posted against trespass)
- (S) Stokes County:  
 Dan River (lower Flippin property line below SR 1416 to 200 yards downstream from end of SR 1421)
- (T) Surry County:  
 Yadkin River (not trout water)  
 Ararat River (SR 1727 downstream to SR 1759) Delayed Harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.  
 Stewarts Creek (not trout water)  
 Pauls Creek (Virginia State line to SR 1625)  
 Fisher River (Cooper Creek) (Virginia State line to NC 89 bridge)  
 Little Fisher River (Virginia State line to NC 89 bridge)  
 Merritt Creek
- (U) Swain County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~  
 Little Tennessee River (not trout water)  
 Calderwood Reservoir (Cheoah Dam to Tennessee State line)  
 Cheoah Reservoir  
 Tuckasegee River (not trout water)  
 Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)  
 Oconaluftee River (not trout water)  
 Connelly Creek  
 Alarka Creek  
 Nantahala River (Macon County line to existing Fontana Lake water level)
- (V) Transylvania County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~  
 French Broad River (junction of west and north forks to US 276 bridge)  
 Little River (not trout water)  
 Laurel Creek (headwaters to existing Cascade Lake water level)  
 Davidson River (game land boundary to Avery Creek to Ecusta intake)



East Fork French Broad River (Gladys Branch to French Broad River)  
~~Middle Fork French Broad River~~  
 West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks)  
 Savannah River (not trout water)  
 Horsepasture River (Jackson County line to existing Lake Jocassee water level)  
 Thompson River (SR 1152 to South Carolina state line, except where posted against trespass)  
~~Gumbo Bottom Creek (SR 1152 to Thompson River)~~  
 (W) Watauga County:  
     New River (not trout waters)  
     North Fork New River (headwaters to Ashe County line)  
     South Fork New River (not trout water)  
         Meat Camp Creek  
         Norris Fork Creek  
         Howards Creek (downstream from lower falls)  
     Middle Fork New River (Lake Chetola Dam to South Fork New River)  
     Yadkin River (not trout water)  
         Stony Fork (headwaters to Wilkes County line)  
         Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)  
     Watauga River (SR 1559 to SR 1114 bridge)  
         Beech Creek  
         Buckeye Creek Reservoir  
         Coffee Lake  
         Laurel Creek  
         Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)  
         Dutch Creek (second bridge on SR 1134 to mouth)  
         Crab Orchard Creek  
         Boone Fork (headwaters to SR 1562)  
 (X) Wilkes County:  
     Yadkin River (not trout water)  
     Roaring River (not trout water)  
     East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) (Delayed harvest regulations apply to portion on Stone Mountain State Park) See Subparagraph (5) of Paragraph (a) of this Rule.  
     Stone Mountain Creek (Alleghany County line to Bullhead Creek)  
     Middle Prong Roaring River (headwaters to second bridge on SR 1736)

Harris Creek (end of SR 1716 to mouth)  
 Pell Branch Pond  
 Boundary Line Pond  
 West Prong Roaring River (not trout waters)  
 Pike Creek  
 Pike Creek Pond  
 Reddies River (not trout water)  
     Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)  
     South Fork Reddies River (headwaters to NC 16 bridge)  
     North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)  
     North Prong Reddies River (Darnell Creek) (downstream ford on SR 1569 to confluence with North Fork)  
     Lewis Fork Creek (not trout water)  
         South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)  
         Fall Creek (except portions posted against trespass)  
         Stony Fork Creek (headwaters to Mt. Zion bridge near intersection of SR 1155 and SR 1167)  
 (Y) Yancey County:  
     Nolichucky River (not trout water)  
     Cane River (Cattail Creek to Bowlens Creek)  
     Bald Mountain Creek (except portions posted against trespass)  
~~Bald Creek (not trout water)~~  
~~Lickskillet Creek~~  
~~Elk Wallow (Schroone Creek)~~  
     Indian Creek (not trout water)  
     Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)  
     South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)  
 (2) Wild Trout Waters. All designated public mountain trout waters located on game lands ~~in and east of Yancey, McDowell and Rutherford Counties~~ are classified as wild trout waters unless classified otherwise. The trout waters listed in this Subparagraph are also classified as wild trout waters. On game lands all tributaries to wild trout waters are also classified as wild trout waters.  
 (A) Alleghany County:  
     Ramey Creek (entire stream)  
 (B) Ashe County:

- Big Horse Creek (Virginia State Line to SR 1361 bridge) Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.
- (C) Avery County:  
 Birchfield Creek (entire stream)  
 Buck Timber Creek (game land boundary downstream to its mouth at Wilson Creek, excluding Flat Land Branch)  
 Cary Flat Branch (headwaters to upper game land boundary, excluding Archie Coffey and Boyde Coffey Lakes, and from lower game land boundary to mouth at Buck Timber Creek)  
 Cow Camp Creek (entire stream)  
 Cranberry Creek (entire stream)  
 Horse Creek (entire stream)  
 Jones Creek (entire stream)  
 Kentucky Creek (entire stream)  
 North Harper Creek (entire stream) (non-game land portions)  
 Rockhouse Creek (entire stream)  
 South Harper Creek (entire stream)  
 Wilson Creek (upper Bill Crump property line downstream to the upper game land boundary) (Catch and Release Artificial Lures Only regulations apply. See Subparagraph (a)(3) of this Rule.)
- (D) Buncombe County:  
 Carter Creek (game land portion) (Catch and Release Artificial Lures only regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.
- (E) Burke County:  
 All waters located on South Mountain State Park, except the main stream of Jacob Fork between the mouth of Shinnay Creek and the lower park boundary where delayed harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.
- (F) Caldwell County:  
 Buffalo Creek (headwaters to lower Dahl property line)  
 Joe Fork (Watauga County line to falls)  
 Rockhouse Creek (entire stream)
- (G) Cherokee County:  
 Bald Creek (entire stream)  
 North Shoal Creek (Crane Creek) (headwaters to SR 1325)  
 Shuler Creek (headwaters to Tennessee State line, except where posted against trespass)
- (H) ~~(G)~~ Clay County:  
 Tuni Creek (entire stream)  
 Buck Creek (game land portion)
- Fires Creek (game land portion)
- (I) ~~(H)~~ Graham County:  
 Big Snow Bird Creek (upstream from old railroad junction)  
 Slick Rock Creek (entire stream)  
 Huffman Creek (Little Buffalo Creek) (entire stream)  
 Mountain Creek (game lands boundary to SR 1138 bridge)  
 Sawyer Creek (entire stream)  
 South Fork Squalla Creek (entire stream)
- (J) Haywood County:  
 Big Creek (game land portion)  
 Big East Fork Pigeon River (game land portion)  
 Cataloochee Creek (game land portion)  
 Little East Fork Pigeon River (game land portion)  
 Middle Prong West Fork Pigeon River
- (J) Henderson County:  
 Big Creek (entire stream)  
 Bradley Creek (entire stream)  
 Fletcher Creek (entire stream)  
 South Mills River (game land portion)  
 Green River (Lake Summit Dam to Polk County line)
- (K) Jackson County:  
 Caney Fork Creek (game land portion)  
 Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)  
 Gage Creek (entire stream)  
 North Fork Scott Creek (game lands boundary to mouth)  
 Tanasee Creek (entire stream)  
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)  
 Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (L) Macon County:  
 Nantahala River (upstream from bear sanctuary line at Rainbow Springs)  
 Roaring Fork Creek (Game lands boundary to mouth)
- (M) Madison County:  
 Big Creek (headwaters to lower game land boundary)  
 Little Creek (entire stream)
- (N) ~~(M)~~ Mitchell County:  
 Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)  
 Little Rock Creek (headwaters to Green Creek Bridge, except where posted against trespass)  
 Wiles Creek (game land boundary to mouth)
- (O) Polk County:

- Big Fall Creek (portion above water supply reservoir)  
Green River (Henderson County line to Fishstop Falls)  
Little Cove Creek (entire stream)  
(P) ~~(N)~~ Transylvania County:  
Avery Creek (entire stream)  
Bradley Creek (entire stream)  
Davidson River (upstream of Avery Creek, excluding Grogan Creek) [Catch and Release Fly Fishing Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]  
Looking Glass Creek (entire stream)  
North Fork Broad River [game land portion upstream from Long Branch (Courthouse Creek)]  
Middle Fork French Broad River (entire stream)  
South Fork Mills River (entire stream)  
Whitewater River (downstream from Silver Run Creek to South Carolina State line)  
(Q) ~~(O)~~ Watauga County:  
Watauga River (Avery County line to SR 1559)  
Boone Fork (Blue Ridge Parkway boundary line to Watauga River) [Catch and Release Fly Fishing Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]  
Howards Creek (headwaters to lower falls)  
(R) ~~(P)~~ Wilkes County:  
Big Sandy Creek (portion on Stone Mountain State Park)  
Garden Creek (portion on Stone Mountain State Park)  
Harris Creek and tributaries [portions on Stone Mountain State Park] [Catch and Release Artificial Lures Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]  
Widow Creek (portion on Stone Mountain State Park)  
(S) ~~(Q)~~ Yancey County:  
Lickskillet Creek (entire stream)  
Middle Creek (game land boundary to mouth)  
Rock Creek (game land boundary to mouth)  
South Toe River (game land boundary downstream to Clear Creek)  
(3) Catch and Release Artificial Lures Only. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:  
Harris Creek and tributaries (portions on Stone Mountain State Park, Wilkes County)  
Big Horse Creek, excluding tributaries (Virginia state line to SR 1361 bridge, Ashe County)  
Three Top Creek (portion located on Bluff Mountain Game Lands, Ashe County)  
Wilson Creek (~~headwaters to game lands boundary above Edgemont, excluding tributaries, (game lands portion, including tributaries, Avery County)~~)  
Upper Creek, Yancey County  
Lower Creek, Yancey County  
Tuckasegee River including all tributaries above the Clarke property, Jackson County  
Flat Creek, Jackson County  
Carter Creek (game lands portion), Buncombe County  
(4) Catch and Release/Artificial Flies Only. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:  
Boone Fork (portion between Blue Ridge Parkway boundary and the Watauga River, Watauga County)  
South Toe River (portion from the concrete bridge above Black Mountain Campground downstream to the game land boundary, excluding Camp Creek and Neals Creek, Yancey County)  
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek, Avery County)  
Davidson River (headwaters to Avery Creek excluding Avery Creek, Looking Glass Creek, and Grogan Creek, Transylvania County)  
(5) Delayed Harvest. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 March and the Friday before the first Saturday in June, inclusive, only artificial lures with one single hook may be used. No fish may be harvested or be



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in possession while fishing these streams during this time. On the first Saturday in June these streams revert to Hatchery Supported Waters regulations:

Ararat River (SR 1727 downstream to SR 1759, Surry County)

East Prong Roaring River (~~portion on Stone Mountain State Park~~, (from Bullhead Creek downstream to the lower Stone Mountain State Park boundary, Wilkes County)

~~Jacobs Jacob~~ Fork (Shinny Creek to lower South Mountain State Park boundary, Burke County)

Nantahala River (portion from Whiteoak Creek to the ~~powerhouse~~, Nantahala Power and Light power house discharge canal, Swain County)

(b) Fishing in Trout Waters

- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so desig-

nated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0004(b)(1)].

- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (3) and (4) of Paragraph (a) of this Rule, the following rules apply to fishing in wild trout waters.
- (A) Open Season. There is a year round open season for the licensed taking of trout.
- (B) Creel Limit. The daily creel limit is four trout.
- (C) Size Limit. The minimum size limit is seven inches.
- (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess live or preserved bait while fishing wild trout waters.
- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

*Statutory Authority G.S. 113-134; 113-272; 113-292.*

### .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

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

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in. (exc. 15)	All year (exc. 2)
Hatchery Supported Trout Waters	7	None	All year, except March 1 to 7:00 a.m. on first Saturday in April (excs. 2 & 3)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (excs. 9 & 10)	None (exc. 9)	ALL YEAR
Sauger	8	15 in.	ALL YEAR

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Black Bass:			
Largemouth	5 (exc. 10)	14 in. (excs. 4, 8 & 11)	ALL YEAR (exc. 13)
Smallmouth and Spotted	5 (exc. 10)	12 in. (excs. 4, 8 & 11)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spot- ted or Speckled)	None	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	<del>None</del> 5	<del>14</del> 18 in.	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1 & 6)	16 in. (excs. 1, 6 & 12)	ALL YEAR (excs. 6 & 16)
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 5 & 14)	None (exc. 14)	ALL YEAR (exc. 5)
NONGAME FISHES	None	None	ALL YEAR (exc. 7)

### (b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (3) Under an agreement with Tennessee, the minimum size limit on trout in Calderwood Reservoir is seven inches.
- (4) Bass taken from streams designated as public mountain trout waters or from Calderwood Reservoir may be retained without restriction as to size limit.
- (5) On Mattamuskeet Lake, special federal regulations apply.
- (6) In the inland fishing waters of Cape Fear, Neuse and Tar Rivers and their tributaries extending upstream to the first impoundment, the daily creel limit for striped bass and their hybrids is one fish and the minimum length limit is 18 inches. In the Roanoke River up to the first impoundment, from July 1 through March 31 and June 1 through June 30 the daily creel limit for ~~stripped~~ striped bass is one fish and the minimum length limit is 18 inches; from April 1 to May 31 the daily creel limit is three fish, no fish between the lengths of 22 inches and 27 inches may be retained, and the minimum length limit is 16 inches, except no fish may be retained in Roanoke River and its tributaries including Cashie, Middle and Eastmost rivers from May 1 to December 31, 1991.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit.

The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, and in Currituck Sound and tributaries north of Wright Memorial Bridge; in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124. In and west of Madison, Buncombe, Henderson and Polk Counties the minimum size limit is 12 inches. In B. Everett Jordan Reservoir a minimum size limit of 16 inches, with no exception, applies to largemouth bass. In Falls of Neuse Reservoir, east of SR 1004, Sutton Lake and Tuckertown Lake no black bass between the lengths of 12 inches and 16 inches may be retained, and the minimum size limit for black bass is 16 inches, except that the daily creel may contain two black bass of less than 12 inches in length. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass.

- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The creel limit for black bass and walleye taken from Calderwood Reservoir is 10.
- (11) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
  - (A) Cane Creek Lake in Union County; and
  - (B) Lake Thom-A-Lex in Davidson County.
- (12) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (13) In Cane Creek Reservoir (Orange County) the season for taking largemouth bass is closed.
- (14) In Lake Tillery, Falls Lake, Badin Lake, and Tuckertown Lake a daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie.
- (15) In Slick Rock Creek the minimum size is 7 inches for brook trout and 10 inches for brown and rainbow trout.
- (16) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of ~~is closed when adjacent joint or coastal fishing waters are closed to hook and line fishing for striped bass by the Marine Fisheries Commission in adjacent joint or coastal fishing waters.~~

*Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.*

#### SUBCHAPTER 10D - GAME LANDS REGULATIONS

##### .0003 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed

after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.



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No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. No person shall take or attempt to take any game birds or game animals attracted to such foods.

No live wild animals or wild birds shall be removed from any game land.

(e) Hunting Dates:

- (1) Doves may be taken on the following game lands and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season:

Buncombe County--Browntown Farms Game Land

Guilford County--Guilford County Farm Game Land

Lenoir County--Caswell Farm Game Land

Wayne County--Cherry Farm Game Land

- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:

Ashe County--Carson Woods Game Land

Bertie County--Bertie County Game Lands

Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On ~~the Breece Tract~~ and the Singletary Tract deer and bear may be taken only by still hunting. Deer of either sex may be taken on the first Wednesday after Thanksgiving and on the second Saturday after Thanksgiving.)

Caswell County--Caswell Game Land (~~That part designated and posted as a "safety zone" is closed to all hunting and trapping, and entry upon such area for any purpose, except by authorized personnel in the performance of their duties, is prohibited. On areas posted as "restricted zones" hunting is limited to bow and arrow.~~)

Catawba and Iredell Counties--Catawba Game Land (No deer may be taken from

the tract known as Island Point and deer may be taken with bow and arrow only from the tract known as Molly's Backbone.)

Lenoir County--H.M. Bizzell, Sr., Game Land

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Deer of either sex may be taken on Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving and on the second through the third Saturday after Thanksgiving.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.) Wild turkey hunting is by permit only.

Robeson County--Bullard and Branch Hunting Preserve Game Land

Stokes County--Sauratown Plantation Game Land

Yadkin County--Huntsville Community Farms Game Land

- (3) Any game may be taken on the following game lands during the open season, except that:

(A) Bears may not be taken on lands designated and posted as bear sanctuaries;

- (B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries located in and west of the counties of Madison, Buncombe, Henderson and Polk;
- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
- (i) Except for the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
  - (ii) In the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
- (D) On Croatan, Goose Creek, New Hope and Shearon Harris Game Lands waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons; except that outside the posted waterfowl impoundments on Goose Creek Game Land hunting any waterfowl in season is permitted any week day during the last 10 days of the regular duck season as established by the U.S. Fish and Wildlife Service; On the Pamlico Point, Campbell Creek, and Spring Creek impoundments a special permit is required for hunting on those opening and closing days of the waterfowl season as well as on those Saturdays that fall after November 1 of the season and on Thanksgiving and New Year's day;
- (E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons;
- (F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;
- (G) On New Lake, Pungo River, and Gull Rock Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (H) ~~(G)~~ On Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons;
- (I) ~~(H)~~ On Angola Bay, Butner-Falls of Neuse, Croatan, Goose Creek, and Hofmann Forest Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday;
- (J) ~~(H)~~ Horseback riding is allowed on the Caswell and Thurmond Chatham game lands only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity;
- (K) ~~(H)~~ On the posted waterfowl impoundments on the New Hope and Butner-Falls of Neuse game lands a special permit is required for all waterfowl hunting.
- (L) ~~(K)~~ Additional restrictions or modifications apply as indicated in parentheses following specific designations:  
 Alexander and Caldwell Counties--Brushy Mountains Game Lands  
 Anson County--Anson Game Land  
Anson, Montgomery, Richmond and Stanly Counties--Pee Dee River Game Lands  
 Ashe County--Elk Ridge Game Lands  
 Ashe County--Cherokee Game Lands  
 Ashe and Watauga Counties--Elk Knob Game Land  
 Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)  
 Bertie and Washington Counties--Bachelor Bay Game Lands

Beaufort and Pamlico Counties--Goose Creek Game Land  
 Brunswick County--Green Swamp Game Land  
 Burke and Cleveland Counties--South Mountains Game Lands  
 Caldwell, Watauga and Wilkes Counties--Yadkin Game Land  
 Carteret, Craven and Jones Counties--Croatan Game Lands  
 Chatham County--Chatham Game Land  
 Chatham, Durham, Orange, and Wake Counties--New Hope Game Lands (On areas posted as "archery zones" hunting is limited to bow and arrow. Horseback riding, including all equine species, is prohibited.)  
 Chatham and Wake Counties--Shearon Harris Game Land  
 Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands. Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.  
 Chowan County--Chowan Game Land  
 Cleveland County--Gardner-Webb Game Land  
 Craven County--Neuse River Game Land  
 Currituck County--North River Game Land  
 Currituck County--Northwest River Marsh Game Land  
 Dare County--Dare Game Land (No hunting on posted parts of bombing range.)  
 Davidson, Davie, Montgomery, Rowan and Stanly Counties--Alcoa Game Land  
 Davidson County--Linwood Game Land  
 Davidson, Montgomery and Randolph Counties--Uwharrie Game Land  
 Duplin and Pender Counties--Angola Bay Game Land  
 Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (On portions of the Butner-Falls of Neuse Game Land designated and posted as "safety zones" and on that part marked

as the Penny Bend Rabbit Research Area no hunting is permitted. ~~On portions posted as "restricted zones" hunting is limited to bow and arrow during the bow and arrow season and the regular gun season for deer.~~ Horseback riding, including all equine species, is prohibited.)  
 Franklin County--Franklin Game Lands  
 Gates County--Chowan Swamp Game Land  
 Henderson, Polk and Rutherford Counties--Green River Game Lands  
 Hyde County--Gull Rock Game Land  
 Hyde County--Pungo River Game Land  
 Hyde and Tyrrell Counties--New Lake Game Land  
 Jones and Onslow Counties--Hofmann Forest Game Land  
 Lee County--Lee Game Land  
 McDowell County--Hickory Nut Mountain Game Land  
 McDowell and Rutherford Counties--Dysartsville Game Lands  
 Moore County--Moore Game Land  
 New Hanover County--Sutton Lake Game Land  
 Person County--Person Game Land  
 Transylvania County--Toxaway Game Land  
 Tyrrell County--Lantern Acres Game Land  
 Vance County--Vance Game Land. (The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract of Vance Game Lands.)  
 Wilkes County--Thurmond Chatham Game Land  
 (4) Deer of either sex may be taken on the hunt dates indicated by holders of permits to participate in managed hunts scheduled and conducted in accordance with this Subparagraph on the game lands or portions of game lands included in the following schedule:  
 Friday and Saturday of the first week after Thanksgiving Week:  
 Uwharrie and Alcoa southeast of NC 49  
~~Third Saturday after Thanksgiving Day:~~  
~~Carson Woods~~  
~~Thurmond Chatham~~  
 Thursday and Friday of the week before Thanksgiving Week:  
 Sandhills east of US 1  
 Sandhills west of US 1  
~~Fourth Saturday after Thanksgiving Day:~~  
~~Dysartsville in McDowell County~~  
~~Hickorynut Mountain in McDowell County~~  
 Pisgah in Avery County



~~Pisgah in Burke County~~  
~~Pisgah in Caldwell County~~  
~~Pisgah in McDowell County~~  
~~Pisgah in Yancey County~~  
~~South Mountains~~  
~~Thurmond Chatham~~

Application forms for permits to participate in managed deer hunts on game lands, together with pertinent information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Commission. Completed applications must be received by the Commission not later than the first day of October next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees 30 days prior to the hunt, and are nontransferable. ~~Each permit is accompanied by an appropriate big game tag.~~ A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.

- (5) The following game lands and Federal Wildlife Refuge are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission: Bertie, Halifax and Martin Counties--Roanoke River Wetlands;  
 Bertie County--Roanoke River National Wildlife Refuge.  
~~Caswell County--Caswell Game Land (That portion designated and posted as a "Safety Zone")~~  
 Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)  
 Davie--Hunting Creek Swamp Waterfowl Refuge  
 Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge (except for youth either-sex deer hunts by permit only on the first and second Saturdays in October).

*Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.*

#### SUBCHAPTER 10E - FISHING AND BOATING ACCESS AREAS

##### .0004 USE OF AREAS REGULATED

(a) No person shall leave any vehicle, boat trailer or other obstruction on any access area in such a location, position or condition that it will prevent, impede, or inconvenience the use by other persons of any ramp or other facility constructed for the purpose of launching or landing

boats. No person shall leave parked any vehicle, boat, boat trailer or other object at any place on any access area other than on such place or zone as is designated as an authorized parking zone and posted or marked as such.

(b) No person shall possess a loaded firearm on any boat access area. No person shall operate a vehicle on any boat access area in a manner so as to endanger life or property.

(c) No person, when using any access area, shall deposit any debris or refuse anywhere on the grounds of the area. No person, when using any access area, shall do any act which is prohibited or neglect to do any act which is required by signs or markings placed on such area under authority of this Regulation for the purpose of regulating the use of the area. At any time when all designated parking zones on any access area are fully occupied, any person may enter and use such facilities, provided such person makes other arrangements for parking and violates none of the provisions of this Regulation or the signs or markings made or posted pursuant hereto.

(d) No person shall operate a motorboat in the public waters of North Carolina within 50 yards of a Commission-owned or managed boat launching ramp at greater than "no wake" speed. For the purpose of this Regulation, "no wake" speed shall mean idling speed or a slow speed creating no appreciable wake.

(e) Except where facilities are provided, it is unlawful to use any boating access area for purposes other than the launching of boats and parking vehicles and boat trailers. All other uses--including swimming, skiing, camping, building fires, operating concessions or other activities not directly involved with launching of boats--are expressly prohibited.

~~(f) No person shall launch or moor jet skis or boats at public fishing access areas. It is unlawful to use any public fishing area for purposes other than fishing. All other uses including swimming, sunbathing on piers or docks, discharging firearms, launching or mooring jet skis or boats, skiing, building fires, operating concessions, or other activities not directly associated with fishing are expressly prohibited.~~

*Statutory Authority G.S. 113-134; 113-264; 75A-14.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule(s)*

## PROPOSED RULES

cited as 15A NCAC 101 .0001; adopt rule(s) cited as 15A NCAC 101 .0006.

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted on the following dates, times and locations:*

April 22, 1992  
10:00 a.m.  
Archdale Bldg.  
512 N. Salisbury Street  
Ground Floor  
Hearing Room  
Raleigh, North Carolina

April 22, 1992  
7:00 p.m.  
Randolph County  
Courthouse  
Asheboro, North Carolina

April 23, 1992  
7:00 p.m.  
Watauga County  
Courthouse  
Boone, North Carolina.

### *Reason for Proposed Action:*

**Rule 15A NCAC 101 .0001** - To define "critical habitat" and related terms.

**Rule 15A NCAC 101 .0006** - To list critical habitats.

*Comment Procedures:* Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from April 1, 1992, to May 1, 1992. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

### SUBCHAPTER 101 - ENDANGERED AND THREATENED SPECIES

#### .0001 DEFINITIONS

For the purposes of this Subchapter, the following definition shall apply:

- (1) "Species" means any taxonomic grouping of wildlife the adult members of which interbreed and reproduce their kind.
- (2) "Critical habitat" means any habitat which is considered essential for the continued survival of an endangered or threatened

wildlife species as listed in Rules .0003 and .0004 of this Subchapter.

- (a) Critical habitats are recommended for Commission adoption by the Nongame Wildlife Advisory Committee based on sound biological evidence.
- (b) Critical habitats shall include those areas within the geographical area occupied by the species, on which are found those physical or biological features which are essential to the conservation of the species and which may require special management considerations or protection; and shall also include specific areas outside the geographical area occupied by the species that are determined to be essential for the conservation of the species and which may require special management considerations or protection.
- (c) Critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species unless the management and protection of this area has been determined to be essential for the conservation of the species.

Statutory Authority G.S. 113-132; 113-134; 113-333; 143-239.

#### .0006 CRITICAL HABITATS LISTED

The following areas are listed by the Commission as critical habitats for endangered and threatened species as listed in Rules .0003 and .0004 of this Subchapter:

- (1) New River and its tributaries from the Virginia state line up to the headwaters of Watauga County.

Listed species:

- (a) Seep mudalia (Leptoxis dilatata) - threatened.
- (b) Pistolgrip (Tritogonia verrucosa) - endangered.

- (2) Watauga River and its tributaries from the Tennessee state line to the headwaters in Avery and Watauga Counties.

Listed species: Tennessee heelsplitter (Lasmigona holstonia) - endangered.

- (3) Little Tennessee River from Lake Emory at Franklin in Macon County to the Georgia state line.

Listed species: Spotfin chub (Hybopsis monacha) - threatened.

- (4) Little Tennessee River and its tributaries in Macon and Swain counties from Fontana Reservoir to Lake Emory at Franklin.

Listed species:

- (a) Tennessee pigtoe (Fusconaia barnesiana) - endangered.

- (b) Spotfine chub (Ilybopsis monacha) - threatened.
- (c) Little-wing pearly mussel (Pegias fabula) - endangered.
- (d) Appalachian elktoe (Alasmidonta ravenliana) - endangered.
- (e) Slippershell mussel (Alasmidonta viridis) - endangered.
- (5) John's River and its tributaries from its confluence with the Catawba River in Burke County to the headwaters in Watauga, Avery, Caldwell, and Burke counties.  
Listed species: Brook floater (Alasmidonta varicosa) - threatened.
- (6) Warrior Fork and its tributaries from its confluence with the Catawba River in Burke County to the headwaters.  
Listed species: Brook floater (Alasmidonta varicosa) - threatened.
- (7) Linville River and its tributaries from its confluence with Lake James in Burke County to the headwaters in Avery, McDowell, and Burke counties.  
Listed species: Brook floater (Alasmidonta varicosa) - threatened.
- (8) Waxhaw Creek and its tributaries from the South Carolina state line to the headwaters in Union County.  
Listed species: Carolina heelsplitter (Lasmigona decorata) - endangered.
- (9) Goose Creek and its tributaries from its confluence with the Rocky River to the headwaters in Mecklenburg and Union counties.  
Listed species:  
(a) Carolina heelsplitter (Lasmigona decorata) - endangered.  
(b) Squawfoot (Strophitus undulatus) - threatened.
- (10) Uwharrie River and its tributaries from its confluence with the Pee Dee River to the headwaters in Davidson, Randolph, and Montgomery counties.  
Listed species:  
(a) Atlantic pigtoe (Fusconaia masoni) - threatened.  
(b) Squawfoot (Strophitus undulatus) - threatened.
- (11) Little River and its tributaries from its confluence with the Pee Dee River to the headwaters in Randolph, Montgomery, and Richmond counties.  
Listed species:  
(a) Atlantic pigtoe (Fusconaia masoni) - threatened.  
(b) Savannah lilliput (Toxolasma pullus) - threatened.
- (c) Squawfoot (Strophitus undulatus) - threatened.
- (d) Brook floater (Alasmidonta varicosa) - threatened.
- (12) Bear Creek and its tributaries from its confluence with the Rocky River to the headwaters in Stanly and Cabarrus counties.  
Listed species:  
(a) Atlantic pigtoe (Fusconaia masoni) - threatened.  
(b) Squawfoot (Strophitus undulatus) - threatened.  
(c) Brook floater (Alasmidonta varicosa) - threatened.
- (13) Deep River and its tributaries from its confluence with the Haw River to the North Carolina Highway 42 bridge in Coleridge and all associated tributaries to their headwaters in Randolph, Moore and Chatham and Lee counties.  
Listed species:  
(a) Yellow lampmussel (Lampsilis cariosa) - threatened.  
(b) Cape Fear shiner (Notropis mekistocholas) - endangered.  
(c) Squawfoot (Strophitus undulatus) - threatened.
- (14) Rocky River and its tributaries in Chatham County from its confluence with the Deep River to the headwaters in Alamance and Randolph counties.  
Listed species:  
(a) Trangle floater (Alasmidonta undulata) - threatened.  
(b) Cape Fear shiner (Notropis mekistocholas) - endangered.  
(c) Squawfoot (Strophitus undulatus) - threatened;  
(d) Brook floater (Alasmidonta varicosa) - threatened.
- (15) Neals Creek and its tributaries from its confluence with the Cape Fear River to the headwaters in Harnett County.  
Listed species: Cape Fear shiner (Notropis mekistocholas) - endangered.
- (16) Cape Fear River in Cumberland and Harnett counties from the Fayetteville wastewater treatment facilities to the Lee County line.  
Listed species: Yellow lampmussel (Lampsilis cariosa) - threatened.
- (17) Orton Pond and Orton Creek to its headwaters in Brunswick County.  
Listed species: Magnificent rams-horn (Planorbella magnifica) - endangered.
- (18) Black River and its tributaries from its confluence with the Cape Fear River to the headwaters in Pender, Bladen, Duplin,



- Sampson, Cumberland and Harnett counties.  
Listed species:  
 (a) Atlantic pigtoe (*Fusconaia masoni*) - threatened.  
 (b) Yellow lampmussel (*Lampsilis cariosa*) - threatened.
- (19) Fork Creek and its tributaries from its confluence with the Deep River to the headwaters in Randolph County.  
Listed species: Cape Fear shiner (*Notropis mekistocholas*) - endangered.
- (20) University Lake and its tributaries to the headwaters in Orange County.  
Listed species: Savannah lilliput (*Toxolasma pullus*) - threatened.
- (21) Cane Creek and its tributaries from its confluence with the Haw River in Alamance County to the Cane Creek Reservoir in Orange County.  
Listed species: Squawfoot (*Strophitus undulatus*) - threatened.
- (22) Lake Waccamaw and Big Creek and its tributaries to the headwaters in Columbus and Bladen counties.  
Listed species:  
 (a) Waccamaw silerside (*Menidia extensa*) - threatened.  
 (b) Waccamaw fatmucket (*Lampsilis fullerkati*) - threatened.  
 (c) Savannah lilliput (*Toxolasma pullus*) - threatened.  
 (d) Waccamaw spike (*Elliptio waccamawensis*) - threatened.
- (23) Waccamaw River from the South Carolina state line to Lake Waccamaw and Waccamaw River tributaries to their headwaters in Columbus and Bladen Counties.  
Listed species:  
 (a) Waccamaw fatmucket (*Lampsilis fullerkati*) - threatened.  
 (b) Waccamaw spike (*Elliptio waccamawensis*) - threatened.
- (24) Little River and its tributaries from the Little River Reservoir in Durham County to the headwaters in Orange County.  
Listed species:  
 (a) Yellow lampmussel (*Lampsilis cariosa*) - threatened.  
 (b) Atlantic pigtoe (*Fusconaia masoni*) - threatened.  
 (c) Squawfoot (*Strophitus undulatus*) - threatened.
- (25) Eno River and its tributaries from the Durham County line to the headwaters in Orange County.  
Listed species:  
 (a) Yellow lampmussel (*Lampsilis cariosa*) - threatened.  
 (b) Squawfoot (*Strophitus undulatus*) - threatened.
- (26) Flat River and its tributaries from Lake Michie in Durham County to the headwaters in Durham and Person counties.  
Listed species:  
 (a) Triangle floater (*Alasmidonta undulata*) - threatened.  
 (b) Yellow lampmussel (*Lampsilis cariosa*) - threatened.  
 (c) Atlantic pigtoe (*Fusconaia masoni*) - threatened.  
 (d) Green floater (*Lasmigona subviridis*) - endangered.  
 (e) Squawfoot (*Strophitus undulatus*) - threatened.
- (27) Little River and its tributaries from the Johnston-Wayne county line to the headwaters in Johnston, Wake and Franklin counties.  
Listed species:  
 (a) Triangle floater (*Alasmidonta undulata*) - threatened.  
 (b) Yellow lampmussel (*Lampsilis cariosa*) - threatened.  
 (c) Dwarf wedge mussel (*Alasmidonta heterodon*) - endangered.  
 (d) Atlantic pigtoe (*Fusconaia masoni*) - threatened.  
 (e) Green floater (*Lasmigona subviridis*) - endangered.  
 (f) Squawfoot (*Strophitus undulatus*) - threatened.
- (28) Swift Creek and its tributaries from its confluence with Middle Creek in Johnston County to the Lake Benson dam in Wake County.  
Listed species:  
 (a) Triangle floater (*Alasmidonta undulata*) - threatened.  
 (b) Dwarf wedge mussel (*Alasmidonta heterodon*) - endangered.  
 (c) Squawfoot (*Strophitus undulatus*) - threatened.  
 (d) Green floater (*Lasmigona subviridis*) - endangered.  
 (e) Yellow lance (*Elliptio lanceolata*) - threatened.  
 (f) Atlantic pigtoe (*Fusconaia masoni*) - threatened.
- (29) Turkey Creek and its tributaries from Buckhorn Lake in Wilson County to the headwaters in Franklin County.  
Listed species:  
 (a) Triangle floater (*Alasmidonta undulata*) - threatened.

## PROPOSED RULES

- (b) Dwarf wedge mussel (Alasmidonta heterodon) - endangered.  
(c) Atlantic pigtoe (Fusconaia masoni) - threatened.  
(d) Squawfoot (Strophitus undulatus) - threatened.  
(30) Tar River and its tributaries from its confluence with Fishing Creek in Granville County to the headwaters in Granville and Person counties.

Listed species:

- (a) Triangle floater (Alasmidonta undulata) - threatened.  
(b) Yellow lampmussel (Lampsilis cariosa) - threatened.  
(c) Dwarf wedge mussel (Alasmidonta heterodon) - endangered.  
(d) Yellow lance (Elliptio lanceolata) - threatened.  
(e) Atlantic pigtoe (Fusconaia masoni) - threatened.  
(f) Green floater (Lasmigona subviridis) - endangered.  
(g) Squawfoot (Strophitus undulatus) - threatened.  
(31) Tar River from the Rocky Mount Reservoir in Nash County to its confluence with Fishing Creek in Granville County.

Listed species:

- (a) Yellow lampmussel (Lampsilis cariosa) - threatened.  
(b) Yellow lance (Elliptio lanceolata) - threatened.  
(c) Atlantic pigtoe (Fusconaia masoni) - threatened.  
(32) Swift Creek and its tributaries from its confluence with the Tar River in Edgecombe County to the headwaters in Edgecombe, Nash, Franklin, Warren and Vance counties.

Listed species:

- (a) Triangle floater (Alasmidonta undulata) - threatened.  
(b) Yellow lampmussel (Lampsilis cariosa) - threatened.  
(c) Yellow lance (Elliptio lanceolata) - threatened.  
(d) Atlantic pigtoe (Fusconaia masoni) - threatened.  
(e) Squawfoot (Strophitus undulatus) - threatened.  
(f) Tar River spiny mussel (Elliptio steinstansana) - endangered.  
(33) Crooked Creek and its tributaries from its confluence with the Tar River to the headwaters in Franklin County.

Listed species: Dwarf wedge mussel (Alasmidonta heterodon) - endangered.

- (34) Cedar Creek and its tributaries from its confluence with the Tar River to the headwaters in Franklin County.  
Listed species: Dwarf wedge mussel (Alasmidonta heterodon) - endangered.

Statutory Authority G.S. 113-132; 113-134; 113-333; 143-239.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNH - Commission for Health Services intends to adopt rules cited as 15A NCAC 18A .2537 - .2538; amend rules cited as 15A NCAC 18A .2509, .2513, .2518, .2522 - .2524, .2526, .2528, .2530, .2532, .2535, .2607, .2610, .2624, .2710, .2822, .2824 - .2825, .2832, .3101; 18C .0403; and repeal rule cited as 15A NCAC 18A .2520.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearings will be conducted as follows:*

**April 20, 1992**

7:30 p.m.

Conference Center

Charlotte-Mecklenburg Government Center

600 East 4th Street

Charlotte, NC

**April 24, 1992**

1:30 p.m.

1st Floor Auditorium

Highway Building

1 South Wilmington Street

Raleigh, NC

**April 28, 1992**

7:30 p.m.

County Commissioners' Auditorium

Room 225

Pitt County Office Building

1717 West 5th Street

Greenville, NC

### *Reasons for Proposed Actions:*

15A NCAC 18A .2509 - This amendment clarifies that licensed landscape architects are qualified to submit swimming pool plans and verify that public swimming pools are constructed in accordance with approved plans. This amendment also clari-

fies licensing requirement for public swimming pool builders.

15A NCAC 18A .2513 - This amendment removes a reference to a rule which has been repealed (15A NCAC 2H .0131). It also clarifies disposal options for various wastewater flows from a swimming pool.

15A NCAC 18A .2518 - This amendment eliminates conflicting standards from the same rule. The portion eliminated was unenforceable and unnecessary.

15A NCAC 18A .2520 - Repeal of this rule is to allow various ion generation systems to be used for supplemental disinfection, algae control, and pH control of public swimming pool water. NSF listings do not exist for much of that equipment. NSF listing of Chlorine and bromine feeders is required in 15A NCAC 18A .2535 as is the prohibition on the use of gaseous chlorine.

15A NCAC 18A .2522 - This amendment will allow some special features to obstruct walkways. The rule currently prevents the construction of waterslides, wave pools and other pools which require obstructions to free access around the pool.

15A NCAC 18A .2523 - This amendment makes the safety rope requirement applicable to existing pools. The change fixes the position of the rope based on the slope of the bottom instead of the depth of the pool. The contrasting color band across the bottom is a new provision.

15A NCAC 18A .2524 - This amendment is to allow the use of energy efficient lighting with light output comparable to the amount provided by incandescent lights at the previously required wattages. This establishes the adequate level of lighting for pool deck areas.

15A NCAC 18A .2526 - This amendment eliminates the requirement for rinse shower on pool deck and unnecessary requirement already covered by building codes for mixing valve location; and allows shatterproof instead of unbreakable mirrors.

15A NCAC 18A .2528 - This amendment clarifies the requirements to prevent entry of unwary children into the pool area.

15A NCAC 18A .2530 - This amendment requires additional lifesaving equipment for very large pools to make it better accessible; eliminates requirement for telephone in pool area because phones are generally provided where needed and operators oppose installation of phones when unnecessary; and clarifies the requirement for warning sign to request adult supervision of children.

15A NCAC 18A .2532 - This amendment makes hot water warnings for spas applicable only to hot water spas.

15A NCAC 18A .2535 - This amendment eliminates a temporary provision which will not be in effect after May 1, 1992. It also provides requirement

for water quality test kits and daily testing of pool water quality.

15A NCAC 18A .2537 - This adoption makes key safety provisions of some design and construction standards applicable to pools existing prior to May 1, 1991 and exempted from otherwise meeting the standards. Safety related operation and maintenance standards are included for all public swimming pools.

15A NCAC 18A .2538 - This adoption eliminates the use of wading pools which do not provide for recirculation and filtration of pool water. Water quality is a concern at these pools.

15A NCAC 18A .2607 - This amendment deletes references to the Building Code. There is presently a fine for enforcing the Building Code when one is not a building inspector.

15A NCAC 18A .2610 - This amendment requires foodservice establishments to provide clean plates, bowls, dessert dishes, etc., for customers who are returning to self-service salad bars, hot bars, etc.

15A NCAC 18A .2624 - This amendment deletes references to the Building Code. There is presently a fine for enforcing the Building Code when one is not a building inspector.

15A NCAC 18A .2710 - This amendment alters these rules to conform with recent changes in the lighting requirements for restaurants.

15A NCAC 18A .2822, .2824, .2825, .2832 - This amendment allows the Lead Rules (15A NCAC 18A .3100) to take precedence.

15A NCAC 18A .3101 - This amendment clarifies the definition of elevated blood lead level. This definition is used to determine when the Department must conduct an environmental investigation.

15A NCAC 18C .0403 - This amendment modifies the rule so that vegetation clearing two feet vertically above the normal full level is no longer required at Class I and II reservoir sites. The requirement to clear vegetation is five feet vertically below the normal full level of the impoundment remains, as well as the requirement to own or control a margin of at least 50 feet horizontally around the impoundment.

**C**omment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, (919) 733-4618. If you desire to speak at the public hearing, notify John P. Barkley at least 3 days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed



*to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.*

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

#### CHAPTER 18 - ENVIRONMENTAL HEALTH

##### SUBCHAPTER 18A - SANITATION

#### SECTION .2500 - PUBLIC SWIMMING POOLS

##### .2509 PLAN REVIEW AND APPROVAL

(a) For public swimming pools which are constructed or remodeled on or after May 1, 1991, plans and specifications shall be prepared by a registered professional engineer, ~~or~~ registered architect, or registered landscape architect, and shall be approved by the Department prior to construction. Public swimming pools constructed after May 1, 1992, shall be constructed by swimming pool contractors licensed by the North Carolina ~~Contractors~~ Licensing Board for General Contractors, Post Office Box 17187, Raleigh, North Carolina 27619. The General Contractor's license shall include the Swimming Pool Classification.

(b) A minimum of two complete sets of plans shall be submitted to the Health Department for review. Plans shall be drawn to scale and accompanied by specifications so as to permit a clear, comprehensive review by the local health department. All prints of drawings shall be a minimum of 18 x 24 inches and a maximum size of 36 x 42 inches. These plans shall include:

- (1) Plan and sectional view dimensions of both the pool and the area enclosed by the barrier fences to include the bathhouse and the equipment room and pool accessories;
- (2) Specifications of all treatment equipment used and their layout in the equipment room;
- (3) A piping schematic showing piping, pipe size, inlets, main drains, skimmers, gutter outlets, vacuum fittings and all other

appurtenances connected to the pool-piping system;

- (4) Layout of the chemical storage room;
- (5) Specifications for the water supply and wastewater disposal systems would include aspects such as well location and backwash water disposal where applicable.

Any additional data requested by the local health department after the initial application shall be submitted in order to clarify any related phase of the project.

(c) The Department shall approve, disapprove, or provide written comments on plans and specifications for public swimming pools within 30 days of their receipt. If such action is not taken within 30 days, the plans and specifications shall be deemed approved.

(d) If construction is not initiated within one year from the date of approval, the approval shall be voided.

(e) Prior to issuance of the operation permit, the owner shall submit to the local health department a statement signed by a registered architect, registered landscape architect, or a registered professional engineer stating that construction is complete and in accordance with approved plans and specifications and approved modifications. Periodic observations of construction and a final inspection for design compliance by the certifying registered architect, or registered professional engineer or his representative shall be required for this statement.

(f) Upon completion of construction, the contractor shall notify the local health department and the owner. The contractor shall provide the owner with a complete set of drawings, which show as built, the location of all pipes and the connections of all equipment and written operating instructions for all equipment.

*Statutory Authority G.S. 130A-282.*

##### .2513 SEWAGE SYSTEMS AND OTHER WASTEWATER DISPOSAL

(a) Sewage shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved, properly operating sanitary sewage system.

(b) There shall be no direct physical connection between the sewer system and any drain from the swimming pool or circulation system. Any swimming pool, deck drain or overflow from the circulation system, when discharged to the sewer system, storm drain or other approved natural drainage course, shall be discharged through a suitable air gap so as to preclude the possibility of back flow of sewage or other waste water into

the swimming pool or the swimming pool piping system. ~~Deck drain and overflow and backwash water discharged to the land surface or drainageways must comply with Environmental Management Commission Rule 15A NCAC 2H .0131. For purposes of this Rule, water from outside rinse showers shall not be considered sewage.~~

*Statutory Authority G.S. 130A-282.*

#### .2518 CIRCULATION SYSTEM

(a) Pools shall be equipped with a circulation system.

(b) The capacity of the circulation system shall be sufficient to clarify and disinfect the entire volume of swimming pool water four times in 24 hours. The system shall be operated 24 hours per day during the operating season.

(c) The piping of the circulation system shall be designed and installed so that the main drains, and the lines from the perimeter overflow system or the automatic surface skimmers shall be connected to the suction line of the circulation pump.

(d) The circulation piping shall be designed and installed with the necessary valves and pipes so that the flow from the swimming pool can be from main drains or the surface overflow system. The circulation piping shall be designed such the flow of water from the swimming pool can be simultaneous from the surface overflow system and the main drains. Skimmer piping shall be sized to handle the maximum flow rate for the required number of skimmers, but in no case less than 50 percent of the design flow rate. Perimeter overflow system piping shall be sized to handle 50 percent of the design flow rate. The main drain piping shall be sized to handle 50 percent of the design flow rate.

(e) Piping shall be designed to reduce friction losses to a minimum and to carry the required quantity of water at a maximum velocity not to exceed six feet (1.83 m) per second for suction piping and not to exceed 10 feet (2.44 m) per second for discharge piping except for copper pipe where the velocity shall not exceed eight feet per second. Piping shall be of non-toxic material, resistant to corrosion, and able to withstand operating pressures. If plastic pipe is used, a minimum of Schedule 40 PVC shall be required. Exposed pipes and valves shall be identified by a color code or labels.

(f) The circulation system shall include a strainer to prevent hair, lint, and other debris from reaching the pump. A spare basket shall be provided. Strainers shall be corrosion-resistant with openings not more than ¼ inch

(6.4 mm) in size which shall provide a free flow area at least four times the cross-section area of pump suction line and shall be accessible for daily cleaning.

(g) A vacuum cleaning system shall be provided to remove debris and foreign material which settles to the bottom of the swimming pool. Pools with more than two skimmers shall be provided with a vacuum cleaning system which is an integral part of the circulation system. Connections shall be located at intervals sufficient to reach the entire pool with a 50 foot hose. Skimmer vacuums may be used in pools with two or fewer skimmers provided the skimmer basket remains in place while the vacuum is in operation. The vacuum cleaning system shall be provided with valves and protective caps.

(h) A rate-of-flow indicator, reading in liters or gallons per minute, shall be installed on the filtered water line and located so that the rate of circulation is indicated. The indicator shall be capable of measuring flows which are at least 1½ times the design flow rate, shall be accurate within 10 per cent of true flow, and shall be easy to read. The indicator shall be installed in accordance with manufacturers' specifications.

(i) A pump or pumps shall be provided with adequate capacity to recirculate the swimming pool water four times in 24 hours, and shall be so located as to eliminate the need for priming. If the pump or pumps, or suction piping is located above the overflow level of the pool, the pump or pumps shall be self-priming. The pump or pumps shall be capable of providing a flow adequate for the backwashing of filters. Unless headloss calculations are provided by the designing engineer, pump design shall be based on an assumed total dynamic head of 65 feet of water. Pumps three horsepower or smaller shall be National Sanitation Foundation (NSF) listed. Larger pumps for which NSF listing is not available shall be approved on a case-by-case basis.

(j) Inlets.

(1) Inlets shall be provided and arranged to produce a uniform circulation of water and maintain a uniform disinfectant residual throughout the pool.

(2) The number of inlets for any swimming pool with a surface area of 2,000 square feet (186 sq m), or less, will be determined based on return water flow. Flow rates (in gallons per minute) through various sized inlet branches shall not exceed those listed in Table 2 of this Rule. There shall be a minimum of four inlets for any swimming pool. For any pool with a



surface area greater than 2,000 square feet (186 sq m), the number of inlets shall be based on one inlet per 15 feet of perimeter or portion thereof.

Table 2

Inside Pipe Diameter	GPM
1 inch	10
1 ¼ inches	20
1 ½ inches	30
2 inches	50

- (3) When wall inlets are used, they shall be equally spaced around the perimeter. When floor inlets are used, they shall be spaced throughout the pool to accomplish a uniform recirculation.
- (4) Provision shall be made to permit adjustment of the flow through each inlet, either with an adjustable orifice or provided with replaceable orifices to permit adjustments of the flows.
- (k) Drains.
  - (1) Swimming pools shall be provided with at least two main drain outlets which shall be located at the deepest section of the pool and connected by "T" piping. Connecting piping shall be of the same diameter as the main drain pipe. The drains shall be capable of permitting the pool to be emptied completely. Drains shall be spaced not more than 30 feet (9.1 m) apart, and not more than 15 feet (4.6 m) away from the side walls.
  - (2) Other systems which require suction outlets shall be provided with two drains with "T" connection pipe. This provision does not apply to capped vacuum outlets.
  - (3) Outlet drain gratings shall have a total area of at least four times the area of the discharge pipe and shall be designed so as not to be readily removed by or create any hazard to bathers.
  - (4) The outlet grate open area shall be such that when maximum flow of water is being pumped through the floor outlet, the velocity through the open grate shall not be greater than one and one-half feet per second. Outlet grates shall be anchored and openings in grates shall be slotted and the maximum dimension of slots shall not be more than one-half inch. Where outlet fittings consist of parallel plates, of the anti-vortex type where the water enters the fittings from the sides, rather than through a grating facing upward, entrance

velocities may be increased to six feet per second.

- (l) Surface Overflow Systems.
  - (1) Swimming pools shall be provided with a surface overflow system which shall be an integral part of the circulation system and which shall consist of a built-in-place perimeter overflow system, a pre-fabricated perimeter overflow system, or recessed automatic surface skimmers.
  - (2) Whenever a built-in-place perimeter overflow system or a pre-fabricated perimeter overflow system is provided, it shall be designed and installed as follows:
    - (A) The system shall be capable of handling 50 percent of the circulation flow without the overflow troughs being flooded for any appreciable period of time;
    - (B) A surge capacity shall be provided either in the system or by use of a surge tank; and the total surge capacity shall be at least equal to one gallon per square foot (41L per square meter) of swimming pool water surface area;
    - (C) The water level of the swimming pool shall be maintained at, or slightly higher than, the level of the overflow rim of the perimeter overflows, except for the time needed to transfer all of the water which may be in the surge capacity back into the swimming pool after a period of use; provided that this transfer time shall not be greater than 20 minutes;
    - (D) When installed the tolerance of the overflow rim shall not exceed ¼ inch (6.4 mm) as measured between the highest point and the lowest point of the overflow rim;
    - (E) During quiescence, the overflow system shall be capable of providing continuously and automatically a skimming action to the water at the surface of the swimming pool;
    - (F) The overflow troughs shall be installed completely around the perimeter of the swimming pool, except at steps, recessed ladders and stairs;
    - (G) The exposed surfaces of the overflow trough shall be capable of providing a firm and safe hand-hold; and
    - (H) The overflow trough shall be cleanable and shall be of such configuration as to minimize accidental injury.
  - (3) Whenever a recessed automatic surface skimmer or skimmers are installed, they shall be designed and constructed in accordance with Section 8 of the National Sanitation Foundation's Standard Num-



ber 50 for circulation system components for swimming pools, spas, or hot tubs, which is hereby adopted by reference in accordance with G.S. 150B-14(c) or equivalent, pertaining to recessed automatic surface skimmers and they shall be installed as follows:

(A) The flow-through rate through any one recessed automatic surface skimmer shall be between 20 and 30 gallons per minute. ~~and not less than four gallons per minute per lineal inch (1.49 L per minute per centimeter) of skimming weir when the skimmer system is operated under its normal operating mode;~~ Piping shall be sized to allow a flow of 30 gallons per minute for each skimmer;

(B) There shall be at least one recessed automatic surface skimmer for each 400 square feet (46 sq. m) of water surface area of the swimming pool or fraction thereof;

(C) When two or more recessed automatic surface skimmers are required, they shall be so located as to minimize interference with each other and as to insure proper and complete skimming of the entire swimming pools water surface; and

(D) Skimmers shall not protrude into the swimming pool. Automatic surface skimmer or skimmers without a perimeter overflow system, shall be installed so that the operating level of the pool is no more than nine inches below the finished deck level so that the deck can be used as a handhold.

(m) Where flooded suction on the pump is not possible to prevent cavitation and loss of prime, skimmers shall have a device or other protection to prevent air entrainment in the suction line. The inlet to the equalizer line shall be provided with a grate.

(n) Nothing in this Section shall preclude the use of a roll-out or deck-level type of swimming pool. Such designs shall conform to the general provisions relating to surface overflow systems. The design of the curb and handhold shall be approved by the Department based on detailed review of this feature of construction and evaluated in the light of proposed use of the swimming pool.

(o) Nothing in this Section shall preclude the use of a surface overflow system which combines both a perimeter overflow system and a recessed automatic surface skimmer or skimmers.

*Statutory Authority G.S. 130A-282.*

#### .2520 CHEMICAL FEEDERS

~~Chemical feeders as may be required to maintain the microbiological, chemical, and physical characteristics of the swimming pool water within prescribed limits shall be NSF listed. The use of chlorine gas for disinfection of public swimming pools is prohibited.~~

*Statutory Authority G.S. 130A-282.*

#### .2522 DECKS

(a) Outdoor swimming pools shall have a continuous deck extending completely around the swimming pool. The width of the deck or walkway shall provide at least six feet of clear walking space at all points. If the swimming area of the pool is 1600 square feet or larger, at least eight feet of clear walking space is required.

(b) Indoor swimming pools shall have a continuous deck or walkway extending completely around the swimming pool. The width of the deck shall provide at least five feet of clear walking space at all points.

(c) Wading pools shall have a continuous deck extending completely around the wading pool. The width of the deck or walkway shall provide at least four feet of clear walking space at all points.

(d) Spas shall have a continuous deck extending at least one-half way around the spa. The width of the deck or walkway shall provide at least four feet of clear walking space at all points.

(e) Whenever a diving board or slide is installed on a swimming pool, there shall be at least five feet (1.52 m) of unobstructed deck behind the diving board or slide.

(f) All deck areas and walkways shall be sloped at a grade of ¼ inch to ½ inch per foot to a deck drain or sheet drain to deck edge. Deck drains shall not be connected to the circulation system in any manner.

(g) All decks and walkways shall have a slip-resistant, impervious surface; except that non-porous resilient artificial recreational surfaces may be used if approved by the Department.

(h) Sufficient hose bibs shall be provided to allow all areas of the deck to be reached with a 100 foot hose.

(i) Special purpose pools such as waterslides and wave pools may vary from the minimum deck area requirements to the extent necessary to accommodate the special features of the pool.

*Statutory Authority G.S. 130A-282.*

#### .2523 DEPTH MARKINGS AND SAFETY ROPES

(a) On swimming pools, the depth of the water shall be marked plainly, at or above, the water

surface on the vertical wall of the swimming pool where possible, and on the edge of the deck next to the swimming pool. Where depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used; provided said markings shall be plainly visible to persons in the swimming pool. Depth markers shall be placed at the following locations:

- (1) at the points of maximum and minimum depths;
- (2) at the transition point where the slope of the bottom changes from the uniform slope of the shallow area;
- (3) if the pool is designed for diving, at appropriate points as to denote the water depths in the diving area; and
- (4) at both ends of the pool.

(b) Depth markers shall be so spaced that the distance between adjacent markers is not greater than 25 feet (7.5 m) when measured peripherally.

(c) Depth markers shall be in arabic numerals at least four inches (10 cm) high and of a color contrasting with the background.

(d) A minimum of  $\frac{3}{4}$  inch diameter safety rope shall be provided at the ~~point where water depth exceeds five feet.~~ breakpoint where the slope of the bottom exceeds 1 to 10 vertical rise to horizontal distance. The position of the rope shall be marked with colored floats at not greater than a five-foot spacing and a 2 inch wide contrasting color band across the pool bottom.

~~(e) "NO DIVING" markers shall be provided on the pool deck adjacent to areas of the pool less than five feet deep. Markers must be placed within two feet of the edge of the coping, and so spaced that the distance between adjacent markers is not more than 25 feet (7.5 m) when measured peripherally. Markers shall be of at least two-inch letter size and of a contrasting color.~~

*Statutory Authority G.S. 130A-282.*

#### **.2524 LIGHTING, VENTILATION, AND ELECTRICAL REQUIREMENTS**

(a) Electrical components of public swimming pools shall meet the requirements of the latest National Electrical Code (NEC) R, as published by the National Fire Protection Association, which are adopted hereby incorporated by reference including any subsequent amendments and editions. Copies may be obtained from the North Carolina Department of Insurance, Engineering Division, Post Office Box 26387, Raleigh, North Carolina 27611 at a cost of thirty dollars (\$30.00). ~~in accordance with G.S. 150B-14(c).~~

(b) Artificial lighting shall be provided at all indoor and outdoor pools which are to be used

at night, or when natural lighting is insufficient to provide clear visibility in the pool area.

(c) Lighting fixtures shall be of such number and design as to illuminate all parts of the pool, the water, the depth markers, and the entire deck area.

(d) Fixtures shall be installed so as not to create hazards such as burning, electrical shock, mechanical injury, or temporary blinding by glare to the bathers, and so that lifeguards, when provided, can clearly see every part of the pool area without being blinded by glare. The illumination shall be sufficient so that the floor of the pool can be seen at all times the pool is in use.

(e) If underwater lighting is used, the illumination of the water surface will be deemed sufficient if the underwater lights provide at least 0.5 watts or 8.35 lumens per square foot of water surface.

(f) Where underwater lighting is employed, area lighting shall ~~be provided for the deck area provide at least 0.6 watts or 10 lumens per square foot of deck area.~~ Where underwater lighting is not employed, and night swimming is permitted, area and pool lighting combined shall be provided in an amount of not less than two watts or 33.5 lumens per square foot of pool area.

(g) Mechanical ventilation shall be required for all indoor pools.

*Statutory Authority G.S. 130A-282.*

#### **.2526 DRESSING AND SANITARY FACILITIES**

(a) Dressing and sanitary facilities shall be provided at all pools, except for pools at hotels, motels, condominiums, and apartments where pool use is restricted to residents or guests. At condominiums and apartments where the farthest unit is more than 300 feet from the pool, toilets shall be provided. ~~Rinse showers shall be provided where indoor showers are not required by this Section.~~

(b) Partitions shall be of durable material, not subject to damage by water and shall be designed so that a waterway is provided between partitions and floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.

(c) Floors of the dressing facility shall be continuous throughout the areas. Floors shall have a slip-resistant surface that shall be relatively smooth, to insure complete cleaning. Floor drains shall be provided, and floors shall be sloped not less than  $\frac{1}{4}$  inch per foot toward the drains to insure positive drainage.

(d) Three-fourths inch hose bibs shall be provided such that all parts of the dressing facility interior can be reached with a 50 foot hose.



(e) The minimum criteria for dressing and sanitary facilities shall be based upon the maximum bather load.

(f) One water closet, one lavatory, and one urinal shall be provided for the first 100 male users. One additional water closet, lavatory, and urinal shall be provided for each additional 200 male users or major fraction thereof. Where the maximum bather load includes less than 50 male users, one water closet and one lavatory will be sufficient.

(g) Two water closets and two lavatories shall be provided for the first 100 female users. One additional water closet and lavatory shall be provided for each additional 100 female users or major fraction thereof. Where the maximum bather load includes less than 50 female users, one water closet and one lavatory will be sufficient.

(h) Showers shall be provided in the proportion of one for each 50 persons at the time of maximum bather load.

(i) The water heater ~~and thermostatically-controlled mixing valves, where used,~~ shall be inaccessible to users. The system shall be designed such that water temperature at the shower heads and lavatories cannot exceed 110 degrees Fahrenheit.

(j) Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory or inside shower. The dispenser shall be of all metal or plastic type, with no glass permitted in these units.

(k) If mirrors are provided, they shall be of ~~unbreakable~~ shatterproof materials.

(l) Toilet paper holders shall be provided at each water closet combination.

*Statutory Authority G.S. 130A-282.*

#### .2528 FENCES

Swimming pools ~~which are located outdoors~~ shall be protected by a fence, wall, building, or other enclosure, or any combination thereof, which completely encloses the swimming pool area such that all of the following conditions are met:

- (1) Constructed so as to afford no external handholds or footholds. However, the use of chain link fences with a mesh size of 2 1/4 inches or less is permitted;
- (2) A four foot (1.22 m) minimum height (from the ~~inside and~~ outside approach) is provided entirely around the swimming pool;
- (3) The horizontal space between vertical members of the enclosure shall not exceed four inches; there shall be at least 30 inches between any horizontal bottom rails or

stringers and the next horizontal rails or stringers;

- (4) The height of any opening under the bottom of the enclosure shall not exceed four inches (10 cm);
- (5) Openings under and through a fringe or barrier with the gate(s) closed shall be sized so that a 4 1/2 inch diameter sphere cannot be passed through the openings;
- (6) All gates and doors shall be equipped with self-closing and positive self-latching closure mechanisms which shall be located at a height at least three feet, and shall be equipped with locking devices. Gates provided to allow bathers access to the pool shall be located so as to open into the pool at a point where the water is less than five feet deep; ~~and~~
- (7) Gates provided specifically for access to equipment rooms shall be locked at all times when not in use by the pool operator;
- (8) Ground level doors and windows opening inside the pool enclosure must be self-closing or child protected; and
- (9) Self-closing, self-latching gates shall not be required for service gates which are kept locked, or for entrances where access is controlled by a gate attendant and a lifeguard is on duty in the pool area.

*Statutory Authority G.S. 130A-282.*

#### .2530 SAFETY PROVISIONS

(a) Swimming pools shall have lifesaving equipment conspicuously and conveniently on hand at all times. ~~that conforms with the following:~~ A unit of lifesaving equipment shall include the following:

- (1) A light, strong pole not less than 12 feet long, including a body hook.
- (2) A minimum 1/4 inch diameter throwing rope as long as one and one-half times the maximum width of the pool or 50 feet, whichever is less, to which has been firmly attached a U.S. Coast Guard approved ring buoy.
- (3) ~~A telephone with posted names and telephone numbers of the nearest available police, fire, ambulance service, rescue or 911, if available.~~

(b) Two units of lifesaving equipment must be provided for any pool which exceeds 2,000 square feet (186 sq m) of total surface area.

(c) ~~(b)~~ When a public swimming pool does not have at least one lifeguard on duty, a sign shall be posted which has clearly legible letters of at least four inches (10 cm) in height stating: "WARNING-NO LIFEGUARD ON DUTY." In



addition there shall be signs stating: "CHILDREN SHOULD NOT USE THE SWIMMING POOL WITHOUT AN ADULT IN ATTENDANCE, SUPERVISION", and: "ADULTS SHOULD NOT SWIM ALONE". Such signs shall be mounted permanently.

(d) ~~(e)~~ A sign prohibiting pets and glass containers in the pool area shall be provided.

*Statutory Authority G.S. 130A-282.*

#### **.2532 SPAS AND HOT TUBS**

Spas and hot tubs shall be designed by a registered professional engineer or registered architect, and shall meet all design specifications for swimming pools and wading pools included in Rules .2512 - .2530 of this Section with the following exceptions:

- (1) The circulation system equipment shall provide a turnover rate for the entire water capacity at least once every 30 minutes.
- (2) The arrangement of water inlets and outlets shall produce a uniform circulation of water so as to maintain a uniform disinfectant residual throughout the spa.
- (3) A minimum of two inlets shall be provided with inlets added as necessary to maintain required flowrate.
- (4) Water outlets shall be designed so that each pumping system in the spa (filter systems or booster systems if so equipped) provides the following:
  - (a) Two bottom drains connected by "T" piping. Connecting piping shall be of the same diameter as the main drain outlet. Such drains shall be capable of emptying the spa completely. Bottom drains shall be equipped with anti-vortex plates that cannot be removed except with tools.
  - (b) Filtration systems shall provide at least one surface skimmer per 100 square feet, or fraction thereof of surface area.
- (5) Piping shall be large enough to permit the rated flow for filtering and cleaning without exceeding the total load developed by the pump at the rated flow.
- (6) The water velocity in spa or hot tub discharge piping shall not exceed ten feet per second (3.05 m/second); except for copper pipe where water velocity shall not exceed eight feet per second (2.44 m/second). Suction water velocity in any piping shall not exceed six feet per second (1.83 m/second).
- (7) Spa recirculation systems shall be separate from companion swimming pools.
  - (a) Where a two-pump system is used, one pump shall provide the required turnover

rate, filtration and disinfection for the spa water. The other pump shall provide water or air for hydrotherapy turbulence without interfering with the operation of the recirculation system. The timer switch will activate only the hydrotherapy pump.

- (b) Where a single two-speed pump is used, the pump shall be designed and installed to provide the required turnover rate for filtration and disinfection of the spa water at all times without exceeding the maximum filtration rates specified in Rule .2519 of this Section. The timer switch shall activate only the hydrotherapy portion of the pump.
- (c) Where a single one-speed pump is used, a timer switch shall not be provided.
- (8) A timer switch shall be provided for the hydrotherapy turbulence system with a maximum of 15 minutes on the timer. The switch shall be placed such that bathers must leave the spa to reach the switch.
- (9) The maximum operational water depth shall be four feet (1.22 m) measured from the water line.
- (10) The maximum depth of any seat or sitting bench shall be two feet (61 cm) measured from the waterline.
- (11) A minimum height between the top of the spa/hot tub rim and the ceiling shall be 7½ feet.
- (12) Depth markers shall not be required at spas.
- (13) Steps, step-seats, ladders or recessed treads shall be provided where spa and hot tub depths are greater than 24 inches (61 cm).
- (14) Contrasting color bands or lines shall be used to indicate the leading edge of step treads, seats, and benches.
- (15) A spa or hot tub shall be equipped with at least one handrail (or ladder equivalent) for each 50 feet (15.2 m) of perimeter, or portion thereof, to designate points of entry and exit.
- (16) Where water temperature exceeds 90 degrees Fahrenheit (32° C), a caution sign shall be mounted adjacent to the entrance to the spa or hot tub. It shall contain the following warnings in letters at least ½ inch in height:
  - (a) CAUTION:
  - (b) -Pregnant women; elderly persons, and persons suffering from heart disease, diabetes, or high or low blood pressure should not enter the spa/hot tub without prior medical consultation and permission from their doctor;

- (c) -Do not use the spa/hot tub while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness or that raise or lower blood pressure;
  - (d) -Do not use alone;
  - (e) -Unsupervised use by children is prohibited;
  - (f) -Enter and exit slowly;
  - (g) -Observe reasonable time limits (that is, 10-15 minutes), then leave the water and cool down before returning for another brief stay;
  - (h) -Long exposure may result in nausea, dizziness, or fainting;
  - (i) -Keep all breakable objects out of the area.
- (17) A sign shall be posted in the immediate vicinity of the spa or hot tub stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location. Those emergency telephone numbers shall include the name and telephone number of the nearest available police, fire and/or rescue unit, physician, ambulance service, and hospital.
- (18) A sign shall also be posted requiring a shower for each user prior to entering the spa or hot tub and prohibiting oils, body lotion, and minerals in the water.
- (f) will demonstrate reduction of total coliform and fecal coliform to a level at least equivalent to free chlorine at a level of one part per million in the same body of water.
  - (4) When chlorine is used as the disinfectant, a free chlorine residual of at least one part per million (ppm) shall be maintained throughout the pool whenever it is open or in use. Pools which use chlorine as the disinfectant must be stabilized with cyanuric acid except at indoor pools or where it can be shown that cyanuric acid is not necessary to maintain a stable free chlorine residual.
  - (5) When bromine or compounds of bromine are used as the disinfectant, a free bromine residual of at least two parts per million, shall be maintained throughout the pool whenever it is open or in use.
  - (6) Automatic chemical feeders that are NSF listed shall be used when chlorine, bromine, or compounds of bromine are used as a disinfectant. Feeders shall be installed in accordance with NSF standard number 50 which is adopted by reference in accordance with G.S. 150B-14(c).
  - (7) When silver/copper ion systems are used, the copper concentration in the pool water shall not exceed one part per million and a chlorine residual must be maintained in accordance with Paragraph (4) of this Rule.
  - (8) The use of chlorine in its elemental elemental (gaseous) form for disinfection of public swimming pools is prohibited. ~~Existing public swimming pools which were using elemental chlorine prior to May 1, 1991 will be allowed to continue the use of elemental chlorine until May 1, 1992 with the following provisions:~~

Statutory Authority G.S. 130A-282.

#### .2535 WATER QUALITY STANDARDS

Swimming pool water quality shall be maintained in accordance with the following:

- (1) The chemical quality of the water shall be maintained in ~~and~~ an alkaline condition at all times with the pH between 7.2 and 7.8.
- (2) The clarity of the water shall be maintained such that the main drain grate is readily visible from the pool deck at all times.
- (3) Disinfection shall be provided in accordance with manufacturers' instructions for all pools by a chemical or other process that meets the criteria listed as follows:
  - (a) registered with the U.S. Environmental Protection Agency for pool water or potable water;
  - (b) provides a residual effect in the pool water which can be measured by simple portable field test equipment;
  - (c) will not impart any immediate or cumulative adverse physiological effects to pool bathers when used as directed;
  - (d) will not produce any undue safety hazard when stored or used as directed;
  - (e) will not damage or cause excessive wear of pool components or equipment;
- (a) Chlorine cylinders and chlorinating equipment shall be in a separate well-ventilated room or rooms. Such room or rooms shall not be below ground level, and shall be provided with vents near the floor which terminate out of doors. The door of the room, or rooms, shall not open directly to the swimming pool area or enclosure, and shall open to the outside.
- (b) Chlorine cylinders whether in use or in storage shall be anchored to prevent them from falling over, and shall be on a scale when in use.
- (c) A self contained air breathing apparatus suitable for use in high concentrations of chlorine gas shall be provided, and such apparatus shall be stored in a special facility located outside the room or rooms

- in which the chlorinator and/or the chlorine cylinders are located or through which conduits carrying chlorine gas may pass; further such storage facility shall be capable of being secured from theft or vandalism and shall be under supervision of personnel who have been especially trained in the use of such apparatus.
- (d) An emergency evacuation plan shall be provided to facilitate evacuation of all persons from the area in the event of a chlorine leak. The evacuation plan shall include escape routes to direct people from potential sources of chlorine to safe areas uphill or upwind of the hazard.
  - (e) An attendant familiar with the evacuation plan shall be present at all times the pool is in use.
  - (9) Test kits or equipment capable of measuring disinfectant level and pH must be maintained at all public swimming pools.
  - (10) Written records of disinfectant level and pH must be recorded at least once during each day of operation and maintained at the pool site for a period of not less than six months.

Statutory Authority G.S. 130A-282.

#### .2537 MAINTENANCE AND OPERATION

- (a) All public swimming pools constructed or remodeled on or after May 1, 1991 shall be maintained and operated in accordance with the Rules of this Section.
- (b) On or after May 1, 1993 all public swimming pools including those constructed prior to May 1, 1991 shall be maintained and operated in accordance with the following:
  - (1) All safety provisions of Rule .2530 of this Section shall be met except that swimming pools constructed prior to May 1, 1991 are not required to provide a telephone.
  - (2) Decks shall be structurally sound and provide uniform walking surface with no offset greater than one half inch (1.3 cm).
  - (3) There shall be no loose coping.
  - (4) Artificial lighting shall be provided in accordance with Rule .2524 of this Section for all pools used when natural lighting is not sufficient to make all parts of the pool and pool area clearly visible.
  - (5) Fences and gates shall be constructed and maintained in accordance with Rule .2528 of this Section.
  - (6) Floating safety ropes and bottom markings shall be provided as required in Rule .2523 of this Section where the slope

of the pool bottom exceeds 1 to 10 vertical rise to horizontal distance.

- (7) Depth markings shall be provided as described in Rule .2523 of this Section.
- (8) Drain covers shall be in good condition and securely attached.
- (9) Damaged face plates or fittings shall be repaired or replaced.
- (10) Underwater light niches shall be maintained or covered so as not to present a potential hazard to bathers.
- (11) Surface skimmers shall be maintained in working condition with baskets and weirs in place. Overflow gutters and grates shall be maintained in working condition.
- (12) Pool ladders with non-skid treads and stair railings shall be maintained and securely fastened in place. Contrasting color bands at least two inches wide shall be applied and maintained on the leading edge of stair treads.
- (13) Diving equipment and pool slides including stairs and railing shall be maintained in good working order.

Statutory Authority G.S. 130A-282.

#### .2538 FILL AND DRAW POOLS

Fill and draw pools are prohibited. Provisions shall be made for filtration and recirculation of water in all public swimming pools, wading pools, and spas.

Statutory Authority G.S. 130A-282.

### SECTION .2600 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

#### .2607 STANDARDS AND APPROVAL OF PLANS

- (a) Plans and specifications for new food service establishments shall be submitted for review and approval to the local health agency prior to initiating construction. Plans and specifications shall also be submitted prior to construction of changes in the dimensions of food preparation areas, seating capacity or the addition of rooms to existing food service establishments. These plans shall include changes related to the increase in dimensions of food preparation areas, seating capacity or the addition of rooms. Plans and specifications for prototype "franchised" or "chain" facilities shall also be submitted for review and approval to the Environmental Health Services Section, Division of Environmental Health.
- (b) Construction shall comply with approved plans and specifications. and shall at least con-



form with minimum standards established in the North Carolina State Building Code. The North Carolina State Building Code has been adopted by reference in accordance with G.S. 150B-14(c). A copy of the North Carolina State Building Code may be obtained from the North Carolina Department of Insurance, P.O. Box 26387, Raleigh, North Carolina 27611.

*Statutory Authority G.S. 130A-248.*

**.2610 STORAGE: HANDLING: AND DISPLAY OF FOOD**

(a) All unwrapped or unenclosed food and drink on display shall be protected in such manner that the direct line from the customer's mouth to the food shall be intercepted by glass or similar shields and shall be otherwise protected from public handling or other contamination, except that approved hand openings may be permitted on counter fronts. This requires standard counter protector installations for all cafeteria counters, salad bars, and similar type service to prevent contamination by customers' coughing and sneezing.

(b) Customer self-service is permitted only under the following conditions:

(1) Buffet-style Service. This style of service is not acceptable unless protective shields, equivalent to cafeteria counter protectors, are provided to intercept contamination; however, protective shields are not required for buffet style service which is provided for a club, organization or private individual as a planned event and from which the public is excluded. When food is served in this manner, the following requirements shall be met:

- (A) Potentially hazardous foods shall be replaced at least hourly;
- (B) Food containers shall be arranged conveniently so customers' clothing does not come in contact with food;
- (C) Long-handled serving spoons, tongs, or other utensils shall be provided and used;
- (D) At the conclusion of the event, food that has not been consumed, shall be discarded.

(2) When customers are allowed to return to a self-service area, clean and sanitized tableware other than beverage cups and glasses, shall be made available for each return trip. Written or verbal notice shall be provided informing customers that clean tableware needs to be used for return trips.

(3) (2) Family-style Service. In establishments featuring this style of service, patrons elect to participate in the family dining-table type of service. Ordinary serving dishes and utensils are acceptable.

(c) Foods, except raw vegetables which are to be cooked, shall be kept under cover when not in the process of preparation and serving. Meat and other potentially hazardous foods shall not be stored on the floor, or in direct contact with shelves and racks of cold storage boxes, or permitted to come in contact with dirty clothes, newspapers, pasteboard, previously-used paper, or other contaminated surfaces. If open dishes and pans containing food are stacked, food shall be protected with wax paper or foil. Food transported to a restaurant shall not be accepted unless properly wrapped, covered, or otherwise protected. Food and drink shall not be served to the general public in the kitchen. In the case of "drive-in" restaurants, all food shall be covered or wrapped before delivery to patrons' vehicles, to exclude vermin or insects, dust, and other contamination.

(d) Containers for onions, slaw, mustard, and other condiments shall have covers and be kept covered when not in use. Sugar shall be dispensed with either pour-type dispensers or individual packages. Waiters and waitresses shall avoid unnecessary handling of food in the process of serving.

(e) The establishment shall be kept free of flies, rodents, roaches, ants, and other vermin. Animals and fowl shall not be permitted in a restaurant, provided that seeing eye dogs accompanying blind persons and service dogs accompanying handicapped persons shall be exempted. All supplementary means necessary for the elimination of flies, such as the installation of fly-repellant fans, and the routine use of approved insecticides shall be employed.

(f) Dustless methods of floor cleaning shall be used and all except emergency floor cleaning shall be done during those periods when the least amount of food and drink is exposed, such as after closing, or between meals.

*Statutory Authority G.S. 130A-248.*

**.2624 TOILET FACILITIES**

(a) Every restaurant shall be provided with toilet facilities for each sex conveniently located and readily accessible at all business hours. Unless specified elsewhere in these Rules, all restaurants shall have toilets which are convenient and accessible to employees and customers. Toilets for patrons shall be so located that the patrons do not pass through the kitchen to enter the toi-

let rooms. Intervening rooms or vestibules, if provided, shall be constructed and maintained in accordance with this Rule. Toilets shall be in the proximity of the restaurant and under control of the management. ~~New construction shall comply with North Carolina State Building Code requirements for handicapped persons. The North Carolina State Building Code has been adopted by reference in accordance with G.S. 150B-14(c). Copies of the North Carolina State Building Code may be obtained from the North Carolina Department of Insurance, P.O. Box 26387, Raleigh, North Carolina 27611.~~ Floors and walls shall be constructed of non-absorbent, washable materials. Floors, walls, and ceilings shall be kept clean and in good repair. Toilet rooms shall be provided with self-closing doors, and kept free of flies and storage. Windows shall be screened if used for ventilation. Fixtures shall be kept clean and in good repair.

(b) Signs shall be posted to advise the public of the locations and identities of the toilet rooms. Durable, legible signs which read that employees must wash their hands before returning to work shall be posted or stenciled conspicuously in each employees' toilet room.

(c) Screens and doors are not required for toilet rooms at stadiums or facilities in which toilet rooms open into the interior of a building and the exterior doors of the building are self-closing.

(d) All toilet wastes and other sewage shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved sanitary sewage system.

*Statutory Authority G.S. 130A-248.*

#### SECTION .2700 - SANITATION OF MEAT MARKETS

##### .2710 LIGHTING

All ~~rooms~~ areas in which meat, meat food products, poultry or poultry products are handled or prepared, or in which utensils are washed, shall be provided with at least ~~20-foot candles~~ 50 foot-candles of light on preparation work levels and at utensil washing work levels. At least ~~20-foot candles~~ 10 foot-candles of light at 30 inches above the floor shall be provided in all other areas and rooms including storage rooms and walk-in units. Fixtures shall be kept clean, in good repair and shielded in all areas where meat, meat food products, poultry or poultry products are stored, handled, or prepared.

*Statutory Authority G.S. 130A-228.*

#### SECTION .2800 - SANITATION OF CHILD DAY CARE FACILITIES

##### .2822 FURNITURE AND TOYS

(a) Furniture shall be of easily cleanable construction, and shall be kept clean and in good repair.

(b) Equipment and toys provided by the facility shall be of easily cleanable construction, and shall be kept clean and in good repair. In infant and toddler rooms, mouth-contact surfaces shall be sanitized at least daily and more frequently if necessary.

~~(c) Toys, furniture, cribs, or other items, having the presence of lead-based paint shall not be used.~~

*Statutory Authority G.S. 110-91.*

##### .2824 FLOORS

(a) Floors and floor coverings of all food preparation, food storage, utensil-washing areas, toilet rooms, and laundry areas shall be constructed of nonabsorbent, easily cleanable, durable material such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic. All floors shall be kept clean and maintained in good repair.

(b) Carpeting used as a floor covering shall be of closely woven construction, properly installed, and easily cleanable, such as 100 percent Olefin fiber carpet and backing, and shall be kept clean and maintained in good repair. Carpeting is prohibited in food preparation, equipment, utensil-washing areas, food storage areas, laundry areas, and toilet rooms.

(c) Floors in areas accessible to children, shall be free of peeling, flaking, or chalking paint.

*Statutory Authority G.S. 110-91.*

##### .2825 WALLS AND CEILINGS

(a) The walls and ceilings, including doors and windows, of all rooms and areas shall be kept clean and in good repair. All walls shall be nonabsorbent and easily cleanable.

(b) Ceilings in rooms in which food is stored, handled or prepared, utensil-washing rooms, and toilet rooms shall be non-absorbent and easily cleanable.

~~(c) Any lead-based paint readily accessible to children, as defined in 15A NCAC 101, shall be removed. Walls and ceilings, including doors and windows in areas accessible to children, shall be free of peeling, flaking, or chalking paint.~~

*Statutory Authority G.S. 110-91.*

##### .2832 OUTDOOR AREAS



(a) The premises, including the outdoor play area, shall be kept clean, drained and free of litter and hazardous materials. Grass and other vegetation shall be maintained in a manner which does not encourage the harborage of vermin.

(b) All outdoor activity areas shall be kept clean. All debris, glass, dilapidated structures, and broken play equipment shall be removed. The play areas shall be free from unprotected wells, grease traps, cisterns, and utility equipment.

(c) ~~For outdoor play equipment, the following shall apply:~~

(1) ~~Equipment finishes shall not include toxic paint or hazardous wood preservative treatment and shall be kept free of rust and corrosion;~~

(2) The sandbox used in outdoor play shall be constructed to allow for proper drainage and shall be kept clean.

*Statutory Authority G.S. 110-91.*

#### SECTION .3100 - LEAD POISONING PREVENTION IN CHILDREN PROGRAM

##### .3101 DEFINITIONS

As used in this article, unless the context requires otherwise:

- (1) "Abatement" means the elimination or control of a lead hazard by methods approved by the Department.
- (2) "Day care facility" means a structure used as a school, nursery, child care center, clinic, treatment center or other facility serving the needs of children under six years of age including any outbuilding or other structure or surrounding land that may have been contaminated from such outbuildings or structures, accessible to children under six years of age.
- (3) "Department" means the Department of Environment, Health, and Natural Resources or its authorized agent.
- (4) "Dwelling" means a structure, all or part of which is designed for human habitation, including any outbuildings or other structures, or surrounding land that may have been contaminated from such outbuildings or structures, accessible to children under six years of age.
- (5) "Elevated blood lead level" means a blood lead of 25 ug/dl or greater. ~~or that level as determined in the most recent standards as established by the U.S. Department of Health and Human Services, Public Health Services, Centers for Disease Control.~~

(6) "Frequently visited" means presence at a dwelling, school or day care facility for eight hours or more a week or for 80 hours within a period of ten consecutive days.

(7) "Lead hazard" means the presence of readily accessible, lead-bearing substances measuring 1.0 milligram per square centimeter or greater by X-ray fluorescence analyzer or 0.5 percent or greater by chemical analyses (AAS); or 500 ppm or greater in soil; or 50 parts per billion or greater in drinking water.

(8) "Managing agent" means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.

(9) "Readily accessible" means capable of being chewed, ingested, or inhaled by a child under six years of age.

*Statutory Authority G.S. 130A-131.5.*

#### SUBCHAPTER 18C - WATER SUPPLIES

#### SECTION .0400 - WATER SUPPLY DESIGN CRITERIA

##### .0403 SURFACE WATER FACILITIES

(a) Unimpounded Stream. Both the minimum daily flow of record of the stream and the estimated minimum flow calculated from rainfall and run-off shall exceed the maximum daily draft for which the water treatment plant is designed with due consideration given to requirements for future expansion of the treatment plant.

(b) Pre-settling Reservoirs. Construction of a pre-settling or pre-treatment reservoir shall be required where excessive bacterial concentrations or wide and rapid variations in turbidity or chemical qualities occur.

(c) Impoundments. Raw water storage capacity shall be sufficient to reasonably satisfy the designed water supply demand during periods of drought.

(d) Clearing of Land for Impoundment. The area in and around the proposed impoundment of class I and class II reservoirs shall be cleared as follows:

- (1) The area from ~~two feet above and normal full level~~ to five feet below the normal full level of the impoundment shall be cleared and grubbed of all vegetation and shall be kept cleared until the reservoir is filled. ~~provided that the area two feet above the normal full level may be reduced if the clearing at that elevation would exceed a horizontal distance of 50 feet from the full level.~~ Secondary growth shall be removed prior to flooding. A margin of at least 50



## PROPOSED RULES

feet around the impoundment shall be owned or controlled by the water supplier.

- (2) The entire area below the five foot water depth shall be cleared and shall be kept cleared of all growth of less than six inches in diameter until the reservoir is filled. Stumps greater than six inches in diameter may be cut off at ground level.

- (3) All brush, trees, and stumps shall be burned or removed from the ~~watershed~~ reservoir area.

(e) Intakes, Pumps, Treatment Units, and Equipment. Raw water intakes, pumps, treatment units and equipment shall be designed to provide water of potable quality meeting the water quality requirements stated in Section .1500 of this Subchapter.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

\* \* \* \* \*

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR-Commission for Health Services intends to amend rule(s) cited as 15A NCAC 21A .0819; 21B .0303; adopt rule(s) cited as 15A NCAC 24C .0001.

The proposed effective date of this action is July 1, 1992.

The public hearing will be conducted on the following dates, times and locations:

April 20, 1992

7:30 p.m.

Conference Center  
Charlotte-Mecklenburg  
Government Center  
600 East 4th Street  
Charlotte, NC

April 24, 1992

1:30 p.m.

1st Floor Auditorium  
Highway Building  
1 South Wilmington Street  
Raleigh, NC

April 28, 1992

7:30 p.m.

County Commissioners' Auditorium  
Room 225  
Pitt County Office Building

1717 West 5th Street  
Greenville, NC.

### *Reason for Proposed Action:*

Rule 15A NCAC 21A .0819 - This amendment is necessary to clarify prohibitions concerning the use of Adolescent Pregnancy Prevention Program (APPP) grant funds.

Rule 15A NCAC 21B .0303 - The General Assembly added general surgeons as an eligible provider group to receive ROCI funds. They provided \$300,000 for FY 1991-92 to expand the program. This amendment will allow general surgeons to start participation in the program to coincide with the new funding cycle.

Rule 15A NCAC 24C .0001 - This adoption establishes categories essential to public health services as required by G.S. 130A-1.1.

*Comment Procedures:* All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, (919) 733-4618. If you desire to speak at the public hearing, notify John P. Barkley at least 3 days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21A - FAMILY PLANNING

SECTION .0800 - ADOLESCENT PREGNANCY AND PREMATURITY PREVENTION PROJECT

.0819 OPERATING STANDARDS

(a) Upon approval of a proposal for grant funds a budget shall be negotiated and a contract shall be signed between the Contractor and the MCH Division.

(b) Project funds shall be used solely for the purposes detailed in the approved proposal and budget. Expenditures for equipment require prior MCH Division approval.

(c) Contractors shall not use APPP funds for purposes that are prohibited by statute, or for the following purposes:

- (1) purchase of inpatient care;
- (2) purchase or improvement of land;
- (3) purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;
- (4) purchase of major equipment;
- (5) purchase ~~and~~ or prescriptions of contraceptives;
- (6) transportation to ~~and~~ or from abortion services; or
- (7) abortions.

(d) APPP projects shall not impose charges on clients for services.

(e) Staff qualifications, training, and experiences shall be appropriate for implementing project activities.

(f) Each project shall participate in regional meetings with state staff and other project staff.

(g) The start-up period before project activities are implemented shall not exceed six months.

(h) Each project shall obtain approval from the MCH Division prior to making changes in program goals, objectives, and target populations during the Five Year Funding period.

(i) Each project shall establish and implement a program review process on an ongoing basis.

(j) APPP projects shall not distribute contraceptives on school property.

*Statutory Authority G.S. 130A-124; S.L. 1989, c. 752, s. 136.*

SUBCHAPTER 21B - MATERNAL HEALTH

SECTION .0300 - RURAL OBSTETRICAL CARE INCENTIVE FUNDS

.0303 PHYSICIANS AND NURSE-MIDWIVES ELIGIBLE TO PARTICIPATE

(a) A physician or nurse-midwife is eligible to receive rural obstetrical care incentive funds if the physician or nurse-midwife:

- (1) is licensed to practice medicine or approved to practice midwifery in North Carolina; and
- (2) carries malpractice liability insurance that is not being totally or partially paid for the physician or nurse-midwife as an employee of the federal government or by an institution of higher learning or an affiliate of the institution.

(b) A physician or nurse-midwife does not have to reside in the underserved county to be eligible to participate.

(c) A general surgeon is eligible to receive Rural Obstetrical Care Incentive Funds if the general surgeon meets the participation requirements in S.L. 1991, Chapter 689, Section 232.

*Statutory Authority S.L. 1989, c. 1066, s. 49.*

CHAPTER 24 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

SUBCHAPTER 24C - PUBLIC HEALTH SERVICES

.0001 ESSENTIAL PUBLIC HEALTH SERVICES

G.S. 130A-1.1 (b) establishes categories of essential public health services and directs the Department to assure, within the resources available to it, that these services are available and accessible to all citizens of the State. The following are the specific services to be provided under each essential public health services category:

(1) Health Support:

- (a) Assessment of health status, health needs, and environmental risks to health;
- (b) Patient and community education;
- (c) Public health laboratory support for essential public health services;
- (d) Registration of vital events;

(2) Environmental Health:

- (a) Lodging and institutional sanitation;
- (b) On-site domestic sewage and wastewater disposal;
- (c) Water and food sanitation and safety;

- (i) Public water supply safety;
- (ii) Private water supply sanitation;
- (iii) Milk sanitation;
- (iv) Shellfish sanitation;
- (v) Public swimming pool sanitation;
- (vi) Food sanitation;

(3) Personal Health:

- (a) Child health:
  - (i) Lead poisoning prevention;
  - (ii) Well-child care;

- (iii) Genetic services;
- (iv) Services to the developmentally-disabled child;
- (v) Child care coordination;
- (vi) Adolescent health services;
- (vii) School health services;
- (b) Chronic Disease Control:
  - (i) Early detection and referral;
  - (ii) Patient education;
  - (iii) Chronic disease monitoring and treatment;
  - (iv) Home health services;
- (c) Communicable Disease Control:
  - (i) Tuberculosis control;
  - (ii) Immunization;
  - (iii) Epidemiologic investigation, surveillance and general communicable disease control;
  - (iv) HIV/STD control;
  - (v) Rabies control;
- (d) Dental Public Health:
  - (i) Dental health education;
  - (ii) Fluoride prophylaxis;
  - (iii) Sealant utilization;
  - (iv) Dental screening and referral;
- (e) Family Planning:
  - (i) Preconceptional counseling;
  - (ii) Contraceptive care;
  - (iii) Fertility services;
- (f) Health Promotion and Risk Reduction:
  - (i) Lifestyle behavior modification;
  - (ii) Injury control;
  - (iii) Nutrition counselling;
- (g) Maternal Health Services:
  - (i) Prenatal and postpartum care;
  - (ii) Maternity care coordination.

Statutory Authority G.S. 130A-1.1.

## TITLE 19A - DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Motor Vehicles intends to amend rule(s) cited as 19A NCAC 3D .0801.

The proposed effective date of this action is July 1, 1992.

A public hearing is not required. The text of this proposed rule was published in the North Carolina Register on January 15, 1992 without a scheduled hearing. The agency failed to adopt the rule following the commentary period. No public hearing was requested. The text of this proposed rule

differs substantially from the rule published on January 15, 1992.

**Reason for Proposed Action:** G.S. 20-183.2(a) as amended effective June 25, 1991 provides that the Commissioner of the Division of Motor Vehicles may designate the place on a vehicle where a current approved federal inspection certificate must be displayed. This Rule designates the location of the certificate.

**Comment Procedures:** Written comments on the proposed rule may be submitted by mailing the comments to the following address within thirty days after the proposed text is published: William R. Stout, Motor Carrier Safety Unit, Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, N.C. 27697.

## CHAPTER 3 - DIVISION OF MOTOR VEHICLES

### SUBCHAPTER 3D - ENFORCEMENT SECTION

#### SECTION .0800 - SAFETY RULES AND REGULATIONS

##### .0801 SAFETY OF OPERATION AND EQUIPMENT

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carriers, while engaged in interstate commerce over the highways of the State of North Carolina.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 26,000 pounds; are designed to transport 16 or more passengers, including the driver; or transport hazardous materials required to be placarded pursuant to 49 CFR 170-190. Provided, the following exceptions shall also apply to all intrastate motor carriers:

- (1) An intrastate motor carrier driver may not drive more than 12 hours following eight consecutive hours off duty; or for any period after having been on duty 16 hours following eight consecutive hours off duty;



or after having been on duty 70 hours in seven consecutive days; or more than 80 hours in eight consecutive days. An intrastate driver will be determined by his previous seven days of operation.

(2) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina will be exempt from provisions of Part 391.11(b)(1) and Part 391.41(b)(1) through (11) and therefore will be authorized for intrastate operation if licensed prior to March 30, 1992, are approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles and meet all other requirements of this Section. These drivers shall continue to be exempt upon completion of a biennial medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer.

(c) The rules and regulations adopted by the U. S. Department of Transportation relating to inspection, repair and maintenance of motor vehicles (49 CFR Part 396.17 through 396.23 and including Appendix G, and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 10,000 pounds. Provided, any farm vehicle shall be exempt from the requirements of this Paragraph if:

- (1) It is being operated by a farmer (or a person under the direct control of the farmer) as a private motor carrier of property;
- (2) It is being used to transport either:
  - (A) agricultural products, or
  - (B) farm machinery, farm supplies, or both, to and from a farm;
- (3) It is being operated solely within this State and within 150 air-miles of the farmer's farm;
- (4) It is not being used in the operation of a for-hire motor carrier; and
- (5) It is not carrying hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with 49 CFR 177.823.

(d) Every motor vehicle registered or required to be registered in North Carolina and subject to the inspection requirements of the Federal Motor Carrier Safety Regulations (49 CFR Part 396) which does not display a current approved State inspection certificate as provided in N.C.G.S.

20-183.2 must display a current approved federal inspection certificate when operated on the streets and highways of this State. On self-propelled vehicles the inspection certificate shall be located on the outside of the driver's door exclusive of the window or rear view mirror. On self-propelled vehicles the federal inspection certificate shall be displayed on the outside of the vehicle in a readily visible location on, or in the immediate vicinity of, the driver's door exclusive of the window or rear view mirror. On trailers and semitrailers, the federal inspection certificate shall be located on the left side as near as possible to the outside lower front of the vehicle. The inspection certificate shall contain at least the following legible information:

- (1) The date of inspection;
- (2) Name and address of the motor carrier or other entity where the inspection report required by 49 CFR 396.21(a) is maintained;
- (3) Information uniquely identifying the vehicle inspected if not clearly marked on the vehicle; and
- (4) A certification that the vehicle has passed an inspection in accordance with 49 CFR 396.17.

*Statutory Authority G.S. 20-384; 20-183.2(a).*

## TITLE 21 - OCCUPATIONAL LICENSING BOARD

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Electrolysis Examiners intends to adopt rule(s) cited as 21 NCAC 19 .0102, .0301 - .0303.*

*The proposed effective date of this action is July 1, 1992.*

*Instructions on how to demand a public hearing (must be requested in writing within 15 days of notice): A request for a public hearing must be in writing and must be filed with the Board at its mailing address (c/o Patricia Holland, 205 Westview Place, High Point, North Carolina 27260) by April 16, 1992.*

### *Reasons for Proposed Actions:*

*21 NCAC 19 .0102 - It is necessary to inform the public of the Board's requirements for the calling, holding, and conducting of meetings.*

*21 NCAC 19 .0301 - .0303 - It is necessary to inform the public of the Board's requirements for*

*petitions for rulemaking, declaratory judgments, and the conduct of contested cases.*

*Comment Procedures: The record of hearing will be open for receipt of written comments from April 1, 1992 through May 1, 1992. Such comments must be mailed to the Board at its mailing address (c/o Patricia Holland, 205 Westview Place, High Point, North Carolina 27260).*

## CHAPTER 19 - BOARD OF ELECTROLYSIS EXAMINERS

### SECTION .0100 - GENERAL PROVISIONS

#### .0102 MEETINGS

(a) The Board shall hold two regular meetings each year in the months of January and July on call of the Chairman, or, if the Chairman is unable for any reason to call the meeting, the Vice-chairman or the Treasurer in that order. Special meetings of the Board may be called at any time by the Chairman or any two board members.

(b) The Chairman shall conduct all meetings; in the absence of the Chairman, the Vice-chairman or the Treasurer in that order shall conduct the meeting.

(c) The officer who is scheduled to conduct the meeting shall prepare an agenda for the meeting.

(d) The Board shall set aside time at its regular meetings to hear members of the public who wish to speak to the Board. If time permits, the Board may also allow members of the public to speak at special meetings. Anyone who wishes to speak concerning an item on the agenda shall notify the presiding officer before the meeting is called to order. Anyone who wishes to speak concerning an item that is not otherwise scheduled to be on the agenda shall, at least 72 hours before the meeting, contact the scheduled presiding officer to request that the item be included. The request must include the identity of the maker and the nature of the item and must be in writing unless the maker can show to the satisfaction of the scheduled presiding officer that it was not reasonably possible to provide a written request. Anyone who speaks to the Board at a regular meeting under the provisions of this Paragraph shall be allowed a time period of five minutes, except that the presiding officer may further limit time if several persons have asked to speak. The presiding officer may limit time as needed at special meetings. At any meeting, the presiding officer may require groups to appoint a representative to speak for members of the group on an issue. Although members of the Board may ask specific questions of those speaking, the time allotted pursuant to this Par-

agraph shall not be used either to debate the relative merits of any proposal or to examine members of the Board.

Statutory Authority G.S. 88A-5.

### SECTION .0300 - ADMINISTRATIVE LAW PROCEDURES

#### .0301 PETITIONS FOR RULEMAKING HEARINGS

(a) Any person may petition the Board to adopt a new rule or to amend or repeal an existing rule by sending a written petition for rulemaking to the Board at the Board's mailing address. The petition must be entitled "Petition for Rulemaking" and must include the following information:

- (1) the name and address of the person submitting the petition;
- (2) a citation to any rule for which an amendment or repeal is requested;
- (3) a draft of any proposed new rule or amended rule;
- (4) an explanation for the request, with any supporting information the petitioner believes is relevant and wishes the Board to consider; and
- (5) an identification of the persons or class of persons most likely to be affected by the proposed action.

(b) The Board shall decide whether to grant or deny the petition and may request additional information. When the Board denies a petition, the notice of denial shall state the reason.

Statutory Authority G.S. 88A-6; 150B-20.

#### .0302 DECLARATORY RULINGS

(a) All petitions for declaratory rulings shall be in writing and shall be sent to the Board at its mailing address. Each petition shall be entitled "Petition for Declaratory Ruling" and shall include the following information:

- (1) the name and address of the petitioner;
- (2) the statute or rule to which the petition relates;
- (3) a concise statement of the manner in which the petitioner has been or will be injured or adversely affected by the statute or rule;
- (4) if the petitioner wishes to make an oral presentation to the Board on the petition, a statement clearly requesting an opportunity to appear and be heard.

(b) The Board may refuse to issue a declaratory ruling when:

- (1) the petition does not comply with this Rule;

- (2) the Board has previously issued a declaratory ruling on substantially similar facts;
- (3) the Board has previously issued a final agency decision in a contested case on substantially similar facts;
- (4) the facts underlying the request for a declaratory ruling were specifically considered at the time the rule was adopted;
- (5) the subject matter of the petition is involved in pending litigation;
- (6) the Board determines for good cause not listed in this Paragraph that issuance of a declaratory ruling is undesirable.

*Statutory Authority G.S. 88A-6; 150B-4.*

### **.0303 CONTESTED CASES**

(a) The following rules establishing procedures for contested cases, adopted by the Office of Administrative Hearings and contained in Title 26, Chapter 3 of the North Carolina Administrative Code, are hereby adopted by reference for contested cases for which the Board has authority to adopt rules under G.S. 150B-38: 26 NCAC 3 .0001(1), .0005, .0006, .0013, .0014, .0015, .0016, .0018, .0019, .0020, .0021. This adoption applies to the listed rules as amended as of November 1, 1991 and does not include subsequent amendments. Copies of these Rules will be made available for inspection by arrangement; anyone wanting to inspect these Rules shall write the Board at its mailing address. Copies of the listed rules may be obtained from the Board at a charge of two dollars and fifty cents (\$2.50) by writing the Board at its mailing address.

(b) For the purposes of this Rule, references in the rules listed in Paragraph (a) of this Rule to

the Office of Administrative Hearings shall be deemed to be references to the Board, references to the administrative law judge shall be deemed to be references to the presiding officer for board hearings, reference in 26 NCAC 3 .0005 to G.S. 150B-33 shall be deemed a reference to G.S. 150B-40, and the words "enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-33(b)(8)" in 26 NCAC 3 .0014 shall be deemed to read, "apply to the Superior Court for an order to show cause in accordance with G.S. 150B-40(c)(6)".

(c) Any person who believes that his or her rights, duties, or privileges have been affected by the Board's administrative action but who has not received a notice of hearing pursuant to G.S. 150B-38 may file a written request for a hearing. The request must be entitled "Request for Administrative Hearing" and must contain the following:

- (1) the name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) a clear and specific statement of request for a hearing.

Without waiving any right to a formal hearing, an individual may first seek to resolve the issue informally with the Board.

(d) The Board may elect either to conduct a hearing itself or to request the designation of an administrative law judge from the Office of Administrative Hearings to preside.

*Statutory Authority G.S. 88A-6; 150B-38.*



# LIST OF RULES CODIFIED

*The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.*

## Key:

*Citation* = Title, Chapter, Subchapter and Rule(s)  
*AD* = Adopt  
*AM* = Amend  
*RP* = Repeal  
*With Chgs* = Final text differs from proposed text  
*Eff. Date* = Date rule becomes effective  
*Temp. Expires* = Rule was filed as a temporary rule and expires on this date

## NORTH CAROLINA ADMINISTRATIVE CODE

FEBRUARY 1992

### TITLE DEPARTMENT

4 Economic and Community  
     Development  
 5 Correction  
 10 Human Resources  
 13 Labor

### TITLE DEPARTMENT

15A Environment, Health,  
       and Natural Resources  
 17 Revenue  
 21 Occupational Licensing Boards  
     2 - Architecture  
     14 - Cosmetic Art Examiners  
     17 - Dietetics/Nutrition

	Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
4	NCAC 6C .0407		•			03 02 92	
5	NCAC 2F .1504 - .1506		•			03 19 92	09 15 92
10	NCAC 1C .0603		•			03 02 92	
	26B .0104		•		•	04 01 92	
13	NCAC 13 .0101		•		•	03 02 92	
	.0203		•			03 02 92	
	.0205		•			03 02 92	
	.0211		•			03 02 92	
	.0213		•			03 02 92	
	.0415		•			03 02 92	
15A	NCAC 2B .0305		•			04 01 92	
	.0309		•			04 01 92	
	2D .1209		•			03 02 92	
	4A .0005		•		•	04 01 92	
	.0007		•		•	04 01 92	

*LIST OF RULES CODIFIED*

Citation			AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
7M	.0403			•			04 01/92	
10B	.0105			•		•	04 01/92	
	.0202 - .0203			•			04 01/92	
10D	.0002 - .0003			•			04 01/92	
10F	.0354			•			04 01/92	
19C	.0206		•				03 02/92	
21	NCAC 2	.0209		•		•	07 01/92	
14J	.0501 - .0502		•				03 02/92	
14L	.0105			•		•	03 02/92	
	.0216			•			03 02/92	
17	.0001 - .0015		•				03 19/92	09 13/92

## RRC OBJECTIONS

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).*

### ADMINISTRATION

#### State Construction

<i>1 NCAC 30F .0101 - Authority</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0103 - Definitions</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0202 - Pre-Bid Conferences and Site Reviews</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0301 - Definitions</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0302 - Overall Job Performance</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0303 - Interim Contractor Evaluation</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0305 - Report Compilation</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0401 - Post-Occupancy Evaluation</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0403 - Appeals of Assigned Eval or Disqual from Bidding</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>

#### State Employees Combined Campaign

<i>1 NCAC 35 .0103 - Organization of the Campaign</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>1 NCAC 35 .0202 - Criteria for Acceptance</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>1 NCAC 35 .0302 - Response</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>

### AGRICULTURE

#### Plant Industry

<i>2 NCAC 48E .0101 - Definitions</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Withdrew Rule</i>		<i>02/20/92</i>

### CRIME CONTROL AND PUBLIC SAFETY

#### State Highway Patrol

<i>14A NCAC 911 .0304 - Notifying Registered Owner</i>	<i>RRC Objection</i>	<i>12/19/91</i>
<i>No Response from Agency</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Agency Withdrew Rule</i>		<i>02/20/92</i>



**ECONOMIC AND COMMUNITY DEVELOPMENT**

**Credit Union Division**

4 NCAC 6C .0407 - Business Loans	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	02/20/92

**Savings Institutions Division: Savings Institutions Commission**

4 NCAC 16A .0105 - Restrictions: Payment/Dividends/Repurchase/Stock	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16C .0402 - Application: Guidelines/Approval/Administrator	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16C .0403 - General Policies	RRC Objection	01/24/92
4 NCAC 16D .0301 - General Policies	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0103 - Composition of Board of Directors	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0105 - Amendment of Converted Savings Bank's Charter	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0301 - General Policies	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0303 - Required Policies	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0502 - Holding of Certificate or Passbook	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0404 - Information Prior To Approval/Plan/Conversion	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0510 - Use of Proxy Soliciting Material to be Authorized	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0513 - Material Required to be Filed	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0714 - Estimated Price Information: Proxy Statements	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0720 - Period for Completion of Sale	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0722 - Extensions of Time to Complete Offerings	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0825 - Requirements as to Paper and Printing	RRC Objection	01/24/92
Agency Revised Rules	Obj. Removed	01/24/92
4 NCAC 16H .0002 - Grounds	RRC Objection	01/24/92
Agency Repealed Rule	Obj. Removed	01/24/92
4 NCAC 16H .0008 - Waiver	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .0702 - Definitions and Other Terms	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .0703 - Stds for Approval of Acquisition: Duties/Conduct	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .0902 - Acquisition Procedure	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .1003 - Acquisition Procedure	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .1202 - Conversion Procedure	RRC Objection	01/24/92

## RRC OBJECTIONS

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>4 NCAC 16J .0003 - Waiver</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>4 NCAC 16K .0001 - Definitions</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>4 NCAC 16K .0005 - Books and Accounts</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>4 NCAC 16K .0009 - Self-Dealing</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>4 NCAC 16K .0010 - Custody of Investments</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>4 NCAC 16L .0004 - Waiver</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>

## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

### Coastal Management

<i>15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>
<i>15A NCAC 7J .0301 - Who is Entitled to a Contested Case Hearing</i>	<i>RRC Objection</i>	<i>02/20/92</i>
<i>15A NCAC 7J .0302 - Petition For Contested Case Hearing</i>	<i>RRC Objection</i>	<i>02/20/92</i>
<i>15A NCAC 7J .0402 - Criteria for Grant or Denial of Permit Applications</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>15A NCAC 7M .0201 - Declaration of General Policy</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>
<i>15A NCAC 7M .0202 - Policy Statements</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>
<i>15A NCAC 7M .0303 - Policy Statements</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>
<i>15A NCAC 7M .0403 - Policy Statements</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/20/92</i>
<i>15A NCAC 7M .0901 - Declaration of General Policy</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>

### Health: Epidemiology

<i>15A NCAC 19A .0202 - Control Measures - HIV</i>	<i>RRC Objection</i>	<i>10/17/91</i>
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### Sedimentation Control

## RRC OBJECTIONS

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### *15A NCAC 4A .0005 - Definitions*

*Agency Responded*

*Agency Revised Rule*

### *15A NCAC 4C .0007 - Procedures: Notices*

*Agency Responded*

*RRC Objection 12/19/91*

*No Action 01/24/92*

*Obj. Removed 02/20/92*

*RRC Objection 12/19/91*

*No Action 01/24/92*

*Obj. Removed 02/20/92*

## HUMAN RESOURCES

### Facility Services

#### *10 NCAC 3J .2905 - Personal Hygiene Items*

#### *10 NCAC 3W .0101 - State Cert for Labs Conducting Pap Smears*

*Agency Revised Rule*

#### *10 NCAC 3W .0201 - State Cert of Screening Mammography Svcs*

*Agency Revised Rule*

*RRC Objection 10/17/91*

*RRC Objection 01/24/92*

*Obj. Removed 01/24/92*

*RRC Objection 01/24/92*

*Obj. Removed 01/24/92*

### Individual and Family Support

#### *10 NCAC 42E .0905 - Personnel: Centers: Homes with Operator/Staff*

*Agency Responded*

#### *10 NCAC 42E .0906 - Personnel: Day Care Homes: /Staff Person/Op*

*Agency Responded*

#### *10 NCAC 42E .1108 - Records*

*Agency Revised Rule*

#### *10 NCAC 42E .1207 - Procedure*

*Agency Responded*

#### *10 NCAC 42Z .0604 - Staff Requirements*

*Agency Responded*

#### *10 NCAC 42Z .0901 - Procedure*

*Agency Responded*

*RRC Objection 01/24/92*

*No Action 02/20/92*

*RRC Objection 01/24/92*

*No Action 02/20/92*

*RRC Objection 01/24/92*

*Obj. Removed 01/24/92*

*RRC Objection 01/24/92*

*No Action 02/20/92*

*RRC Objection 01/24/92*

*No Action 02/20/92*

*RRC Objection 01/24/92*

*No Action 02/20/92*

### Mental Health: General

#### *10 NCAC 14S .0102 - Communication Rights*

*Agency Responded*

#### *10 NCAC 14S .0103 - Living Environment*

*Agency Responded*

*ARRC Objection 9/19/91*

*10/17/91*

*ARRC Objection 9/19/91*

*10/17/91*

## INSURANCE

### Life and Health Division

#### *11 NCAC 12 .0507 - Fraternal Orders: Societies and Associations*

*Agency Revised Rule*

#### *11 NCAC 12 .0826 - Filing Requirements for Advertising*

*Agency Revised Rule*

#### *11 NCAC 12 .1202 - Definitions*

*Agency Revised Rule*

#### *11 NCAC 12 .1209 - Discrimination*

*Agency Revised Rule*

*RRC Objection 12/19/91*

*Obj. Removed 01/24/92*

*RRC Objection 01/24/92*

*Obj. Removed 01/24/92*

*RRC Objection 12/19/91*

*Obj. Removed 01/24/92*

*RRC Objection 12/19/91*

*Obj. Removed 01/24/92*

## LICENSING BOARDS AND COMMISSIONS

### Certified Public Accountant Examiners



## *RRC OBJECTIONS*

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\* 21 NCAC 8G .0313 - Firm Name  
Agency Responded

*RRC Objection* 10/17/91  
*No Action* 12/19/91

*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

**15A NCAC 7J .0301 - WHO IS ENTITLED TO A CONTESTED CASE HEARING**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 7J .0301(b) void as applied in *Lucy R. Hanson, Stanley P. and Jean C. Szwed, Petitioners v. N.C. Department of Environment, Health, and Natural Resources, Division of Coastal Management, Respondent* (91 EHR 0551, 91 EHR 0557).

**15A NCAC 21D .0802(b)(2) - AVAILABILITY**

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0802(b)(2) void as applied in *Wilson's Supermarket #12, Petitioner v. Department of Environment, Health, and Natural Resources, Respondent* (91 EHR 0795).

**15A NCAC 21D .0805 - DECISION**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0805 void as applied in *Glenn E. Davis/Davis Grocery, Petitioner v. N.C. Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, WIC Section, Respondent* (91 EHR 0694).

## CONTESTED CASE DECISIONS

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

### KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	EDC	Department of Public Instruction
BDA	Board of Dental Examiners	EHF	Department of Environment, Health, and Natural Resources
BME	Board of Medical Examiners	ESC	Employment Security Commission
BMS	Board of Mortuary Science	HAF	Hearing Aid Dealers and Fitters Board
BOG	Board of Geologists	HRC	Human Relations Commission
BON	Board of Nursing	IND	Independent Agencies
BOO	Board of Opticians	INS	Department of Insurance
CFA	Commission for Auctioneers	LBC	Licensing Board for Contractors
COM	Department of Economic and Community Development	MLK	Milk Commission
CPS	Department of Crime Control and Public Safety	NHA	Board of Nursing Home Administrators
CSE	Child Support Enforcement	OAH	Office of Administrative Hearings
DAG	Department of Agriculture	OSP	Department of State Personnel
DCC	Department of Community Colleges	PHC	Board of Plumbing and Heating Contractors
DCR	Department of Cultural Resources	POD	Board of Podiatry Examiners
DCS	Distribution Child Support	SOS	Department of Secretary of State
DHR	Department of Human Resources	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOA	Department of Administration	WRC	Wildlife Resources Commission
DOJ	Department of Justice		
DOL	Department of Labor		
DSA	Department of State Auditor		
DST	Department of State Treasurer		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Fernando Demeco White v. DHR, Caswell Center	89 OSP 0284	West	01/10/92
Cathy Faye Barrow v. DHR, Craven County Health Department	89 DHR 0715	Morgan	03/09/92
Kenneth W. White v. Employment Security Commission	90 OSP 0390	Becton	01/13/92
Craig S. Eury v. Employment Security Commission	90 OSP 0391	Becton	01/13/92
Jolene H. Johnson v. DHR, Division of Medical Assistance	90 DHHR 0685	Morgan	02/21/92



# **CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Sgt. Carl Edmunds v. DHR, Division of Social Services, CSE	90 CSE 1135	Nesnow	02/04/92
Kermit Linney v. Department of Correction	90 OSP 1380	Morrison	02/12/92
Jerry Odell Johnson v. Sheriffs' Education & Training Standards Comm	90 DOJ 1411	Morgan	01/09/92
Stoney W. & Darlene L. Thompson v. Department of Environment, Health, & Natural Resources	91 EHR 0003	West	01/06/92
Gloria Jones/Medbill v. Children Special Health Services	91 EHR 0142	Morgan	03/11/92
Thomas Such v. EHR and William W. Cobey Jr.	91 OSP 0202	Becton	02/20/92
N.C. Human Relations Comm. on behalf of Deborah Allen v. Charles Watkins	91 HRC 0204	Morrison	03/17/92
Cindy Gale Hyatt v. Department of Human Resources	91 DHR 0215	Morgan	02/27/92
Gliston L. Morrissey v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0232	West	02/03/92
Anthony Caldwell v. Juvenile Evaluation Center	91 OSP 0259	Morgan	03/12/92
Kenneth R. Downs, Guardian of Mattie M. Greene v. Teachers' & St Emp Comp Major Medical Plan	91 DST 0261	Gray	02/20/92
Deborah W. Clark v. DHR, Dorothea Dix Hospital	91 OSP 0297	Nesnow	01/16/92
Wade R. Bolton v. DHR, Division of Social Services, CSE	91 CSE 0312	Mann	01/14/92
Betty L. Rader v. Teachers' & St Emp Major Medical Plan	91 DST 0330	Morgan	01/10/92
Marcia Carpenter v. UNC - Charlotte	91 OSP 0346	Mann	03/12/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
James Arthur Lee v. NC Crime Victims Compensation Commission	91 CPS 0355	Chess	03/05/92
Michael Darwin White v. Department of Environment, Health, & Natural Resources	91 OSP 0413	Morrison	02/14/92
Curtis Wendell Bigelow v. CCPS, Division of State Highway Patrol	91 OSP 0418	West	03/10/92
Alcoholic Beverage Control Commission v. Hilsinger Enterprises, Inc., t/a The Waterin Hole	91 ABC 0442	Gray	01/10/92
Penny Whitfield v. Pitt County Mental Health Center	91 OSP 0465	Gray	01/08/92
Senior Citizens' Home Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0467	Gray	02/18/92
Alcoholic Beverage Control Commission v. Everett Lee Williams Jr., t/a Poor Boys Gameroom	91 ABC 0531	Morrison	01/31/92
Jonathan Russell McCravey, t/a Encore v. Alcoholic Beverage Control Commission	91 ABC 0534	Morrison	02/04/92
Horace Britton Askew Jr. v. Sheriffs' Education & Training Standards Comm	91 DOJ 0610	Reilly	01/22/92
Roy L. Keever v. Department of Correction	91 OSP 0615	West	02/26/92
Larry Madison Chatman, t/a Larry's Convenient Store v. Alcoholic Beverage Control Commission	91 ABC 0626	Gray	02/20/92
Cecil Leon Neal v. Department of Economic & Community Development	91 OSP 0648	Mann	02/07/92
DAG, Food & Drug Protection Div, Pesticide Section v. D. Carroll Vann	91 DAG 0654	Morrison	01/15/92
Alcoholic Beverage Control Commission v. Kenneth Richard Cooper, t a Silvers	91 ABC 0680	Becton	02/26/92
Sarah Linda Hankins v. Alcoholic Beverage Control Commission	91 ABC 0688	Mann	02/27/92
Keith Hull v. DHR - Division of Medical Assistance	91 DHR 0707	Chess	02/27/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
John E. Canup v. DHR, Division of Social Services, CSE	91 CSE 0759	Reilly	01/13/92
Falcon Associates, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 0767 91 EHR 0768	West	01/06/92
Michael F. Stone v. Bd of Trustees/Local Gov't Emp Retirement Sys	91 DST 0771	West	02/24/92
Ruben Gene McLean v. Alcoholic Beverage Control Commission	91 ABC 0772	Nesnow	01/30/92
Bobby McEachern v. Fayetteville State University	91 OSP 0839	Gray	02/06/92
Singletree, Inn v. EHR, and Stokes County Health Department	91 EHR 0840	Nesnow	01/16/92
Henry B. Barnhardt v. Mt Pleasant Vol Fire Dept, St Auditor/Firemen's Rescue Squad Workers' Pension Fund	91 DSA 0843	Reilly	01/29/92
Mackey L. Hall v. DHR, Division of Social Services, CSE	91 CSE 0854	Reilly	01/17/92
Kay Long v. Department of Human Resources	91 DHR 0873	Reilly	03/17/92
Alcoholic Beverage Control Commission v. Mack Ray Chapman, t/a Ponderosa Lounge	91 ABC 0887	Morrison	01/31/92
Joseph W. Devlin Jr., Johnson Brothers Carolina Dist v. Alcoholic Beverage Control Commission	91 ABC 0890	West	02/11/92
Ossie Beard v. EHNR & Wastewater Treatment Plant Certification Comm.	91 EHNR 0893	Nesnow	03/12/92
Alcoholic Beverage Control Commission v. Trinity C. C., Inc., t/a Trinity College Cafe	91 ABC 0915	West	02/11/92
N.C. Alcoholic Beverage Control Commission v. Jessie Pendergraft Rigsbee, T/A Club 2000	91 ABC 0919	West	03/12/92
Alcoholic Beverage Control Commission v. Cedric Warren Edwards, t/a Great, American Food Store	91 ABC 0923	Becton	02/26/92



# CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Department of Environment, Health, & Natural Resources v. Hull's Sandwich Shop, Andy Hull	91 EHR 0936	West	01/09/92
Betty Davis d/b/a ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 0955	Morrison	01/31/92
Thomas J. Hailey v. EHR and Rockingham County Health Department	91 EHR 0957	Becton	01/15/92
Ronald Waverly Jackson v. EHR, Division of Maternal & Child Health, WIC Section	91 EHR 0963	Gray	02/24/92
Roy Shealey v. Victims Compensation Commission	91 CPS 1002	Morrison	01/31/92
Willie Brad Baldwin v. DHR, Division of Social Services, CSE	91 CSE 1020	Reilly	01/28/92
Clinton Dawson v. N.C. Department of Transportation	91 OSP 1021	Mann	03/05/92
Benjamin C. Dawson v. Department of Correction	91 OSP 1025	West	02/18/92
Paulette R. Smith v. DHR, Division of Social Services, CSE	91 CSE 1026	Reilly	02/27/92
Scot Dawson v. Department of Labor	91 DOL 1031	West	02/24/92
Luis A. Rosario v. DHR, Division of Social Services, CSE	91 CSE 1046	Morrison	03/03/92
William H. Hogsed v. DHR, Division of Social Services, CSE	91 CSE 1070	Nesnow	03/16/92
Donald M. Washington v. DHR, Division of Social Services, CSE	91 CSE 1078	Morrison	03/04/92
Melvin L. Miller Sr. v. DHR, Division of Social Services, CSE	91 CSE 1084	Morrison	03/16/92
Bobby G. Evans v. DHR, Division of Social Services, CSE	91 CSE 1094	Reilly	01/13/92
William Louis Timmons v. DHR, Division of Social Services, CSE	91 CSE 1104	Mann	02/18/92

# **CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Richard E. Murray v. Department of Human Resources	91 CSE 1134	Reilly	01/13/92
Atlantic Enterprises, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1136	Reilly	01/23/92
Theresa M. Sparrow v. Criminal Justice Education & Training Standards Comm	91 DOJ 1138	Mann	02/04/92
James A. Hinson v. DHR, Division of Social Services, CSE	91 CSE 1154	Mann	02/18/92
George H. Parks Jr. v. DHR, Division of Social Services, CSE	91 CSE 1157	Morrison	01/27/92
Adrian Chandler Harley v. DHR, Division of Social Services, CSE	91 CSE 1180	Nesnow	02/10/92
Billy J. Hall v. DHR, Division of Social Services, CSE	91 CSE 1182	Nesnow	02/10/92
Donaldson L. Wooten v. DHR, Division of Social Services, CSE	91 CSE 1189	Reilly	03/13/92
William P. Reid v. DHR, Division of Social Services, CSE	91 CSE 1193	Nesnow	02/04/92
Ronald G. Bolden v. DHR, Division of Social Services, CSE	91 CSE 1208	Gray	02/26/92
Wayne Phillip Irby v. DHR, Division of Social Services, CSE	91 CSE 1211	Nesnow	02/04/92
Tony Hollingsworth v. DHR, Division of Social Services, CSE	91 CSE 1212	Nesnow	02/10/92
Russell G. Ginn v. Department of Correction	91 OSP 1224	Reilly	02/14/92
Angela McDonald McDougald v. DHR, Division of Social Services, CSE	91 CSE 1227	Nesnow	02/28/92
Sering O. Mbye v. DHR, Division of Social Services, CSE	91 CSE 1228	Mann	03/11/92
Stanford Earl Kern v. DHR, Division of Social Services, CSE	91 CSE 1255	Nesnow	02/04/92

# *CONTESTED CASE DECISIONS*

CASE NAME	CASE NUMBER	ALJ	FILED DATE
James T. White v. DHR, Division of Social Services, CSE	91 CSE 1271	Gray	02/27/92
Ronald Brown and Regina Brown v. DHR, Division of Facility Services	91 DHR 1278	Becton	02/25/92
Samuel Armwood v. David Brantley, Wayne County Clerk of Superior Court	91 CSE 1285	Reilly	02/11/92
Raymond Vaughan v. DHR, Division of Social Services, CSE	91 CSE 1304	Reilly	03/09/92
Stanley Wayne Gibbs v. Elizabeth City State University	91 OSP 1318	Gray	01/14/92
David Martin Strode v. DHR, Division of Social Services, CSE	91 CSE 1327	Morgan	03/19/92
Steveason M. Bailey v. McDowell Technical Community College	91 OSP 1353	Morrison	01/28/92
Gary N. Rhoda v. Department of Correction	91 OSP 1361	Nesnow	01/31/92
Marc D. Walker v. CCPS, Division of State Highway Patrol	91 OSP 1399	Morrison	03/16/92
Serena Gaynor v. DHR, Division of Vocational Rehabilitation	91 OSP 1403	Gray	03/02/92
Charles R. Wellons II v. Department of Environment, Health, & Natural Resources	91 EHR 1418	West	02/25/92
Charley Joe Milligan v. Bd of Trustees/Local Gov't Emp Retirement Sys	91 DST 1424	Gray	02/27/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	91 OSP 1429 91 OSP 1430	Gray	03/13/92
New Bern-Craven County Board of Education, a Statutory Corporation of North Carolina v. The Honorable Harlan E. Boyles, State Treasurer, The Honorable Fred W. Talton, State Controller, The Honorable William W. Cobey, Jr., Sec. of EHNR, Dr. George T. Everett, Dir., Div. of Environmental Mgmt.	92 EHR 0003	Reilly	03/13/92
Cindy G. Bartlett v. Department of Correction	92 OSP 0029	Reilly	03/16/92



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**CONTESTED CASE DECISIONS**

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Kurt Hafner v. N.C. Retirement System et al.	92 DST 0094	Gray	03/04/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	92 OSP 0096	Gray	03/13/92
Youth Focus, Inc. (MID # 239-23-0865T) v. DHR, Division of Medical Assistance	92 DHR 0110	Gray	02/26/92

## CONTESTED CASE DECISIONS

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STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
91 EHR 0142

GLORIA JONES/MEDBILL,  
Petitioner

v.

CHILDREN SPECIAL HEALTH SERVICES,  
Respondent

RECOMMENDED DECISION:  
ENTRY OF SUMMARY  
JUDGMENT FOR RESPONDENT

The Petitioners filed a Petition for a Contested Case Hearing on February 14, 1991, alleging that the Respondent had denied claims for payment. In a Prehearing Statement filed on April 15, 1991, the Petitioners more specifically contended that the Respondent improperly denied payment for medical services which had been authorized, based upon the Respondent's erroneous determination that the claims for payment were not timely received by the Respondent. The Respondent asserted, in its Prehearing Statement filed on April 12, 1991, that it properly denied payment for claims for medical services submitted by the Petitioners because these claims were not timely submitted to the Respondent. The Respondent also filed on April 12, 1991 the Respondent's Motion for Summary Judgment or, In the Alternative, to Dismiss, arguing in the motion that the Petitioners' claims for payment were not received by the Respondent within the time period which is designated by rule, that there is no genuine issue as to any material fact and that the Respondent therefore is entitled to a judgment as a matter of law. The Respondent contends, as an alternative position, that this contested case should be dismissed because the Petitioners lack standing to institute it. The presiding administrative law judge issued a Request for Response to Motion on April 15, 1991. In the Petitioner's Response to Respondent's Motion for Summary Judgment filed on April 26, 1991, the Petitioners objected to the Respondent's motion. The undersigned administrative law judge does not deem oral arguments by the parties concerning this motion to be necessary for its disposition pursuant to the discretion accorded in Title 26, Chapter 3, Section .0015(b) of the North Carolina Administrative Code.

### CONCLUSIONS OF LAW

North Carolina General Statutes Section 1A-1, Rule 56(b) states, in pertinent part:

"A party against whom a claim...is asserted...may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof."

Section (c) of this civil procedure rule states, again in pertinent part:

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law."

The Petitioners have alleged that medical services were rendered to an infant patient named Josiah Clapp between the December 12, 1989 date of his birth and the April 10, 1989 date of his discharge from Moses Cone Hospital in Greensboro, North Carolina. The Petitioners admit in their Prehearing Statement that they do not have sufficient information to identify the dates of their requests for authorization for payment from the Respondent for the aforementioned medical services. However, the Petitioners do state that the Respondent signed authorizations for payment on August 2, 1990, Moses Cone Hospital received these authorizations on or about August 8, 1990, and the Petitioners received these authorizations from the hospital on August 13, 1990. On September 27, 1990, the Petitioners sent medical claims statements which totalled \$12,251.00 to the Respondent, which received them on or about October 4, 1990. The Petitioners, on December 5, 1990, received a denial of payment of these claims from the Respondent dated November 28, 1990.

The Respondent has alleged that it approved authorization requests on August 2, 1990 from Moses Cone Hospital for inpatient care provided to the infant Clapp between January 9, 1990 and April 5, 1990. Claims for payment for medical services were submitted by the Petitioners and received by the Respondent on October 4, 1990. In a report dated November 28, 1990 as alleged by the Respondent, the Respondent denied the Petitioners' claims for payment on the basis that the claims were received by the Respondent after the elapse of the time periods addressed in Title 15A, Chapter 24A, Section .0302(5) of the North Carolina Administrative Code.

15A NCAC 24A .0302, with its subsections, contains the information concerning authorizations and claims processing time frames which are pertinent to this contested case. 15A NCAC 24A .0302(1) states that "[a]n Authorization Request must be received by the Department within 90 days after the date of service or it will be denied." In their Prehearing Statement, the Petitioners indicate that the dates of requests for authorization may have been as early as February 16, 1990 and as late as May 7, 1990.

These dates are noteworthy in light of the Petitioners' allegation that the Respondent did not comply with 15A NCAC 24A .0302(2), which states that "[t]he Department shall respond to an Authorization Request within 45 days after receipt." The authorizations at issue were signed by the Respondent on August 2, 1990--167 days after the earliest speculated authorization request date and 87 days after the latest speculated authorization request date. The Petitioners have not provided sufficient information beyond speculation in their pleadings or in any other documents, to show that the Respondent failed to comply with the time deadlines established in 24A NCAC .0302(2). Even assuming, *arguendo*, that the Respondent did fail to comply with this rule, such an omission does not affect the resolution of the ultimate issue in this contested case concerning the Respondent's denial of the Petitioners' claims for payment pursuant to 15A NCAC 24A .0302(5) based on the Respondent's determination that the Petitioners' claims were untimely.

The provision of 15A NCAC 24A .0302(5) upon which the Respondent justifies its denial of the Petitioners' claims for payment states:

"A claim for payment must be received by the Department [of Environment, Health, and Natural Resources] within 180 days after the date of service or within 45 days after the date of authorization approval, whichever is later, or the claim will be denied."

The documents supporting the Respondent's Motion for Summary Judgment or, in the Alternative, to Dismiss reflect that the last date of the provision of medical services to the infant Clapp was April 5, 1990--the date of the child's discharge from the hospital. Under the time calculation formula relating to a claim for payment being received by the Respondent within 180 days after the discharge date of service, the Respondent must have received the claim by October 1, 1990. Under the time calculation formula relating to a claim for payment being received by the Respondent within 45 days after the August 2, 1990 date of authorization approval, the Respondent must have received the claims by September 16, 1990. Since October 1, 1990 is the later of the two dates determined under the time calculation formula contained in 15A NCAC 24A .0302(5), the Petitioners' claims for payment must have been received by this date or the claims would be denied.

When the language of a statute is clear and unambiguous, it must be given effect and its clear meaning may not be evaded by an administrative body or a court under the guise of construction. State ex rel Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E.2d 184 (1977). In applying this standard for proper legal interpretation to the rule provision at issue here, the undersigned administrative law judge finds that the clear and unambiguous meaning of 15A NCAC 24A .0302(5) indicates that the Petitioners' claims for payment must have been received by October 1, 1990 or the claims would be denied. Since the Respondent received the claims for payment on October 4, 1990 as shown by the summary judgment documents, the Respondent properly denied the Petitioners' claims.

The pleadings, affidavits and supporting documents show that there is no genuine issue as to any material fact concerning the pertinent dates in the time calculation formula established in 15A NCAC 24A .0302(5). Since the Respondent did not receive the Petitioners' claims for payment in a timely manner, the Respondent is entitled to a judgment as a matter of law.



## *CONTESTED CASE DECISIONS*

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### RECOMMENDATION

It is recommended that summary judgment be entered in favor of the Respondent because there is no genuine issue as to any material fact concerning the tardiness of the Respondent's receipt of the Petitioners' claims for payment, thus entitling the Respondent to a judgment as a matter of law.

### ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

### NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Environment, Health, and Natural Resources.

This the 11th day of March, 1992.

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Michael Rivers Morgan  
Administrative Law Judge



2. From September 1987 to August 1990, Petitioner Deborah Allen (hereinafter "Complainant"), lived in a mobile home in Watkins Mobile Home Park. The Complainant, who is white, owned her mobile home, and she rented the lot from the Respondent.
3. In January, 1990, the Complainant advertised her mobile home for sale. Harvey and Mildred Dewberry, who are black, responded to the Complainant's advertisement. The Dewberrys told the Complainant they were interested in buying her mobile home, leaving it on the lot in Watkins Mobile Home Park, and having their daughter live in the mobile home. Ms. Allen told the Dewberrys to contact the Respondent about renting the mobile home lot in Watkins Mobile Home Park.
4. In January 1990, the Dewberrys spoke with the Respondent and informed him that they were interested in buying the Complainant's mobile home and leaving it on her lot in Watkins Mobile Home Park.
5. After the Dewberrys informed the Respondent of their interest in renting the Complainant's lot in Watkins Mobile Home Park, the Respondent spoke with the Complainant. The Respondent told the Complainant that she was putting him in a terrible position because once one black came to his mobile home park, other blacks would come. The Complainant asked the Respondent if he would rent to the Dewberrys. His response was that he would have to think about it.
6. A few days after the conversation described in paragraph 5, above, the Complainant had heard nothing from the Respondent concerning the Dewberrys' inquiry about renting the lot. The Complainant contacted the Respondent and again asked if he would rent the lot to the Dewberrys. The Respondent said he had not made a decision yet. The Respondent said that the Complainant would need to get character and credit references from the Dewberrys and that he would let her know about whether he would rent to them.
7. It was not the Respondent's customary practice to ask prospective white tenants to submit character and credit references as a precondition to moving into Watkins Mobile Home Park. The application asks for the name of the tenant's employer. The Respondent did not ask the Complainant to submit any character or credit references when she applied for tenancy in the park. Likewise, none of the other tenants who testified stated that the Respondent asked them for character or credit references. The Respondent claims that he obtains some of this reference information, without specifically asking for it, in casual conversations with prospective tenants or in conversations with people who know them.
8. In the 20 years Watkins Mobile Home Park has existed, the Respondent has never had a black tenant. When the Dewberrys inquired about renting a lot in the park, the Respondent did not invite them to come to his home to meet him or to complete an application. Instead, as a precondition to deciding whether he would rent to them at all, the Respondent asked the Complainant to obtain character and credit references from the Dewberrys.
9. After the Respondent told the Complainant to do so, the Complainant contacted the Dewberrys and informed them that the Respondent wanted them to submit character and credit references if they wanted to be considered for a rental lot in the park. The Dewberrys informed the Complainant that they had decided not to purchase her mobile home. The Complainant finally sold her mobile home to another purchaser in August 1990.
10. The Complainant testified that the Respondent's above-described actions caused her embarrassment and emotional distress. She stated she felt discrimination was wrong, and that she was angered by the Respondent's actions. She also testified she was embarrassed by having to tell the Dewberrys they would need to submit references, knowing she has not been required to do so. The Complainant testified that the distress caused by these incidents caused her anxiety, depression and sleepless nights.



## CONTESTED CASE DECISIONS

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11. At the time the Respondent took the above-described actions, he was aware of the State Fair Housing Act and its prohibition against racial discrimination in the conditions of a real estate transaction.

### CONCLUSIONS OF LAW

1. G.S. 41A-4(a) (6) prohibits a person from making a statement which indicates directly or indirectly an intent to discriminate on the basis of race in a real estate transaction. In this case, after the Complainant referred a black family to the Respondent to inquire about renting a lot, the Respondent told the Complainant that she had put him in a terrible position because once one black comes, others will come. This statement indicated the Respondent's racially discriminatory intent regarding the transaction, and the statement was a violation of G.S. 41A-4(a) (6).
2. G.S. 41A-4(a) (2) prohibits discrimination because of race in the terms, conditions, and privileges of a real estate transaction. This provision is violated when a landlord requires black rental applicants to submit certain information or undergo certain background checks which are not required of all white applicants. This unequal application of rental criteria based on race is, by itself, a violation of the law. An applicant who is required to meet extra rental qualifications because of race need not be denied a rental to establish unlawful discrimination in the terms and conditions of the rental transaction.

In this case, the Respondent required a black family to submit credit and character references before he would consider renting them a lot in his mobile home park. The Respondent did not regularly request or require such references from white lot applicants. In thus requiring the black family, because of race, to submit references when he did not regularly require such references from white applicants, the Respondent discriminated in the terms and conditions of a real estate transaction in violation of G.S. 41A-4(a) (2).

3. The Complainant has standing to challenge the Respondent's unlawful discriminatory housing practices. G.S. 41A-7(a) states that a claim of a violation of the State Fair Housing Act may be made by "Any person who claims to have been injured by an unlawful discriminatory housing practice".
4. The Respondent's motion to dismiss this action pursuant to Rule 12(b) (6) of the North Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted is hereby denied.

Based on the foregoing the undersigned makes the following:

### PROPOSAL FOR DECISION

The North Carolina Human Relations Commission will make the final decision in this contested case. It is proposed that the Commission assess a civil penalty against the Respondent in the amount of \$1,000 and order him to pay \$1,000 in compensatory damages to the Complainant.

### NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

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

## *CONTESTED CASE DECISIONS*

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furnished to his attorney of record. G.S. 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Human Relations Commission.

This the 17th day of March, 1992.

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Fred G. Morrison, Jr.  
Senior Administrative Law Judge

## CONTESTED CASE DECISIONS

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STATE OF NORTH CAROLINA

COUNTY OF ORANGE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

91 OSP 1429

91 OSP 1430

92 OSP 0096

ROY BLALOCK,  
DEBORAH EAKINS, and  
JOHN GORDON WRIGHT,  
Petitioners,

v.

UNIVERSITY OF NORTH CAROLINA  
AT CHAPEL HILL,  
Respondent.

FINAL DECISION  
DISMISSING CONTESTED CASES  
FOR LACK OF JURISDICTION

The three above captioned contested cases were consolidated in the Office of Administrative Hearings on February 17, 1992. Each case poses a common legal question as to whether the Office of Administrative Hearings has subject matter jurisdiction in cases where the only question in issue is whether the Petitioner should be awarded reasonable attorneys fees following resolution, at the agency level, of a successful appeal brought by the employee following the employee's dismissal.

In case 91 OSP 1429, Petitioner Blalock was dismissed from employment by Respondent in July, 1991. Following his internal grievance proceedings, Respondent reinstated him with back pay on November 25, 1991. Respondent declined to award Petitioner Blalock attorney's fees.

In case 91 OSP 1430, Petitioner Eakins was dismissed from employment by Respondent on June 3, 1991. Following her internal grievance proceedings, Respondent reinstated her with back pay on November 15, 1991. Respondent declined to award Petitioner Eakins attorney's fees.

In case 92 OSP 0096, Petitioner Wright was dismissed from employment by Respondent in July, 1991. Following his internal grievance proceedings, Respondent reinstated him with back pay on November 25, 1991. Respondent declined to award Petitioner Wright attorney's fees.

A telephone scheduling conference in the consolidated cases was conducted by Beecher R. Gray, administrative law judge, on February 18, 1992. Alan McSurely, Esq. appeared for Petitioners Blalock, Eakins, and Wright. Barbara A. Shaw, Esq. appeared for Respondent University of North Carolina at Chapel Hill. During the conference, Respondent noted that it had filed, or intended to file, motions to dismiss in all three cases. It was agreed and determined that Petitioners would have thirteen (13) days following the filing of the last motion to dismiss in which to respond to any or all motions to dismiss. Respondent filed the last motion to dismiss on February 20, 1992 in case 92 OSP 0096. Petitioners have not filed a response to any motion.

Having considered the motions to dismiss, the record in each case, and the applicable statutes and rules I find that:

1. G.S. 126-4(11) grants the State Personnel Commission the authority to determine an award of attorney's fees following reinstatement or an award of back pay to a state employee;
2. the State Personnel Commission has promulgated rules which provide:

Attorney's fees may be awarded by the commission only in the following situations:

- (1) the grievant is reinstated to the same or similar position from either a demotion or a dismissal;
- (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated;



## CONTESTED CASE DECISIONS

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- (3) the grievant is determined, by the commission or by the agency's internal grievance procedure, to have been discriminated against in violation of G.S. 126-16;
- (4) the grievant is awarded back pay as the result of a successful grievance alleging a violation of G.S. 126-7.1;
- (5) any combination of the above situations.

Attorney's fees may be awarded when any of the above situations occur, either within the agency internal grievance procedure or in an appeal to the State Personnel Commission.  
N.C. Admin. Code tit. 25, r. 1B .0414 (August, 1991);

3. each Petitioner filed a contested case petition in the Office of Administrative Hearings contesting only the failure of Respondent to award attorney's fees in each of the three cases following reinstatement of the employees.

### CONCLUSIONS OF LAW

1. An appeal from an internal agency grievance proceeding which reinstated a State employee with back pay but declined to award attorney's fees does not constitute a contested case under Chapter 150B of the General Statutes of North Carolina because such denial does not affect a right, duty, or privilege within the contemplation of G.S. 150B-2(2), G.S. 150B-22, or G.S. 150B-23. Under G.S. 126-4(11) and N.C. Admin. Code tit. 25, r. 1B .0414, whether to award attorney's fees in cases where a state employee is reinstated or receives back pay rests in the sound discretion of the State Personnel Commission.
2. Under G.S. 126-37, the State Personnel Commission would have had jurisdiction in each of these matters if the cases had progressed beyond the internal agency grievance level because each case included a dismissal from employment, followed by reinstatement and back pay; the State Personnel Commission is authorized by G.S. 126-4(11) and N.C. Admin. Code tit. 25, r. 1B .0414 (August, 1991) to receive direct requests from Petitioners for review of Petitioners' requests for attorney's fees.
3. Subject matter jurisdiction in the Office of Administrative Hearings in personnel matters arises from Chapter 126 of the General Statutes. Batten v. North Carolina Department of Correction, 326 N.C. 338, 389 S.E.2d 35 (1990). Petitioners have not been granted a right to attorney's fees by Chapter 126, only the opportunity to seek an order from the State Personnel Commission awarding attorney's fees in proper cases.

For the foregoing reasons, Respondent's Motions to Dismiss should be, and the same hereby are, **ALLOWED**. The consolidated petitions in 91 OSP 1429, 91 OSP 1430, and 92 OSP 0096 are **DISMISSED** for lack of subject matter jurisdiction in the Office of Administrative Hearings.

### NOTICE

This final decision is subject to judicial review in the Superior Court Division of the North Carolina General Court of Justice in accordance with the provisions of G.S. Chapter 150B, Article 4, which require that an appeal be filed in the superior court within thirty (30) days following service upon the person of a written copy of the final decision.

This the 13th day of March, 1992.

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Beecher R. Gray  
Administrative Law Judge

## CONTESTED CASE DECISIONS

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STATE OF NORTH CAROLINA  
COUNTY OF CRAVEN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
92 EHR 0003

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NEW BERN-CRAVEN COUNTY BOARD  
OF EDUCATION, a Statutory Corporation  
of North Carolina,  
Petitioner

v.

THE HONORABLE HARLAN E. BOYLES,  
State Treasurer, THE HONORABLE  
FRED W. TALTON, State Controller,  
THE HONORABLE WILLIAM W. COBEY, JR.,  
Secretary of the Department of Environment,  
Health, and Natural Resources, and  
DR. GEORGE T. EVERETT, Director of  
the Division of Environmental Management,  
Respondents

### FINAL DECISION

---

The verified Petition, filed January 2, 1992, alleged:

7.

On or about October 17, 1991, Weyerhaeuser Company, a Corporation of Washington, with an office and place of business in Craven County, North Carolina, paid or caused to (be) paid to the North Carolina Division of Environmental Management and/or to the General Fund of the State of North Carolina, a civil fine, penalty or forfeiture, totaling \$926,000.00 for violations of North Carolina State laws and regulations designed to protect the air quality and prevent air pollution.

8.

That said fine, penalty or forfeiture arose out of notices of violations to Weyerhaeuser Company issued by the Division of Environmental Management, identifying violations of one or more laws or regulations of the North Carolina Administrative Code, occurring in Craven County; and the Division of Environmental Management issued an assessment or assessments of civil penalties for said violations of law pursuant to G.S. 143, Article 21B and particularly G.S. 143-215.114, in case number 91-EHR-0644, Craven County, North Carolina.

9.

That said sum of \$926,000.00 paid by Weyerhaeuser Company to the State of North Carolina, as aforesaid, is a fine, penalty or forfeiture within the context, meaning and control of Article 1X, Section 7, of the North Carolina Constitution, which provides that said payment of \$926,000.00 shall belong to and remain in Craven County and shall be faithfully appropriated and used exclusively for maintaining free public schools.

10.

The Petitioner has demanded payment of the \$926,000.00 from all of the Respondents named herein; and the Respondents have failed and refused to pay the same, after demand, to or on behalf of the Petitioner.

11.

Respondents, as Petitioner is informed, believes and therefore alleges, contend that the said monies paid by Weyerhaeuser Company to the State are not within the purview of Article IX, Section 7, of the Constitution; and, therefore, refuse to voluntarily remit the monies to Craven County for the exclusive use of the public schools.

12.

Respondents continue to hold and refuse to surrender the monies which Petitioner verily believes it is entitled to for free public schools pursuant to Article IX, Section 7. The Treasurer, who has custody of said monies, refuses to surrender the same to Petitioner, claiming lack of authority to do so without a warrant authorized by the Secretary of the Department of Environment, Health, and Natural Resources, and issued by the Controller, per G.S. 147-68(a) and (b), G.S. 147-4 and G.S. 143-3.2. Petitioner is informed, believes and therefore alleges that the Secretary and the Director refuse to authorize a warrant for payment to Craven County for the use and benefit of the Petitioner, based on the contention that the funds belong to the account of and for the use and benefit of the Department of Environment, Health, and Natural Resources or the Division of Environmental Management, or both, and are not within the reach of Article IX, Section 7 of the Constitution. Petitioner contends that the subject funds are controlled by this constitutional section; and the constitution preempts the effect of the above cited statutes and/or the possession and control of Respondents. Litigation is, therefore, unavoidable.

13.

Petitioner, therefore, has attempted to resolve this dispute through informal procedures, i.e., by demand upon and correspondence with the Respondents; and the Attorney General of North Carolina, acting for said agencies-respondents, has issued correspondence to Petitioner effectively denying any liability of said Respondent-agencies to pay the same and declaring that their inability to remit the subject monies to Petitioner, said correspondence from the Attorney General being dated November 18, 1991.

Therefore, although Petitioner has attempted to reach an informal resolution with Respondents to this dispute, the parties Respondent cannot, or will not, agree to a resolution through informal procedures; and this matter has become a "contested case" within the purview of G.S. 150B, Article 3; and Petitioner commences this administrative proceeding to determine and establish its rights to the subject funds.

14.

Consequently, the Respondents have deprived Petitioner of property and otherwise substantially prejudice Petitioner's rights and, in doing so, have exceeded their authority and jurisdiction, acted erroneously, and have failed to act as required by law, especially in accordance with the mandate of Article 9, Section 7, of the North Carolina Constitution.

After the filing of the Petition, the contested case was assigned to the undersigned administrative law judge. The undersigned issued an Order for Prehearing Statements. In response, all parties filed unverified Prehearing Statements. In their Prehearing Statement, the respondents moved to dismiss "pursuant to Rule 12b (sic) of the North Carolina Rules of Civil Procedure because the Office of Administrative Hearings lacks jurisdiction over the subject matter of this dispute and because the petition fails to state a claim upon which the relief sought can be granted." Memoranda were filed by the parties. Oral arguments were heard on March 5, 1992, in Raleigh.

11.

The Respondents' Memorandum of Law in Support of Motion to Dismiss contained several arguments supporting their position that the Office of Administrative Hearings lacks subject matter jurisdiction to hear this contested case and that the petition failed to state a claim upon which relief can be granted.



A.

Although matters outside the pleadings may be considered and weighed by the court in determining the existence of jurisdiction over the subject matter [Tart v. Walker, 38 NC App 500, 248 SE 2d 736 (1978)], no affidavits, stipulations, deposition transcripts or sworn testimony were presented to the undersigned. Therefore, the Motion to Dismiss for lack of subject matter jurisdiction, like the Motion to Dismiss for failure to state a claim, must be determined solely with reference to the verified Petition.

The respondents first contended that Article 3 of G.S. Chapter 150B is procedural only and therefore does not confer substantive rights. Batten v. Department of Correction, 326 NC 338, 389 SE 2d 35 (1990) was cited. However, the Department of Correction was and is exempted from the provisions of Article 3 and therefore that case was necessarily decided by construing only G.S. Chapter 126. References to Article 3 in Batten are therefore obiter dicta. As noted in Matter of Appeal from Civil Penalty, 324 NC 373, 379 SE 2d 30 (1989), "mechanical application of (a rule in a prior case) ignores the progress made in the way the role of administrative agencies is regarded." (Id. at 381, 35) A March 12, 1991, Order in Scott v. Board of Trustees (90 DST 1426) and a February 14, 1992 Final Decision in Ginn v. Department of Correction (91 OSP 1224) are attached and are incorporated herein. They contain further discussion of Batten.

The Department of Correction was and is exempted from Article 3. However, the State Treasurer, the State Controller, the Secretary of Environment, Health, and Natural Resources, and the Director of Environmental Management are subject to the Administrative Procedure Act. G.S. 150B-1(b) declares that "(t)his Chapter confers procedural rights." In addition, G.S. 150B-1(e) declares that "(t)he contested case provisions (Article 3 and 4) apply to all agencies and all proceedings not expressly exempted from the Chapter." "Agency" includes "an officer in the executive branch of the government of this State." See G.S. 150B-2(1). The named respondents are officers and are included in the definition of "agency." They are not expressly exempted from Article 3 and 4. Article 3 contains G.S. 150B-23. It provides that "(a) contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office." Therefore, the Administrative Procedure Act confers not only procedural rights but also determines which agencies are subject to the jurisdiction of the Office of Administrative Hearings.

G.S. 150B-23(a) specifies the content of a petition:

A petition shall be signed by a party or a representative of a party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

Although the respondents analyzed the above statutory language in respect to their lack of subject matter jurisdiction argument, the undersigned believes that this language is relevant to determining whether the petition states a claim upon which relief can be granted. The subject matter jurisdiction issue is resolved by determining that the named respondents are included within the definition of "agency" under G.S. 150B-1(e) and are not expressly exempted by that subsection. (The 60 days time limitation in G.S. 150B-23(f) is also a jurisdictional provision.)

The Petition named four respondents. The Petition alleged that Weyerhaeuser Company paid a civil fine, penalty or forfeiture, totaling \$926,000, to the Division of Environmental Management. The Petition alleged that the sum belonged to the petitioner pursuant to Article IX, Section 7, of the North Carolina Constitution. The Petition alleged that the petitioner made demand for payment on the respondents and they refused to pay the amount. The Petition further alleged that the Treasurer has custody of the amount and refused payment due to the lack of a warrant, that the Secretary and the Director

refused to authorize a warrant, that the Controller was required to issue any warrant, and that no warrant has been issued.

If the allegations contained in the Petition contain merit, the Petition has alleged that the respondents have deprived the petitioner of property, an identifiable substantive right, i.e. the right to \$926,000, by taking and possessing money which belonged to the petitioner. The Petition has also alleged that, by taking and possessing the money, the respondents have failed to act as required by law, i.e. Article IX, Section 7. This Section is the source of the petitioner's substantive right. The Constitution, statutes and rules constitute the law of this State.

C.

One of the respondents' arguments was that the petitioner had not made any demand upon the respondents other than the State Treasurer. However, the deprivation of property occurred by the taking and possessing of the money; no demand is required. Furthermore, the Petition alleged that demand was made on all respondents.

The respondents argued in their Memorandum that the Office of Administrative Hearings cannot issue a declaratory ruling pursuant to G.S. 150B-4. The undersigned agrees. The Petition requested "(f)or such other and further relief as the court may seem (sic) just and proper." In the administrative law context, the proper relief is the issuance of a recommended decision, containing findings of fact and conclusions of law, pursuant to G.S. 150B-34.

The respondents also contended that an administrative law judge lacks the authority to declare a statute unconstitutional. The undersigned agrees. However, under Article VI, Section 7 of the Constitution of North Carolina, a person elected or appointed to office, such as the respondents and the administrative law judge, takes an oath to "support and maintain" the United States and North Carolina Constitutions. In Bailey v. State of North Carolina, 330 NC 227, 410 SE 2d 462 (1991), the controlling statute, Chapter 792, had "not yet been examined either by federal courts or by the appellate courts of this state." (Id. at 224, 472) Therefore, it was not the responsibility of the Secretary of Revenue or State Treasurer "to judge the constitutionality of the statutes authorizing and regulating their departmental functions." (Id. at 225, 473) However, if the controlling statutes in this case are consistent with Article IX, Section 7, the respondents and the administrative law judge must support and maintain both the Constitution and statutes of this State as they have sworn to do. In addition to this executive responsibility, the Supreme Court recognized in Matter of Appeal from Civil Penalty, supra, that some "discretionary judicial authority may be granted to an agency when reasonably necessary to accomplish the agency's purpose." (Id. at 379, 34) This limited judicial authority has been granted to the administrative law judge in making recommended decisions pursuant to G.S. 150B-34 and to the agencies in making a final decision pursuant to G.S. 150B-36.

III.

The test on a motion to dismiss for failure to state a claim upon which relief can be granted is whether the pleading is legally sufficient (Citations omitted.) A complaint may be dismissed on motion filed under Rule 12(b)(6) if it is clearly without merit; such lack of merit may consist of an absence of law to support a claim of the sort made, absence of fact sufficient to make a good claim, or the disclosure of some fact which will necessarily defeat the claim. Shoffner Industries, Inc. v. W.B. Lloyd Construction Company, 42 NC App 259, 263, 257 SE 2d 50, 54 (1979).

The task is to determine whether the enabling statutes pertaining to the respondents and Article IX, Section 7, as interpreted by the appellate courts, support the petitioner's claim.

A.

G.S. 143-215.114A authorizes the Secretary of Environment, Health, and Natural Resources to assess a civil penalty for violation of an air pollution law or rule. The statute requires payment within 30 days after notice of assessment has been served on the violator. This power may be delegated to the Director

of Environmental Management. The statute is silent about to whom payment shall be made and to whose account the payment shall be deposited. The Petition contended that the \$926,000 was incorrectly paid to the Division of Environmental Management.

G.S. 147-77 provides that "(a)ll funds belonging to the State of North Carolina, in the hands of any head of any department of the State" shall be deposited in a bank designated by the State Treasurer. The Petition questioned whether the \$926,000 belonged to the State of North Carolina.

G.S. 143-3.2 provides that "the State Controller shall have exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer." The State Controller must determine the legality of payment and the correctness of the accounts before issuing the warrants. The Petition alleged that the State Controller was required to but failed to issue the warrant even though the payment of \$926,000 to the petitioner would have been legally correct.

G.S. 147-68(b) states that "(n)o moneys shall be paid out of the treasury except on warrant unless there is a legislative appropriation or authority to pay the same." The respondents overlook the language "authority to pay the same." That authority is G.S. 147-84. The statute provides:

Whenever taxes or other receipts of any kind are or have been by clerical error, misinterpretation of the law, or otherwise, collected and paid into the State treasury in excess of the amount legally due the State, said excess amount shall be refunded to the person entitled thereto.

The petitioner's claim, if it has merit, falls squarely within the scope of this statute. Contrary to the respondent's argument, the plain language of G.S. 147-84 imposes no restriction on refunds after certification of the funds. Neither does G.S. 143-3.2. Furthermore, in Bailey v. State, *supra*, the Supreme Court recognized that the statute's purpose is to refund money erroneously paid.

The \$926,000 is a receipt of any kind which the Petition alleged was incorrectly paid into the Treasury due to a misinterpretation of Article IX, Section 7, and which the State Treasurer refused to refund. The respondents argued that a warrant must nevertheless be issued. If a warrant is required despite the language of G.S. 147-68(b) and G.S. 147-84, then the State Controller must issue a warrant if the payment of the petitioner's claim is legally correct. The legal correctness depends on the application of Article IX, Section 7, to the allegations contained in the Petition.

The petitioner, if its interpretation of Article IX, Section 7, is correct, has alleged a claim against all of the respondents.

B.

The respondents' arguments on the proper construction of Article IX, Section 7, were brief. The respondents first argued that they are legally "bound to follow statutory law absent a contrary order from a court of the General Courts (sic) of Justice." (Memorandum p 17) As discussed above, the respondents are officers who are bound by their oaths to support and maintain the Constitution of North Carolina. Secondly, unlike Bailey v. State, *supra*, there is no controlling statute contrary to the alleged applicable constitutional provision. All the statutes discussed above in Part A are truly procedural. Not one purports to determine what moneys belong to the State; they only prescribe how moneys in the possession of the State shall be handled.

The respondents' other argument is that Article IX, Section 7 is applicable only to the penal laws of the State. They argued that G.S. 143-215.114A imposes a civil penalty which is remedial, not penal, in nature. United States v. Ward, 448 US 242 (1980) and United States v. Santoro, 866 F 2d 1538 (4th Cir. 1989) were cited. The first held that Section 311(b)(3) of the Federal Water Pollution Control Act imposed a civil, not a criminal, penalty and therefore certain clauses of the Fifth and Sixth Amendments were not applicable. The second concerned whether a forfeiture was civil or criminal. The Court held that if a penalty was designated as civil, the "clearest proof" was required to show that the statute was so punitive that the forfeiture could not be labeled as civil.



The respondents also cited Mussallam v. Mussallam, 321 NC 504, 364 SE 2d 364 (1988). The Supreme Court held that the Guilford County Board of Education was entitled to the proceeds from the forfeiture of an appearance bond. The bond was a civil bond in a civil case. In case of forfeiture, the sureties were bound to pay the State of North Carolina. The Court construed Article IX, Section 7:

We interpret the provisions of section 7 relating to the clear proceeds from penalties, forfeitures and fines as identifying two distinct funds for the public schools. These are (1) the clear proceeds of all penalties and forfeitures in all cases regardless of their nature, so long as they accrue to the state; and (2) the clear proceeds of all fines collected for any breach of the criminal laws. ( Id. at 508-509, 366)

The Court continued:

The term 'penal laws,' as used in the context of article IX, section 7, means laws that impose a monetary payment for their violation. The payment is punitive rather than remedial in nature and is intended to penalize the wrongdoer rather than compensate a particular party. ( Id. at 509, 367)

For purposes of determining whether the \$926,000 civil penalty belongs to the first fund identified in Article IX, the question is whether payment of the penalty is punitive (to penalize) or remedial (to compensate). (Fines collected for the breach of the criminal law clearly belong to the second fund.) See also State ex Rel. Thornburg v. Currency, 324 NC 276, 378 SE 2d 1 (1989). The answer may be derived from an examination of the purpose of the air pollution control law in G.S. Chapter 143, Article 21B and the method of determining the amount of the penalty under G.S. 143-215.114A.

G.S. 143-211 is the declaration of the public policy of this State concerning the conservation of water and air resources. The statute states in part:

Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare. Standards of water and air purity shall be designed to protect public health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources.

The Secretary is directed to consider the factors set out in G.S. 143B-282.1 when determining the amount of the civil penalty imposed under G.S. 143-215.114A:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
- (8) The cost to the State of the enforcement procedures.

The purpose of the air pollution control law is remedial, i.e. to protect the natural resources of this State. The imposition of a civil penalty, such as the \$926,000 penalty paid by Weyerhaeuser is remedial, i.e. to compensate the State of North Carolina for damage to its natural resources. The factors considered in imposing the penalty are primarily remedial, even though factors #5, 6 and 7 are punitive in nature. When applying the Mussallam rule, the undersigned concludes that the payment of a civil penalty for violation of the air pollution control law is remedial in that it compensates the State for damage to its natural resources. Since the payment of the civil penalty is remedial, the clear proceeds from the penalty belong to the State of North Carolina, the injured party, and not the petitioner pursuant to Article IX, Section 7, of the Constitution of North Carolina. Therefore, the the petitioner's claim is without merit and is subject to dismissal pursuant to G.S. 1A-1, Rule 12(b)(6), Rules of Civil Procedure, because of an absence of law to support the claim. See Shoffner Industries, Inc., supra.

ORDER

The Motion to Dismiss for lack of subject matter jurisdiction is DENIED.

The Motion to Dismiss for failure to state a claim upon which relief can be granted is ALLOWED.

This is a FINAL DECISION pursuant to G.S. 150B-36(c)(4).

NOTICE

In order to appeal a final decision, the person seeking judicial review must file a petition in the Superior Court of Wake County or in the superior court of the county where the person resides. The petition for judicial review must be filed within thirty days after the person is served with a copy of the final decision. G.S. 150B-46 describes the contents of the petition and requires service of a copy of the petition on all parties.

This the 13th day of March, 1992.

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Robert Roosevelt Reilly, Jr.  
Administrative Law Judge

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

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# NORTH CAROLINA ADMINISTRATIVE CODE

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