

NORTH CAROLINA REGISTER



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Pages 349 - 510

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through July 25, 2000.

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
*21	Occupational Licensing Boards	Marital and Family Therapy	31
22	Administrative Procedures (Repealed)	Medical Examiners	32
23	Community Colleges	Midwifery Joint Committee	33
24	Independent Agencies	Mortuary Science	34
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		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
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		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
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		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
Publication Schedule For January 2000 - December 2000

FILING DEADLINES			NOTICE OF RULE- MAKING PROCEEDIN GS	NOTICE OF TEXT							TEMPORARY RULE
volume and issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
14:13	01/04/00	12/09/99	03/15/00	01/19/00	02/03/00	02/21/00	05/09/00	03/06/00	03/20/00	05/09/00	09/30/00
14:14	01/14/00	12/21/99	03/15/00	01/31/00	02/14/00	02/21/00	05/09/00	03/14/00	03/20/00	05/09/00	10/10/00
14:15	02/01/00	01/10/00	04/03/00	02/16/00	03/02/00	03/20/00	05/09/00	04/03/00	04/20/00	01/26/01	10/28/00
14:16	02/15/00	01/25/00	04/17/00	03/01/00	03/16/00	03/20/00	05/09/00	04/17/00	04/20/00	01/26/01	11/11/00
14:17	03/01/00	02/09/00	05/01/00	03/16/00	03/31/00	04/20/00	01/26/01	05/01/00	05/22/00	01/26/01	11/26/00
14:18	03/15/00	02/23/00	05/15/00	03/30/00	04/14/00	04/20/00	01/26/01	05/15/00	05/22/00	01/26/01	12/10/00
14:19	04/03/00	03/13/00	06/15/00	04/18/00	05/03/00	05/22/00	01/26/01	06/02/00	06/20/00	01/26/01	12/29/00
14:20	04/17/00	03/27/00	07/03/00	05/02/00	05/17/00	05/22/00	01/26/01	06/16/00	06/20/00	01/26/01	01/12/01
14:21	05/01/00	04/07/00	07/03/00	05/16/00	05/31/00	06/20/00	01/26/01	06/30/00	07/20/00	01/26/01	01/26/01
14:22	05/15/00	04/24/00	07/17/00	05/30/00	06/14/00	06/20/00	01/26/01	07/14/00	07/20/00	01/26/01	02/09/01
14:23	06/01/00	05/10/00	08/01/00	06/16/00	07/03/00	07/20/00	01/26/01	07/31/00	08/21/00	01/26/01	02/26/01
14:24	06/15/00	05/24/00	08/15/00	06/30/00	07/17/00	07/20/00	01/26/01	08/14/00	08/21/00	01/26/01	03/12/01
15:01	07/03/00	06/12/00	09/01/00	07/18/00	08/02/00	08/21/00	01/26/01	09/01/00	09/20/00	01/26/01	03/30/01
15:02	07/17/00	06/23/00	09/15/00	08/01/00	08/16/00	08/21/00	01/26/01	09/15/00	09/20/00	01/26/01	04/13/01
15:03	08/01/00	07/11/00	10/02/00	08/16/00	08/31/00	09/20/00	01/26/01	10/02/00	10/20/00	01/26/01	04/28/01
15:04	08/15/00	07/25/00	10/16/00	08/30/00	09/14/00	09/20/00	01/26/01	10/16/00	10/20/00	01/26/01	05/12/01
15:05	09/01/00	08/11/00	11/01/00	09/18/00	10/02/00	10/20/00	01/26/01	10/31/00	11/20/00	01/26/01	05/29/01
15:06	09/15/00	08/24/00	11/15/00	10/02/00	10/16/00	10/20/00	01/26/01	11/14/00	11/20/00	01/26/01	06/12/01
15:07	10/02/00	09/11/00	12/01/00	10/17/00	11/01/00	11/20/00	01/26/01	12/01/00	12/20/00	05/2002	06/29/01
15:08	10/16/00	09/25/00	12/15/00	10/31/00	11/15/00	11/20/00	01/26/01	12/15/00	12/20/00	05/2002	07/13/01
15:09	11/01/00	10/11/00	01/02/01	11/16/00	12/01/00	12/20/00	05/2002	01/02/01	01/22/01	05/2002	07/29/01
15:10	11/15/00	10/24/00	01/16/01	11/30/00	12/15/00	12/20/00	05/2002	01/16/01	01/22/01	05/2002	08/12/01
15:11	12/01/00	11/07/00	02/01/01	12/18/00	01/02/01	01/22/01	05/2002	01/30/01	02/20/01	05/2002	08/28/01
15:12	12/15/00	11/22/00	02/15/01	01/02/01	01/16/01	01/22/01	05/2002	02/13/01	02/20/01	05/2002	09/11/01

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD

(1) **RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) **RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

<i>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.</i>

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

ABBREVIATED NOTICE

The North Carolina Medical Care Commission is required to adopt temporary rules to implement the requirements of House Bill 1514 with regards to respite care provided in adult care homes. Specifically, the Commission must define the circumstances under which adult care homes may admit residents on a short-term basis for the purpose of caregiver respite and the rules that shall apply during their stay. The bill was ratified during the recent Short Session of the General Assembly. The Commission will conduct a public hearing on the temporary rules prior to their adoption. Anyone wishing information on the public hearing or rules should contact Jackie Sheppard (919) 733-2342.

U.S. Department of Justice

Civil Rights Division

JDR:JBG:DCM:nj
DJ 166-012-3
2000-1902

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

June 27, 2000

Michael B. Brough, Esq.
The Brough Law Firm
1829 East Franklin St., Suite 800-A
Chapel Hill, NC 27514

Dear Mr. Brough:

This refers to two annexations (Ordinance Nos. 00-07 and 00-08) and their designation to Ward 4 of the Town of Tarboro in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on May 4, 2000.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:GS:SMC:par
DJ 166-012-3
2000-2098

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

July 13, 2000

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

Dear Mr. Holec:

This refers to seven annexations (Ordinance Nos. 29 through 33, 37, and 38 (2000)) and their designation to council districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on May 22, 2000.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 2 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

CHAPTER 34 – STRUCTURAL PEST CONTROL DIVISION

Notice of Rule-making Proceedings is hereby given by the North Carolina Structural Pest Control Committee in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 2 NCAC 34 .0502 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 106-65.29

Statement of the Subject Matter: Establishes standards for approval of termiticide products.

Reason for Proposed Action: Proposed amendments would establish requirements for prior approval of other termite control products.

Comment Procedures: Written comments may be submitted to Carl Falco, Secretary, North Carolina Structural Pest Control Committee, PO Box 27647, Raleigh, NC 27611.

income housing tax credits (LIHTC) given to affordable housing developments in North Carolina.

Reason for Proposed Action: To update the current Administrative Rules to reflect recent affordable housing development industry standards and Internal Revenue Service decisions involving the Low Income Housing Tax Credit Program, and to allow for Agency modifications for program administration.

Comment Procedures: Written comments may be submitted to the North Carolina Housing Finance Agency by mail at NCHFA, Attention C. William Dowse, PO Box 28066, Raleigh, NC 27611-8066 or by fax: 919-877-5702.

TITLE 7 – DEPARTMENT OF CULTURAL RESOURCES

CHAPTER 4 – DIVISION OF ARCHIVES AND HISTORY

Notice of Rule-making Proceedings is hereby given by the North Carolina Historical Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 7 NCAC 4M .0102-.0103; .0105-.0106; .0201-.0203; .0205; .0301-.0304; .0401; .0503; .0510-.0512; 4R; 4R .0802-.0806; .0808; 4S .0101-.0102; .0104-.0108; .0110 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 70-18; 121-2(8); 121-4(2), (3); 121-4(8), (9); 121-4(13), (14); 121-4.1(a); 121-5; 121-5(d); 121-8; 121-8(b), (c), (f); 132-3; 132-8.1; 132-8.2; 143B-62(1)g; 143B-62(2)a; 143B-62(2)b; 143B-62(2)d; 143B-62(2)(g)

Statement of the Subject Matter:
7 NCAC 4M .0102-.0103, .0105-.0106, .0201-.0203, .0205, .0301-.0304, .0401, .0503, .0510-.0512 – address the operation of and services made available by the Archives and Records Section of the North Carolina Division of Archives and History.
7 NCAC 4R – Agency is proposing three new rules that will address the operating hours, the maintenance of historic structure maps and files, and public access and visitation procedures for the Survey and Planning Branch of the State Historic Preservation Office.
7 NCAC 4R .0802-.0806, .0808 – address the services provided by the Office of State Archaeology, including accessioning

TITLE 4 – DEPARTMENT OF COMMERCE

CHAPTER 1 – DEPARTMENTAL RULES

Notice of Rule-making Proceedings is hereby given by the North Carolina Housing Finance Agency in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 4 NCAC 1G .0101-.0102; .0201-.0203; .0301-.0302 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 122 A-5

Statement of the Subject Matter: Amendment to the Administrative Rules governing the allocation of federal low

procedures for collections maintained by the agency, curation of artifacts, loans of artifacts, access, files, and use guidelines.
7 NCAC 4S .0101-.0102, .0104-.0108, .0110 – address the purposes, operations and services available from the Tryon Palace Historic Sites and Gardens in New Bern, North Carolina, and have not been updated or modified since 1989.

Reason for Proposed Action:

7 NCAC 4M .0102-.0103, .0105-.0106, .0201-.0203, .0205, .0301-.0304, .0401, .0503, .0510-.0512 – Amendments and changes in these rules are needed to correct various technical points and to update procedures pertaining to visitation, reference services, copying services, researcher access, records disposition, and fees charges. Rules have not been corrected in over ten years, and various items need revision.

7 NCAC 4R – At present the Survey and Planning Branch of the State Historic Preservation Office lacks rules and procedures governing visitation and access to it files, operating hours, and the maintenance of its historic structure maps and files. The proposed new rules would provide such a framework in line with the needs of the branch and its desire to meet use demands.

7 NCAC 4R .0802-.0806, .0808 – These proposed amendments would make technical changes to the rules for the Office of State Archaeology and establish fee schedules and accessioning procedures for collections maintained by the office. Collected fees would be used to operate the Office of State Archaeology Research Center, in lieu of appropriated operating funds, which have not been forthcoming.

7 NCAC 4S .0101-.0102, .0104-.0108, .0110 – These amendments and changes are needed to accurately reflect the current administrative status of the Tryon Palace Historic Gardens and to clarify rules relating to hours, visitation, use of facilities, acquisition of artifacts, and research activity.

Comment Procedures: Written comments may be submitted to Boyd D. Cathey, Division of Archives and History, NC Department of Cultural Resources, 4614 Mail Service Center, 109 East Jones St., Raleigh, NC 27699-4614.

CHAPTER 4 – DIVISION OF ARCHIVES AND HISTORY

Notice of Rule-making Proceedings is hereby given by the Tryon Palace Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 7 NCAC 4S .0109 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 121-20; 143B-71

Statement of the Subject Matter: Addresses the collection and accessioning of artifacts; certain editorial changes are needed in the text of this Rule to bring it into line with present administrative usage.

Reason for Proposed Action: Small editorial changes are needed to accurately reflect the present administrative designation of the Tryon Palace Historic Sites and Gardens.

Comment Procedures: Written comments may be submitted to Boyd D. Cathey, Division of Archives and History, NC Department of Cultural Resources, 4614 Mail Service Center, 109 East Jones St., Raleigh, NC 27699-4614.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

Notice of Rule-making Proceedings is hereby given by the North Carolina Wildlife Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 10B .0115 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 75A-3; 75A-15; 113-291.1(e1)

Statement of the Subject Matter: Restrictions on use of shining light for hunting in Cherokee County.

Reason for Proposed Action: The Cherokee County Board of Commissioners has requested the NC Wildlife Resources Commission to undertake this rulemaking procedure in response to complaints by the public.

Comment Procedures: The record will be open for receipt of written comments. Written comments may be mailed to the NC Wildlife Resources Commission at 1701 Mail Service Center, Raleigh, NC 27699-1701, or delivered to the NC Wildlife Resources Commission at Suite 334, 512 N. Salisbury St., Raleigh, NC 27604-1188.

TITLE 18 – DEPARTMENT OF THE SECRETARY OF STATE

CHAPTER 6 – SECURITIES DIVISION

Notice of Rule-making Proceedings is hereby given by the NC Department of the Secretary of State in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 18 NCAC 6 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 78A; G.S. 78C

Statement of the Subject Matter: These rules govern the regulation of securities and securities agents, dealers and salesmen.

Reason for Proposed Action: These rulemaking proceedings were initiated by the Department of the Secretary of State Securities Division to correct duplicitous information and technical changes related to outdated citations and inconsistent provisions.

Comment Procedures: Comments concerning these rules may be addressed to David S. Massey, Deputy Securities Administrator at PO Box 29622, Raleigh, NC 27626-0525, (919)733-3924. Comments must be received no later than October 15, 2000.

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 58A .0104, .0106, .0108, .0110, .0112, .0506, .1706, .1708; 58C .0207; 58E .0406, .0505 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 41A-3; 41A-3(1b); 41A-4; 93A-2(a), (a1), (b); 93A-3; 93A-3(c); 93A-4(a); 93A-4A; 93A-6(a), (b); 93A-33

Statement of the Subject Matter:

21 NCAC 58A .0104 - Agency Agreements And Disclosure
 21 NCAC 58A .0106 - Delivery Of Instruments
 21 NCAC 58A .0108 - Retention Of Records
 21 NCAC 58A .0110 - Broker-In-Charge
 21 NCAC 58A .0112 - Offers And Sales Contracts
 21 NCAC 58A .1706 - Repetition Of Courses
 21 NCAC 58A .1708 - Equivalent Credit
 21 NCAC 58A .0506 - Salesperson To Be Supervised By Broker
 21 NCAC 58C .0207 - Facilities And Equipment
 21 NCAC 58E .0406 - Course Completion Reporting
 21 NCAC 58E .0505 - Advertising; Providing Course Information

Reason for Proposed Action:

21 NCAC 58A .0104 - to amend the rule to relax the requirement for written agency contracts in certain situations involving real estate sales transactions; to replace the required "Description of Agents' Duties" language with an agency informational publication; and to modify the requirements for agency disclosure.
 21 NCAC 58A .0106 - to amend the rule to make it conform to the agency agreements and disclosure provisions of 21 NCAC 58A .0104 and to require real estate licensees to deliver copies of required written contracts and disclosures to parties and other persons involved in real estate transactions.
 21 NCAC 58A .0108 - to amend the rule to clarify that licensees must retain copies of agency contracts and disclosures among their records.
 21 NCAC 58A .0110 - to amend the rule to require brokers-in-charge to keep agency contract and disclosure records and to supervise agency agreement and disclosure practices of the licensees in their offices.
 21 NCAC 58A .0112 - to amend the rule to require the real estate sales offer and contract forms which licensees propose for use by their customers and clients to provide for disclosure of agency relationships in conformity with 21 NCAC 58A .0104.
 21 NCAC 58A .0506 - to amend the rule to relax the requirements and procedures for the submission of salesperson supervision notification to the Commission.
 21 NCAC 58A .1706 - to amend the rule to provide that a licensee may not receive continuing education elective course credit for taking an elective course that they have already taken during the same or immediately preceding two license periods.
 21 NCAC 58A .1708 - to amend the rule to provide that any equivalent continuing education credit awarded under this rule will be applied first to make up any continuing education deficiency for the previous license period rather than for the previous two license periods.
 21 NCAC 58C .0207 - to amend the rule to permit private real estate schools greater flexibility in facilities used for classroom purposes.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 33 – MIDWIFERY JOINT COMMITTEE

Notice of Rule-making Proceedings is hereby given by the Midwifery Joint Committee in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 33 .0106 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90-178.3; 90-178.4(b)

Statement of the Subject Matter: How a graduate nurse midwife may apply for approval to practice as an applicant and how the applicant may function with limitations.

Reason for Proposed Action: An amendment to the General Statutes by the 2000 Legislature Session.

Comment Procedures: Comments regarding this action should be directed to Jean H. Stanley, APA Coordinator/Administrative Assistant, Midwifery Joint Committee, PO Box 2129, Raleigh, NC 27602-2129.

CHAPTER 58 – REAL ESTATE COMMISSION

Notice of Rule-making Proceedings is hereby given by the NC Real Estate Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

21 NCAC 58E .0406 - to amend the rule to permit course sponsors to submit course completion reports and related information by electronic means.

21 NCAC 58E .0505 - to amend the rule to require course sponsors to provide prospective students with a description of the sponsor's cancellation and fee refund policies.

Comment Procedures: Written comments regarding the proposed rule-making action may be submitted to Pamela Millward, NC Real Estate Commission, PO Box 17100, Raleigh, NC 27619-7100, so as to be delivered by October 16, 2000.

CHAPTER 68 – BOARD OF SUBSTANCE ABUSE PROFESSIONALS

Notice of Rule-making Proceedings is hereby given by the NC Board of Substance Abuse Professionals in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 68 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90, Article 5C

Statement of the Subject Matter: Rules governing the practice and procedures for Substance Abuse Professionals.

Reason for Proposed Action: To adopt and amend rules governing prevention, education, and requirements for certification.

Comment Procedures: Written comments should be directed to Ann Christian, PO Box 2455, Raleigh, NC 27602.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

CHAPTER 1 – OFFICE OF STATE PERSONNEL

Notice of Rule-making Proceedings is hereby given by the State Personnel Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 25 NCAC 1E .1003, .1201-.1205, .1501-.1506, .1601-.1607; 11 .2302-.2304, .2306-.2308, .2310 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 126-4; 126-4(7A); 126-34; 126-35; 126-36; 126-38

Statement of the Subject Matter:

25 NCAC 1E .1003, .1201-.1205, .1501-.1506, .1601-.1607 – These rules are proposed to be adopted in order to establish a program for awarding Community Service Leave to State Employees subject to the State Personnel Act. Community Service Leave may be granted to parents for child involvement in the schools, any employee for volunteer activity in the schools or in a Community Service Organization, and any employee for tutoring and mentoring in the schools.

25 NCAC 1I .2302-.2304, .2306-.2308, .2310 – These rules set forth the disciplinary actions for unsatisfactory job performance and unacceptable personal conduct. The rules also set out the procedural requirements which agencies must follow in order to issue disciplinary actions to local government employees subject to the State Personnel Act. Rule 25 NCAC 1I .2310 sets forth the appeal process for local government employees subject to the State Personnel Act.

Reason for Proposed Action:

25 NCAC 1E .1003, .1201-.1205, .1501-.1506, .1601-.1607 – On April 13, 2000, Gov. Hunt signed an Executive Order, which provides employees with time off for certain school and community activities. The Order recognizes the diverse and distinct needs of its school, communities and citizens and recognizes that employees of State government represent a significant source of volunteers. The employee, although committed to volunteering time and effort, often are unable to meet those needs during regularly scheduled work hours. The Executive Order directs the OSP to establish a program for awarding Community Service Leave to State employees subject to the State Personnel Act. The proposed rules for repeal will be incorporated into the new Community Service Leave Program.

25 NCAC 1I .2302-.2304, .2306-.2308, .2310 – These rules propose new language which provides for a "designated management representative" to conduct a predisciplinary conference as a result of unsatisfactory job performance or unacceptable personal conduct. This proposed amendment has already been applied to existing rules for state employees subject to the State Personnel Act. These rules are also proposed to be amended in order to be consistent with the legislation passed by the General Assembly, SB 78 Unlawful Workplace Harassment. SB 78 added new grounds for a contested case hearing to those listed in NCGS 126-43.1.

Comment Procedures: Written comments may be submitted on the subject matter of the proposed rulemaking to Delores A. Joyner, Rulemaking Coordinator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 3 – HEARINGS DIVISION

Notice of Rule-making Proceedings is hereby given by the Office of Administrative Hearings in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 26 NCAC 3 - *Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: G.S. 7A-751(a)

Statement of the Subject Matter: *Rules adopted by OAH that govern the requirements and procedure for carrying out its statutory functions as it relates to contested cases.*

Reason for Proposed Action: *To amend rules to conform to changes in House Bill 968 ratified in the 2000 session of General Assembly.*

Comment Procedures: *All written comments should be directed to Carol Johnson, OAH Paralegal, 6714 Mail Service Center, Raleigh, NC 27699-6714; or faxed to the attention of Mrs. Johnson at 919-733-3407.*

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 4- DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Banking Commission intends to repeal the rules cited as 4 NCAC 3C .1501-.1502. Notice of Rule-making Proceedings was published in the Register on June 15, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: September 18, 2000

Time: 2:00 p.m.

Location: Office of the Commissioner of Banks, 316 W. Edenton St., Raleigh, NC 27603

Reason for Proposed Action: *These rules were promulgated before enactment of the Riegle-Neal Interstate Banking and Branching Act of 1994 (Pub. L. No. 103-328, 108 Stat. 2338). Riegle-Neal pre-empted certain state laws which restricted interstate branching. Also, market response to this federal law change combined with the tremendous changes in electronic technology and the acceptance by consumers of automated banking transactions have rendered these two regulation obsolete and impracticable.*

Comment Procedures: *Any written comments should be forwarded to Otis M. Meacham, Deputy Commissioner, Office of the Commissioner of Banks, 4309 Mail Service Center, Raleigh, NC 27699-4309. All comments must be received no later than September 18, 2000.*

Fiscal Impact

- ☐ State
☐ Local
☐ Substantive (≥\$5,000,000)
☒ None

CHAPTER 3 – BANKING COMMISSION

SUBCHAPTER 3C – BANKS

SECTION .0500 – AUTOMATION AND DATA PROCESSING

04 NCAC 03C .1501 CUSTOMERBANK COMMUNICATIONS TERMINALS

(a) ~~A state bank may make available for use by its customers one or more electronic devices or machines through which the customer may communicate to the bank a request to withdraw money either from his account or from a previously authorized line of credit, or an instruction to receive or transfer funds for the customer's benefit. The device may receive or dispense cash in~~

~~accordance with such a request or instruction, subject to verification by the bank. These devices may be unmanned or manned by a bona fide third party under contract to the bank. The bank for a reasonable period of time may provide one of its employees to instruct and assist customers in the operation of the device. Any transactions initiated by such a device shall be subject to verification by the bank either by direct wire transmission or otherwise.~~

~~(b) Use of such devices at locations other than the main office or a branch office of the bank does not constitute branch banking. A bank shall provide insurance protection under its bonding program for transactions involving such devices.~~

~~(c) No device for which notice must be given under this Rule may be established or used by a state bank at a distance greater than 50 miles from the bank's main office or closest branch, whichever is nearer, unless such device or machine is available to be shared at a reasonable cost by one or more local (i.e., within the trade area of the device or machine) depository financial institutions authorized to receive deposits.~~

~~(d) Written notice must be given to the Commissioner's office 30 days before changing any of the operations described in a notice previously given pursuant to this Paragraph. One or more state banks sharing one or more devices or machines may give a single notice to the Commissioner's office, provided that the notice includes the information listed in Subparagraph (1) of Rule .1502 of this Section for each shared device or machine. The Commissioner reserves the right to adopt different reporting procedures as warranted by the circumstances of a particular network of devices or machines.~~

~~(e) No notice need be given for any device or machine which is used only to transfer funds for goods or services received, and through which neither cash is dispensed nor cash or checks left for subsequent deposit; is used solely to verify a customer's credit for purposes of check cashing or of a credit card transaction; or is a part of a bank's authorized main office or branch.~~

Authority G.S. 53-62; 53-92; 53-104.

04 NCAC 03C .1502 LIMITATIONS

~~The establishment and use of these devices is subject to the following limitations:~~

- ~~(1) Contents of Notice. Written notice must be given to the Commissioner of Banks' office 30 days before any such device is put into operation and mailed to:~~

~~The Commissioner of Banks~~

~~430 N. Salisbury Street~~

~~Dobbs Bldg. Box 29512~~

~~Raleigh, North Carolina 27626-0512~~

~~The notice must describe with regard to the device or machine:~~

- ~~(a) the location;~~

- ~~(b) a general description of the area where it is located e.g., shopping center, gasoline station, supermarket and the manner of installation e.g., free standing, exterior wall, separate interior booth;~~
- ~~(c) the manner of operation, including whether the device is on line;~~
- ~~(d) the kinds of transactions which will be performed;~~
- ~~(e) whether the device will be manned, and, if so, by whose employees;~~
- ~~(f) whether the device will be shared, and, if so, under what terms and with what other institutions and their locations;~~
- ~~(g) the manufacturer and, if owned, the purchase price or, if leased, the lease payments and the name of the lessor;~~
- ~~(h) the distance from the nearest banking office and from the nearest similar device of the reporting bank;~~
- ~~(i) the distance from the nearest banking office and nearest similar device of another commercial bank, which will not share the facility, and the name of such other bank or banks; and~~
- ~~(j) consumer protection procedures, including the disclosure of rights and liabilities of consumers and protection against wrongful or accidental disclosure of confidential information.~~
- (2) ~~To the extent consistent with the antitrust laws, state banks are permitted, but not required, to share such devices with one or more financial institutions.~~

Authority G.S. 53-62; 53-92; 53-104.

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to adopt the rules cited as 13 NCAC 12 .0407-.0409 and amend the rules cited as 13 NCAC 12 .0306-.0307, .0401-.0403, .0406, .0501, .0801. Notice of Rule-making Proceedings was published in the Register on April 3, 2000.

Proposed Effective Date: March 1, 2001

Public Hearing:

Date: August 30, 2000

Time: 2:00 p.m.

Location: Room 205, Labor Building, 4 W. Edenton St., Raleigh, NC 27601

Reason for Proposed Action: *To amend and propose rules to embody enforcement positions of the Department of Labor and to help employers more fully understand their responsibilities under the Wage and Hour Act. To amend and propose rules under the Wage and Hour Act regarding youth employment, to clarify and add detrimental occupations for youth in order to provide for their health and well-being and to help youth, parents and employers more fully understand their responsibilities.*

Comment Procedures: *Written comments, data or other information relevant to this proposal should be submitted to Ann B. Wall, Agency Legal Specialist, Department of Labor, Legal Affairs Division, 4 W. Edenton St., Raleigh, NC 27601-1092. Fax transmittals may be directed to (919) 733-4235. Comments will be received through September 14, 2000.*

Fiscal Impact

- ☐ State
- ☐ Local
- ☐ Substantive (≥\$5,000,000)
- ☒ None

CHAPTER 12 – WAGE AND HOUR

SECTION .0300 – WAGES

13 NCAC 12 .0306 VACATION PAY

(a) The purposes of the vacation provisions of the Wage and Hour Act are to ensure that employees know what their vacation benefits are and that they receive the promised benefits. Employers shall notify employees of the employer's policies and practices concerning vacation pay as follows:

- (1) Orally or in writing at the time of hiring;
- (2) By making a copy of the policies and practices available to them in writing or through a posted notice maintained in a place accessible to the employees;
- (3) Before the effective date of any changes, in writing or through a posted notice maintained in a place accessible to the employees.

(b) All vacation policies and practices shall address:

- (1) How and when vacation is earned so that the employees know the amount of vacation to which they are entitled;
- (2) Whether or not vacation time may be carried forward from one year to another, and if so, in what amount;
- (3) When vacation time must be taken;
- (4) When and if vacation pay may be paid in lieu of time off; and
- (5) Under what conditions and in what amount vacation pay will be paid upon discontinuation of employment.

(c) Ambiguous policies and practices shall be construed against the employer and in favor of the employees.

(d) Employers shall notify employees in accordance with the provisions of G.S. 95-25.13 of any policy or practice which requires or results in forfeiture of vacation wages. Any employer who fails to notify an employee in accordance with G.S. 95-25.13 and Paragraph (a) of this Rule, of any policy or practice which requires or results in a loss or forfeiture of vacation time or pay, is liable for such vacation time and pay without loss or forfeiture by the employee.

(e) Vacation benefits granted under a policy which does not establish an earning period cannot be reduced or eliminated as a result of a change in policy. If a policy which establishes an earning period or accrual rate is changed, employees are entitled to a pro rata share of the benefits earned under the original policy through the effective date of the change and of the benefits earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

Authority G.S. 95-25.2; 95-25.12; 95-25.13; 95-25.19.

13 NCAC 12 .0307 BONUSES, COMMISSIONS AND OTHER FORMS OF CALCULATION WAGES

(a) Employers may pay wages based on bonuses, commissions or other forms of calculation as infrequently as annually, if the employees are so notified before earning such wages. ~~Employers shall notify employees in accordance with the provisions of G.S. 95-25.13 of any policy or practice which requires or results in the forfeiture of such wages.~~

(b) Employers shall notify employees of the employer's policies and practices concerning pay, wages based on bonuses, commissions, or other forms of calculation as follows and in accordance with Rule .0801 of this Chapter:

- (1) Orally or in writing at the time of hiring;
- (2) By making a copy of the policies and practices available to them in writing or through a posted notice maintained in a place accessible to the employees; and,
- (3) Before the effective date of any changes, in writing or through a posted notice maintained in a place accessible to the employees.

(c) Employers shall notify employees in accordance with the provisions of G.S. 95-25.13 of any policy or practice which requires or results in forfeiture of such bonuses, commissions, or other forms of calculation wages. Any employer who fails to notify an employee in accordance with G.S. 95-25.13, and this Rule, is liable for such bonuses, commissions or other forms of calculation wages without forfeiture by the employee.

(d) Ambiguous policies and practices shall be construed against the employer and in favor of employees.

(e) All policies or practices relating to bonuses, commissions, or other forms of calculation wages shall address:

- (1) How and when bonuses, commissions or other forms of calculation wages are earned so that the employees know the amount of bonuses, commissions or other forms of calculation wages to which they are entitled; and
- (2) Under what conditions and in what amount bonuses, commissions or other forms of calculation wages will be paid upon discontinuation of employment.

(f) Wages computed under a bonus, commission, or other forms of calculation policy or practice which does not establish specific earning criteria cannot be reduced or eliminated as a result of a change in policy or practice. If the employer changes a policy or practice which establishes specific earning criteria, the employee is entitled to the bonus, commission or other forms of calculation wages earned under the original policy through the effective date of the change and is entitled to the bonus, commission or other forms of calculation wages earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

Authority G.S. 95-25.6; 95-25.7; 95-25.13; 95-25.19.

SECTION .0400 – YOUTH EMPLOYMENT

13 NCAC 12 .0401 CERTIFICATION OF YOUTHS

(a) ~~To be employed as a worker Unless exempted by the Wage and Hour Act,~~ all youths under 18 years of age must obtain a youth employment certificate. Where there is no employer-employee relationship, a youth is not employed as a worker and a certificate is not required. ~~For example,~~

~~volunteered services do not constitute employment. A youth mowing lawns for private individuals is also not a worker requiring a certificate.~~

(b) Youths who reside in homes for dependent children may perform domestic activities without being considered employees. Such activities include personal care, maintenance of living quarters, work around the residence or its farm and other activities normally performed by children when living at home and under direct parental control.

~~(c) All youths employed in interstate commerce or in the production of goods for interstate commerce, or employed in any enterprise engaged in interstate commerce or the production of goods for interstate commerce, are subject to the child labor provisions of the F.L.S.A. Establishments or individuals so covered by the F.L.S.A. are subject to all rules in this Section relating to the issuance, maintenance and revocation of youth employment certificates, detrimental occupations, and employment in establishments with ABC permits.~~

~~(d)~~(c) A youth employment certificate is valid only for the employer specified on the certificate. This certificate is valid at all locations of this employer. A new certificate must be obtained for each new employer. A certificate remains valid for a youth who terminates employment but then resumes work at the same place of employment.

Authority G.S. 95-25.5; 95-25.14; 95-25.19.

13 NCAC 12 .0402 APPLICATION FOR A YOUTH EMPLOYMENT CERTIFICATE

(a) A youth may obtain a youth employment certificate from the county director of social services ~~services'~~ office or approved designee in the county in which the youth resides or the county in which the youth intends to work.

(b) The youth must provide proof of age by means of one of the following:

- (1) A birth certificate;
- (2) Evidence from the bureau of vital statistics in the state in which the youth was born;
- (3) Any state driver's license, ~~or~~ learner's ~~permit~~ permit, or state-issued identification card;
- (4) ~~Insurance records~~ Passport;
- (5) ~~Bible records;~~ School records or insurance records; or
- (6) Other documentary evidence as approved by the county director of social services ~~shall accept in consultation with the Wage and Hour Division Office.~~

(c) The youth shall obtain a youth employment certificate form on which ~~he~~ the youth and the employer must supply the following information:

- (1) Youth's name, address, phone number, sex, age and birth date;
- (2) Employer's company name, type of business, address and phone number; and
- (3) ~~Job description and daily and weekly hours of employment.~~

(d) The youth employment certificate must be signed by the youth in the presence of the issuing officer, by a parent, ~~or~~ guardian, or person standing in place of a parent as defined in 29 CFR 570.126, and by the employer.

(e) The requirements of this Rule may be modified by the Commissioner for the electronic issuance of youth employment certificates in accordance with G.S. 95-25.5(a).

Authority G.S. 95-25.5; G.S. 95-25.19.

13 NCAC 12 .0403 REVIEW: ISSUANCE AND MAINTENANCE OF CERTIFICATES

(a) The county director of social services or approved designee shall review the youth employment certificate to see that it is complete and shall ascertain the age of the youth by the means prescribed in Rule .0402 of this Section and the permissibility of employment based on hours, type of employment and prohibitions from hazardous or detrimental occupations pursuant to in G.S. 95-25.5 and the child labor provisions of the F.L.S.A.

~~(b) The county director of social services shall verify the signatures, age, hazardous nature of the work to be performed, work hours or any other information provided on the certificate by any appropriate means.~~

~~(c)(b)~~ Upon review of the completed youth employment certificate, if all the requirements of this Section have been met, the county director of social services or approved designee shall sign, date and issue the certificate in triplicate. The employer's copy of the certificate shall be given to the youth.

(1) No certificate shall be issued where the proposed employment does not comply with all statutory requirements and prohibitions, and all rules and regulations promulgated thereunder.

(2) No certificate shall be issued to a youth or for a youth to work in an establishment required to comply with or subject to regulation of child labor under the F.L.S.A. if the proposed employment will be in violation of the F.L.S.A. and all rules and regulations promulgated thereunder.

~~(d)(c)~~ The Department of Social Services shall maintain one copy of the certificate on file until the youth becomes 20 years of age for two years following the date of issuance and shall ~~mail send~~ one copy to the Wage and Hour Division Office at the end of each week. The employer's copy of the certificate shall be given to the youth with the instructions set out in (e) of this Rule.

~~(e)(d)~~ The employer's copy of the youth employment certificate must be given to the employer by the youth on or before the first day of employment. ~~No employer may~~ The employer shall not employ a youth until the employer has received ~~his~~ its copy of the issued certificate. The employer shall maintain the certificate on record where it is readily accessible to any person authorized to inspect or investigate youth employment. The employer shall maintain the certificate on record so long as the youth is employed thereunder and for two years after the employment terminates.

~~(f)(e)~~ The employer or youth may request ~~the Wage and Hour Division to~~ a review of the denial of a certificate by written or oral request to the Wage and Hour Division in Raleigh Office. Appeals of the review decisions rendered must be made in writing within 15 days to the Wage and Hour Administrator who shall issue a written decision. Requests for appeal of the Administrator's decision must addressed to the Office of Administrative Hearings in accordance with G.S. 150B, Article 3. No particular form of request is prescribed, but the request should clearly indicate the reasons the petitioner contends the denial is in error. The review request may ask for a hearing pursuant to 13 NCAC Subchapter 1B.

~~(g) Because of the unusual or unique characteristics of employment of youths as models and as actors or performers in motion pictures or theatrical productions, in radio or television productions, or in outdoor dramas, youth employment certificates for youths under 16 years of age in such occupations shall be issued by the Wage and Hour Division Office.~~

Authority G.S. 95-25.5; 95-25.14; 95-25.15.

13 NCAC 12 .0406 DETRIMENTAL OCCUPATIONS

(a) The following occupations are found and declared to be detrimental to the health and well-being of youths. No youth under 18 years of age may be employed by an employer in these detrimental occupations:

- (1) ~~Welding;~~ Welding, brazing and torch cutting as defined in the Occupational Safety and Health Administration (OSHA) General Industry Standards, 29 CFR 1910.251 through 255 and OSHA Construction Standards, 29 CFR 1926.350 through 354.
- (2) Any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form.
- (3) Any work involving exposure to lead or any of its compounds in any form
- (4) At any work involving exposure to ~~benzol~~ benzene or any ~~benzol~~ benzene compound which is volatile or which can penetrate the skin.
- ~~(5) Spray painting;~~
- ~~(6) Handling of unsterilized hides or animal or human hair.~~
- (5) Occupations in canneries, seafood and poultry processing establishments which involve the use, setting up, adjusting, repairing, or cleaning of cutting, slicing machines, or freezing or packaging activities;
- (6) Any work which involves the risk of falling a distance of 10 feet or more, including the use of ladders and scaffolds.
- (7) Any work as an electrician or electricians helper;
- (8) Any work in confined spaces as defined by OSHA General Industry Standard 29 CFR 1910.146 and OSHA Construction Standards 29 CFR 1926.21.
- (9) Occupations in which the use of a respirator is required by OSHA General Industry Standard, 29 CFR 1910.134 or OSHA Construction Industry Standards, 29 CFR 1926.

(b) Youths and employers working under the supervision of bona fide apprenticeship and student-learner programs, as defined by the Fair Labor Standards Act and the rules and regulations promulgated thereunder, are exempt from the prohibition against employment of youths in detrimental occupations.

Authority G.S. 95-25.5; 95-25.19.

13 NCAC 12 .0407 DESIGNATION OF YOUTH EMPLOYMENT CERTIFICATE ISSUERS

(a) County directors of social services may, subject to approval by the Commissioner of Labor, designate personnel outside their staffs to issue youth employment certificates. Requests for designee approval will be made on the Department of Labor form provided to each DSS office.

(b) The Commissioner of Labor shall approve the designation only if:

- (1) The designee is an employee of a State or local government agency, a public, private or charter school, or a private non-profit organization which assists in placing youths into jobs at no cost to the youths;
- (2) The designee and the designee's employer have consented to the designation and the conditions for designation in Paragraph (c) of this Rule; and
- (3) The designee has received training required by the Department of Labor.

(c) The Department of Labor approval of a designee shall be made upon the agreement of the designee and the designee's employer to the following conditions:

- (1) Neither the designee nor the designee's employer shall be entitled to receive any funding from the county department of social services or the Department of Labor for performing the functions of a designee;
- (2) The designee may not issue any youth employment certificate to a youth for a job with the designee's employer;
- (3) Neither the designee nor the designee's employer may charge a fee in connection with the issuance of any youth employment certificate; and
- (4) The designee shall take refresher and update training as required by the Department of Labor.

(d) Department of Labor approval of a designee shall be terminated upon:

- (1) Failure of the designee or the designee's employer to abide by the conditions listed in Paragraph (c) above;
- (2) Written resignation by the designee;
- (3) Separation from employment with the agency, institution or organization with whom the designee was employed at the time of approval;
- (4) Written withdrawal of the designee's employer's consent;
- (5) Written withdrawal of the designation by the county director of social services; or
- (6) Written withdrawal of the approval by the Commissioner of Labor.

Authority G.S. 95-25.5; 95-25.19.

13 NCAC 12 .0408 DEFINITIONS RELATIVE TO ABC RESTRICTIONS:

(a) For purposes of G.S. 95-25.5(j) and these Rules, the following terms are defined:

- (1) Prepare: To make ready or put together by combining various elements or ingredients.
- (2) Serve: To supply; or place before the customer.
- (3) Dispense: To pour or to draw from a tap.
- (4) Sell: To offer; to accept the order for; to exchange or deliver for money or equivalent; or to handle payment.
- (5) Premises: The land, building, or combination of these as described in the permit issued for the sale or consumption of alcoholic beverages.
- (6) ABC permit for on-premises sale or consumption: Permit which allows the consumption of alcoholic beverages on the premises where the sale occurred.

Authority G.S. 95-25.5; 95-25.19.

13 NCAC 12 .0409 PARENTAL EXEMPTION

For purposes of the exemption listed in G.S. 95-25.5(i), a parent is deemed to be a natural or adoptive parent.

Authority G.S. 95-25.5; 95-25.19.

SECTION .0500 – JURISDICITON AND EXEMPTIONS

13 NCAC 12 .0501 EXEMPTIONS

~~(a) The exemption from minimum wage, overtime, youth employment and recordkeeping, for any person covered by the Fair Labor Standards Act, applies to persons whose wages, overtime, and conditions and records of employment are regulated by the Fair Labor Standards Act and the rules promulgated thereunder. Persons covered by the Fair Labor Standards Act, but whose wages, overtime, and conditions and records of employment are exempted from federal regulation, are subject to the state wage and hour provisions unless specifically exempted by the Wage and Hour Act. G.S. 95-25.14(a)(1) provides an exemption from the minimum wage, overtime, youth employment and related recordkeeping requirements of the Wage and Hour Act for any person employed in an "enterprise" as defined by the F.L.S.A. Persons employed in commerce or in the production of goods for commerce as defined by the F.L.S.A. are not exempted by this statute and therefore are subject to the provisions of both the F.L.S.A. and the Wage and Hour Act, unless otherwise exempted.~~

(b) Pursuant to G.S. 95-25.14(a)(1)(c), where the F.L.S.A. provides an exemption from child labor, minimum wage, or overtime (other than an exemption providing for an alternate method of computing overtime), but the Wage and Hour Act does not provide the same exemption, the provisions of the Wage and Hour Act apply. Examples of such federal exemptions include:

- (1) Minimum wage and overtime exemptions under the F.L.S.A.:
 - (A) Seasonal amusement or recreational establishments as specified in 29 U.S.C. 213(a)(3);
 - (B) Small newspapers as specified in 29 U.S.C. 213(a)(8);
 - (C) Small public telephone companies as specified in 29 U.S.C. 213(a)(10).
- (2) Overtime exemptions under the F.L.S.A.:
 - (A) Outside buyers of poultry, eggs, and milk as specified in 29 U.S.C. 213(b)(5);
 - (B) Small grain elevators as specified in 29 U.S.C. 213(b)(14);
 - (C) Maple sugar or syrup processors as specified in 29 U.S.C. 213(b)(15);
 - (D) Employees engaged in intra-state transportation of fruits or vegetables as specified in 29 U.S.C. 213(b)(16);
 - (E) Motion picture theaters as specified in 29 U.S.C. 213(b)(27);
 - (F) Small lumbering or forestry operations as specified in 29 U.S.C. 213(b)(28);
 - (G) Newspaper carriers and makers of wreaths composed of natural materials as specified in 29 U.S.C. 213(d).

(c) Pursuant to G.S. 95-25.14(a)(1)(c), where an F.L.S.A. exemption provides an alternate method for computing overtime, persons subject to that exemption are also exempted from the overtime provisions of the Wage and Hour Act. Moreover, persons covered only by the overtime provisions of the Wage and Hour Act are subject to the same alternate methods of overtime calculation. Examples of such F.L.S.A. exemptions include:

- (1) Petroleum distributors as specified in 29 U.S.C. 207(b)(3);
- (2) Employees who work irregular hours and are paid a guaranteed salary as specified in 29 U.S.C. 207(f);
- (3) Piece rate workers as specified in 29 U.S.C. 207(g);
- (4) Commissioned inside salespersons in retail as specified in 29 U.S.C. 207(i);
- (5) Employees of hospitals, nursing homes, old age homes as specified in 29 U.S.C. 207(j);
- (6) Seasonal employees at tobacco warehouses and auctions as specified in 29 U.S.C. 207(m);
- (7) Bus drivers as specified in 29 U.S.C. 207(n);
- (8) Employees of concessionaires in national parks as specified in 29 U.S.C. 213(b)(29);
- (9) Seasonal employees in cotton ginning, sugarcane or sugar beet processing as specified in 29 U.S.C. 213(h);
- (10) Seasonal employees in local cotton ginning as specified in 29 U.S.C. 213(i);
- (11) Seasonal employees in sugar processing as specified in 29 U.S.C. 213(j).

(d) The statutory exemption from certain wage and hour provisions for the spouse, child, parent or dependent of the employer applies equally to the spouse, child, parent or dependent of corporate officers. For the purposes of this Section only, corporate officers are those who directly head the establishment and:

- (1) are majority stockholders, or
- (2) are principal stockholders with voting control, or
- (3) are in voting control through stock ownership or with joint ownership of spouse or family.

(e) Homes for dependent children pursuant to G.S. 95-25.14(c)(6) include institutions and group homes for dependent children.

Authority G.S. 95-25.14; 95-25.19.

SECTION .0800 – RECORDKEEPING

13 NCAC 12 .0801 RECORDS TO BE MAINTAINED

(a) Every employer, except where partially or fully exempted from the recordkeeping provisions of the Wage and Hour Act, employer shall maintain complete and accurate records which contain the following information for of all hours worked by each employee in each workweek, unless specifically exempted: These employment records must contain for each employee:

- (1) Name in full;
- (2) Home address, including zip code and phone number;
- (3) Date of birth if under 20;
- (4) Occupation in which employed or job title;
- (5) Time of day and day of week the employee's workweek begins (a group of employees working the same workweek may have one record keeping for the entire group);

- (6) Regular rate of pay;
- (7) Hours worked each workday;
- (8) Total hours worked each workweek;
- (9) Total straight-time earnings each workweek;
- (10) Total overtime earnings each workweek;
- (11) Total additions to or deductions from wages;
- (12) Total gross wages paid each pay period;
- (13) Date of each payment.

(b) All other records required for the enforcement of any provision of the Wage and Hour Act must also be maintained by the employer. Such records include, but are not limited to, the following: tip credits; costs of meals, lodging or other facilities; start and end time for youth under age 18; youth employment certificates; wage deductions; vacation and sick leave policies; policies and procedures relating to promised wages; and records required to compute wages based on bonuses, commissions, or other forms of calculation. The records specified in this Rule are in addition to and not in lieu of the other records or writings required by specific provisions of the Wage and Hour Act and by other sections of this Chapter, such as the cost of meals and lodging, tip credits, wage deductions, youth employment, vacation and sick leave policies and wages based on bonuses, commission, or other forms of calculation.

Authority G.S. 95-25.13; 95-25.15; 95-25.19.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to adopt the rules cited as 13 NCAC 20 .0101, .0201-.0203, .0301-.0306, .0401-.0402, .0501-.0503, .0601-.0602. Notice of Rule-making Proceedings was published in the Register on April 3, 2000.

Proposed Effective Date: March 1, 2001

Public Hearing:

Date: August 30, 2000

Time: 9:30 a.m.

Location: Room 205, Labor Building, 4 W. Edenton St., Raleigh, NC 27601

Reason for Proposed Action: To propose rules regarding the enforcement of the Controlled Substances Examination Regulation Act in order to embody enforcement positions of the Department of Labor and to clarify the Act to help applicants, employers and laboratories more fully understand their rights and responsibilities.

Comment Procedures: Written comments, data or other information relevant to this rulemaking and this Notice of Text must be submitted by 5:00 p.m. on September 14, 2000 to Ann B. Wall, Legal Affairs Specialist, Department of Labor, Legal Affairs Division, 4 W. Edenton St., Raleigh, NC 27601-1092. Fax transmittals may be directed to (919) 733-4235.

Fiscal Impact

- ☐ State
- ☐ Local
- ☐ Substantive (≥\$5,000,000)
- ☒ None

**CHAPTER 20 – CONTROLLED SUBSTANCES
EXAMINATION REGULATION**

SECTION .0100 – DEFINITIONS

13 NCAC 20 .0101 DEFINITIONS

As used in G.S. 95, Article 20 and this Chapter:

- (1) "All actions" means procedures performed on the examinee's urine or blood to detect, identify, or measure controlled substances. Examples include, but are not limited to, "examinations and screening for controlled substances," "controlled substances testing," "drug testing," "screening," "screening test," "confirmation," and "confirmation test".
- (2) "Chain of custody" means the process of establishing the history of the physical custody or control of the sample from the time the examiner provides the container for the sample to the examinee through the later of:
 - (a) The reporting of the negative result to the examiner;
 - (b) The 90 day period specified in G.S. 95-232(d); or
 - (c) The completion of the retesting described in G.S. 95-232(f).
- (3) "On-site" means any location, other than an approved laboratory, at which a screening test is performed on prospective employees. For example, "on-site" locations include, but are not limited to, the examiner's place of business or a hospital, physician's office, or third-party commercial site operated for the purpose of collecting samples to be used in controlled substance examinations.
- (4) "Sample" means the examinee's urine or blood.
- (5) "Employer or person charged" means an examiner found by the Commissioner to have violated G.S. Chapter 95, Article 20.

Authority G.S. 95-231; 95-232; 95-234.

SECTION .0200 – GENERAL PROVISIONS

13 NCAC 20 .0201 COMPUTING TIME PERIODS

In computing any period of time described in G.S. 95, Article 20 or this Chapter, the day of the triggering act or event shall not be counted. If the last day of the period falls on a Saturday, Sunday or a legal holiday, it shall not be counted and the period shall end at the close of the next day which is not a Saturday, Sunday, or a legal holiday. The Commissioner shall use Rule 6 of the NC Rules of Civil Procedure, G.S. 1A-6(a) as a guide in interpretation of this Rule.

Authority G.S. 95-232; 95-234.

13 NCAC 20 .0202 APPLICABILITY

The provisions of G.S. 95, Article 20 and this Chapter regarding the collection and handling of samples apply whenever an on-site screening test is performed.

Authority G.S. 95-232; 95-234.

13 NCAC 20 .0203 CONFIRMATION OF SAMPLES

For confirmation of positive results or for retesting of confirmed positive results, the approved laboratory shall use gas chromatography with mass spectrometry (GC/MS) or the examiner shall bear the burden of proof to show that the substitute testing method used is an equivalent scientifically accepted method.

Authority G.S. 95-232; 95-234.

SECTION .0300 – USE OF CONTRACTORS

13 NCAC 20 .0301 EXAMINER OPTIONS

In collecting and transporting the sample to the approved laboratory, the examiner may:

- (1) Collect and transport the sample itself; or
- (2) Send the examinee to the approved laboratory for the collection; or
- (3) Contract with a third party to collect and transport the sample. Examples of a third party include physicians, medical clinics, hospitals, or consortia established to negotiate rates for these services.

Authority G.S. 95-231; 95-232; 95-234.

13 NCAC 20 .0302 CURRENT EMPLOYEES

The examiner shall contract with an approved laboratory to perform the screening and confirmation test for current employees.

Authority G.S. 95-232; 95-234.

13 NCAC 20 .0303 PROSPECTIVE EMPLOYEES

The examiner may perform the screening test for prospective employees or may contract with an approved laboratory for the screening test for prospective employees. The examiner shall contract with an approved laboratory for the confirmation test for prospective employees.

Authority G.S. 95-232; 95-234.

13 NCAC 20 .0304 CONTRACTOR PROCEDURES

If the examiner contracts with a third party for collection, screening, or confirmation testing, the examiner shall ensure that the contractor's procedures comply with requirements of G.S. 95, Article 20 and this Chapter. Compliance with the requirements of the U.S. Department of Health and Human Services (DHHS), 59 Federal Register No. 110, pages 29908 through 29931 (June 9, 1994), for all aspects of the controlled substance examination shall meet the requirements of G.S. 95, Article 20 and this Chapter. Compliance with the requirements of the College of American Pathologists' Forensic Urine Drug Test Inspection Checklist shall meet the requirements of G.S. 95, Article 20 and this Chapter for screening, confirmation and retesting of confirmed samples. If the examiner adopts alternative procedures, the examiner shall ensure that the alternative procedures meet the requirements of G.S. 95, Article 20 and this Chapter. However, nothing in the DHHS or CAP requirements shall be interpreted to:

- (1) Require the examiner to use the services of a medical review officer; or

(2) Allow the examiner to conduct on-site screening for current employees.

Authority G.S. 95-232; 95-234.

SECTION .0500 – CONFIDENTIALITY

13 NCAC 20 .0305 LABORATORY INSTRUCTIONS

The examiner shall follow procedural instructions of the approved laboratory regarding the controlled substance examination, unless the examiner follows equally reliable procedures which it has previously adopted in writing. The examiner shall bear the burden of proof to show these alternative procedures are equally reliable. Examples of procedural instructions include, but are not limited to, instructions regarding:

- (1) Collection of samples;
- (2) Reasonable and sanitary conditions for collection;
- (3) Chain of custody;
- (4) Preservation of examinees' individual dignity;
- (5) Prevention of substitution or adulteration of samples;
- (6) Prevention of interference with the collection, examination, or screening of samples;
- (7) On-site screening;
- (8) Confirmation of positive tests; and
- (9) Any other action to be taken with regard to the collection, labeling, packaging, transportation, screening, documentation, or preservation of samples used for controlled substance examinations.

Authority G.S. 95-231; 95-232; 95-234.

13 NCAC 20 .0306 RETESTING LABORATORY INSTRUCTIONS

If the examinee chooses to have the confirmed positive sample retested, the examiner and, where applicable, the examiner's agent (the original testing laboratory) shall follow the retesting laboratory's instructions in facilitating the retest of the positive sample.

Authority G.S. 95-232; 95-234.

SECTION .0400 – NOTICE TO EXAMINEES

13 NCAC 20 .0401 INITIAL NOTICE TO EXAMINEES

At the time of the provision of the sample, the examiner shall provide examinees with written notice of their rights and responsibilities under the Controlled Substance Examination Regulation Act.

Authority G.S. 95-231; 95-232; 95-234.

13 NCAC 20 .0402 POST-TESTING NOTICE TO EXAMINEES

Within 30 days from the time that the results are mailed or otherwise delivered to the examiner, the examiner shall give notice to the examinee, in writing:

- (1) Of any positive result of a controlled substance examination; and
- (2) Of the examinee's rights and responsibilities regarding retesting under G.S. 95-232(f).

13 NCAC 20 .0501 CONFIDENTIALITY OF INFORMATION RELATED TO CONTROLLED SUBSTANCE EXAMINATIONS

In order to preserve individual dignity and privacy, examiners and their agents shall keep information confidential relating to examinees' controlled substance examinations, unless otherwise authorized by law or this Chapter.

Authority G.S. 95-231; 95-232; 95-234.

13 NCAC 20 .0502 EXAMPLES

Examples of confidential information include: controlled substance examination results or information provided by examinees about their medical histories and lawful prescription drug use.

Authority G.S. 95-231; 95-232; 95-234.

13 NCAC 20 .0503 RELEASE OF CONFIDENTIAL INFORMATION

Examiners and their agents may release information which would otherwise be confidential under this Chapter in the following circumstances:

- (1) To the examinee;
- (2) To laboratories performing screening, confirmation tests, or retests of confirmed positive results; and
- (3) For employment-related reasons. Examples of employment-related reasons include: performance evaluations, discipline and provision of references.

Authority G.S. 95-231; 95-232; 95-234.

SECTION .0600 – PAYMENT OF EXPENSES

13 NCAC 20 .0601 PAYMENT OF EXPENSES

The examiner shall pay expenses related to all controlled substance examinations except examinee-requested retests. The examinee shall pay all reasonable expenses for retests of confirmed positive results.

Authority G.S. 95-232; 95-234.

13 NCAC 20 .0602 REASONABLE EXPENSES

"Reasonable expenses for retesting" means:

- (1) The actual cost of the retest charged by the approved laboratory;
- (2) Fees assessed by the approved laboratory for expenses associated with the retest. Examples of laboratory expenses include chain of custody procedures and shipping;
- (3) A maximum of fifteen dollars (\$15.00) for the examiner's expenses, if any, to comply with chain of custody procedures related to the retest. The amount of fifteen dollars (\$15.00) for the expenses described in this Section shall be deemed to be a reasonable amount. The examiner may charge more than fifteen dollars (\$15.00) for the expenses described in this Section if

the examiner proves the actual cost of expenses greater than fifteen dollars (\$15.00); and

- (4) The actual cost of any shipping expenses the examiner incurs related to the retest.

Authority G.S. 95-232; 95-234.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Transportation intends to amend the rule cited as 19A NCAC 03D .0519. Notice of Rule-making Proceedings was published in the Register on June 15, 2000.

Proposed Effective Date: April 1, 2001.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501. The demand must be received within 15 days of this Notice.

Reason for Proposed Action: Federal Register 40 CFR, Part 51.361[a] requires states to enforce a registration denial program which refuses renewal if a vehicle is not in compliance with emissions inspection requirements. G.S. 120-183.8A requires NC DMV to assess a civil penalty if a vehicle is not inspected within four months of sticker expiration. Amendments to this Rule set software requirements for stations to transfer information to and receive emissions confirmation from DMV by telephone. Two telephone calls per transaction are required. Amendments to this Rule require that the emissions stations pay charges directly to the telephone contractor.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, N.C. DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by September 15, 2000.

Fiscal Impact

- ☐ State
☐ Local
☐ Substantive (≥\$5,000,000)
☒ None

CHAPTER 3 – DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3D – ENFORCEMENT SECTION

SECTION .0500 – GENERAL INFORMATION REGARDING SAFETY INSPECTION OF MOTOR VEHICLES

19A NCAC 03D .0519 STATIONS

(a) Licensed stations shall keep the area where vehicles are inspected and the area where inspection records are kept as required by G.S. 20-183.6A(b) free of spills, debris, hazardous materials or obstructions that inhibit proper inspection of vehicles or present a safety hazard for auditors or inspectors of

the Division. All vehicles shall remain in the inspection area during the entire inspection.

(b) Stations with only a 25 foot lineal inspection lane shall not inspect trucks or other vehicles exceeding that length.

(c) Stations with mechanical aimers shall not inspect vehicles with headlamps that were not manufactured to be aimed with this device. These headlamps were manufactured to be aimed with photoelectric eyes, wall charts, computerized headlight test equipment, or on-board headlight aiming devices.

(d) Stations not equipped with an exhaust emission analyzer shall not inspect vehicles which are 1975 or newer gasoline powered motor vehicles registered or based in counties designated as non-attainment for air quality standards by either the North Carolina Department of ~~Environment, Health, Environment & Natural Resources~~ (N.C. ~~DEHNR~~) DENR or U.S. Environmental Protection Agency (U.S. EPA). However, they are permitted to perform the original safety equipment inspections on new vehicles, vehicles 1974 model year or older, diesel powered vehicles, motorcycles and trailers.

(e) Emissions inspections shall be conducted through use of the software approved as complying with the most recent version of the N.C. Analyzer Specifications by the North Carolina Department of Environment & Natural Resources. The Software Shall make a telephone call to a database to confirm the vehicle registration information. A normal inspection shall consist of two telephone calls to the database. The first telephone call will determine the accuracy of the vehicle identification number and compare it to the existing registration database. The second mainframe. All exhaust emissions stations shall pay a contractor designated by the Division of Motor Vehicles a fee for access to the emissions inspection database. The fee will be based on a per telephone call basis. Failure to pay the monthly charges to the contractor shall result in the emissions inspection station being denied access to the database system and prevent the station from performing inspections until fees have been paid.

(~~e~~) (f) Each station shall have equipment and tools for the carrying out of inspections, which include but are not limited to the following:

- (1) 1 jack or lift with minimum capacity of 2 tons,
- (2) 1 headlight tester or aiming kit adapters to fit all headlights,
- (3) 1 workbench,
- (4) 1 creeper,
- (5) 1 hand paper punch (round, 1/4" cut),
- (6) 1 tire tread depth gauge (calibrated in 32nds of an inch),
- (7) 1 Emission Control System Application Manual (current edition issued by N.C. DENR), ~~DEHNR~~),
- (8) 1 Exhaust Emission Analyzer,
- (9) ~~1 Active telephone line with jack.~~ 1 dedicated telephone line with jack for each exhaust emissions analyzer.

Authority G.S. 20-2; 20-39; 20-183.4.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16X .0101 and amend the rules cited as 21 NCAC 16B .0306; 16Q .0201, .0301. Notice of Rule-making Proceedings was published in the Register on June 1, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: September 30, 2000

Time: 8:30 a.m.

Location: Greensboro-High Point Airport Marriott, One Marriott Drive, Greensboro, NC 27409

Reason for Proposed Action: To revise requirements for foreign graduates applying as candidates for examination; to set out requirements for management arrangements; and to revise general anesthesia and sedation requirements.

Comment Procedures: Any person desiring to present oral data, views, or arguments on the proposed rules must, at least 10 days prior to the proposed hearing, file a notice with the Board. Notice of such request to appear or failure to give timely notice may be waived by the Board in its discretion. Comments should be limited to five minutes. Any person permitted to make an oral presentation is directed to submit a written statement of such presentation to the Board prior to or at the time of such hearing. The Board's address is PO Box 32270, Raleigh, NC 27622-2270. Any person may file written submission of comments or arguments at any time up to the close of the hearing on September 30, 2000.

Fiscal Impact

- ☐ State
☐ Local
☐ Substantive (≥\$5,000,000)
☒ None

**SUBCHAPTER 16B – LICENSURE EXAMINATION:
DENTISTS**

SECTION .0300 – APPLICATION

21 NCAC 16B .0306 FOREIGN GRADUATES

Graduates of foreign colleges may, at the discretion of the Board, be accepted as candidates for examination after completing at least two years in a dental school accredited by the Commission on Dental Accreditation of the American Dental Association and graduating with a dental or postgraduate dental degree from that dental school.

Authority G.S. 90-28; 90-30; 90-48.

**SUBCHAPTER 16Q – GENERAL ANESTHESIA AND
SEDATION**

SECTION .0200 – GENERAL ANESTHESIA

21 NCAC 16Q .0201 CREDENTIALS AND PERMIT

(a) No dentist shall employ or use general anesthesia on an outpatient basis for dental patients unless the dentist possesses a

permit issued by the Board. A dentist holding a permit shall be subject to review and shall only employ or use general anesthesia at a facility located in the State of North Carolina in accordance with 21 NCAC 16Q.0202. Such permit must be renewed annually.

(b) Any dentist who wishes to administer general anesthesia to patients must apply to the Board for the required permit on a prescribed application form, submit an application fee of fifty dollars (\$50.00), and produce evidence showing that he:

- (1) Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program approved by the Board; or
- (2) Has graduated from a program certified by the American Dental Association in Oral and Maxillofacial Surgery; or
- (3) Is a Diplomate of or eligible for examination by the American Board of Oral and Maxillofacial Surgery; or
- (4) Is a Fellow of the American Dental Society of Anesthesiology; or
- (5) Is a dentist who has been administering general anesthetics in a competent manner for the five years preceding the effective date of this Rule.

(c) A dentist who is qualified to administer general anesthesia in accordance with this Section and holds a general anesthesia permit is also authorized to administer sedation without obtaining a separate sedation permit.

(d) The dentist involved with the administration of general anesthesia shall ~~be trained in and capable of administering~~ document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall ~~be trained in and capable of administering~~ document current, successful completion of basic life support support (BLS) training.

Authority G. S. 90-28; 90-30.1.

SECTION .0300 - SEDATION

21 NCAC 16Q .0301 SEDATION CREDENTIALS AND PERMIT

(a) A dentist may administer or employ a certified registered nurse anesthetist to administer sedation to dental patients on an outpatient basis provided he obtains a permit from the Board by submitting the appropriate information on an application form provided by the Board and pays a fee of fifty dollars (\$50.00).

(b) A dentist applying for a permit to administer sedation must meet at least one of the following criteria:

- (1) Satisfactory completion of a minimum of 60 hours of didactic training and instruction in intravenous conscious sedation and satisfactory management of a minimum of ten patients, under supervision, using intravenous sedation in a training program approved by the Board; or
- (2) Satisfactory completion of an undergraduate or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (1) of this Rule; or

- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (1) of this Rule; or
 - (4) Authorization for the use of general anesthetics by holding a permit for the same issued by the Board; or
 - (5) Utilization of a certified registered nurse anesthetist under his supervision to administer intravenous sedation to dental patients.
- (c) To be eligible for a sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, staffed with supervised auxiliary personnel ~~capable of administering who shall document current, successful completion of~~ basic life support and ~~capable of~~ handling procedures, problems and emergencies incident thereto.
- (d) The dentist seeking a permit ~~must~~ shall meet one of the following criteria:
- (1) ~~be trained in and capable of administering document current, successful completion of~~ advanced cardiac life support (ACLS) training or its age-specific ~~equivalent; equivalent, or other Board-approved equivalent course;~~ or
 - (2) ~~be trained in and capable of administering document current, successful completion of~~ basic life support (BLS) training and, in addition to the continuing education required each calendar year for license renewal, obtain four hours of continuing education each year in one or more of the following areas:
 - (A) sedation;
 - (B) medical emergencies;
 - (C) monitoring IV sedation and the use of monitoring equipment; ~~or~~
 - (D) pharmacology of drugs and agents used in IV ~~sedation; sedation;~~
 - (E) physical evaluation; or
 - (F) audit ACLS/PALS courses.
- (e) The Board may, based upon formal application, grant a permit authorizing the use of sedation to a dentist who has been utilizing sedation in a competent and effective manner for the past five years preceding the effective date of this Rule, but who has not had the benefit of formal training as outlined in Paragraph (b) of this Rule, provided that said dentist meets the requirements of Paragraphs (c) and (d) of this Rule.

Authority G. S. 90-28; 90-30.1.

SUBCHAPTER 16X – MANAGEMENT ARRANGEMENTS

SECTION .0100 – MANAGEMENT ARRANGEMENTS

21 NCAC 16X .0101 MANAGEMENT ARRANGEMENTS

- (a) Pursuant to G.S. 90-41(a)(9) and (a)(13), no dentist or professional entity shall enter into a management arrangement unless such management arrangement meets the requirements of Paragraphs (b) and (c) hereof.
- (b) A management arrangement shall:
 - (1) be in a writing that:
 - (A) is signed by all parties to the agreement;
 - (B) sets forth all material terms of the arrangement between or among the parties thereto;

- (C) describes all of the types of services to be provided by the management company and the time periods during which those services will be provided;
 - (D) sets forth the aggregate compensation to be paid under the management arrangement or the precise methodology for calculating such compensation; and
 - (E) is commercially reasonable.
- (2) be approved by the Dental Board.
- (c) No management arrangement shall provide for or permit any of the following:
- (1) direct or indirect ownership of, or control over clinical aspects of, the dental business of a dentist or professional entity by a management company or the grant to the management company or another non-professional entity control over the distribution of a revenue stream or control over a line of business of the professional entity except for the sale of fixed assets of a dentist or professional entity permitted under the laws of the State of North Carolina;
 - (2) ownership or exclusive control of patient records by a management company;
 - (3) direct or indirect control over, or input into, the clinical practices of the professional entity or its dentists or ancillary personnel by a management company;
 - (4) direct or indirect control over the hiring and/or firing of clinical personnel or material terms of clinical personnel's relationship with the dentist or professional entity by a management company or a related person;
 - (5) authority in the management company to enter into or approve any contract or other arrangement, or material terms of such contract or arrangement, between the professional entity and a dentist for the provision of dental services or the requirement that the management company or related person approve or give input into such contract or arrangement;
 - (6) direct or indirect control over the transfer of ownership interests in the professional entity by a management company or other non-professional entity including, without limitation, any agreement or arrangement limiting or requiring in whole or in part the transfer of ownership interests in a professional entity;
 - (7) payment to the management company of anything of value based on a formula that will foreseeably increase or decrease because of the increase or decrease in profitability, gross revenues or net revenues of the dentist or professional entity; or
 - (8) payments to the management company that, at the time of execution of an agreement as required under Paragraph (b), are likely, foreseeably and purposely in excess of the likely profits of the professional entity not taking into account the compensation to be paid to the management company under the management arrangement.
- (d) Notwithstanding Paragraphs (c)(7) and (c)(8) above, a management arrangement may provide for the following:
- (1) increased payments to the management company based upon the lowering of costs to the professional entity or dentist;

- (2) decreased payments to the management company based upon increases in costs to the professional entity or dentist; or
- (3) collection of monies, or payment of costs, of the professional entity or dentist by the management company so long as the amounts retained by the management company following payment of any costs of the professional entity or dentist comply with the provisions of this Rule relating to compensation to the management company and all sums collected or retained by the management company in excess of costs paid by the management company plus its compensation are paid at least monthly and at regular intervals to the professional entity.
- (e) No dentist or professional entity shall enter into an oral or written arrangement or scheme that the dentist or professional entity knows or should know has a material purpose of creating an indirect arrangement that, if entered into directly, would violate this rule.
- (f) For purposes of this Rule, the following terms shall have the following meanings:
- (1) "Ancillary personnel" shall mean any individual that regularly assists a dentist in the clinical aspects of the practice of dentistry;
- (2) "Clinical" shall mean of or relating to the activities of a dentist as described in G.S. 90-29(b)(1)-(10);
- (3) "Commercially reasonable" shall mean an arrangement that appears to be a sensible, prudent business agreement from the perspective of the particular parties involved even in the absence of control over the dentist or professional entity by a management company or the sharing of a percentage of profits, income or revenues of the dentist or professional entity by a management company;
- (4) "Management arrangement" shall mean any one or more agreements, understandings and/or arrangements, alone or together, whether written or oral, between a management company and a dentist or professional entity whereby:
- (A) a management company regularly provides services for the clinical-related business of a dentist or professional entity; and/or
- (B) a management company exerts control over the management or clinical aspects of the business of a dentist or professional entity or its or their employees or contractors; and/or
- (C) a management company receives a percentage of the net or gross revenues or profits of a dentist or professional entity;
- (5) "Management company" shall mean any individual, business corporation, nonprofit corporation, partnership, limited liability company, limited partnership or other legal entity that is not a professional entity;
- (6) "Professional entity" shall mean a professional corporation, nonprofit corporation, partnership, professional limited liability company, professional limited partnership or other entity or aggregation of individuals that is licensed or certified or otherwise explicitly permitted to practice dentistry under North Carolina General Statutes; and

- (7) "Related person" shall mean any person or entity, other than a dentist or professional entity, that owns, is employed by, or regularly receives consideration from, a management company or another related person.

Authority G.S. 90-29(b)(11).

CHAPTER 46 – BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Pharmacy intends to adopt the rules cited as 21 NCAC 46 .3201-.3211 and amend the rules cited as 21 NCAC 46 .1603-.1604, .2008, .2502. Notice of Rule-making Proceedings was published in the Register on May 15, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: September 18, 2000

Time: 10:00 a.m.

Location: Institute of Pharmacy, Auditorium, 109 Church St., Chapel Hill, NC 27516

Reason for Proposed Action: *To clarify application of permitting rules to nonprofit corporation; to clarify when a new permit is not required and to require Board approval prior to disposition of a permit involved in a pending disciplinary proceeding; to set out informal procedures for resolution of cases; to set out rules for the program for peer review of impaired pharmacists; and, to set out requirements for pharmacy closings and pharmacy security in the absence of the pharmacist.*

Comment Procedures: *Persons wishing to present oral data, views or arguments on a proposed rule or rule change, may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address is Board of Pharmacy, PO Box 459, Carrboro, NC 27510-0459. Written submission of comments or arguments will be accepted at any time up to and including September 18, 2000.*

Fiscal Impact

- ☐ State
- ☐ Local
- ☐ Substantive (≥\$5,000,000)
- ☒ None

SECTION .1600 – LICENSES AND PERMITS

21 NCAC 46 .1603 WHEN NEW PERMIT REQUIRED

A new pharmacy, device, or medical equipment permit is required for a new location, a change to a different or successor business entity, or a change of more than 50 percent ownership interest in the permit holder or any entity in the chain of ownership above the permit holder, parent corporation except as provided in Rule .1604 of this Section. A new permit is required if there is a change in the authority to control or designate a

majority of the members or board of directors of a nonprofit corporation holding a pharmacy permit or any nonprofit corporation in the chain of ownership above the permit holder.

Authority G.S. 90-85.6; 90-85.21; 90-85.22.

21 NCAC 46 .1604 WHEN NEW PERMIT NOT REQUIRED

(a) A ~~valid new~~ pharmacy, device, or medical equipment permit ~~may be transferred and a new permit~~ is not required in the following situations:

- (1) where the change of ownership does not involve the acquisition of more than 50 percent interest in the permit holder or any ~~parent corporation entity in the chain of ownership above the permit holder;~~ or
- (2) the permit holder is a publicly-traded corporation which remains publicly-traded and continues to hold the permit; or
- (3) the permit holder is a corporation which is a wholly-owned subsidiary, and any change in the ownership of any ~~parent corporation in the chain of ownership above the permit holder~~ is due to the stock of such corporation being publicly-traded.

(b) A permit which is involved in a pending disciplinary proceeding may not be surrendered, terminated, or ~~transferred.~~ transferred, without approval of the Board.

Authority G.S. 90-85.6; 90-85.21; 90-85.22.

SECTION .2000 – ADMINISTRATIVE PROVISIONS

21 NCAC 46 .2008 INFORMAL PROCEDURES

(a) Prior to issuing a notice of hearing, the Board or the device and medical equipment subcommittee and the party or parties may agree to conduct a conference in which a member of the Board or the device and medical equipment subcommittee and the party or parties meet to consider the possibility of disposing of the dispute without a hearing or any other matter as may aid in the prompt disposition of the dispute. If such a conference is held, the Board, or the device and medical equipment subcommittee, ~~with the consent of the party or parties, may issue a consent order which recites the action taken at the conference.~~ may direct one or more of the following dispositions:

- (1) Submission to the Board with a recommendation to dismiss with no action;
- (2) Submission to the Board with a recommendation to resolve by consent; or
- (3) Scheduling, with appropriate notice, for contested case hearing.

All recommendations of dismissal must be approved by the Board. This Any consent order proposed may dispose of the dispute or set forth such matters as were agreed to between the parties that may expedite the hearing. All matters contained in the consent order must be agreed to by the party or parties and approved by the Board at its next regular meeting. The Board member or member of the device and medical equipment subcommittee who participated in the conference may participate in Board discussions concerning any recommendation made, but may not vote upon the recommendation. The Board member who participated in the conference shall disqualify himself or herself in accordance with

Rule .2011 of this Section from participation in any hearing or decision in the matter discussed in the conference if the matter results in a contested case hearing before the Board.

(b) After issuance of a notice of hearing, the Board or the device and medical equipment subcommittee and the party or parties may agree in advance to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

Authority G.S. 90-85.6; 150B-41.

SECTION .2500 – MISCELLANEOUS PROVISIONS

21 NCAC 46 .2502 RESPONSIBILITIES OF PHARMACIST-MANAGER

(a) The pharmacist-manager shall assure that prescription legend drugs and controlled substances are safe and secure within the pharmacy.

(b) The pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but shall be present for at least one-half the hours the pharmacy is open or 32 hours a week, whichever is less.

(c) Whenever a change of ownership or change of pharmacist-manager occurs, the successor pharmacist-manager shall complete an inventory of all controlled substances in the pharmacy within 10 days. A written record of such inventory, signed and dated by the successor pharmacist-manager, shall be maintained in the pharmacy with other controlled substances records for a period of three years.

(d) The pharmacist-manager shall develop and implement a system of inventory record-keeping and control which will enable that pharmacist-manager to detect any shortage or discrepancy in the inventories of controlled substances at that pharmacy at the earliest practicable time.

(e) The pharmacist-manager shall maintain complete authority and control over any and all keys to the pharmacy and shall be responsible for the ultimate security of the pharmacy. A pharmacy shall be secured to prohibit unauthorized entry if no pharmacist will be present in the pharmacy for a period of ninety minutes or more.

(f) These duties are in addition to the specific duties of pharmacist-managers at institutional pharmacies and pharmacies in health departments as set forth in these Rules.

(g) A person shall not serve as pharmacist-manager at more than one pharmacy at any one time except for limited service pharmacies.

(h) When a pharmacy is to be closed permanently, the pharmacist-manager shall inform the Board and the United States Drug Enforcement Administration of the closing, arrange for the proper disposition of the pharmaceuticals and return the pharmacy permit to the Board's offices within 10 days of the closing date. Notice of the closing shall be given to the public by posted notice at the pharmacy and by publication in a newspaper with a general circulation in the county in which the pharmacy is located at least 14 days prior to the closing date and such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice. During the period of notice to the public, the pharmacist-manager,

and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request. The Absent specific instructions from the patient or customer, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy for maintenance of patient therapy and shall inform the public of such transfer by posted notice or otherwise, at the pharmacy and by publication in a newspaper with a general circulation in the county in which the pharmacy is located within 14 days of the closing date. Controlled substance records shall be retained for the period of time required by law.

(i) Notice of the temporary closing of any pharmacy for more than 14 consecutive days shall be given to the public by posted notice at the pharmacy and by publication in a newspaper with a general circulation in the county in which the pharmacy is located at least 14 days prior to the closing date and such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice. During the period of notice to the public, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request.

~~(j)~~(j) The pharmacist-manager shall prepare a plan to safeguard prescription records and pharmaceuticals in the event of a natural disaster such as hurricane or flood.

~~(k)~~(k) The pharmacist-manager shall separate from the dispensing stock all drug products more than six months out of date.

~~(l)~~(l) The pharmacist-manager shall report to the Board of Pharmacy information that reasonably suggests that there is a probability that a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient or customer. This report shall be filed in writing on a form provided by the Board within 14 days of the owner representative or pharmacist-manager's becoming aware of the event. The pharmacist-manager shall retain all documents, labels, vials, supplies, substances and internal investigative reports relating to the event. All such items shall be made available to the Board upon request.

~~(m)~~(m) The Board shall not disclose the identity of a pharmacist-manager who makes a report under Paragraph (k) of this Rule, except as required by law. All reports made under Paragraph (k) of this Rule shall not be released except as required by law.

~~(n)~~(n) Dispensing errors which are not detected and corrected prior to the patient receiving the medication shall be documented and reported to the pharmacist-manager. Documentation shall include pertinent chronological information and appropriate forms including the identity of individual(s) responsible. These documents, including action taken as part of a quality assurance plan, shall be archived in a readily retrievable manner and available for inspection by the Board for a period of three years. These documents shall not be released except as required by law.

~~(o)~~(o) In any Board proceeding, the Board shall consider compliance with Paragraphs ~~(l)~~(l) and ~~(n)~~(n) of this Rule as a mitigating factor and noncompliance with Paragraphs ~~(l)~~(l) and ~~(n)~~(n) of this Rule as an aggravating factor.

Authority G.S. 90-85.6; 90-85.21; 90-85.25.

SECTION .3200 – PEER REVIEW AGREEMENTS

21 NCAC 46 .3201 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Board" means the North Carolina Board of Pharmacy;
- (2) "Committee" means the Board of Directors established to function as a supervisory and advisory body to the Program;
- (3) "Impairment" means mental illness, chemical dependency, physical illness, and aging problems; and
- (4) "Program" means program established by agreements between special impaired pharmacist peer review organizations and the Board.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3202 PEER REVIEW AGREEMENTS

Peer review activities shall include: investigation; review and evaluation of records, reports, complaints, litigation, and other information about the practices and practice patterns of pharmacists licensed by the Board. Peer review activities shall also include programs for impaired pharmacists. Peer review agreements may cover some or all of these activities, as deemed appropriate by the Board.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3203 DUE PROCESS

Any action taken pursuant to a peer review agreement must afford the subject pharmacist all due process rights enumerated in the Administrative Procedure Act, G.S. 150B.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3204 RECEIPT AND USE OF INFORMATION OF SUSPECTED IMPAIRMENT

- (a) Information concerning suspected impairments may be received by the Program through reports by pharmacists, family members, and others, and through self-referral.
- (b) Upon receipt of information of a suspected impairment, the Program shall initiate an investigation.
- (c) The Program may conduct routine inquiries regarding suspected impairments.
- (d) Pharmacists suspected of impairment may be required to submit to personal interviews before any person authorized by the Program.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3205 INTERVENTION AND REFERRAL

When, following an investigation, impairment is confirmed, an intervention is conducted using specialized techniques designed to assist the pharmacist in acknowledging responsibility for dealing with the impairment. The pharmacist is referred to an appropriate treatment source:

- (1) Methods and objectives of interventions are decided on a case-by case basis.
- (2) Interventions are arranged and conducted as soon as possible. In cases referred by the Board a representative of the Board may be present.

- (3) Treatment sources are evaluated before receiving case referrals from the Program.
- (4) Intervention outcomes, including treatment contracts that are elements of an intervention, are recorded by the Program.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3206 MONITORING TREATMENT

A treatment source receiving referrals from the Program shall be monitored as to its ability to provide:

- (1) adequate medical and non-medical staffing;
- (2) appropriate treatment;
- (3) affordable treatment;
- (4) adequate facilities; and
- (5) appropriate post-treatment support.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3207 MONITORING REHABILITATION AND PERFORMANCE

- (a) Monitoring requirements for each pharmacist shall be designated by the Program. Pharmacists may be tested regularly or randomly, on Program demand.
- (b) Treatment sources may be required to submit reports regarding a pharmacist's rehabilitation and performance to the Program.
- (c) Impaired pharmacists may be required to submit to periodic personal interviews before any person authorized by the Program.
- (d) Appropriate case records are maintained by the Program.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3208 MONITORING POST-TREATMENT SUPPORT

Post-treatment support may include family counseling, advocacy and other services and programs deemed appropriate to improve recoveries:

- (1) Treatment sources' post-treatment support shall be monitored by the Program on an ongoing basis.
- (2) The Program's post-treatment support will be monitored by the Program on an ongoing basis.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3209 REPORTS OF INDIVIDUAL CASES TO THE BOARD

- (a) Upon investigation and review of a pharmacist licensed by the Board, the Program shall report immediately to the Board detailed information about any pharmacist as required under G.S. 90-85.41(d).
- (b) The Program shall submit quarterly a report to the Board on the status of all pharmacists then involved in the Program who have been previously reported by the Board. The Program shall submit monthly to the Board a report on the status of any pharmacist previously reported to the Board then in active treatment until such time as mutually agreed to by the Board and the Program.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3210 PERIODIC REPORTING OF STATISTICAL INFORMATION

Statistical information concerning suspected impairments, impairments, self-referrals, post-treatment support and other significant demographic and substantive information collected through Program operations shall be included in comprehensive statistical reports compiled and annually reported to the Board by the Program.

Authority G.S. 90-85.6; 90-85.41.

21 NCAC 46 .3211 CONFIDENTIALITY

Any nonpublic information acquired, created, or used in good faith by the Program shall be treated according to G.S. 90-85.41.

Authority G.S. 90-85.6; 90-85.41.

TEMPORARY RULES

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 2C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Department of Environment and Natural Resources*

Rule Citation: *15A NCAC 1C .0402*

Effective Date: *August 1, 2000*

Findings Reviewed and Approved by: *Julian Mann, III*

Authority for the rulemaking: *G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10*

Reason for Proposed Action: *This amendment will prohibit the NC Department of Environment and Natural Resources ("DENR") from acting on applications for permits or other DENR approvals required by a project while preparation and review of environmental documents required pursuant to the Environmental Policy Act, G.S. 113A-100 et seq. is underway. This rule amendment would not prohibit approvals of activities undertaken to gather data needed for the SEPA process.*

Comment Procedures: *Comments may be submitted to Mr. Ryke Longest, Department of Justice, Attorney General's Office, PO Box 114, Edenton St., Raleigh, NC 27602, (919) 716-6942.*

CHAPTER 1 – DEPARTMENTAL RULES

SUBCHAPTER 1C – CONFORMITY WITH NORTH CAROLINA ENVIRONMENTAL POLICY ACT

SECTION .0400 – PUBLIC RECORDS

15A NCAC 01C .0402 LIMITATION ON ACTIONS DURING NCEPA PROCESS

(a) While work on an environmental document is in progress, no agency shall undertake in the interim any action which might limit the choice among alternatives or otherwise prejudice the ultimate decision on the issue. A permit approval or other action to approve land disturbing activity or construction of part of the project or action, other than those actions necessary for gathering information needed to prepare the environmental document, limits the choice among alternatives and shall not be approved until the final environmental document for the action is published in the Bulletin and adopted by the agency through the procedures established by the Department of Administration's Rules for administering NC EPA and this Subchapter of the Department's rules.

(b) If an agency is considering a proposed action for which an environmental document is to be or is being prepared, the agency shall promptly notify the initiating party that the agency cannot take final action until the environmental documentation is completed and available for use as a decision-making tool. The

notification shall be consistent with the statutory and regulatory requirements of the agency and may be in the form of a notification that the application is incomplete.

(c) When an agency decides that a proposed activity, for which state actions are pending or have been taken, requires environmental documentation then the agency should promptly notify all action agencies of the decision. When statutory and regulatory requirements prevent an agency from suspending action, the agency shall deny any action for which it determines an environmental document is necessary but not yet available as a decision-making tool.

History Note: *Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10; Eff. August 1, 1989; Transferred from T15.01D .0502 Eff. November 1, 1989; Temporary Amendment Eff. August 1, 2000.*

Rule-making Agency: *NC Department of Environment and Natural Resources*

Rule Citation: *15A NCAC 1P .0103*

Effective Date: *August 1, 2000*

Findings Reviewed and Approved by: *Julian Mann, III*

Authority for the rulemaking: *S.L. 1999, c. 463 (Extra Session)*

Reason for Proposed Action: *Chapter 463 of the 1999 Session Laws appropriated \$11.4 million for assistance to commercial fishers. This session law (Part IV) also authorized adoption of temporary rules necessary to implement the disbursement of funds. Recent revisions to grant criteria created another application period and included shellfish seed stock. It failed to take into consideration growers that grow their own seed and therefore can not produce receipts. This amendment allows for those individuals to also apply for grants.*

Comment Procedures: *Written comments are welcomed and may be submitted to Juanita Gaskill, DENR, Division of Marine Fisheries, PO Box 769, Morehead City, NC 28557.*

CHAPTER 1 – DEPARTMENTAL RULES

SUBCHAPTER 1P – GRANTS TO COMMERCIAL FISHERMEN FOR HURRICANE DAMAGE

SECTION .0100 – GRANTS TO COMMERCIAL FISHERMAN FOR HURRICANE DAMAGE

15A NCAC 01P .0103 APPLICATION AND

ELIGIBILITY REVIEW PROCESS

(a) Applications for Grants to Commercial Fishermen shall be available at all offices of the Division of Marine Fisheries which are located in Elizabeth City, Wanchese, Columbia, Washington, Morehead City and Wilmington, and must be submitted to the Morehead City Office of the Division of Marine Fisheries, Attention: Hurricane Grants, Post Office Box 769, Morehead City, NC 28557 for processing.

(b) Applications must be received at the Morehead City Division of Marine Fisheries Office, Attention: Hurricane Grants, postmarked no later than September 16, 2000, on a form provided by the Division of Marine Fisheries. The applicant's signature on the application must be notarized.

(c) Incomplete applications shall be returned and shall not be reviewed until determined to be complete by the Division of Marine Fisheries.

(d) Applicants must complete all required information including but not limited to:

- (1) For applications in the name of an individual: full name, physical address, mailing address, county of residence, social security number, date of birth, phone number and participant number of the applicant. For applications in the name of a business entity: full name, physical address, mailing address, county of residence, social security number, date of birth, and phone number of the responsible party and identifying information for the business entity as required on the application form including the participant number and, if applicable, the federal tax identification number.
- (2) Standard Commercial Fishing License Number, Retired Standard Commercial Fishing License Number, or Shellfish License for North Carolina Resident without a Standard Commercial Fishing License Number.
- (3) Endorsement to Sell Numbers for License Years 1997-1998 and 1998-1999, if applicable and available.
- (4) Certification as to whether or not the applicant has received any other compensation for loss of fisheries income or commercial fishing equipment through insurance, unemployment, FEMA, Small Business Administration or any other disaster program and that the loss resulted from the effects of the hurricane. If such compensation has been received, the level of compensation must be reported and shall be deducted from the total eligible compensation under this grant program.
- (5) For application for compensation for loss of a vessel(s) or equipment used in a commercial fishery:
 - (A) The fishermen must have been determined to be a commercial fisherman with documented commercial fishing income in 1999 from the use of that type equipment or vessel to be eligible to apply for compensation for lost or damaged equipment or vessel(s). Commercial fishery income in 1999 shall be verified by the Division of Marine Fisheries through historical landings data.
 - (B) For compensation for loss or damage to a vessel, the applicant must furnish copies of the Commercial Fishing Vessel Registration, the State motorboat registration, or the U.S. Coast Guard vessel documentation papers, if available. Applicants must furnish documentation of the loss

or damage to the vessel. Such documentation may include repair invoices, estimates of damages from a repair facility, photographs of the damages, Wildlife Resources Commission motorboat accident reports, notarized affidavits from individuals with knowledge of the loss, or other relevant verification of the loss.

(C) For application for equipment loss or damage, the applicant must furnish copies of receipts for equipment purchased prior to November 15, 1999 and a notarized affidavit from the applicant that equipment has been lost or damaged and must furnish at least one notarized affidavit from an individual involved in commercial fishing or from a fish dealer that the applicant did own and have damages or loss of such equipment. Information required will include the type, description, amount, location, and the extent of damage of commercial equipment. Equipment loss claims may be verified by agents of the Division of Marine Fisheries by on-site inspections and other methods. Only equipment losses between September 16 and November 15, 1999, shall be considered for compensation. Calculation of loss of equipment shall be as follows:

- (I) For equipment losses that have been replaced, compensation shall be based on the actual replacement cost shown on receipts or invoices for replacement.
- (II) For equipment losses that have not been replaced or for which receipts or invoices are not available, compensation shall be based on a standard amount set by the Division of Marine Fisheries to be the fair market replacement cost for each type of equipment.

(6) For compensation for loss of shellfish seed stock, the applicant must provide their lease location and number, documentation of seed stock under cultivation ~~proof of purchase of the seed stock~~ during the period September 1, ~~1997~~ 1998 through September 15, 1999, and documentation of the loss. Only seed stock losses during the period September 16 to November 15, 1999 shall be considered for compensation. Calculation of the value of the loss of seed stock shall be as follows:

- (I) For seed stock losses that have been replaced, compensation shall be based on the actual replacement cost shown on receipts or invoices for replacement.
- (II) For seed stock losses that have not been replaced or for which receipts or invoices are not available, compensation shall be based on a standard amount set by the Division of Marine Fisheries to be the fair market replacement cost for the type of seed stock.

(7) The applicant must certify that all information on the application and any supporting documentation is true, accurate, and complete.

(e) Grants shall be issued according to the order that complete applications are received, reviewed and approved.

History Note: Authority S.L. 1999, c. 463 (Extra Session);
Temporary Adoption Effective August 1, 2000; July 1, 2000;
February 4, 2000 to expire on January 1, 2003.

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of January 20, 2000 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2000 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
2	NCAC	34	.0102*	14:13 NCR
2	NCAC	34	.0319	14:13 NCR
2	NCAC	34	.0330*	14:13 NCR
2	NCAC	34	.0509*	14:13 NCR
10	NCAC	20B	.0201	14:16 NCR
10	NCAC	20B	.0202*	14:16 NCR
10	NCAC	20B	.0203	14:16 NCR
10	NCAC	20B	.0204*	14:16 NCR
10	NCAC	20B	.0205-.0206	14:16 NCR
10	NCAC	20B	.0207*	14:16 NCR
10	NCAC	20B	.0208-.0209	14:16 NCR
10	NCAC	20B	.0210*	14:16 NCR
10	NCAC	20B	.0211	14:16 NCR
10	NCAC	20B	.0221*	14:16 NCR
10	NCAC	20B	.0223	14:16 NCR
10	NCAC	20B	.0225*	14:16 NCR
10	NCAC	41H	.0304	14:16 NCR
10	NCAC	41P	.0106*	14:16 NCR
10	NCAC	42B	.1201*	14:13 NCR
10	NCAC	42B	.1213*	14:13 NCR
10	NCAC	42B	.1214	14:13 NCR
10	NCAC	42B	.1407*	14:13 NCR
10	NCAC	42B	.1707	14:13 NCR
10	NCAC	42B	.1803*	14:13 NCR
10	NCAC	42B	.2406	14:13 NCR
10	NCAC	42B	.2501-.2503	14:13 NCR
10	NCAC	42C	.2005*	14:13 NCR
10	NCAC	42C	.2011-.2014*	14:13 NCR
10	NCAC	42C	.2015	14:13 NCR
10	NCAC	42C	.2207*	14:13 NCR
10	NCAC	42C	.2214*	14:13 NCR
10	NCAC	42C	.2302*	14:13 NCR
10	NCAC	42C	.2501	14:13 NCR
10	NCAC	42C	.2505	14:13 NCR
10	NCAC	42C	.2703	14:13 NCR
10	NCAC	42C	.3401-.3402	14:13 NCR
10	NCAC	42C	.3701*	14:13 NCR
10	NCAC	42C	.3703*	14:13 NCR
10	NCAC	42C	.3801-.3810*	14:13 NCR
10	NCAC	42C	.3901-.3903*	14:13 NCR
10	NCAC	42D	.1301*	14:13 NCR
10	NCAC	42D	.1302	14:13 NCR
10	NCAC	42D	.1303-.1304*	14:13 NCR
10	NCAC	42D	.1401	14:13 NCR
10	NCAC	42D	.1402*	14:13 NCR
10	NCAC	42D	.1407*	14:13 NCR

APPROVED RULES

10	NCAC 42D	.1410-.1414*	14:13 NCR
10	NCAC 42D	.1415	14:13 NCR
10	NCAC 42D	.1416*	14:13 NCR
10	NCAC 42D	.1503*	14:13 NCR
10	NCAC 42D	.1605*	14:13 NCR
10	NCAC 42D	.1804*	14:13 NCR
10	NCAC 42D	.1821	14:13 NCR
10	NCAC 42D	.1831	14:13 NCR
10	NCAC 42D	.1901-.1902*	14:13 NCR
10	NCAC 42D	.1903	14:13 NCR
10	NCAC 42D	.1904*	14:13 NCR
10	NCAC 42D	.1905	14:13 NCR
10	NCAC 42D	.1906*	14:13 NCR
10	NCAC 42D	.1907	14:13 NCR
10	NCAC 42D	.1908*	14:13 NCR
10	NCAC 42D	.1909-.1910	14:13 NCR
10	NCAC 42D	.2001-.2002*	14:13 NCR
10	NCAC 42D	.2003	14:13 NCR
10	NCAC 42D	.2004*	14:13 NCR
10	NCAC 42D	.2005	14:13 NCR
10	NCAC 42D	.2006*	14:13 NCR
10	NCAC 42D	.2007-.2011	14:13 NCR
10	NCAC 42D	.2201-.2203	14:13 NCR
10	NCAC 42E	.1501*	14:16 NCR
10	NCAC 42E	.1503	14:16 NCR
10	NCAC 42E	.1504*	14:16 NCR
10	NCAC 42E	.1505-.1507	14:16 NCR
10	NCAC 42E	.1508*	14:13 NCR
10	NCAC 42Z	.1002*	14:16 NCR
10	NCAC 42Z	.1003-.1006	14:16 NCR
10	NCAC 42Z	.1007*	14:16 NCR
10	NCAC 43L	.0401*	14:16 NCR
10	NCAC 50B	.0102	14:10 NCR
10	NCAC 50B	.0313	14:10 NCR
11	NCAC 12	.0327	14:16 NCR
12	NCAC 10B	.0302-.0303	14:16 NCR
12	NCAC 10B	.0909	14:16 NCR
13	NCAC 7F	.0201*	14:16 NCR
15A	NCAC 2D	.0518	14:07 NCR
15A	NCAC 2D	.0902	14:07 NCR
15A	NCAC 2D	.0909	14:07 NCR
15A	NCAC 2D	.0948-.0950	14:07 NCR
15A	NCAC 2D	.0951*	14:07 NCR
15A	NCAC 2D	.0958*	14:07 NCR
15A	NCAC 2D	.1201*	14:03 NCR
15A	NCAC 7M	.0403*	14:09 NCR
15A	NCAC 10B	.0116	14:12 NCR
15A	NCAC 10B	.0203*	14:12 NCR
15A	NCAC 10B	.0209	14:12 NCR
15A	NCAC 10C	.0205*	14:12 NCR
15A	NCAC 10C	.0305*	14:12 NCR
15A	NCAC 10C	.0401*	14:12 NCR
15A	NCAC 10C	.0402	14:12 NCR
15A	NCAC 10C	.0407	14:12 NCR
15A	NCAC 10C	.0503	14:12 NCR
15A	NCAC 10D	.0102-.0103*	14:12 NCR
15A	NCAC 10D	.0104	14:12 NCR
15A	NCAC 10F	.0332-.0333	14:13 NCR & 14:08 NCR
15A	NCAC 10F	.0339	14:08 NCR
15A	NCAC 10F	.0353	14:12 NCR
15A	NCAC 10F	.0355	14:08 NCR

APPROVED RULES

15A	NCAC	21F	.1203-.1204*	14:10 NCR
17	NCAC	4C	.0603	14:16 NCR
17	NCAC	4C	.1101	14:16 NCR
17	NCAC	4C	.1801	14:16 NCR
17	NCAC	4E	.0201	14:16 NCR
17	NCAC	7B	.1402	14:16 NCR
19A	NCAC	2E	.0201*	14:09 NCR
19A	NCAC	2E	.0203*	14:09 NCR
19A	NCAC	3G	.0205*	14:13 NCR
21	NCAC	12	.0202*	14:06 NCR
21	NCAC	12	.0209*	14:06 NCR
21	NCAC	12	.0402*	14:06 NCR
21	NCAC	12	.0405*	14:06 NCR
21	NCAC	12	.0410*	14:06 NCR
21	NCAC	12	.0907*	14:06 NCR
21	NCAC	21	.0501*	14:12 NCR
21	NCAC	21	.1101*	14:12 NCR
21	NCAC	26	.0101*	14:12 NCR
21	NCAC	26	.0104-.0105	14:12 NCR
21	NCAC	26	.0302	14:12 NCR
21	NCAC	32R	.0101-.0102*	14:16 NCR
21	NCAC	32R	.0103-.0104	14:16 NCR
21	NCAC	33	.0101*	14:16 NCR
21	NCAC	33	.0102	14:16 NCR
21	NCAC	33	.0104	14:16 NCR
21	NCAC	37D	.0403*	14:13 NCR
21	NCAC	50	.0304*	14:14 NCR
21	NCAC	50	.0402*	14:14 NCR
21	NCAC	50	.1101*	14:14 NCR
21	NCAC	56	.0101	14:13 NCR
21	NCAC	56	.0103-.0104	14:13 NCR
21	NCAC	56	.0402*	14:13 NCR
21	NCAC	56	.0501-.0502*	14:13 NCR
21	NCAC	56	.0505	14:13 NCR
21	NCAC	56	.0601-.0602*	14:13 NCR
21	NCAC	56	.0606	14:13 NCR
21	NCAC	56	.0701*	14:13 NCR
21	NCAC	56	.0702	14:13 NCR
21	NCAC	56	.0802*	14:13 NCR
21	NCAC	56	.0902	14:13 NCR
21	NCAC	56	.1001	14:13 NCR
21	NCAC	56	.1003	14:13 NCR
21	NCAC	56	.1101*	14:13 NCR
21	NCAC	56	.1102-.1105	14:13 NCR
21	NCAC	56	.1106*	14:13 NCR
21	NCAC	56	.1201	14:13 NCR
21	NCAC	56	.1203	14:13 NCR
21	NCAC	56	.1301*	14:13 NCR
21	NCAC	56	.1302	14:13 NCR
21	NCAC	56	.1409	14:13 NCR
21	NCAC	56	.1501*	14:13 NCR
21	NCAC	56	.1601-.1604*	14:13 NCR
21	NCAC	56	.1605	14:13 NCR
21	NCAC	56	.1606-.1609*	14:13 NCR
21	NCAC	56	.1701	14:13 NCR
21	NCAC	56	.1702-.1703*	14:13 NCR
21	NCAC	56	.1704-.1705	14:13 NCR
21	NCAC	56	.1706*	14:13 NCR
21	NCAC	56	.1707-.1709	14:13 NCR
21	NCAC	63	.0102-.0103	14:14 NCR
21	NCAC	63	.0201	14:14 NCR

21	NCAC	63	.0202*	14:14 NCR
21	NCAC	63	.0205-.0209	14:14 NCR
21	NCAC	63	.0211*	14:14 NCR
21	NCAC	63	.0212-.0213	14:14 NCR
21	NCAC	63	.0302*	14:14 NCR
21	NCAC	63	.0303	14:14 NCR
21	NCAC	63	.0304-.0305*	14:14 NCR
21	NCAC	63	.0306	14:14 NCR
21	NCAC	63	.0402	14:14 NCR
21	NCAC	63	.0403*	14:14 NCR
21	NCAC	63	.0404	14:14 NCR
21	NCAC	63	.0501*	14:14 NCR
21	NCAC	63	.0509*	14:14 NCR
21	NCAC	63	.0602	14:14 NCR
21	NCAC	63	.0603*	14:14 NCR
21	NCAC	63	.0604	14:14 NCR
21	NCAC	63	.0607	14:14 NCR
21	NCAC	63	.0609	14:14 NCR
21	NCAC	63	.0701	14:14 NCR
21	NCAC	63	.0703-.0704	14:14 NCR
21	NCAC	63	.0801-.0809	14:14 NCR
21	NCAC	63	.0820	14:14 NCR
21	NCAC	68	.0203*	14:16 NCR
21	NCAC	68	.0205-.0206*	14:16 NCR
21	NCAC	68	.0208*	14:16 NCR
21	NCAC	68	.0209	14:16 NCR
21	NCAC	68	.0211-.0213*	14:16 NCR
21	NCAC	68	.0503*	14:16 NCR
21	NCAC	68	.0507*	14:14 NCR
21	NCAC	68	.0701*	14:16 NCR
23	NCAC	2D	.0323-.0324*	14:04 NCR
26	NCAC	1	.0103*	14:12 NCR
26	NCAC	2C	.0108*	14:12 NCR

TITLE 2 - DEPARTMENT OF AGRICULTURE

CHAPTER 34 - STRUCTURAL PEST CONTROL DIVISION

SECTION .0100 - INTRODUCTION AND DEFINITIONS

02 NCAC 34 .0102 DEFINITIONS

In addition to the definitions contained in the Act, the following definitions apply:

- (1) "Act or law" means the Structural Pest Control Act of North Carolina of 1955.
- (2) "Active infestation of a specific organism" means evidence of present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (3) "Active ingredient" means an ingredient which will or is intended to prevent, destroy, repel, or mitigate any pest.
- (4) "Acutely toxic rodenticidal baits" means all baits that, as formulated, are classified as Toxicity Category I or II (Signal Word "Danger" or "Warning") under 40 CFR Part 156.10.
- (5) "Board of Agriculture" means the Board of Agriculture of the State of North Carolina.
- (6) "Commercial certified applicator" shall mean any certified applicator employed by a licensed individual.
- (7) "Commercial structure" means any structure which is not a residential structure; including but not limited to shopping centers, offices, nursing homes, and similar structures.
- (8) "Complete surface residual spray" means the over-all application of any pesticide by spray or otherwise, to any surface areas within, on, under, or adjacent to, any structure in such a manner that the pesticide will adhere to surfaces and remain toxic to household pests and rodents or other pests for an extended period of time.
- (9) "Continuing education units" or "CEU" means units of noncredit education awarded by the Division of Continuing Studies, North Carolina State University or comparable educational institution, for satisfactorily completing course work.
- (10) "Continuing certification unit" or "CCU" means a unit of credit awarded by the Division upon satisfactory completion of one clock hour of approved classroom training.
- (11) "Crack and crevice application" means an application of pesticide made directly into a crack or void area with equipment capable of delivering the pesticide to the target area.

- (12) "Deficient soil sample" shall mean any soil sample which, when analyzed, is found to contain less than 25 percent, expressed in parts per million (ppm), of the termiticide applied by a licensee which would be found if the termiticide had been applied at the lowest concentration and dosage recommended by the labeling.
- (13) "Department" means the Department of Agriculture and Consumer Services of the State of North Carolina.
- (14) "Disciplinary action" means any action taken by the Committee as provided under the provisions of G.S. 106-65.28.
- (15) "Division" means the Structural Pest Control Division of the Department of Agriculture and Consumer Services of the State of North Carolina.
- (16) "Enclosed space" means any structure by whatever name known, including household structures, commercial buildings, warehouses, docks, vacant structures, and places where people congregate, such as hospitals, schools, churches, and others; railroad cars, trucks, ships, aircraft, and common carriers. It shall also mean vaults, tanks, chambers, and special rooms designed for use, being used, or intended to be used for fumigation operations.
- (17) "EPA" means the Environmental Protection Agency of the United States Government.
- (18) "EPA registration number" means the number assigned to a pesticide label by EPA.
- (19) "Flammable pesticidal fog" means the fog dispelled into space and produced:
 - (a) from oil solutions of pesticides finely atomized by a blast of heated air or exhaust gases from a gasoline engine, or from mixtures of water and pesticidal oil solutions passed through a combustion chamber, the water being converted to steam, which exerts a shearing action, breaking up the pesticidal oil into small droplets (thermal fog); or
 - (b) from oil solutions of pesticides which are forced through very narrow space by centrifugal force and atomized as they are thrown off into the air (mechanical or cold fogs).
- (20) "Fog or fogging" means micron sized particles of pesticide(s) dispersed by means of a thermal or centrifugal fogger or a pressurized aerosol pesticide.
- (21) "Fumigation" means the use of fumigants within an enclosed space, or in, or under a structure, in concentrations which may be hazardous to man.
- (22) "Fumigation crew" or "crew" means personnel performing the fumigation operation.
- (23) "Fumigation operation" means all details prior to application of fumigant(s), the application of fumigant(s), fumigation period, and post fumigation details as outlined in these Rules.
- (24) "Fumigation period" means the period of time from application of fumigant(s) until ventilation of the fumigated structure(s) is completed and the structure or structures are declared safe for occupancy for human beings or domestic animals.
- (25) "Fumigator" means a person licensed under the provisions of G.S. 106-65.25(a)(3) or certified under the provisions of G.S. 106-65.25(e)(1) to engage in or supervise fumigation operations.
- (26) "Gas-retaining cover" means a cover which will confine fumigant(s) to the space(s) intended to be fumigated.
- (27) "General fumigation" means the application of fumigant(s) to one or more rooms and their contents in a structure, at the desired concentration and for the necessary length of time to control rodents, insects, or other pests.
- (28) "Household" means any structure and its contents which are used for man.
- (29) "Household pest" means any undesirable vertebrate or invertebrate organism, other than wood-destroying organisms, occurring in a structure or the surrounding areas thereof, including but not limited to insects and other arthropods, commensal rodents, and birds which have been declared pests under G.S. 143-444.
- (30) "Household pest control" means that phase of structural pest control other than the control of wood-destroying organisms and fumigation and shall include the application of remedial measures for the purpose of curbing, reducing, preventing, controlling, eradicating, and repelling household pests.
- (31) "Inactive license" shall mean any structural pest control license held by an individual who has no employees and is not engaged in any structural pest control work except as a certified applicator or registered technician.
- (32) "Infestation of a specific organism" means evidence of past or present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (33) "Inspection for a specific wood-destroying organism" means the careful visual examination of all accessible areas of a building and the sounding of accessible structural members adjacent to slab areas, chimneys, and other areas particularly susceptible to attack by wood-destroying organisms to determine the presence of and the damage by that specific wood-destroying organism.
- (34) "Inspector" means any employee of the Structural Pest Control Division of the Department of Agriculture and Consumer Services of the State of North Carolina.
- (35) "Licensed structural pest control operation," or "pest control operation," or "operator," or "licensed operator" means any person licensed under the provisions of G.S. 106-65.25(a) or unlicensed who, for direct or indirect hire or compensation is engaged in the business of controlling, destroying, curbing, mitigating, preventing, repelling, offering advice on control methods and procedures, inspecting and identifying infestations and populations of insects, rodents, fungi, and other pests within, under and on structures of any kind, or the nearby surrounding ground areas or where people may assemble or congregate including work defined under G.S. 106-65.24(23).
- (36) "Liquefied gas aerosol" means the spray produced by the extreme rapid volatilization of a compressed and liquefied gas, to which has been added a nonvolatile oil solution containing a pesticide.

- (37) "Noncommercial certified applicator" shall mean any certified applicator not employed by a licensed individual.
- (38) "Open porch" means any porch without fill in which the distance from the bottom of the slab to the top of the soil beneath the slab is greater than 12 inches.
- (39) "Physical barrier" as used in 2 NCAC 34 .0500, means a barrier, which, by its physical properties and proper installation, is capable of preventing the passage of subterranean termites into a structure to be protected from subterranean termites.
- (40) "Residential structure" means any structure used, or suitable for use, as a dwelling such as a single- or multi-family home, house trailer, motor home, mobile home, a condominium or townhouse, or an apartment or any other structure, or portion thereof, used as a dwelling.
- (41) "Secretary" means the Secretary to the North Carolina Structural Pest Control Committee.
- (42) "Service vehicle" means any vehicle used regularly to transport the licensee or certified applicator or registered technician or other employee or any equipment or pesticides used in providing structural pest control services.
- (43) "Slab-on-ground" means a concrete slab in which all or part of that concrete slab is resting on or is in direct contact with the ground immediately beneath the slab.
- (44) "Solid masonry cap" means a continuous concrete or masonry barrier covering the entire top, width and length, of any wall, or any part of a wall, that provides support for the exterior or structural parts of a building.
- (45) "Space spray" means any pesticide, regardless of its particle size, which is applied to the atmosphere within an enclosed space in such a manner that dispersal of the pesticide particles is uncontrolled. Pesticidal fogs or aerosols, including those produced by centrifugal or thermal fogging equipment or pressurized aerosol pesticides, shall be considered space sprays.
- (46) "Spot fumigation" means the application of a fumigant to a localized space or harborage within, on, under, outside of, or adjacent to, a structure for local household pest or rodent control.
- (47) "Spot surface residual spray" means the application of pesticidal spray directly to a surface and only in specific areas where necessary and in such a manner that the pesticidal material will largely adhere to the surface where applied and will remain toxic to household pests or rodents or other pests for which applied for an extended period of time.
- (48) "Structure" means all parts of a building, whether vacant or occupied, in all stages of construction.
- (49) "Structural pests" means all pests that occur in any type of structure of man and all pests associated with the immediate environs of such structures.
- (50) "Sub-slab fumigation" means the application of a fumigant below or underneath a concrete slab and is considered spot fumigation.
- (51) "Supervision," as used in 2 NCAC 34 .0325, shall mean the oversight by the licensee of the structural pest control activities performed under that license. Such oversight may be in person by the licensee or through instructions, verbal, written or otherwise, to persons performing such activities. Instructions may be disseminated to such persons either in person or through persons employed by the licensee for that purpose.
- (52) "Telephone answering service location" means any location used for the sole purpose of receiving telephone messages including locations which utilize call forwarding or other electronic answering or messaging technology.
- (53) "Termiticide(s)" (as used in these Rules) means those pesticides specified in 2 NCAC 34 .0502, Pesticides for Subterranean Termite Prevention and/or Control.
- (54) "Termiticide barrier" shall mean an area of soil treated with an approved termiticide, which, when analyzed, is not deficient in termiticide.
- (55) "To use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling. Provided that, the term shall not include:
 - (a) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency;
 - (b) applying a pesticide against any target pest not specified on the labeling if the application is to the site specified on the labeling, unless the EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling; or
 - (c) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified by the labeling.
- (56) "Type of treatment" means the method used to apply a pesticide formulation to a specific location, including but not limited to: space spray, crack and crevice, complete surface residual, spot surface residual, bait placement, or fog.
- (57) "Unauthorized personnel" means any individual or individuals not given specific authorization by the licensee or certified applicator to enter areas to which access is restricted by these Rules.
- (58) "Waiver" means a standard form prescribed by the Committee which will, when completed correctly, permit the licensee to deviate from or omit one or more of the minimum treatment methods and procedures for structural pests which are set forth in the Committee rules, definitions, and requirements.
- (59) "Wood-destroying insect report" means any written statement or certificate issued, by an operator or his authorized agent, regarding the presence or absence of wood-destroying insects or their damage in a structure.
- (60) "Wood-destroying organism" is an organism such as a termite, beetle, other insect, or fungus which may invade, inhabit, devour, or destroy wood or wood products and other cellulose material found in, on, under, in contact with, and around structures.
- (61) "Wood-destroying organism report" means any written statement or certificate issued, by an operator or his

authorized agent, regarding the presence or absence of wood-destroying organisms or their damage in a structure.

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. July 1, 2000; July 1, 1998; August 3, 1992;

January 1, 1991; January 1, 1989.

SECTION .0300 - LICENSING AND CERTIFICATION

02 NCAC 34 .0330 BRANCH OFFICE

(a) A licensee shall not establish more than two branch offices in addition to his/her home office.

(b) The licensee shall register each branch office with the Division prior to its establishment and at the time of renewal of the license on a form prescribed by the Division.

(c) At a minimum, the licensee shall provide the following information concerning the branch office at the time of registration and within 10 days of any change in the information:

- (1) The physical location or address of the branch office;
- (2) The mailing address of the branch office;
- (3) The telephone number of the branch office;
- (4) The location, branch office or home office, at which records of work and pesticides used shall be stored;
- (5) An outline of the company organization showing the lines of supervision and responsibility, the credentials of supervisor(s) (education, experience, certification status), percentage of time devoted to supervision, methods and personnel conducting quality control; frequency of visits to the branch office and work sites by the licensee; and,
- (6) The names of all employees performing work from the branch office.

(d) The licensee shall not establish any branch office more than 75 miles from the location of his/her home unless prior approval has been obtained from the Committee to locate a branch office more than 75 miles from the licensee's primary residence.

(e) Requests to operate a branch office more than 75 miles from the licensee's primary residence shall be made in writing to the Committee and shall include a plan of supervision in addition to the information in Paragraph (c) of this Rule. At a minimum, the plan of supervision shall include:

- (1) Complete training program, including a schedule of training;
- (2) A description of communication capabilities and procedures between the home office and branch office and between the consumer and the branch and home offices; and
- (3) A plan to be followed in the event of emergencies such as fire, pesticide spills or other emergency.

(f) If, at any time, the Committee determines that any branch office is not being adequately supervised, the branch office shall be closed and shall not resume operation nor shall the licensee be permitted to open any new branch office until a satisfactory plan of supervision has been approved by the Committee or until the office is made a home office.

History Note: Authority G.S. 106-65.29;

Temporary Adoption Eff. October 2, 1999;

Eff. July 1, 2000.

SECTION .0500 - WOOD-DESTROYING ORGANISMS

02 NCAC 34 .0509 PHYSICAL BARRIERS FOR TERMITE CONTROL

(a) Physical barriers approved by the Structural Pest Control Committee may be used for the prevention or control of subterranean termites.

(b) Physical barriers shall be installed in accordance with the manufacturers' recommendations by personnel certified by the manufacturer, if required or recommended by the manufacturer, or specifically trained in the installation of the approved physical barrier.

(c) Where all possible subterranean termite entry points can be sealed with the approved physical barrier the subterranean termite treatment shall not be subject to 2 NCAC 34 .0503, for an existing structure, or 2 NCAC 34 .0505 or .0506 for new construction.

(d) Where it is not possible to seal all possible entry points with the physical barrier, all unsealed entry points shall be treated with termiticide in accordance with 2 NCAC 34 .0503, .0505 or .0506 as applicable; except that, such termiticide applications may be waived by the property owner on the Official NC Waiver of Minimum Requirements.

History Note: Authority G.S. 106-65.29;

Eff. July 1, 2000.

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 20 - VOCATIONAL REHABILITATION

SUBCHAPTER 20B – PROCEDURE

SECTION .0200 - CONTESTED CASES: ADMINISTRATIVE REVIEWS: APPEALS HEARINGS

10 NCAC 20B .0202 WRITTEN INFORMATION FOR APPLICANTS AND CLIENTS

(a) All applicants for and clients receiving vocational rehabilitation services shall be informed of the opportunities for an administrative review, mediation and an appeal available under Section 102(c) of the Rehabilitation Act and Rules .0202 through .0228 of this Section.

(b) Written information shall be provided to all applicants and clients informing them:

- (1) of their right to an appeals hearing when they are dissatisfied with any determinations made by the division concerning the furnishing or denial of services;
- (2) that they have the option of seeking resolution of the issue through an administrative review prior to an appeals hearing;
- (3) that mediation may be available to resolve their problems if the Division agrees to it;
- (4) that the rehabilitation counselor, rehabilitation coordinator or other designated staff of the division will assist them in preparation of the written request for an administrative review, mediation, or appeal;

- (5) of the name and address of the appropriate regional director to whom the request shall be submitted; and
- (6) that they may receive assistance with the resolution of their problems through the Client Assistance Program.
- (c) The notifications required in Paragraph (b) of this Rule shall be provided in writing:
 - (1) at the time an individual applies for services;
 - (2) at the time the individualized plan for employment for the individual is developed; and
 - (3) upon reduction, suspension, or cessation of vocational rehabilitation services for the individual.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s.102 (c); Eff. February 1, 1976; Amended Eff. July 1, 2000; September 1, 1989; October 20, 1979.

10 NCAC 20B .0204 DIVISION ACTIONS IN RESPONSE TO REQUEST

- (a) Upon receipt of a request for an appeals hearing, the regional director shall immediately forward the original request to the Division's Chief of Operations who will arrange for the provision of information about the possibility of mediation to the individual and the appointment of a hearing officer to conduct the appeals hearing.
- (b) If the individual has requested an administrative review in addition to an appeals hearing, the regional director shall:
 - (1) make a decision to conduct the administrative review himself or herself or appoint a designee to conduct the administrative review who:
 - (A) has had no previous involvement in the issues currently in controversy;
 - (B) can conduct the administrative review in an unbiased way; and
 - (C) has a broad working knowledge of the Division's rules, federal regulations governing the program, and the State Plan for Vocational Rehabilitation Services or Independent Living Services (as appropriate); and
 - (2) proceed with, or direct the designee to proceed with, an administrative review according to the provisions of Rules .0205, .0208, and .0209 of this Section.
- (c) The regional director shall send the applicant or client written acknowledgment of receipt of the request and inform the individual that additional information will be sent regarding the possibility of mediation and the administrative review and appeals hearing or only the appeals hearing.
- (d) The regional director shall provide the Chief of Operations and the Client Assistance Program (if the Client Assistance Program is assisting the individual with the case) with a copy of the request and the response to the request.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c); Eff. February 1, 1976; Amended Eff. July 1, 2000; April 1, 1997; September 1, 1989.

10 NCAC 20B .0207 SCHEDULING AND NOTICE OF MEDIATION AND APPEALS HEARING

- (a) If mediation is agreed upon, the mediation shall take place prior to the appeals hearing and shall be conducted according to Rule .0210 of this Section.
- (b) The hearing officer shall schedule the formal appeals hearing, to be held within 45 days of receipt of the original request by the applicant or client as described in Rule .0203 of this Section unless the Coordinator of Rules and Policy Development has extended the time for the hearing for a specific period of time upon written agreement of both parties or the hearing officer grants an extension under Subparagraph (d)(4) of this Rule.
- (c) The hearing officer shall provide the applicant or client and the division written notice of the date, time and place of the hearing and the issue(s) to be considered at least 10 days prior to the hearing. A copy of the notice shall be sent to the Client Assistance Program if CAP is involved in the case.
- (d) The notice shall inform the applicant or client and the division:
 - (1) of the procedures to be followed in the hearing;
 - (2) of the particular sections of the statutes, federal regulations, state rules, and state plan involved;
 - (3) of the rights of the applicant or client as specified in 34 C.F.R. 361.57(b)(1) through (b)(4);
 - (4) that the hearing officer shall extend the time for the hearing if the parties jointly agree to a specific extension of time and submit a written statement to that effect to the hearing officer; and
 - (5) that the hearing may be cancelled if the matter is resolved in an administrative review or through mediation.-
- (e) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c); Eff. February 1, 1976; Amended Eff. July 1, 2000; September 1, 1989.

10 NCAC 20B .0210 MEDIATION

- (a) If both parties agree to mediation, the mediation shall take place prior to the appeals hearing.
- (b) Mediation shall not be used to deny or delay an individual's right to speedy complaint resolution. The mediation shall be completed in a period that also allows for convening of an appeals hearing after mediation within the 45-day time required under 34 C.F.R. 361.57(b) unless both parties sign a written agreement for a specific extension of time.
- (c) An individual to conduct the mediation shall be selected from a list of qualified and impartial mediators that is maintained by the Division. Individuals on the list of qualified mediators shall:
 - (1) be certified by the N. C. Dispute Resolution Commission or approved by the Mediation Network of North Carolina; and
 - (2) be knowledgeable regarding the laws, Federal regulations and State rules governing the provision of vocational rehabilitation and independent living services.

(d) Each mediation session shall be scheduled in a timely manner and held in a location that is convenient to the parties involved.

(e) The Division shall bear the cost of the mediation.

(f) Parties involved shall sign a confidentiality pledge prior to the process indicating that discussions which occur during the mediation process shall be confidential and may not be used as evidence in any subsequent appeals hearing or civil proceeding. No evidence that is otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation.

(g) If an agreement is reached during mediation, it shall be in writing and signed by both parties.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);

Eff. February 1, 1976;

Amended Eff. July 1, 2000; April 1, 1997; September 1, 1989.

10 NCAC 20B .0221 CONDUCT OF HEARING

(a) The hearing officer shall have control over the hearing, including:

- (1) the responsibility of having a record made of the hearing;
- (2) the administration of oaths and affirmations;
- (3) recognition of speakers;
- (4) prevention of repetitious presentations; and
- (5) general management of the hearing.

(b) The hearing officer shall conduct the hearing in a manner that will provide the applicant or client the rights required by 34 C.F.R. 361.57(b)(3).

(c) The hearing shall not be open to the public.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);

Eff. September 1, 1989;

Amended Eff. July 1, 2000.

10 NCAC 20B .0225 EXTENSIONS OF TIME

(a) Reasonable time extensions may be granted for the procedures in these Rules at the request of a party or at the request of both parties except for:

- (1) the time for continuation of services during mediation, an appeals hearing or an administrative review as specified in Rule .0203(d) of this Section;
- (2) the time for conducting the appeals hearing as specified in Rule .0207(b) of this Section which may be extended only as specified in Rule .0207(b) and (d)(4) of this Section;
- (3) the time for issuance of the written notice of the formal appeals hearing as specified in Rule .0207(c) of this Section;
- (4) the time to request a review of the hearing officer's decision as specified in Rule .0224(a) of this Section; and
- (5) the time for the reviewing official's issuance of a final decision as specified in Rule .0224(d) of this Section.

(b) When an extension of time is being granted by the person conducting the administrative review, mediation, or the hearing officer, consideration shall be given to the effect of the extension on deadlines for other steps in the administrative review, mediation, and appeals process.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);

Eff. September 1, 1989;

Amended Eff. July 1, 2000.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41P - CHILD-PLACING AGENCIES: ADOPTION

SECTION .0100 - APPLICABILITY

10 NCAC 41P .0106 ADOPTIVE HOME RECRUITMENT

The agency shall have a written plan for on-going recruitment of adoptive homes for the children it places or plans to place for adoption. The plan shall adhere to the provisions of the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 and shall be submitted to the Division to ensure compliance with the Act. If the plan is found to be out of compliance, it will be returned to the agency for corrections. A copy of the Multiethnic Placement Act of 1994 as amended may be obtained from the U. S. Department of Health and Human Services, Children's Bureau, 300 C Street SW, Washington, D.C. 20447.

History Note: Authority G.S. 48-3-204; 131D-10.5; 143B-153;

Eff. February 1, 1986;

Amended Eff. March 1, 1992;

Filed as a Temporary Amendment Eff. July 1, 1996;

Recodified from 10 NCAC 41P .0006 Eff. December 6, 1996;

Amended Eff. July 17, 2000; April 1, 1997.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42B - LICENSING OF HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

SECTION .1200 - PERSONNEL

10 NCAC 42B .1201 PERSONNEL REQUIREMENTS

The qualifications of administrator, co-administrator, supervisor-in-charge, manager, and co-manager are as follows:

- (1) shall be an adult;
- (2) shall be a high school graduate or certified under the G.E.D. Program (applies to those employed on or after August 1, 1991);
- (3) shall earn 12 hours a year of continuing education credits related to the management of homes and training of developmentally disabled adults.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-153; 168-1; 168-9; S.L. 99-0334;

Eff. January 1, 1978;

Amended Eff. July 1, 1990; September 1, 1987;

ARRC Objection Lodged January 1, 1991;

Amended Eff. August 1, 1991;

Temporary Amendment Eff. January 1, 2000; December 1, 1999;

Amended Eff. July 1, 2000.

10 NCAC 42B .1213 QUALIFICATIONS OF MEDICATION STAFF

(a) Effective February 15, 2000, staff who administer medications, hereafter referred to as medication aides, and staff who directly supervise the administration of medications shall have documentation of successfully completing the clinical skills validation portion of the competency evaluation according to Paragraphs (d) and (e) of Rule 10 NCAC 42C .2014 as cross-referenced in Rule .1214 of this Section prior to the administration or supervision of the administration of medications. Medication aides who perform other personal care tasks shall also meet the staff training and competency requirements according to Rule 10 NCAC 42D .1410 as cross-referenced in Rule .1210 of this Section. Persons authorized by state occupational licensure laws to administer medications are exempt from this requirement.

(b) Effective October 1, 2000, medication aides and staff who directly supervise the administration of medications, except persons authorized by state occupational licensure laws to administer medications, shall successfully pass the written examination prior to or within 90 days after successful completion of the clinical skills validation portion of a competency evaluation according to Rule 10 NCAC 42C .2014 as cross-referenced in Rule .1214 of this Section.

(c) Medication aides and staff who directly supervise the administration of medications, except persons authorized by state occupational licensure laws to administer medications, shall complete six hours of continuing education annually related to medication administration.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. January 1, 2000; December 1, 1999; Eff. July 1, 2000.

SECTION .1400 - ARRANGEMENT AND SIZE OF ROOMS**10 NCAC 42B .1407 STORAGE AREAS**

The storage areas shall be adequate in size and number for storage of clean linens, soiled linens, cleaning materials, household supplies, food and equipment. Refer to rules and regulations governing the sanitation and other aspects of residential care facilities.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; 168-9; S.L. 1999-0334; Eff. January 1, 1978; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000.

SECTION .1800 - MEDICAL POLICIES**10 NCAC 42B .1803 MEDICATIONS**

(a) The group home shall have a written policy regarding medication:

- (1) The group home shall have a systematic training program to help each resident become less reliant on drug administration by staff and more self-reliant regarding drug administration.

(2) Programs designed to gradually reduce the use of psychotropic medications shall be under the supervision of a qualified physician. Care shall be taken to distinguish psychotropic medications from medication used for other purposes such as for seizure control.

(3) Medications for all residents shall be re-evaluated and re-authorized every six months by a physician.

(4) The home administrator-manager shall be responsible for assuring that the resident complies with the prescribed drugs regimen.

(b) The rules stated in 10 NCAC 42C .3800 shall control for this Section of the Subchapter.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;

Eff. January 1, 1978;

Temporary Amendment Eff. December 1, 1999;

Amended Eff. July 1, 2000.

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES**SECTION .2000 - PERSONNEL****10 NCAC 42C .2005 OTHER PERSONNEL REQUIREMENTS**

(a) In addition to the personnel requirements set forth in Rules .2001, .2002, and .2006 of this Subchapter, additional competent staff shall be employed, as needed, to assure good housekeeping, supervision and personal care of the residents.

(b) In homes where there are minor children, aged or infirm relatives of the administrator or other management staff residing, the number of extra staff shall be determined by the capacity for which the home is licensed plus the minors and relatives who require care and supervision.

(c) The Division of Facility Services shall make the final determination of the need for additional staff, based on the home's licensed capacity; the number of live-in minors and relatives requiring care; the condition, needs and ambulation capacity of the residents; and the layout of the building.

(d) Each staff member shall have a well-defined job description that reflects actual duties and responsibilities, signed by the administrator and the employee.

(e) Each staff member shall be able to apply all of the home's accident, fire safety and emergency procedures for the protection of the residents.

(f) Each staff member authorized by the administrator to have access to confidential resident information shall be informed of the confidential nature of the information and shall protect and preserve such information from unauthorized use and disclosure. G.S. 131D-2(b)(4), G.S. 131D-21(6), and G.S. 131D-21.1 govern the disclosure of such information.

(g) Each staff member shall encourage and assist the residents in the exercise of the rights guaranteed under the Adult Care Home Residents' Bill of Rights. No staff member shall hinder or interfere with the proper performance of duty of a lawfully appointed Adult Care Home Community Advisory Committee.

(h) Each staff member left alone with the residents shall be 18 years or older.

(i) By January 1, 2001, each facility shall have at least one staff person on the premises at all times who has successfully

completed within the last 24 months a course on cardiopulmonary resuscitation (CPR) and choking management, including Heimlich maneuver, provided by the American Heart Association, the American Red Cross or a trainer with documented certification as a trainer in these procedures unless the only staff person on-site has been deemed physically incapable of performing these procedures by a licensed physician. For the purpose of this Rule, successfully completed means demonstrating competency, as evaluated by the instructor, in performing the Heimlich maneuver and cardiopulmonary resuscitation. Documentation of successful completion of the course shall be on file and available for review in the facility. The facility shall not have a policy prohibiting staff from administering CPR to residents except those residents with physician orders for no resuscitation or no CPR.

(j) Staff who transport residents shall maintain a valid driver's license.

(k) If licensed practical nurses are employed by the facility, there shall be continuous availability of a registered nurse consistent with Rules 21 NCAC 36 .0224(I) and 21 NCAC 36 .0225.

Note: The practice of licensed practical nurses is governed by their occupational licensing laws.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-153; S.L. 1999-0334;

Eff. January 1, 1977;

Readopted Eff. October 31, 1977;

Amended Eff. April 1, 1984;

Temporary Amendment Eff. December 1, 1999;

Amended Eff. July 1, 2000.

10 NCAC 42C .2011 STAFF COMPETENCY AND TRAINING

(a) The facility shall assure that personal care staff and those who directly supervise them in facilities without heavy care residents successfully complete a 25-hour training program, including competency evaluation, approved by the Department according to Rule .2012 of this Section. For the purposes of this Subchapter, heavy care residents are those for whom the facility is providing personal care tasks listed in Paragraph (i) of this Rule. Directly supervise means being on duty in the facility to oversee or direct the performance of staff duties.

(b) The facility shall assure that staff who perform or directly supervise staff who perform personal care tasks listed in Paragraph (i) of this Rule in facilities with heavy care residents successfully complete an 80-hour training program, including competency evaluation, approved by the Department according to Rule .2012 of this Section and comparable to the State-approved Nurse Aide I training.

(c) The facility shall assure that training specified in Paragraphs (a) and (b) of this Rule is successfully completed six months after hiring for staff hired after July 1, 2000. Staff hired prior to July 1, 2000, shall have completed at least a 20-hour training program for the performance or supervision of tasks listed in Paragraph (i) of this Rule or a 75-hour training program for the performance or supervision of tasks listed in Paragraph (j) of this Rule. The 20 and 75-hour training shall meet all the requirements of this Rule except for the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule, within six months after hiring.

(d) The Department shall have the authority to extend the six-month time frame specified in Paragraph (c) of this Rule up to six additional months for a maximum allowance of 12 months for completion of training upon submittal of documentation to the Department by the facility showing good cause for not meeting the six-month time frame.

(e) Exemptions from the training requirements of this Rule are as follows:

- (1) The Department shall exempt staff from the 25-hour training requirement upon successful completion of a competency evaluation approved by the Department according to Rule .2012 of this Section if staff have been employed to perform or directly supervise personal care tasks listed in Paragraph (h) and the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule in a comparable long-term care setting for a total of at least 12 months during the three years prior to January 1, 1996, or the date they are hired, whichever is later.
- (2) The Department shall exempt staff from the 80-hour training requirement upon successful completion of a 15-hour refresher training and competency evaluation program or a competency evaluation program approved by the Department according to Rule .2012 of this Section if staff have been employed to perform or directly supervise personal care tasks listed in Paragraph (i) and the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule in a comparable long-term care setting for a total of at least 12 months during the three years prior to January 1, 1996, or the date they are hired, whichever is later.
- (3) The Department shall exempt staff from the 25 and 80-hour training and competency evaluation who are or have been licensed health professionals or Certified Nursing Assistants.

(f) The facility shall maintain documentation of the training and competency evaluations of staff required by the rules of this Subchapter. The documentation shall be filed in an orderly manner and made available for review by representatives of the Department.

(g) The facility shall assure that staff who perform or directly supervise staff who perform personal care tasks listed in Paragraphs (h) and (i), and the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule receive on-the-job training and supervision as necessary for the performance of individual job assignments prior to meeting the training and competency requirements of this Rule.

(h) For the purposes of this Rule, personal care tasks which require a 25-hour training program include, but are not limited to the following:

- (1) assist residents with toileting and maintaining bowel and bladder continence;
- (2) assist residents with mobility and transferring;
- (3) provide care for normal, unbroken skin;
- (4) assist with personal hygiene to include mouth care, hair and scalp grooming, care of fingernails, and bathing in shower, tub, bed basin;
- (5) trim hair;
- (6) shave resident;
- (7) provide basic first aid;
- (8) assist residents with dressing;

- (9) assist with feeding residents with special conditions but no swallowing difficulties;
 - (10) assist and encourage physical activity;
 - (11) take and record temperature, pulse, respiration, routine height and weight;
 - (12) trim toenails for residents without diabetes or peripheral vascular disease;
 - (13) perineal care;
 - (14) apply condom catheters;
 - (15) turn and position;
 - (16) collect urine or fecal specimens;
 - (17) take and record blood pressure if a registered nurse has determined and documented staff to be competent to perform this task;
 - (18) apply and remove or assist with applying and removing prosthetic devices for stable residents if a registered nurse, licensed physical therapist or licensed occupational therapist has determined and documented staff to be competent to perform the task; and
 - (19) apply or assist with applying ace bandages, TED's and binders for stable residents if a registered nurse has determined and documented staff to be competent to perform the task.
- (i) For the purposes of this Rule, personal care tasks which require a 80-hour training program are as follows:
- (1) assist with feeding residents with swallowing difficulty;
 - (2) assist with gait training using assistive devices;
 - (3) assist with or perform range of motion exercises;
 - (4) empty and record drainage of catheter bag;
 - (5) administer enemas;
 - (6) bowel and bladder retraining to regain continence;
 - (7) test urine or fecal specimens;
 - (8) use of physical or mechanical devices attached to or adjacent to the resident which restrict movement or access to one's own body used to restrict movement or enable or enhance functional abilities;
 - (9) non-sterile dressing procedures;
 - (10) force and restrict fluids;
 - (11) apply prescribed heat therapy;
 - (12) care for non-infected pressure ulcers; and
 - (13) vaginal douches.
- (j) For purposes of this Rule, the interpersonal skills and behavioral interventions include, but are not limited to the following:
- (1) recognition of residents' usual patterns of responding to other people;
 - (2) individualization of appropriate interpersonal interactions with residents;
 - (3) interpersonal distress and behavior problems;
 - (4) knowledge of and use of techniques, as alternatives to the use of restraints, to decrease residents' intrapersonal and interpersonal distress and behavior problems; and
 - (5) knowledge of procedures for obtaining consultation and assistance regarding safe, humane management of residents' behavioral problems.

Amended Eff. July 1, 2000.

10 NCAC 42C .2012 TRAINING PROGRAM AND COMPETENCY EVALUATION CONTENT AND APPROVAL

(a) The 25 hour training specified in Rule .2011 of this Section shall consist of at least 15 hours of classroom instruction, and the remaining hours shall be supervised practical experience. Competency evaluation shall be conducted in each of the following areas:

- (1) personal care skills;
- (2) cognitive, behavioral and social care for all residents and including interventions to reduce behavioral problems for residents with mental disabilities, and;
- (3) residents' rights as established by G.S. 131D-21.

(b) The 80-hour training specified in Rule .2011 of this Section shall consist of at least 34 hours of classroom instruction and at least 34 hours of supervised practical experience. Competency evaluation shall be conducted in each of the following areas:

- (1) observation and documentation;
- (2) basic nursing skills, including special health-related tasks;
- (3) personal care skills;
- (4) cognitive, behavioral and social care for all residents and including interventions to reduce behavioral problems for residents with mental disabilities;
- (5) basic restorative services; and
- (6) residents' rights as established by G.S. 131D-21.

(c) The following requirements shall apply to the 25 and 80-hour training specified in Rule .2011 of this Section:

- (1) The training shall be conducted by an individual or a team of instructors with a coordinator. The supervisor of practical experience and instructor of content having to do with personal care tasks or basic nursing skills shall be a registered nurse with a current, unencumbered license in North Carolina and with two years of clinical or direct patient care experience working in a health care, home care or long term care setting. The program coordinator and any instructor of content that does not include instruction on personal care tasks or basic nursing skills shall be a registered nurse, licensed practical nurse, physician, gerontologist, social worker, psychologist, mental health professional or other health professional with two years of work experience in adult education or in a long term care setting; or a four-year college graduate with four years of experience working in the field of aging or long term care for adults.
- (2) A trainee participating in the classroom instruction and supervised practical experience in the setting of the trainee's employment shall not be considered on duty and counted in the staff-to-resident ratio.
- (3) Training shall not be offered without a qualified instructor on site.
- (4) Classroom instruction shall include the opportunity for demonstration and practice of skills.
- (5) Supervised practical experience shall be conducted in a licensed adult care home or in a facility or laboratory setting comparable to the work setting in which the trainee will be performing or supervising the personal care skills.

*History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 1996;
Eff. May 1, 1997;
Temporary Amendment Eff. December 1, 1999;*

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- (6) All skills shall be performed on humans except for intimate care skills, such as perineal and catheter care, which may be conducted on a mannequin.
 - (7) There shall be no more than 10 trainees for each instructor for the supervised practical experience.
 - (8) A written examination prepared by the instructor shall be used to evaluate the trainee's knowledge of the content portion of the classroom training. The trainee shall score at least 70 on the written examination. Oral testing shall be provided in the place of a written examination for trainees lacking reading or writing ability.
 - (9) The trainee shall satisfactorily perform all of the personal care skills specified in Rule .2011(h) and the skills specified in Rule .2001(j) of this Section for the 25-hour training and in Rule .2011(h), (i) and (j) of this Section for the 80-hour training. The instructor shall use a skills performance checklist for this competency evaluation that includes, at least, all those skills specified in Rules .2011(h) and .2011(j) of this Section for the 25-hour training and all those skills specified in Rules .2011(h), (i) and (j) of this Section for the 80-hour training. Satisfactory performance of the personal care skills and interpersonal and behavioral intervention skills means that the trainee performed the skill unassisted; explained the procedure to the resident; explained to the instructor, prior to or after the procedure, what was being done and why it was being done in that way; and incorporated the principles of good body mechanics, medical asepsis and resident safety and privacy.
 - (10) The training provider shall issue to all trainees who successfully complete the training a certificate, signed by the registered nurse who conducted the skills competency evaluation, stating that the trainee successfully completed the 25 or 80-hour training. The trainee's name shall be on the certificate. The training provider shall maintain copies of the certificates and the skills evaluation checklists for a minimum of five years.
- (d) An individual, agency or organization seeking to provide the 25 or 80-hour training specified in Rule .2011 of this Section shall submit the following information to the Adult Care Licensure Section of the Division of Facility Services:
- (1) an application which is available at no charge by contacting the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, North Carolina 27699-2708;
 - (2) a statement of training program philosophy;
 - (3) a statement of training program objectives for each content area;
 - (4) a curriculum outline with specific hours for each content area;
 - (5) teaching methodologies, a list of texts or other instructional materials and a copy of the written exam or testing instrument with an established passing grade;
 - (6) a list of equipment and supplies to be used in the training;
 - (7) procedures or steps to be completed in the performance of the personal care and basic nursing skills;
 - (8) sites for classroom and supervised practical experience, including the specific settings or rooms within each site;
 - (9) resumes of all instructors and the program coordinator, including current RN certificate numbers as applicable;
 - (10) policy statements that address the role of the registered nurse, instructor to trainee ratio for the supervised practical experience, retention of trainee records and attendance requirements;
 - (11) a skills performance checklist as specified in Subparagraph (c)(9) of this Rule; and
 - (12) a certificate of successful completion of the training program.
- (e) The following requirements shall apply to the competency evaluation for purposes of exempting adult care home staff from the 25 or 80-hour training as required in Rule .2011 of this Section:
- (1) The competency evaluation for purposes of exempting adult care home staff from the 25 and 80-hour training shall consist of the satisfactory performance of personal care skills and interpersonal and behavioral intervention skills according to the requirement in Subparagraph (c)(9) of this Rule.
 - (2) Any person who conducts the competency evaluation for exemption from the 25 or 80-hour training shall be a registered nurse with the same qualifications specified in Subparagraph (c)(1) of this Rule.
 - (3) The competency evaluation shall be conducted in a licensed adult care home or in a facility or laboratory setting comparable to the work setting in which the participant will be performing or supervising the personal care skills.
 - (4) All skills being evaluated shall be performed on humans except for intimate care skills such as perineal and catheter care, which may be performed on a mannequin.
 - (5) The person being competency evaluated in the setting of the person's employment shall not be considered on duty and counted in the staff-to-resident ratio.
 - (6) An individual, agency or organization seeking to provide the competency evaluation for training exemption purposes shall complete an application available at no charge from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, North Carolina 27699-2708 and submit it to the Adult Care Licensure Section along with the following information:
 - (A) resume of the person performing the competency evaluation, including the current RN certificate number;
 - (B) a certificate, with the signature of the evaluating registered nurse and the participant's name, to be issued to the person successfully completing the competency evaluation;
 - (C) procedures or steps to be completed in the performance of the personal care and basic nursing skills;
 - (D) a skills performance checklist as specified in Subparagraph (c)(9) of this Rule; a site for the competency evaluation; and a list of equipment, materials and supplies;
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- (E) a site for the competency evaluation; and
- (F) a list of equipment, materials and supplies.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 1996;
Eff. May 1, 1997;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000.

10 NCAC 42C .2013 QUALIFICATIONS OF MEDICATION STAFF

- (a) Effective February 15, 2000, staff who administer medications, hereafter referred to as medication aides, and staff who directly supervise the administration of medications shall have documentation of successfully completing the clinical skills validation portion of the competency evaluation according to Paragraphs (d) and (e) of Rule .2014 of this Section prior to the administration or supervision of the administration of medications. Medication aides who perform other personal care tasks shall also meet the staff training and competency requirements according to Rule .2011 of this Section. Persons authorized by state occupational licensure laws to administer medications are exempt from this requirement.
- (b) Effective October 1, 2000, medication aides and staff who directly supervise the administration of medications, except persons authorized by state occupational licensure laws to administer medications, shall successfully pass the written examination prior to or within 90 days after successful completion of the clinical skills validation portion of a competency evaluation according to Rule .2014 of this Section.
- (c) Medication aides and staff who directly supervise the administration of medications, except persons authorized by state occupational licensure laws to administer medications, shall complete six hours of continuing education annually related to medication administration.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 2000; December 1, 1999;
Eff. July 1, 2000.

10 NCAC 42C .2014 MEDICATION ADMINISTRATION COMPETENCY EVALUATION

- (a) The competency evaluation for medication administration shall consist of a written examination and a clinical skills evaluation to determine competency in the following areas: medical abbreviations and terminology; transcription of medication orders; obtaining and documenting vital signs; procedures and tasks involved with the preparation and administration of oral (including liquid, sublingual and inhaler), topical (including transdermal), ophthalmic, otic, and nasal medications; infection control procedures; documentation of medication administration; monitoring for reactions to medications and procedures to follow when there appears to be a change in the resident's condition or health status based on those reactions; medication storage and disposition; regulations pertaining to medication administration in adult care facilities; and the facility's medication administration policy and procedures.

(b) An individual shall score at least 90% on the written examination which shall be a standardized examination established by the Department.

(c) A certificate of successful completion of the written examination shall be issued to each participant successfully completing the examination. A copy of the certificate shall be maintained and available for review in the facility. The certificate is transferable from one facility to another as proof of successful completion of the written examination. A medication study guide for the written examination is available at no charge by contacting the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

(d) The clinical skills validation portion of the competency evaluation shall be conducted by a registered nurse or a registered pharmacist consistent with their occupational licensing laws and who has a current unencumbered license in North Carolina. This validation shall be completed for those medication administration tasks to be performed in the facility. Competency validation by a registered nurse is required for unlicensed staff who perform any of the personal care tasks related to medication administration specified in Rule .3703 of this Subchapter.

(e) The Medication Administration Skills Validation Form shall be used to document successful completion of the clinical skills validation portion of the competency evaluation for those medication administration tasks to be performed in the facility employing the medication aide. Copies of this form and instructions for its use may be obtained at no cost by contacting the Adult Care Licensure Section, Division of Facility Services, 2708 Mail Service Center, Raleigh, NC 27699-2708. The completed form shall be maintained and available for review in the facility and is not transferable from one facility to another.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 2000; December 1, 1999;
Eff. July 1, 2000.

SECTION .2200 - ARRANGEMENT AND SIZE OF ROOMS

10 NCAC 42C .2207 STORAGE AREAS

- (a) Storage areas shall be adequate in size and number for separate storage of clean linens, soiled linens, food and food service supplies, and household supplies and equipment.
- (b) There shall be separate locked areas for storing cleaning agents, bleaches, pesticides, and other substances which may be hazardous if ingested, inhaled or handled. Cleaning supplies shall be supervised while in use.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. July 1, 1990; April 1, 1987; April 1, 1984;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000.

10 NCAC 42C .2214 BUILDING SERVICE EQUIPMENT

- (a) The building and all fire safety, electrical, mechanical, and plumbing equipment shall be maintained in a safe and operating condition.
- (b) There shall be an approved central heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. Built-in electric heaters, if used, shall be installed or protected so as to avoid hazards to residents and room furnishings. Unvented fuel burning room heaters and portable electric heaters are prohibited.
- (c) Air conditioning or at least one fan per resident bedroom and living and dining areas shall be provided when the temperature in the main center corridor exceeds 80 degrees F (26.7 degrees C).
- (d) The hot water tank shall be of such size to provide an adequate supply of hot water to the kitchen, bathrooms, and laundry. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and must not exceed 116 degrees F (46.7 degrees C).
- (e) All resident areas shall be well lighted for the safety and comfort of the residents. The minimum lighting required is:
 - (1) 30 foot-candle power for reading;
 - (2) 10 foot-candle power for general lighting; and
 - (3) 1 foot-candle power at the floor for corridors at night.
- (f) Where the bedroom of the live-in staff is located in a separate area from residents' bedrooms, an electrically operated sounding device shall be provided connecting each resident bedroom to the live-in staff bedroom. The resident call switches, shall be such that they can be activated with a single action and remain on until switched off by staff. The call switch shall be within reach of resident lying on his bed.
- (g) Alternate methods, procedures, design criteria and functional variations from the requirements of this Rule or other rules in this Section because of extraordinary circumstances, new programs or unusual conditions, may be approved by the Division when the facility can effectively demonstrate to the Division's satisfaction that the intent of the requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 1999-0334;

Eff. January 1, 1977;

Readopted Eff. October 31, 1977;

Amended Eff. April 1, 1987; April 1, 1984; July 1, 1982;

Temporary Amendment Eff. December 1, 1999;

Amended Eff. July 1, 2000.

SECTION .2300 - SERVICES

10 NCAC 42C .2302 HEALTH CARE

- (a) The administrator is responsible for providing occasional or incidental medical care, such as providing therapeutic diets, rotating positions of residents confined to bed, and applying heat pads.
- (b) The resident or his responsible person shall be allowed to choose a physician to attend to him.
- (c) Immediate arrangements shall be made by the administrator with the resident or his responsible person for the resident to secure another physician when he cannot remain under the care of his own physician. The name, address and telephone number

of the resident's physician shall be recorded on the Resident Register.

(d) If a resident is hospitalized, a completed FL-2 or patient transfer form shall be obtained before the resident can be readmitted to the facility.

(e) Between annual medical examinations there may be a need for a physician's care. The resident's health services record is to be used by the physician to report any drugs prescribed and any treatment given or recommended for minor illnesses.

(f) All contacts (office, home or telephone) with the resident's physician shall be recorded on the resident's health services record which is to be retained in the resident's record in the home. The physician's orders shall be included in the resident's health services record including telephone orders initialed by staff and signed by the physician within 15 days from the date the order is given.

(g) Until January 1, 2001, the following restraint requirements shall apply. The use of a physical restraint refers to the application of a mechanical device to a person to limit movement for therapeutic or protective reasons, excluding siderails for safety reasons. Residents shall be physically restrained only as provided for in the Declaration of Residents' Rights, G.S. 131D-21(5), and in accordance with the following:

- (1) The use of physical restraints is allowed only with a written order from a licensed physician. If the order is obtained from a physician other than the resident's attending physician, the attending physician shall be notified of the order within seven days.
- (2) In emergency situations the administrator or supervisor-in-charge shall make the determination relative to necessity for the type and duration of the physical restraint to use until a physician is contacted. Contact shall be made within 24 hours.
- (3) The physician shall specify in the restraint order the medical need for the physical restraint, the type to be used, the period of time it is to be used, and the time intervals it is to be checked, loosened, or removed.
- (4) The current order for the physical restraint shall be on or attached to Form FL-2 or Form MR-2 (upon entering the home) or the Report of Health Services to Residents Form, or approved equivalent (for subsequent orders).
- (5) The physician ordering the physical restraint shall update the restraint order at a minimum of every six months.
- (6) If the resident's physician changes after admission to the home, the physician who is to attend the resident shall update and sign the existing restraint order.
- (h) Effective January 1, 2001, the following restraint requirements shall apply. The use of physical restraints refers to the application of a physical or mechanical device attached to or adjacent to the resident's body that the resident cannot remove easily which restricts freedom of movement or normal access to one's body and includes bed rails when used to keep the resident from voluntarily getting out of bed as opposed to enhancing mobility of the resident while in bed. Residents shall be physically restrained only in accordance with the following:
 - (1) The facility shall prohibit the use of physical restraints for discipline or convenience and limit restraint use to circumstances in which the resident has medical symptoms that warrant the use of restraints. Medical symptoms may include, but are not limited to, the

following: confusion with risk of falls; and risk of abusive or injurious behaviors to self or others.

- (2) Alternatives to physical restraints that would provide safety to the resident and prevent a potential for decline in the resident's functioning shall be provided prior to restraining the resident and documented in the medical record. Alternatives may include, but are not limited to, the following: providing restorative care to enhance abilities to stand safely and to walk, providing a device that monitors attempts to rise from chair or bed, placing the bed lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering fluids, providing activities, providing supportive devices such as wedge cushions, controlling pain and providing a calm relaxing environment with minimal noise and confusion.
- (3) If alternatives to physical restraints have failed and the resident's medical symptoms warrant the use of physical restraints, the facility shall assure that the resident is restrained with the least restrictive restraint that would provide safety.
- (4) When physical restraints are used, the facility shall engage in a systemic and gradual process towards reducing restraint time by using alternatives.
- (5) The administrator shall assure the development and implementation of written policies and procedures in the use of alternatives to physical restraints and in the care of residents who are physically restrained.
 - (A) The administrator shall consult with a registered nurse in developing policies and procedures for alternatives to physical restraints and in the care of residents who are physically restrained.
 - (B) Policies and procedures for alternatives to physical restraints and the use of physical restraints shall comply with requirements of this section. Orientation of these policies and procedures shall be provided to staff responsible for the care of residents who are restrained or require alternatives to restraints. This orientation shall be provided as part of the training required prior to staff providing care to residents who are restrained or require alternatives to restraints.
- (6) The administrator shall assure that each resident with medical symptoms that warrant the use of physical restraints is assessed and a care plan is developed. This assessment and care planning shall be completed prior to the resident being restrained; except in emergency situations. This assessment and care planning must meet any additional requirements in 10 NCAC 42C .3700 Resident Assessment and Care.
 - (A) The assessment shall include consideration of the following:
 - (i) Medical symptoms that warrant the use of a physical restraint;
 - (ii) How the medical symptoms affect the resident;
 - (iii) When the medical symptoms were first observed;
 - (iv) How often the medical symptoms occur; and
 - (v) Alternatives that have been provided and the resident's response.
 - (B) The care plan shall be individualized and indicate specific care to be given to the resident. The care plan shall include consideration of the following:
 - (i) Alternatives and how the alternatives will be used;
 - (ii) The least restrictive type of physical restraint that would provide safety; and
 - (iii) Care to be provided to the resident during the time the resident is restrained.
 - (C) The assessment and care planning shall be completed through a team process. The team must consist of, but is not limited to, the following: the supervisor or a personal care aide, a registered nurse and the resident's representative. If the resident's representative is not present, there must be documented evidence that the resident's representative was notified and declined an invitation to attend.
- (7) The resident's right to participate in his or her care and to refuse treatment includes the right to accept or refuse restraints. For the resident to make an informed choice about the use of physical restraints, negative outcomes, benefits and alternatives to restraint use shall be explained to the resident. Potential negative outcomes include incontinence, decreased range of motion, decreased ability to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact. In the case of a resident who is incapable of making a decision, the resident's representative shall exercise this right based on the same information that would have been provided to the resident. However, the resident's representative cannot give permission to use restraints for the sake of discipline or staff convenience or when the restraint is not necessary to treat the resident's medical symptoms.
- (8) The resident or the resident representative involvement in the restraint decision shall be documented in the resident's medical record. Documentation shall include the following:
 - (A) The resident or the resident's representative shall sign and date a statement indicating they have been informed as required above.
 - (B) The statement shall indicate the resident's or the resident's representative's decision in restraint use, either consent for or a desire not to use restraints.
 - (C) The consent shall include the type of restraint to be used and the medical symptoms for use.
- (9) When a physical restraint is warranted and consent has been given, a physician's order shall be written. The following requirements apply to the physician's order:
 - (A) The use of physical restraints is allowed only with a written order from a licensed physician. If the order is obtained from a physician other than the resident's attending physician, the attending physician shall be notified of the order within seven days.
 - (B) In emergency situations, the administrator or supervisor-in-charge shall make the determination relative to necessity for the type and duration of the

- physical restraint to use until a physician is contacted. Contact shall be made within 24 hours.
- (C) The physician shall specify in the restraint order the medical need for the physical restraint, the type to be used, the period of time it is to be used, and the time intervals it is to be checked and removed.
 - (D) The current order for the physical restraint shall be on or attached to Form FL-2 or Form MR-2 (upon entering the home) or the Report of Health Services to Residents Form, or approved equivalent (for subsequent orders).
 - (E) The physician ordering the physical restraint shall update the restraint order at a minimum of every three months.
 - (F) If the resident's physician changes after admission to the home, the physician who is to attend the resident shall update and sign the existing restraint order.
- (10) The physical restraint shall be applied correctly according to manufacture's instructions and the physician's order.
 - (11) The resident shall be checked and released from the physical restraint and care provided as stated in the care plan; at least every 15 minutes for checks and at least every 2 hours for release.
 - (12) Alternatives shall be provided in an effort to reduce restraint time.
 - (13) All instances of physical restraint use shall be documented and shall include at least the following:
 - (A) Alternatives to physical restraints that were provided and the resident's response;
 - (B) Type of physical restraint that was used;
 - (C) Medical symptoms warranting the use of the physical restraint;
 - (D) Time and duration of the physical restraint;
 - (E) Care that was provided to the resident during the restraint use; and
 - (F) Behaviors of the resident during the restraint use.
 - (14) Physical restraints shall be applied only by staff who have received training and who have been validated for competency by a registered nurse on the proper use of restraints. Training and competency validation on restraints shall occur before staff members apply restraints. Competency validation of restraint use by a registered nurse shall be completed annually. This Rule is consistent with the requirements in 10 NCAC 42D .1410 Staff Competency and Training, 10 NCAC 42C .2011 Staff Competency and Training and 10 NCAC 42C .3703 Licensed health professional Support.
 - (15) The administrator shall assure that training in the use of alternatives to physical restraints and in the care of residents who are physically restrained is provided to all staff responsible for caring for residents with medical symptoms that warrant restraints. Training shall be provided by a registered nurse and shall include the following:
 - (A) Alternatives to physical restraints;
 - (B) Types of physical restraints;
 - (C) Medical symptoms that warrant physical restraints;
 - (D) Negative outcomes from using physical restraints;
 - (E) Correct application of physical restraints;
 - (F) Monitoring and caring for residents who are restrained; and
 - (G) Process of reducing restraint time by using alternatives.
 - (i) The administrator shall have specific written instructions recorded as to what to do in case of sudden illness, accident, or death of a resident.
 - (j) There shall be an adequate supply of first aid supplies available in the home for immediate use.
 - (k) The administrator shall make arrangements with the resident, his responsible person, the county department of social services or other appropriate party for appropriate health care as needed to enable the resident to be in the best possible health condition.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 99-0334; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. December 1, 1993; May 1, 1992; July 1, 1990; September 1, 1987; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000.

SECTION .3700 - RESIDENT ASSESSMENT AND CARE

10 NCAC 42C .3701 RESIDENT ASSESSMENT

- (a) The facility shall assure that an admission assessment of each resident is completed 72 hours of admitting the resident using an assessment instrument approved by the Department. Effective January 1, 2002, in addition to the admission assessment within 72 hours, an evaluation of each resident shall be completed within 30 calendar days from the date of admission and annually thereafter using the Resident Assessment Instrument as approved by the Department. The evaluation within 30 calendar days of admission and annually thereafter is a functional assessment to determine a resident's level of functioning to include routines, preferences, needs, mood and psychosocial well-being, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident which are bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting and eating. The evaluation within 30 calendar days of admission and annually thereafter shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.
- (b) The facility shall assure a reassessment of a resident is completed within 10 days of a significant change in the resident's condition using the assessment instrument to be completed within 72 hours of resident admission prior to January 1, 2002 and the Resident Assessment Instrument thereafter. For the purposes of this Subchapter, significant change in the resident's condition is defined as follows:
 - (1) Significant change is one or more of the following:
 - (A) deterioration in two or more activities of daily living;
 - (B) change in ability to walk or transfer;
 - (C) change in the ability to use one's hands to grasp small objects;

- (D) deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic;
 - (E) no response by the resident to the treatment for an identified problem;
 - (F) initial onset of unplanned weight loss or gain of five percent of body weight within a 30-day period or 10 percent weight loss or gain within a six-month period;
 - (G) threat to life such as stroke, heart condition, or metastatic cancer;
 - (H) emergence of a pressure ulcer at Stage II or higher;
 - (I) a new diagnosis of a condition likely to affect the resident's physical, mental, or psychosocial well-being over a prolonged period of time such as initial diagnosis of Alzheimer's disease or diabetes;
 - (J) improved behavior, mood or functional health status to the extent that the established plan of care no longer matches what is needed;
 - (K) new onset of impaired decision-making;
 - (L) continence to incontinence or indwelling catheter; or
 - (M) the resident's condition indicates there may be a need to use a restraint and there is no current restraint order for the resident.
- (2) Significant change is not any of the following:
- (A) changes that suggest slight upward or downward movement in the resident's status;
 - (B) short-term changes that resolve with or without intervention;
 - (C) changes that arise from easily reversible causes;
 - (D) a short-term acute illness or episodic event;
 - (E) a well-established, predictive, cyclical pattern; or
 - (F) steady improvement under the current course of care.

(c) If a resident experiences a significant change as defined in Paragraph (b) of this Rule, the facility shall refer the resident to the resident's physician or other appropriate licensed health professional such as a mental health professional, nurse practitioner, physician assistant or registered nurse in a timely manner consistent with the resident's condition but no longer than 10 days from the significant change, and document the referral in the resident's record.

(d) The assessment to be completed within 72 hours and the evaluation to be completed within 30 calendar days of admission and annually thereafter as required in Paragraph (a) of this Rule and any reassessment as required in Paragraph (b) of this Rule shall be completed and signed by the administrator or a person designated by the administrator to perform resident assessments or reassessments.

(e) The facility administrator or a person designated by the administrator to perform resident assessments and reassessments using the Resident Assessment Instrument shall successfully complete training provided by the Department on assessing residents before performing any assessments or reassessments using the Resident Assessment Instrument as required in Paragraph (a) of this Rule. Registered nurses are exempt from the assessment training. Documentation of assessment training shall be maintained in the facility and available for review.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 1996
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000.

10 NCAC 42C .3703 LICENSED HEALTH PROFESSIONAL SUPPORT

(a) The facility shall assure that a registered nurse, licensed under G.S. 90, Article 9A, participates in the on-site review and evaluation of the residents' health status, care plan and care provided for residents requiring, but not limited to, one or more of the following personal care tasks. The review and evaluation shall be completed within the first 30 days of admission or within 30 days from the date a resident develops the need for the task and at least quarterly thereafter.

- (1) applying and removing ace bandages, ted hose and binders;
 - (2) feeding techniques for residents with swallowing problems;
 - (3) bowel or bladder training programs to regain continence;
 - (4) enemas, suppositories and vaginal douches;
 - (5) positioning and emptying of the urinary catheter bag and cleaning around the urinary catheter;
 - (6) chest physiotherapy or postural drainage;
 - (7) clean dressing changes;
 - (8) collecting and testing of fingerstick blood samples;
 - (9) care of well established colostomy or ileostomy;
 - (10) care for pressure ulcers;
 - (11) inhalation medication by machine;
 - (12) maintaining accurate intake and output data;
 - (13) medication administration through gastrostomy feeding tube;
 - (14) medication administration through injection;
- Note: Unlicensed staff may only administer subcutaneous injections as stated in Rule .3804(q) of this Subchapter;
- (15) oxygen administration and monitoring;
 - (16) the care of residents who are physically restrained and the use of care practices as alternatives to restraints;
 - (17) oral suctioning;
 - (18) care of well established tracheostomy; or
 - (19) administering and monitoring of gastrostomy tube feedings.

(b) The facility shall assure that a registered nurse, occupational therapist licensed under G.S. 90, Article 18D or physical therapist licensed under G.S. 90-270.24, Article 18B, participates in the on-site review and evaluation of the residents' health status, care plan and care provided within the time frames specified in Paragraph (a) of this Rule for those residents who require one or more of the following personal care tasks:

- (1) application of prescribed heat therapy;
- (2) application and removal of prosthetic devices except as used in early post-operative treatment for shaping of the extremity;
- (3) ambulation using assistive devices;
- (4) range of motion exercises;
- (5) any other prescribed physical or occupational therapy; or

- (6) transferring semi-ambulatory or non-ambulatory residents.
- (c) The facility shall not provide care to residents with conditions or care needs as stated in G.S. 131D-2(a1).
- (d) The facility shall assure that participation by a registered nurse, occupational therapist or physical therapist in the on-site review and evaluation of the residents' health status, care plan and care provided includes:
- (1) assuring that licensed practical nurses and non-licensed personnel providing care and performing the tasks are competency validated according to Paragraph (e) of this Rule;
 - (2) performing a physical assessment of the residents as related to their diagnosis and current condition;
 - (3) evaluating the resident's progress to care being provided;
 - (4) recommending changes in the care of the resident as needed; and
 - (5) documenting the activities in Subparagraphs (1) through (4) of this Paragraph.
- (e) The facility shall assure that licensed practical nurses and non-licensed personnel are trained and competency validated for personal care task specified in Paragraphs (a) and (b) of this Rule. Competency validation shall be completed prior to staff performing the personal care task and documentation shall be in the facility and readily available. Staff shall be competency validated by the following health professionals:
- (1) A registered nurse shall validate the competency of staff who perform personal care task specified in Paragraph (a) of this Rule. In lieu of a registered nurse, a registered respiratory therapist may validate the competency of staff who perform personal care task (6), (11), (15), (17) and (18) specified in Paragraph (a) of this Rule. In lieu of a registered nurse, a registered pharmacist may validate the competency of staff who perform personal care task (8) specified in Paragraph (a) of this Rule.
 - (2) A registered nurse, occupational therapist or physical therapist shall validate the competency of staff who performs personal care task specified in Paragraph (b) of this Rule.
- (f) The facility shall assure that training on the care of residents with diabetes is provided to unlicensed staff prior to the administration of insulin as follows and documented:
- (1) Training shall be provided by a registered nurse or registered pharmacist.
 - (2) Training shall include at least the following:
 - (A) basic facts about diabetes and care involved in the management of diabetes;
 - (B) insulin action;
 - (C) insulin storage;
 - (D) mixing, measuring and injection techniques for insulin administration;
 - (E) treatment and prevention of hypoglycemia and hyperglycemia, including signs and symptoms;
 - (F) blood glucose monitoring; and
 - (G) universal precautions.
 - (g) The facility shall assure that staff who perform personal care tasks listed in Paragraphs (a) and (b) of this Rule are at least annually observed providing care to residents by a licensed registered nurse or other appropriate licensed health

professional, as specified in Paragraph (d) of this Rule, who is employed by the facility or under contract or agreement, individually or through an agency, with the facility. Annual competency validation shall be documented and readily available for review.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 1996;
Eff. May 1, 1997;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000.

SECTION .3800 - MEDICATIONS

10 NCAC 42C .3801 MEDICATION ADMINISTRATION POLICIES AND PROCEDURES

- (a) The facility shall ensure the development and implementation of written policies and procedures for the ordering, receiving, storage, discontinuation, disposition and administration of medications, including self-administration of medications. Orientation of policies and procedures shall be provided to new staff responsible for medication administration prior to staff administering medications.
- (b) The facility shall consult with a licensed health professional who is authorized to dispense or administer medications in developing medication policies and procedures.
- (c) Medication policies and procedures shall comply with requirements of this Section and all applicable state and federal regulations, including definitions in the North Carolina Pharmacy Practice Act, G.S. 90-85.3. For the purposes of this Subchapter, medications shall include herbal and non-herbal supplements.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. December 1, 1999;
Eff. July 1, 2000.

10 NCAC 42C .3802 MEDICATION ORDERS

- (a) The facility shall ensure contact of the resident's physician or prescribing practitioner for verification or clarification of orders for medications and treatments:
 - (1) if the FL-2 is not dated and signed within 24 hours of admission to the facility;
 - (2) if orders for readmission of a resident from the hospital are not dated and signed within 24 hours of readmission; or
 - (3) if orders are not clear or complete, e.g., when multiple admission forms are received upon admission or readmission and orders on the forms are not the same.
 The facility shall ensure that this verification or clarification is documented in the resident's record.
- (b) All orders for medications, prescription and non-prescription, and treatments shall be maintained in the resident's record in the facility.
- (c) The medication orders shall be complete and include the following:
 - (1) medication name;
 - (2) strength of medication;
 - (3) dosage of medication to be administered;

- (4) route of administration;
- (5) specific directions of use, including frequency of administration; and
- (6) if ordered on an as needed basis, a clearly stated indication for use.
- (d) Verbal orders for medications and treatments shall be:
 - (1) countersigned by the prescribing practitioner within 15 days from the date the order is given;
 - (2) signed or initialed and dated by the person receiving the order; and
 - (3) accepted only by a licensed nurse, pharmacist, or qualified staff responsible for medication administration.
- (e) Any standing orders shall be for individual residents and signed and dated by the resident's physician or prescribing practitioner.
- (f) The facility shall assure that all current orders for medications or treatments, including standing orders and orders for self-administration, are reviewed and signed by the resident's physician or prescribing practitioner at least every six months.
- (g) In addition to the requirements as stated in Paragraph (c) of this Rule, psychotropic medications ordered "as needed" by a prescribing practitioner, shall not be administered unless the following have been provided by the practitioner or included in an individualized care plan developed with input by a registered nurse or registered pharmacist:
 - (1) detailed behavior-specific written instructions, including symptoms that might require use of the medication;
 - (2) exact dosage;
 - (3) exact time frames between dosages; and
 - (4) the maximum dosage to be administered in a twenty-four hour period.

The facility shall assure that staff receives training and inservice programs about the desired and undesired effects of psychotropic medications, including alternative behavior interventions. Documentation of training and inservice programs attended by staff shall be maintained in the facility.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42C .3803 MEDICATION LABELS

- (a) Prescription legend medications shall have a legible label with the following information:
 - (1) the name of the resident for whom the medication is prescribed;
 - (2) the most recent date of issuance;
 - (3) the name of the prescriber;
 - (4) the name and concentration of the medication, quantity dispensed, and prescription serial number;
 - (5) directions for use clearly stated and not abbreviated;
 - (6) a statement of generic equivalency shall be indicated if a brand other than the brand prescribed is dispensed;
 - (7) the expiration date, unless dispensed in a single unit or unit dose package that already has an expiration date;
 - (8) auxiliary statements as required of the medication;
 - (9) the name, address, telephone number of the dispensing pharmacy; and

- (10) the name or initials of the dispensing pharmacist.
 - (b) For medication systems such as med paks and multi-paks when two or more solid oral dosage forms are packaged and dispensed together, labeling shall be in accordance with Paragraph (a) of this Rule and the label or package shall also have a physical description or identification of each medication contained in the package.
 - (c) The facility shall assure the container is relabeled by a pharmacist or a dispensing practitioner at the refilling of the medication when there is a change in the directions by the prescriber. The facility shall have a procedure for identifying direction changes until the container is correctly labeled. No person other than a pharmacist or dispensing practitioner shall alter a prescription label.
 - (d) Non-prescription medications shall have the manufacturer's label with the expiration date clearly visible, unless the container has been labeled by a pharmacist or a dispensing practitioner. Non-prescription medications in the original manufacturer's container shall be labeled with at least the resident's name and the name shall not obstruct any of the information on the container. Facility staff may label or write the resident's name on the container.
 - (e) Medications, prescription and non-prescription, shall not be transferred from one container to another except when prepared for administration to a resident.
 - (f) Prescription medications leaving the facility shall be in a form packaged and labeled by a pharmacist or a dispensing practitioner. Non-prescription medications that are not packaged or labeled by a pharmacist or dispensing practitioner must be released in the original container and directions for administration must be provided to the resident or responsible party. The facility shall assure documentation of medications, including quantity released and returned to the facility.
- Note: Dispensing of medications is restricted to pharmacists or other health care practitioners that are approved by the North Carolina Board of Pharmacy. Repackaging or providing more than one dose of a prescription medication, including unit dose prescription medications, for subsequent administration is an act of dispensing.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42C .3804 MEDICATION ADMINISTRATION

- (a) The facility shall assure that staff administer medications, prescription and non-prescription, and treatments according to orders by a licensed prescribing practitioner which are maintained in the resident's record.
- (b) The facility shall assure that only staff meeting the requirements in Rule .2013 of this Subchapter shall administer medications, including the preparation of medications for administration. The facility shall be responsible for assuring that staff has the ability to apply the rules in this Section and the facility's policies and procedures.
- (c) Only oral solid medications that are ordered for routine administration may be prepared in advance and must be prepared within 24 hours of the prescribed time for administration. Medications prescribed for prn (as needed) administration shall not be prepared in advance.

(d) Liquid medications, including powders or granules that require to be mixed with liquids for administration, and medications for injection shall be prepared immediately before administration to a resident.

(e) Medications shall not be crushed for administration until immediately before the medications are administered to the resident.

(f) If medications are prepared for administration in advance, the following procedures shall be implemented to keep the drugs identified up to the point of administration and protect them from contamination and spillage:

- (1) Medications are dispensed in a sealed package such as unit dose and multi-paks that is labeled with at least the name of each medication and strength in the sealed package. The labeled package of medications is to remain unopened and kept enclosed in a capped or sealed container that is labeled with the resident's name, until the medications are administered to the resident. If the multi-pak is also labeled with the resident's name, it does not have to be enclosed in a capped or sealed container;
- (2) Medications not dispensed in a sealed and labeled package as specified in Subpart (1) of this Rule are kept enclosed in a sealed container that identifies at least the name and strength of each medication prepared and the resident's name;
- (3) A separate container is used for each resident and each planned administration of the medications and labeled according to Paragraph (1) or (2) of this Rule;
- (4) All containers are placed together on a separate tray or other device that is labeled clearly with the planned time for administration and stored in a locked area which is only accessible to staff as specified in Rule .3806(d) of this Section.

(g) Medications shall be administered within one hour before or one hour after the prescribed or scheduled time unless precluded by emergency situations.

(h) If medications are not prepared and administered by the same staff person, there shall be documentation for each dose of medication prepared for administration by the staff person who prepared the medications when or at the time the resident's medication is prepared. Procedures shall be established and implemented to clearly identify the staff person who prepared the medication and the staff person who administered the medication.

(i) The recording of the administration on the medication administration record shall be by the staff person who administers the medication immediately following administration of the medication to the resident and observation of the resident actually taking the medication and prior to the administration of another resident's medication. Pre-charting is prohibited.

(j) The resident's medication administration record (MAR) shall be accurate and include the following:

- (1) resident's name;
- (2) name of the medication or treatment order;
- (3) strength and dosage or quantity of medication administered;
- (4) instructions for administering the medication or treatment;

(5) reason or justification for the administration of medications or treatments as needed (PRN) and documenting the resulting effect on the resident;

(6) date and time of administration;

(7) documentation of any omission of medications or treatments and the reason for the omission, including refusals; and,

(8) name or initials of the person administering the medication or treatment. If initials are used, a signature equivalent to those initials is to be documented and maintained with the medication administration record (MAR).

(k) The facility shall have a system in place to ensure the resident is identified prior to the administration of any medication or treatment.

(l) The facility shall assure the development and implementation of policies and procedures governing medication errors and adverse medication reactions that include documentation of at least the following:

- (1) notification of a physician or appropriate health professional and supervisor;
- (2) action taken by the facility according to orders by the physician or appropriate health professional; and
- (3) charting or documentation errors, unavailability of a medication, resident refusal of medication, any adverse medication reactions and notification of the resident's physician when necessary.

(m) Medication administration supplies, such as graduated measuring devices, shall be available and used by facility staff in order for medications to be accurately and safely administered.

(n) The facility shall assure that medications are administered in accordance with infection control measures that help to prevent the development and transmission of disease or infection, prevent cross-contamination and provide a safe and sanitary environment for staff and residents.

(o) A resident's medication shall not be administered to another resident except in an emergency. In the event of an emergency, steps shall be taken to ensure that the borrowed medications are replaced promptly and that the borrowing and replacement of the medication is documented.

(p) Only oral, topical (including ophthalmic and otic medications), inhalants, rectal and vaginal medications, subcutaneous injections and medications administered by gastrostomy tube and nebulizers shall be administered by persons who are not authorized by state occupational licensure laws to administer medication.

(q) Unlicensed staff may not administer injections other than insulin and other subcutaneous injections, excluding anticoagulants such as heparin. The unlicensed person may not administer insulin or other subcutaneous injections prior to meeting the requirements for training and competency validation as stated in Rule .3703 of this Subchapter.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;

Temporary Adoption Eff. December 1, 1999;

Eff. July 1, 2000.

10 NCAC 42C .3805 SELF-ADMINISTRATION OF MEDICATIONS

(a) The facility shall permit residents who are competent and physically able to self-administer to self-administer their medications if the following requirements are met:

- (1) the self-administration is ordered by a physician or other person legally authorized to prescribe medications in North Carolina and documented in the resident's record; and
- (2) specific instructions for administration of prescription medications are printed on the medication label.

(b) When there is a change in the resident's mental or physical ability to self-administer or resident non-compliance with the physician's orders or the facility's medication policies and procedures, the facility shall notify the physician. A resident's right to refuse medications does not imply the inability of the resident to self-administer medications.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;

Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42C .3806 MEDICATION STORAGE

(a) Medications that are self-administered and stored in the resident's room shall be stored in a safe and secure manner as specified in the facility's medication storage policy and procedures.

(b) All prescription and non-prescription medications stored by the facility, including those requiring refrigeration, shall be maintained in a safe manner under locked security except when under the immediate or direct physical supervision of staff in charge of medication administration.

(c) The medication storage area shall be clean, well-lighted, well-ventilated, large enough to store medications in an orderly manner, and located in areas other than the bathroom, kitchen or utility room. Medication carts shall be clean and medications shall be stored in an orderly manner.

(d) Accessibility to locked storage areas for medications shall only be by staff responsible for medication administration and administrator or person in charge.

(e) Medications intended for topical or external use, except for ophthalmic, otic and transdermal medications, shall be stored in a designated area separate from the medications intended for oral and injectable use. Ophthalmic, otic and transdermal medications may be stored with medications intended for oral and injectable use. Medications shall be stored apart from cleaning agents and hazardous chemicals.

(f) Medications requiring refrigeration shall be stored at 36 degrees F to 46 degrees F (2 degrees C to 8 degrees C).

(g) Medications shall not be stored in a refrigerator containing non-medications and non-medication related items, except when stored in a separate container. The container shall be locked when storing medications unless the refrigerator is locked or is located in a locked medication area.

(h) The facility shall only possess a stock of non-prescription medications or the following prescription legend medications for general or common use:

- (1) irrigation solutions in single unit quantities exceeding 49 ml. and related diagnostic agents;
- (2) diagnostic agents;
- (3) vaccines; and
- (4) water for injection and normal saline for injection.

Note: A prescribing practitioner's order is required for the administration of any medication as stated in Rule .3804 (a) of this Section.

(i) First aid supplies shall be immediately available, stored out of sight of residents and visitors and stored separately in a secure and orderly manner.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;

Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42C .3807 MEDICATION DISPOSITION

(a) Medications shall be released to or with a resident upon discharge if the resident has a physician's order to continue the medication. Prescribed medications are the property of the resident and shall not be given to, or taken by, other staff or residents according to Rule .3804(o) of this Subchapter.

(b) Medications, excluding controlled medications, that are expired, discontinued, prescribed for a deceased resident or deteriorated shall be stored separately from actively used medications until disposed of.

(c) Medications, excluding controlled medications, shall be destroyed at the facility or returned to a pharmacy within 90 days of the expiration or discontinuation of medication or following the death of the resident.

(d) All medications destroyed at the facility shall be destroyed by the administrator or the administrator's designee and witnessed by a pharmacist, a dispensing practitioner, or their designee. The destruction shall be conducted so that no person can use, administer, sell or give away the medication.

(e) Records of medications destroyed or returned to the pharmacy shall include the resident's name, the name and strength of the medication, the amount destroyed or returned, the method of destruction if destroyed in the facility and the signature of the administrator or the administrator's designee and the signature of the pharmacist, dispensing practitioner or their designee. These records shall be maintained by the facility for a minimum of one year.

(f) A dose of any medication prepared for administration and accidentally contaminated or not administered shall be destroyed at the facility according to the facility's policies and procedures.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;

Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42C .3808 CONTROLLED SUBSTANCES

(a) The facility shall assure a readily retrievable record of controlled substances by documenting the receipt, administration and disposition of controlled substances. These records shall be maintained with the resident's record and in order that there can be accurate reconciliation.

(b) Controlled substances may be stored together in a common location or container. If Schedule II medications are stored together in a common location, the Schedule II medications shall be under double lock.

(c) Controlled substances that are expired, discontinued or no longer required for a resident shall be returned to the pharmacy within 90 days of the expiration or discontinuation of the

controlled substance or following the death of the resident. The facility shall document the resident's name; the name, strength and dosage form of the controlled substance and the amount returned. There shall also be documentation by the pharmacy of the receipt or return of the controlled substances.

(d) If the pharmacy will not accept the return of a controlled substance, the facility shall assure that destruction of the controlled substance is within 90 days of the expiration or discontinuation of the controlled substance or following the death of the resident and the destruction is by the administrator or the administrator's designee and witnessed by a registered pharmacist, a dispensing practitioner, or their designee. The destruction shall be conducted so that no person can use, administer, sell or give away the controlled substance. Records of controlled substances destroyed shall include the resident's name; the name, strength and dosage form of the controlled substance; the amount destroyed; the method of destruction; and, the signature of the administrator or the administrator's designee and the signature of the registered pharmacist, dispensing practitioner or their designee.

(e) Records of controlled substances returned to the pharmacy or destroyed by the facility shall be maintained by the facility for a minimum of three years.

(f) Controlled substances that are expired, discontinued, prescribed for a deceased resident or deteriorated shall be stored securely in a locked area separately from actively used medications until disposed of.

(g) A dose of a controlled substance accidentally contaminated or not administered shall be destroyed at the facility. The destruction shall be documented on the medication administration record (MAR) or the controlled substance record showing the time, date, quantity, manner of destruction and the initials or signature of the person destroying the substance.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42C .3809 PHARMACEUTICAL CARE

(a) The facility shall obtain the services of a licensed pharmacist, prescribing practitioner or registered nurse for the provision of pharmaceutical care at least quarterly for residents or more frequently as determined by the Department, based on the documentation of significant medication problems identified during monitoring visits or other investigations in which the safety of the residents may be at risk. Pharmaceutical care involves the identification, prevention and resolution of medication related problems which includes at least the following:

- (1) an on-site medication review for each resident which includes at least the following:
 - (A) the review of information in the resident's record such as diagnoses, history and physical, discharge summary, vital signs, physician's orders, progress notes, laboratory values and medication administration records, including current medication administration records, to determine that medications are administered as prescribed and ensure that any undesired side effects, potential and actual medication reactions or interactions, and

medication errors are identified and reported to the appropriate prescribing practitioner; and,

- (B) making recommendations for change, if necessary, based on desired medication outcomes and ensuring that the appropriate prescribing practitioner is so informed; and,
 - (C) documenting the results of the medication review in the resident's record;
- (2) review of all aspects of medication administration including the observation or review of procedures for the administration of medications and inspection of medication storage areas;
 - (3) review of the medication system utilized by the facility, including packaging, labeling and availability of medications;
 - (4) review the facility's procedures and records for the disposition of medications and provide assistance, if necessary;
 - (5) provision of a written report of findings and any recommendations for change for Items (1) through (4) of Paragraph (a) of this Rule to the facility and the physician or appropriate health professional, when necessary;
 - (6) conducting in-service programs as needed for facility staff on medication usage that includes, but not limited to the following:
 - (A) potential or current medication related problems identified;
 - (B) new medications;
 - (C) side effects and medication interactions; and
 - (D) policies and procedures.
 - (b) The facility shall assure action is taken as needed in response to the medication review and documented, including that the physician or appropriate health professional has been informed of the findings when necessary.
 - (c) The facility shall maintain the findings and reports resulting from the activities in Subparagraphs (1) through (6) of Paragraph (a) of this Rule in the facility, including action taken by the facility.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42C .3810 PHARMACEUTICAL SERVICES

- (a) The facility shall allow the resident the right to choose a pharmacy provider as long as the pharmacy will provide services that are in compliance with the facility's medication management policies and procedures.
- (b) There shall be a current, written agreement with a licensed pharmacist, prescribing practitioner or registered nurse for pharmaceutical care services according to Rule .3809 of this Section. The written agreement shall include a statement of the responsibility of each party.
- (c) The facility shall assure the provision of emergency pharmaceutical services.
- (d) The facility shall assure the provision of medication for residents on temporary leave from the facility or involved in day activities out of the facility.

(e) The facility shall assure that accurate records of the receipt, use and disposition of medications are maintained in the facility and readily available for review.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

SECTION .3900 - FAMILY CARE HOME LICENSE ELIGIBILITY

10 NCAC 42C .3901 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Person" means an individual; a trust or estate; a partnership; a corporation; or any grouping of individuals, each of whom owns five percent or more of a partnership or corporation, who collectively own a majority interest of either a partnership or a corporation.
- (2) "Owner" means any person who has or had legal or equitable title to or a majority interest in an adult care home.
- (3) "Affiliate" means any person that directly or indirectly controls or did control an adult care home or any person who is controlled by a person who controls or did control an adult care home. In addition, two or more adult care homes who are under common control are affiliates.
- (4) "Principal" means any person who is or was the owner or operator of an adult care home, an executive officer of a corporation that does or did own or operate an adult care home, a general partner of a partnership that does or did own or operate an adult care home, or a sole proprietorship that does or did own or operate an adult care home.
- (5) "Indirect control" means any situation where one person is in a position to act through another person over whom the first person has control due to the legal or economic relationship between the two.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42C .3902 PERSONS NOT ELIGIBLE FOR NEW ADULT CARE HOME LICENSES

- (a) A new license shall not be issued for an adult care home if any of the conditions specified in G.S. 131D-2(b)(1b) apply to the applicant for the adult care home license.
- (b) Additionally, no new license shall be issued for any adult care home to an applicant for licensure who is the owner, principal or affiliate of an adult care home that has had its admissions suspended until six months after the suspension is lifted.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42C .3903 CONDITIONS FOR LICENSE RENEWAL

(a) Before renewing an existing license of an adult care home, the Department shall conduct a compliance history review of the facility and its principals and affiliates.

(b) In determining whether to renew a license under G.S. 131D-2(b)(6), the Department shall take into consideration at least the following:

- (1) the compliance history of the applicant facility;
- (2) the compliance history of the owners, principals or affiliates in operating other adult care homes in the state;
- (3) the extent to which the conduct of a related facility is likely to affect the quality of care at the applicant facility; and
- (4) the hardship on residents of the applicant facility if the license is not renewed.

(c) Pursuant to G.S. 131D-2(b)(1), an adult care home is not eligible to have its license renewed if any outstanding fines or penalties imposed by the Department have not been paid; provided, however that if an appeal is pending the fine or penalty will not be considered imposed until the appeal is resolved.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

SUBCHAPTER 42D - LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .1300 - MANAGEMENT

10 NCAC 42D .1301 MANAGEMENT OF FACILITIES WITH A CAPACITY OR CENSUS OF SEVEN TO THIRTY RESIDENTS

(a) The requirements in Paragraphs (a) and (c) of Rule 10 NCAC 42C .1901 shall control for this Subchapter for facilities with a capacity or census of 7 to 30 residents.

(b) At all times there shall be one administrator or supervisor-in-charge who is directly responsible for assuring that all required duties are carried out in the home and for assuring that at no time is a resident left alone in the home without a staff member. In addition to the requirements in 10 NCAC 42C .1901(a) and (c), one of the following arrangements shall be used to manage a facility with a capacity of 7 to 30 residents:

- (1) The administrator is in the home or within 500 feet of the home and immediately available. To be immediately available, the administrator shall be on stand-by and have direct access to either a two-way intercom system or a two-way intercom line on the existing telephone system that connects the licensed home with the private residence of the administrator. The equipment installed shall be in working condition and must be located in the bedroom of the administrator; or
- (2) A supervisor-in-charge is in the home or within 500 feet of the home and is immediately available. The conditions of being "immediately available" cited in

Subparagraph (b)(1) of this Rule shall apply to this arrangement; or

- (3) When there is a cluster of licensed homes, each with a capacity of 7 to 12 residents, located adjacently on the same site, there shall be at least one staff member, either live-in or on a shift basis in each of these homes. In addition, there shall be at least one administrator or supervisor-in-charge who is within 500 feet of each home, immediately available, and directly responsible for assuring that all required duties are carried out in each home. To be immediately available, the administrator or supervisor-in-charge shall be on stand-by and have direct access to either a two-way intercom system or a two-way intercom line on the existing telephone system that connects these homes with each other and with the residence of the administrator or supervisor-in-charge. The equipment installed shall be in working condition and shall be located in the bedroom of the administrator or supervisor-in-charge.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. July 1, 1990; April 1, 1987; April 1, 1984;
Temporary Amendment Eff. January 1, 2000; December 1, 1999;
Amended Eff. July 1, 2000.

10 NCAC 42D .1303 MANAGEMENT OF FACILITIES WITH A CAPACITY OR CENSUS OF 31 TO 80 RESIDENTS

- (a) In facilities with a capacity or census of 31 to 80 residents, there shall be an administrator on call, which means able to be contacted by telephone, pager or two-way intercom, at all times when not in the building. (For staffing chart, see Rule .1416 of this Subchapter.)
- (b) When the administrator is not on duty in the facility, there shall be a person designated as administrator-in-charge on duty in the facility who has the responsibility for the overall operation of the facility and meets the qualifications for administrator-in-charge required in Rule .1304 of this Section. The personal care aide supervisor, as required in Rule .1413 of this Subchapter, may serve simultaneously as the administrator-in-charge.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 2000;
Eff. July 1, 2000.

10 NCAC 42D .1304 MANAGEMENT OF FACILITIES WITH A CAPACITY OR CENSUS OF 81 OR MORE RESIDENTS

- (a) A facility with a capacity or census of 81 or more residents shall be under the direct control of an administrator, who shall be responsible for the operation, administration, management and supervision of the facility on a full-time basis to assure that all care and services to residents are provided in accordance with all applicable local, state and federal regulations and codes. The administrator shall be on duty in the facility at least eight hours

per day, five days per week and shall not serve simultaneously as a personal care aide supervisor or other staff to meet staffing requirements while on duty as an administrator. (For staffing chart, see Rule .1416 of this Subchapter.) If there is more than one facility on a contiguous parcel of land or campus setting, and the combined licensed capacity of the facilities is 200 beds or less, there may be one administrator on duty for all the facilities on the campus. The administrator shall not serve simultaneously as a personal care aide supervisor in this campus setting.

(b) When the administrator is not on duty in the facility, there shall be a person designated as administrator-in-charge on duty in the facility who has responsibility for the overall operation of the facility. The supervisor may serve simultaneously as the administrator-in-charge. Each facility on a contiguous parcel of land or campus setting, as described in Paragraph (a) of this Rule, shall have a person designated as the administrator-in-charge in the facility when the administrator is not on duty.

(c) The administrator-in-charge shall meet the following qualifications:

- (1) be 21 years or older;
- (2) be at least a high school graduate or certified under the G.E.D. program or have passed an alternative examination established by the Department;
- (3) meet the general health requirements according to Rule .1406 of this Subchapter;
- (4) have at least six months management or supervisory experience in a long term care setting or be a licensed health professional or a licensed nursing home administrator; and
- (5) earn at least 12 hours a year of continuing education credits related to the management of adult care homes and care of aged and disabled persons in accordance with procedures established by the Department.

(d) The administrator shall be on call, which means able to be contacted by telephone, pager or two-way intercom at all times when not in the building.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 2000; December 1, 1999;
Eff. July 1, 2000.

SECTION .1400 - PERSONNEL

10 NCAC 42D .1402 QUALIFICATIONS OF SUPERVISOR-IN-CHARGE IN FACILITIES WITH A CAPACITY OR CENSUS OF 7 TO 30 RESIDENTS

Rule 10 NCAC 42C .2002 shall control for this Subchapter for facilities with a capacity or census of seven to thirty residents.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000.

10 NCAC 42D .1407 STAFFING

- (a) In addition to the requirements set forth in Paragraphs (b) through (e) of this Rule, the requirements in 10 NCAC 42C

.2005 shall control for this Subchapter. References to homes in Paragraphs (b) through (e) of this Rule refer to homes for the aged and disabled.

(b) Homes shall staff to the licensed capacity of the home or to the resident census. When a home is staffing to resident census, a daily census log shall be maintained which lists current residents by name, room assignment and date of admission and must be available for review by the monitoring and licensing agencies.

(c) Homes with capacity or census of 12 or fewer residents:

(1) At all times there shall be an administrator or supervisor-in-charge in the home or within 500 feet of the home and immediately available;

(2) A free standing home with capacity or census of 12 or fewer residents shall comply with the following staffing:

(A) When the administrator or supervisor-in-charge is not on duty within the home, there shall be at least one staff member on duty on the first and second shifts and at least one staff member on call within the building on third shift. There shall be a call system connecting the bedroom of the staff member, who may be asleep on the third shift, with each resident's bedroom; and

(B) When the administrator or supervisor-in-charge is on duty within the home on the first and second shifts and on call within the home on the third shift, another staff member (i.e., co-administrator, supervisor-in-charge or aide) shall be in the building or within 500 feet of the home and immediately available.

(3) A cluster of homes with capacity or census of 12 or fewer residents shall comply with the following staffing:

(A) When there is a cluster of up to six licensed homes located adjacently, there shall be at least one administrator or supervisor-in-charge who lives within 500 feet of each of the homes, is immediately available, and who, as supervisor for all the homes, is directly responsible for assuring that all required duties are carried out in each home; and

(B) In each of the homes, at least one staff member shall be on duty on the first and second shifts and at least one staff member shall be on call within the building during the third shift. There shall be a call system connecting the bedroom of the staff member, who may be asleep on the third shift, with each resident's bedroom.

(4) The following shall apply to all homes with capacity or census of 12 or fewer residents:

(A) The administrator shall prepare a plan of operation for the home (each home in a cluster) specifying the staff involved, their regularly assigned duties and the amount of time estimated to be spent for each duty. There shall be a current plan of operation on file in the home, available for review by bona fide inspectors and the monitoring and licensing agencies;

(B) At least 12 hours shall be spent daily providing for the personal services, health services, drug

management, meaningful activities, and other direct services needed by the residents. These activities are the primary responsibility of the staff member(s) on duty on the first and second shifts; however, other help, such as the supervisor-in-charge and activities coordinator may be used to assist in providing these services;

(C) During the remaining hours, the staff member on duty may perform housekeeping and food service duties as long as the staff member can respond immediately to resident calls or the residents are otherwise supervised. Also, the person on call within the home may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. if the duties do not hinder care of residents or immediate response to resident calls, do not disrupt residents' normal lifestyles and sleeping patterns; and do not take the person on call out of view of where the residents are;

(D) Additional help shall be available daily to assure adequate housekeeping and food service.

(d) Homes with capacity or census of 13-20 shall comply with the following staffing. When the home is staffing to census and the census falls below 13 residents, the staffing requirements for a home with 12 or fewer residents shall apply.

(1) At all times there shall be an administrator or supervisor-in-charge in the home or within 500 feet of the home and immediately available;

(2) When the administrator or supervisor-in-charge is not on duty within the home, there shall be at least one staff member on duty on the first, second and third shifts;

(3) When the administrator or supervisor-in-charge is on duty within the home, another staff member (i.e. co-administrator, supervisor-in-charge or aide) shall be in the building or within 500 feet of the home and immediately available;

(4) The job responsibility of the staff member on duty within the home is to provide the direct personal assistance and supervision needed by the residents. Any housekeeping duties performed by the staff member between the hours of 7 a.m. and 9 p.m. shall be limited to occasional, non-routine tasks. The staff member may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. as long as such duties do not hinder care of residents or immediate response to resident calls, do not disrupt residents' normal lifestyles and sleeping patterns and do not take the staff member out of view of where the residents are. The staff member on duty to attend to the residents shall not be assigned food service duties; and

(5) In addition to the staff member(s) on duty to attend to the residents, there shall be sufficient help available daily to perform necessary housekeeping and food service duties.

(e) Homes with capacity or census of 21 or more shall comply with the following staffing. When the home is staffing to census and the census falls below 21 residents, the staffing requirements for a home with a census of 13-20 shall apply.

(1) While the Division of Facility Services may require a home to have additional aide duty in excess of the minimum (based on the condition of the residents and

the layout of the building), the daily total of aide duty hours on each 8-hour shift shall at all times (other than during short, unforeseeable circumstances) be at least:

- (A) First shift (morning) - 16 hours of aide duty for facilities with a census or capacity of 21 to 40 residents; and 16 hours of aide duty plus four additional hours of aide duty for every additional 10 or fewer residents for facilities with a census or capacity of 40 or more residents. (For staffing chart, see Rule .1416 of this Subchapter.)
 - (B) Second shift (afternoon) - 16 hours of aide duty for facilities with a census or capacity of 21 to 40 residents; and 16 hours of aide duty plus four additional hours of aide duty for every additional 10 or fewer residents for facilities with a census or capacity of 40 or more residents. (For staffing chart, see Rule .1416 of this Subchapter.)
 - (C) Third shift (evening) - 8.0 hours of aide duty per 30 or fewer residents (licensed capacity or resident census). (For staffing chart, see Rule .1416 of this Subchapter.)
 - (D) The facility shall have additional aide duty to meet the needs of the facility's heavy care residents equal to the amount of time reimbursed by Medicaid. As used in this Rule, the term, "heavy care resident", means an individual residing in an adult care home who is defined as "heavy care" by Medicaid and for which the facility is receiving enhanced Medicaid payments.
- (2) The following describes the nature of the aide's duties, including allowances and limitations:
- (A) The job responsibility of the aide is to provide the direct personal assistance and supervision needed by the residents;
 - (B) Any housekeeping performed by an aide between the hours of 7 a.m. and 9 p.m. shall be limited to occasional, non-routine tasks, such as wiping up a water spill to prevent an accident, attending to an individual resident's soiling of his bed, or helping a resident make his bed. Routine bed-making is a permissible aide duty;
 - (C) If the home employs more than the minimum number of aides required, any additional hours of aide duty above the required hours of direct service between 7 a.m. and 9 p.m. may involve the performance of housekeeping tasks;
 - (D) An aide may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. as long as such duties do not hinder the aide's care of residents or immediate response to resident calls, do not disrupt the residents' normal lifestyles and sleeping patterns, and do not take the aide out of view of where the residents are. The aide shall be prepared to care for the residents since that remains his primary duty; and
 - (E) Aides shall not be assigned food service duties; however, providing assistance to individual residents who need help with eating is an appropriate aide duty.
- (3) In addition to the staffing required for management and aide duties, there shall be sufficient personnel employed

to perform necessary housekeeping and food service duties.

History Note: Authority G.S. 131D-2; 131D-4.3; 143B-153; S.L. 99-0334;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. December 1, 1991; September 1, 1990; July 1, 1990; April 1, 1984;
Temporary Amendment Eff. January 1, 2000; December 1, 1999;
Amended Eff. July 1, 2000.

10 NCAC 42D .1410 STAFF COMPETENCY AND TRAINING

- (a) The facility shall assure that staff who perform or directly supervise staff who perform personal care tasks listed in Paragraph (h) of this Rule successfully complete a 45-hour training program, including competency evaluation, approved by the Department according to Rule .1411 of this Section. Directly supervise means being on duty in the facility to oversee or direct the performance of staff duties.
- (b) The facility shall assure that staff who perform or directly supervise staff who perform personal care tasks listed in Paragraph (i) of this Rule successfully complete a 80-hour training program, including competency evaluation, approved by the Department according to Rule .1411 of this Section and comparable to the State-approved Nurse Aide I training.
- (c) The facility shall assure that training specified in Paragraphs (a) and (b) of this Rule is successfully completed within six months after hiring for staff hired after July 1, 2000. Staff hired prior to July 1, 2000, shall have completed at least a 40-hour training program for the performance or supervision of tasks listed in Paragraph (i) of this Rules or a 75-hour training program for the performance or supervision of tasks listed in Paragraph (j) of this Rule. The 40 and 75-hour training shall meet all the requirements of this Rule except for the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule.
- (d) The Department shall have the authority to extend the six-month time frame specified in Paragraph (c) of this Rule up to six additional months for a maximum allowance of 12 months for completion of training upon submittal of documentation to the Department by the facility showing good cause for not meeting the six-month time frame.
- (e) Exemptions from the training requirements of this Rule are as follows:
 - (1) The Department shall exempt staff from the 45-hour training requirement upon successful completion of a competency evaluation approved by the Department according to Rule .1411 of this Section if staff have been employed to perform or directly supervise personal care tasks listed in Paragraph (h) and the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule in a comparable long-term care setting for a total of at least 12 months during the three years prior to January 1, 1996, or the date they are hired, whichever is later.
 - (2) The Department shall exempt staff from the 80-hour training requirement upon successful completion of a 15-hour refresher training and competency evaluation

program or a competency evaluation program approved by the Department according to Rule .1411 of this Section if staff have been employed to perform or directly supervise personal care tasks listed in Paragraph (i) and the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule in a comparable long-term care setting for a total of at least 12 months during the three years prior to January 1, 1996, or the date they are hired, whichever is later.

- (3) The Department shall exempt staff from the 45 and 80-hour training and competency evaluation who are licensed health professionals or listed on the N.C. Nurse Aide Registry.

(f) The facility shall maintain documentation of the training and competency evaluations of staff required by the rules of this Subchapter. The documentation shall be filed in an orderly manner and made available for review by representatives of the Department.

(g) The facility shall assure that staff who perform or directly supervise staff who perform personal care tasks listed in Paragraphs (h) and (i) and the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule receive on-the-job training and supervision as necessary for the performance of individual job assignments prior to meeting the training and competency requirements of this Rule.

(h) For the purposes of this Rule, personal care tasks which require a 45-hour training program include, but are not limited to the following:

- (1) assist residents with toileting and maintaining bowel and bladder continence;
- (2) assist residents with mobility and transferring;
- (3) provide care for normal, unbroken skin;
- (4) assist with personal hygiene to include mouth care, hair and scalp grooming, care of fingernails, and bathing in shower, tub, bed basin;
- (5) trim hair;
- (6) shave resident;
- (7) provide basic first aid;
- (8) assist residents with dressing;
- (9) assist with feeding residents with special conditions but no swallowing difficulties;
- (10) assist and encourage physical activity;
- (11) take and record temperature, pulse, respiration, routine height and weight;
- (12) trim toenails for residents without diabetes or peripheral vascular disease;
- (13) perineal care;
- (14) apply condom catheters;
- (15) turn and position;
- (16) collect urine or fecal specimens;
- (17) take and record blood pressure if a registered nurse has determined and documented staff to be competent to perform this task;
- (18) apply and remove or assist with applying and removing prosthetic devices for stable residents if a registered nurse, licensed physical therapist or licensed occupational therapist has determined and documented staff to be competent to perform the task; and
- (19) apply or assist with applying ace bandages, TED's and binders for stable residents if a registered nurse has

determined and documented staff to be competent to perform the task.

- (i) For the purposes of this Rule, personal care tasks which require a 80-hour training program are as follows:

- (1) assist with feeding residents with swallowing difficulty;
- (2) assist with gait training using assistive devices;
- (3) assist with or perform range of motion exercises;
- (4) empty and record drainage of catheter bag;
- (5) administer enemas;
- (6) bowel and bladder retraining to regain continence;
- (7) test urine or fecal specimens;
- (8) use of physical or mechanical devices attached to or adjacent to the resident which restrict movement or access to one's own body used to restrict movement or enable or enhance functional abilities;
- (9) non-sterile dressing procedures;
- (10) force and restrict fluids;
- (11) apply prescribed heat therapy;
- (12) care for non-infected pressure ulcers; and
- (13) vaginal douches.

- (j) For purposes of this Rule, the interpersonal skills and behavioral interventions include, but are not limited to the following:

- (1) recognition of residents' usual patterns of responding to other people;
- (2) individualization of appropriate interpersonal interactions with residents;
- (3) interpersonal distress and behavior problems;
- (4) knowledge of and use of techniques, as alternatives to the use of restraints, to decrease residents' intrapersonal and interpersonal distress and behavior problems;
- (5) knowledge of procedures for obtaining consultation and assistance regarding safe, humane management of residents' behavioral problems.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000.

10 NCAC 42D .1411 TRAINING PROGRAM AND COMPETENCY EVALUATION CONTENT AND APPROVAL

(a) The 45-hour training specified in Rule .1410 of this Section shall consist of at least 24 hours of classroom instruction, and the remaining hours shall be supervised practical experience. Competency evaluation shall be conducted in each of the following areas:

- (1) personal care skills;
- (2) cognitive, behavioral and social care for all residents and including interventions to reduce behavioral problems for residents with mental disabilities; and
- (3) residents' rights as established by G.S. 131D-21.

(b) The 80-hour training specified in Rule .1410 of this Section shall consist of at least 34 hours of classroom instruction and at least 34 hours of supervised practical experience. Competency evaluation shall be conducted in each of the following areas:

- (1) observation and documentation;

- (2) basic nursing skills, including special health-related tasks;
- (3) personal care skills;
- (4) cognitive, behavioral and social care for all residents and, including interventions to reduce behavioral problems for residents with mental disabilities;
- (5) basic restorative services; and
- (6) residents' rights as established by G.S. 131D-21.

(c) The following requirements shall apply to the 45 and 80-hour training specified in Rule .1410 of this Section:

- (1) The training shall be conducted by an individual or a team of instructors with a coordinator. The supervisor of practical experience and instructor of content having to do with personal care tasks or basic nursing skills shall be a registered nurse with a current, unencumbered license in North Carolina and with two years of clinical or direct patient care experience working in a health care, home care or long term care setting. The program coordinator and any instructor of content that does not include instruction on personal care tasks or basic nursing skills shall be a registered nurse, licensed practical nurse, physician, gerontologist, social worker, psychologist, mental health professional or other health professional with two years of work experience in adult education or in a long term care setting; or a four-year college graduate with four years of experience working in the field of aging or long term care for adults.
- (2) A trainee participating in the classroom instruction and supervised practical experience in the setting of the trainee's employment shall not be considered on duty and counted in the staff-to-resident ratio.
- (3) Training shall not be offered without a qualified instructor on site.
- (4) Classroom instruction shall include the opportunity for demonstration and practice of skills.
- (5) Supervised practical experience shall be conducted in a licensed adult care home or in a facility or laboratory setting comparable to the work setting in which the trainee will be performing or supervising the personal care skills.
- (6) All skills shall be performed on humans except for intimate care skills, such as perineal and catheter care, which may be conducted on a mannequin.
- (7) There shall be no more than 10 trainees for each instructor for the supervised practical experience.
- (8) A written examination prepared by the instructor shall be used to evaluate the trainee's knowledge of the content portion of the classroom training. The trainee shall score at least 70 on the written examination. Oral testing shall be provided in the place of a written examination for trainees lacking reading or writing ability.
- (9) The trainee shall satisfactorily perform all of the personal care skills specified in Rule .1410(h) and the skills specified in Rule .1410(j) of this Section for the 45-hour training and in Rules .1410(h), (i) and (j) of this Section for the 80-hour training. The instructor shall use a skills performance checklist for this competency evaluation that includes, at least, all those skills specified in Rules .1410(h) and (j) of this Section

for the 45-hour training and all those skills specified in Rules .1410(h), (i) and (j) of this Section for the 80-hour training. Satisfactory performance of the personal care skills and interpersonal and behavioral intervention skills means that the trainee performed the skill unassisted; explained the procedure to the resident; explained to the instructor, prior to or after the procedure, what was being done and why it was being done in that way; and incorporated the principles of good body mechanics, medical asepsis and resident safety and privacy.

- (10) The training provider shall issue to all trainees who successfully complete the training a certificate, signed by the registered nurse who conducted the skills competency evaluation, stating that the trainee successfully completed the 45 or 80-hour training. The trainee's name shall be on the certificate. The training provider shall maintain copies of the certificates and the skills evaluation checklists for a minimum of five years.

(d) An individual, agency or organization seeking to provide the 45 or 80-hour training specified in Rule .1410 of this Section shall submit the following information to the Adult Care Licensure Section of the Division of Facility Services:

- (1) an application which is available at no charge by contacting the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center Raleigh, North Carolina 27699-2708;
- (2) a statement of training program philosophy;
- (3) a statement of training program objectives for each content area;
- (4) a curriculum outline with specific hours for each content area;
- (5) teaching methodologies, a list of texts or other instructional materials and a copy of the written exam or testing instrument with an established passing grade;
- (6) a list of equipment and supplies to be used in the training;
- (7) procedures or steps to be completed in the performance of the personal care and basic nursing skills;
- (8) sites for classroom and supervised practical experience, including the specific settings or rooms within each site;
- (9) resumes of all instructors and the program coordinator, including current RN certificate numbers as applicable;
- (10) policy statements that address the role of the registered nurse, instructor to trainee ratio for the supervised practical experience, retention of trainee records and attendance requirements;
- (11) a skills performance checklist as specified in Subparagraph (c)(9) of this Rule; and
- (12) a certificate of successful completion of the training program.

(e) The following requirements shall apply to the competency evaluation for purposes of exempting adult care home staff from the 45 or 80-hour training as required in Rule .1410 of this Section:

- (1) The competency evaluation for purposes of exempting adult care home staff from the 45 or 80-hour training shall consist of the satisfactory performance of personal care skills according to the requirement in Subparagraph (c)(9) of this Rule.

- (2) Any person who conducts the competency evaluation for exemption from the 45 or 80-hour training shall be a registered nurse with the same qualifications specified in Subparagraph (c)(1) of this Rule.
- (3) The competency evaluation shall be conducted in a licensed adult care home or in a facility or laboratory setting comparable to the work setting in which the participant will be performing or supervising the personal care skills.
- (4) All skills being evaluated shall be performed on humans except for intimate care skills such as perineal and catheter care, which may be performed on a mannequin.
- (5) The person being competency evaluated in the setting of the person's employment shall not be considered on duty and counted in the staff-to-resident ratio.
- (6) An individual, agency or organization seeking to provide the competency evaluation for training exemption purposes shall complete an application available at no charge from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, North Carolina 27699-2708 and submit it to the Adult Care Licensure Section along with the following information:
 - (A) resume of the person performing the competency evaluation, including the current RN certificate number;
 - (B) a certificate, with the signature of the evaluating registered nurse and the participant's name, to be issued to the person successfully completing the competency evaluation;
 - (C) procedures or steps to be completed in the performance of the personal care and basic nursing skills;
 - (D) skills performance checklist as specified in Subparagraph (c)(9) of this Rule;
 - (E) a site for the competency evaluation; and
 - (F) a list of equipment, materials and supplies.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;

*Temporary Adoption Eff. January 1, 1996;
Eff. May 1, 1997;*

*Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000.*

10 NCAC 42D .1412 CERTIFICATION OF ADMINISTRATOR

The administrator of an adult care home licensed on or after January 1, 2000, shall be certified by the Department under the provisions of G.S. 90, Article 20A and according to Rules .2401 - .2403 of this Subchapter.

History Note: Authority G.S. 90-288; 131D-2; 143B-165; S.L. 1999-0334; S.L. 1999-0443;

*Temporary Adoption Eff. December 1, 1999;
Eff. July 1, 2000.*

10 NCAC 42D .1413 STAFFING AND QUALIFICATIONS OF PERSONAL CARE AIDE SUPERVISORS

(a) On first and second shifts in facilities with a capacity or census of 31 or more residents and on third shift in facilities with a capacity or census of 91 or more residents, there shall be at least one supervisor of personal care aides, hereafter referred to as supervisor, on duty in the facility for less than 64 hours of aide duty per shift; two supervisors for 64 to less than 96 hours of aide duty per shift; and three supervisors for 96 to less than 128 hours of aide duty per shift. In facilities sprinklered for fire suppression with a capacity or census of 91 to 120 residents, the supervisor's time on third shift may be counted as required aide duty. (For staffing chart, see Rule .1416 of this Section.)

(b) On first and second shifts in facilities with a capacity or census of 31 to 70 residents, the supervisor may provide up to four hours of aide duty per shift which may be counted as required aide hours of duty. The supervisor's hours on duty shall not be counted as required hours of aide duty except as specified in this Rule.

Note: Supervisors may be involved in performing some personal care in facilities with a capacity or census of 71 or more residents, but their primary responsibility is the direct supervision of personal care aides and the time involved in performing any personal care cannot be counted as required aide hours.

(c) On third shift in facilities with a capacity or census of 31 to 60 residents, the supervisor shall be in the facility or within 500 feet and immediately available, as defined in Rule .1301 of this Subchapter. In facilities sprinklered for fire suppression with a capacity or census of 31 to 60 residents, the supervisor's time on duty in the facility on third shift may be counted as required aide duty.

(d) On third shift in facilities with a capacity or census of 61 to 90 residents, the supervisor shall be on duty in the facility for at least four hours and within 500 feet and immediately available, as defined in Rule .1301 of this Subchapter, for the remaining four hours. In facilities sprinklered for fire suppression with a capacity or census of 61 to 90 residents, the supervisor's time on duty in the facility on third shift may be counted as required aide duty.

(e) A supervisor is responsible for the direct supervision of personal care aides, including those who administer medications, to assure that care and services are provided to residents by personal care aides in a safe and secure manner and according to licensure rules. This involves observing personal care aides in the performance of their duties; instructing, correcting and consulting with aides as needed; and reviewing documentation by aides.

(f) A supervisor on duty shall not serve simultaneously as the administrator but may serve simultaneously as the administrator-in-charge in the absence of the administrator.

(g) A supervisor shall meet the following qualifications:

- (1) be 21 years or older;
- (2) be a high school graduate or certified under the G.E.D. program, or have passed an alternative examination established by the Department;
- (3) meet the general health requirements according to Rule .1406 of this Section;
- (4) have at least six months of experience in performing or supervising the performance of duties to be supervised during a period of three years prior to the effective date of this Rule or the date of hire, whichever is later, or be

a licensed health professional or a licensed nursing home administrator;

- (5) meet the same minimum training and competency requirements of the aides being supervised; and
- (6) earn at least 12 hours a year of continuing education credits related to the care of aged and disabled persons in accordance with procedures established by the Department of Health and Human Services.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. January 1, 2000; December 1, 1999; Eff. July 1, 2000.

10 NCAC 42D .1414 QUALIFICATIONS OF MEDICATION STAFF

(a) Effective February 15, 2000, staff who administer medications, hereafter referred to as medication aides, and staff who directly supervise the administration of medications shall have documentation of successfully completing the clinical skills validation portion of the competency evaluation according to Paragraphs (d) and (e) of Rule 10 NCAC 42C .2014 as cross referenced in Rule .1415 of this Section prior to the administration or supervision of the administration of medications. Medication aides who perform other personal care

tasks shall also meet the staff training and competency requirements according to Rule .1410 of this Section. Persons authorized by state occupational licensure laws to administer medications are exempt from this requirement.

(b) Effective July 1, 2000, medication aides and their direct supervisors, except persons authorized by state occupational licensure laws to administer medications, shall successfully pass the written examination within 90 days after successful completion of the clinical skills validation portion of a competency evaluation according to Rule .1415 of this Section. Medication aides shall also meet the staff training and competency requirements according to Rule .1410 of this Section.

(c) Medication aides and staff who directly supervise the administration of medications, except persons authorized by state occupational licensure laws to administer medications, shall complete six hours of continuing education annually related to medication administration.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. January 1, 2000; December 1, 1999; Eff. July 1, 2000.

10 NCAC 42D .1416 STAFFING CHART

The following chart specifies the required aide, supervisory and management staffing for each eight-hour shift in facilities with a capacity or census of 21 or more residents according to Rules .1301, .1303, .1304, .1407 and .1413 of this Subchapter.

Bed Count	Position Type	First Shift	Second Shift	Third Shift
21 - 30	Aide	16	16	8
	Supervisor	Not Required	Not Required	Not Required
	Administrator/SIC	In the building, or within 500 feet and immediately available.		
31-40	Aide	16	16	16
	Supervisor	8*	8*	In the building, or within 500 feet and immediately available.**
	Administrator	On call		
41-50	Aide	20	20	16
	Supervisor	8*	8*	In the building, or within 500 feet and immediately available.**
	Administrator	On call		
51-60	Aide	24	24	16
	Supervisor	8*	8*	In the building, or within 500 feet and immediately available.**
	Administrator	On call		
61-70	Aide	28	28	24
	Supervisor	8*	8*	4 hours within the facility/4 hours within 500 feet and immediately available.**
	Administrator	On call		
	Aide	32	32	24

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71-80	Supervisor	8	8	4 hours within the facility/4 hours within 500 feet and immediately available.**
	Administrator	On call		
81-90	Aide	36	36	24
	Supervisor	8	8	4 hours within the facility/4 hours within 500 feet and immediately available.**
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
91-100	Aide	40	40	32
	Supervisor	8	8	8**
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
101-110	Aide	44	44	32
	Supervisor	8	8	8**
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
111-120	Aide	48	48	32
	Supervisor	8	8	8**
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
121-130	Aide	52	52	40
	Supervisor	8	8	8
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
131-140	Aide	56	56	40
	Supervisor	8	8	8
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
141-150	Aide	60	60	40
	Supervisor	8	8	8
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
151-160	Aide	64	64	48
	Supervisor	16	16	8
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
161-170	Aide	68	68	48
	Supervisor	16	16	8
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
171-180	Aide	72	72	48
	Supervisor	16	16	8
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
181-190	Aide	76	76	56
	Supervisor	16	16	8
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
191-200	Aide	80	80	56
	Supervisor	16	16	8
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
201-210	Aide	84	84	56
	Supervisor	16	16	8
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
211-220	Aide	88	88	64
	Supervisor	16	16	16
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
221-230	Aide	92	92	64
	Supervisor	16	16	16
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		
231-240	Aide	96	96	64
	Supervisor	24	24	16
	Administrator	5 days/week: Minimum of 40 hours. When not in facility, on call.		

*Supervisor may conduct up to four hours of aide duty.

** Supervisor' time on duty in the facility may be counted as required aide duty if the facility is sprinklered.

*History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 2000;
Eff. July 1, 2000.*

SECTION .1500 - THE BUILDING

10 NCAC 42D .1503 PHYSICAL ENVIRONMENT

The home shall provide ample living arrangements to meet the individual needs of the residents, the live-in staff and other live-in persons.

- (1) The requirements for each living room and recreational area are:
 - (a) Each living room and recreational area shall be located off a lobby or corridor and enclosed with walls and doors;
 - (b) In buildings with a licensed capacity of 15 or less, there shall be a minimum area of 250 square feet;
 - (c) In buildings with a licensed capacity of 16 or more, there shall be a minimum of 16 square feet per resident; and
 - (d) Each living room and recreational area shall have windows.
- (2) The requirements for the dining room are:
 - (a) The dining room shall be located off a lobby or corridor and enclosed with walls and doors;
 - (b) In buildings with a licensed capacity of 15 or less, there shall be a minimum of 200 square feet;
 - (c) In building with a licensed capacity of 16 or more, there shall be a minimum of 14 square feet per resident; and
 - (d) The dining room shall have windows.
- (3) The requirements for the kitchen are:
 - (a) The size of the kitchen and the kitchen equipment shall meet the sanitation requirements of the North Carolina Department of Environment, Health, and Natural Resources; Division of Environmental Health. Scaled drawings and specifications shall be submitted to the Division of Facility Services; and
 - (b) In areas where approved water and sewer services are not available, the owner shall secure from the local sanitarian instructions on the installation of an approved water and sewer system and comply with these instructions.
- (4) The requirements for the bedroom are:
 - (a) The number of resident beds set up shall not exceed the licensed capacity of the facility;
 - (b) There shall be bedrooms sufficient in number and size to meet the individual needs according to age and sex of the residents, the administrator or supervisor-in-charge, other live-in staff and any other persons living in the home. Residents shall not share bedrooms with staff or other live-in non-residents;
 - (c) Only rooms authorized as bedrooms shall be used for residents' bedrooms;

- (d) Bedrooms shall be located on an outside wall and off a corridor. A room where access is through a bathroom, kitchen, or another bedroom shall not be approved for a resident's bedroom;
 - (e) There must shall be a minimum area of 100 square feet excluding vestibule, closet or wardrobe space, in rooms occupied by one person and a minimum area of 80 square feet per bed, excluding vestibule, closet or wardrobe space, in rooms occupied by two or more people;
 - (f) The total number of residents assigned to a bedroom shall not exceed the number authorized for that particular bedroom;
 - (g) A bedroom may not be occupied by more than four residents. This does not apply to homes licensed before April 1, 1984, with five residents occupying one bedroom, which meet all other rules of this Subchapter;
 - (h) Resident bedrooms shall be designed to accommodate all required furnishings;
 - (i) Each resident bedroom shall be ventilated with one or more windows which are maintained operable and well lighted. The window area shall be equivalent to at least eight percent of the floor space. The windows shall be low enough to see outdoors from the bed and chair, with a maximum 36 inch sill height; and
 - (j) Bedroom closets or wardrobes shall be large enough to provide each resident with a minimum of 48 cubic feet of hanging clothing storage space (approximately two feet deep by three feet wide of hanging space by eight feet high).
- (5) The requirements for bathrooms and toilet rooms are:
 - (a) Minimum bathroom and toilet facilities shall include a toilet and a hand lavatory for each 5 residents and a tub or shower for each 10 residents or portion thereof;
 - (b) Entrance to the bathroom shall not be through a kitchen, another person's bedroom, or another bathroom;
 - (c) Toilets and baths for staff and visitors shall be in accordance with Volume II, Plumbing, North Carolina Building Code;
 - (d) Bathrooms and toilets accessible to the physically handicapped shall be provided as required by Section 11X, Volume I, North Carolina Building Code;
 - (e) The bathrooms and toilet rooms shall be designed to provide privacy. Bathrooms and toilet rooms with two or more water closets (commodes) shall have privacy partitions or curtains for each water closet. Each tub or shower shall have privacy partitions or curtains;

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- (f) Hand grips shall be installed at all commodes, tubs and showers used by or accessible to residents;
 - (g) Each home shall have at least one bathroom opening off the corridor with: a door three feet minimum width, a three feet by three feet roll-in shower designed to allow the staff to assist a resident in taking a shower without the staff getting wet, a bathtub accessible on at least two sides, a lavatory and a toilet. If the tub and shower are in separate rooms, each room shall have a lavatory and a toilet. All fixtures shall meet the State Building Code requirements for the physically handicapped in effect at the time the building was constructed;
 - (h) Bathrooms and toilet rooms shall be located as conveniently as possible to the residents' bedrooms;
 - (i) Resident toilet rooms and bathrooms shall not be utilized for storage or purposes other than those indicated in Item (5) of this Rule;
 - (j) Toilets and baths shall be well lighted and mechanically ventilated at two cubic feet per minute. The mechanical ventilation requirement does not apply to facilities licensed before April 1, 1984, with adequate natural ventilation;
 - (k) Nonskid surfacing or strips shall be installed in showers and bath areas; and
 - (l) The floors of the bathrooms and toilet rooms shall have, water-resistant covering.
- (6) The requirements for storage rooms and closets are:
- (a) General Storage for the Home. A minimum area of five square feet (40 cubic feet) per licensed capacity shall be provided. This storage space shall be either in the facility or within 500 feet of the facility on the same site;
 - (b) Linen Storage. Storage areas shall be adequate in size and number for separate storage of clean linens and separate storage of soiled linens. Access to soiled linen storage shall be from a corridor or laundry room;
 - (c) Food Storage. Space shall be provided for dry, refrigerated and frozen food items to comply with sanitation regulations;
 - (d) Housekeeping storage requirements are:
 - (i) A housekeeping closet, with mop sink or mop floor receptor, shall be provided at the rate of one per 60 residents or portion thereof; and
 - (ii) There shall be separate locked areas for storing cleaning agents, bleaches, pesticides, and other substances which may be hazardous if ingested, inhaled or handled. Cleaning supplies shall be supervised while in use;
 - (e) Handwashing facilities with wrist type lever handles shall be provided immediately adjacent to the drug storage area;
 - (f) Storage for Resident's Articles. Some means for residents to lock personal articles within the home shall be provided; and
 - (g) Staff Facilities. Some means for staff to lock personal articles within the home shall be provided.
- (7) The requirements for corridors are:
- (a) Doors to spaces other than small reach-in closets shall not swing into the corridor;
 - (b) Handrails shall be provided on both sides of corridors at 36 inches above the floor and be capable of supporting a 250 pound concentrated load;
 - (c) Corridors shall be lighted sufficiently with night lights providing 1 foot-candle power at the floor; and
 - (d) Corridors shall be free of all equipment and other obstructions.
- (8) The requirements for outside entrances and exits are:
- (a) Public and service entrances shall not be through required resident areas;
 - (b) All steps, porches, stoops and ramps shall be provided with handrails and guardrails; and
 - (c) All exit door locks shall be easily operable, by a single hand motion, from the inside at all times without keys.
 - (d) In homes with at least one resident who is determined by a physician or is otherwise known to be disoriented or a wanderer, each required exit door shall be equipped with a sounding device that is activated when the door is opened. The sound shall be of sufficient volume that it can be heard by staff. A central control panel that will deactivate the sounding device may be used provided the control panel is located in the office of the administrator.
- (9) The requirements for floors are:
- (a) All floors shall be of smooth, non-skid material and so constructed as to be easily cleanable;
 - (b) Scatter or throw rugs shall not be used; and
 - (c) All floors shall be kept in good repair.
- (10) Soil Utility Room. A separate room shall be provided and equipped for the cleaning and sanitizing of bed pans and shall have handwashing facilities.
- (11) Office. There shall be an area within the home large enough to accommodate normal administrative functions.
- (12) The requirements for laundry facilities are:
- (a) Laundry facilities shall be large enough to accommodate washers, dryers, and ironing equipment or work tables;
 - (b) These facilities shall be located where soiled linens will not be carried through the kitchen, dining, clean linen storage, living rooms or recreational areas; and
 - (c) A minimum of one residential type washer and dryer each shall be provided, even if all laundry services are contracted.
- (13) The requirements for outside premises are:
- (a) The outside grounds shall be maintained in a clean and safe condition;
 - (b) If the home has a fence around the premises, the fence shall not prevent residents from exiting or entering freely or be hazardous; and
 - (c) Outdoor walkways and drives shall be illuminated by no less than five foot-candles of light at ground level.
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- (14) Alternate methods, procedures, design criteria and functional variations from the physical environment requirements, because of extraordinary circumstances, new programs or unusual conditions, may be approved by the Division when the facility can effectively demonstrate to the Division's satisfaction that the intent of the physical environment requirements are met and the variation does not reduce the safety or operational effectiveness of the facility.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-153; S.L. 1999-0334;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. July 1, 1990; April 1, 1987; July 1, 1984; April 1, 1984;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000.

SECTION .1600 - FIRE SAFETY AND OTHER REQUIREMENTS

10 NCAC 42D .1605 OTHER REQUIREMENTS

- (a) The building and all fire safety, electrical, mechanical, and plumbing equipment shall be maintained in a safe and operating condition.
- (b) There shall be an approved heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions.
- (1) Built-in electric heaters, if used, shall be installed or protected so as to avoid burn hazards to residents and room furnishings.
- (2) Unvented fuel burning room heaters and portable electric heaters are prohibited.
- (3) Fireplaces, fireplace inserts and wood stoves shall be designed or installed so as to avoid a burn hazard to residents. Fireplace inserts and wood stoves shall be U.L. listed.
- (c) Air conditioning or at least one fan per resident bedroom and living and dining areas shall be provided when the temperature in the main center corridor exceeds 80 degrees F (26.7 degrees C).
- (d) The hot water system shall be of such size to provide an adequate supply of hot water to the kitchen, bathrooms, laundry, housekeeping closets and soil utility room. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).
- (e) All multi-story facilities shall be equipped with elevators.
- (f) In addition to the required emergency lighting, minimum lighting shall be as follows:
- (1) 30 foot-candle power for reading;
- (2) 10 foot-candle power for general lighting; and
- (3) 1 foot-candle power at the floor for corridors at night.
- (g) The spaces listed in this Paragraph shall be provided with exhaust ventilation at the rate of two cubic feet per minute per square foot. This requirement does not apply to facilities licensed before April 1, 1984, with adequate natural ventilation in these specified spaces:
- (1) soiled linen storage;
- (2) soil utility room;

- (3) bathrooms and toilet rooms;
- (4) housekeeping closets; and
- (5) laundry area.

- (h) Where required for staffing purposes, an electrically operated call system shall be provided connecting each resident bedroom to the live-in staff bedroom. The resident call switches shall be such that they can be activated with a single action and remain on until switched off by staff. The call switch shall be within reach of the resident lying on his bed.

History Note: Authority G.S. 131D-2; 143B-153; S.L. 1999-0334;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. July 1, 1990; April 1, 1987; April 1, 1984;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000.

SECTION .1800 - REMAINING POLICIES AND REGULATIONS

10 NCAC 42D .1804 MANAGEMENT OF MEDICATIONS

The rules stated in 10 NCAC 42C .3800 shall control for this Subchapter, except that:

- (1) The facility shall obtain the services of a licensed pharmacist or a prescribing practitioner for the provision of pharmaceutical care at least quarterly for residents or more frequently as determined by the Department based on the documentation of significant medication problems identified during monitoring visits or other investigations in which the safety of the residents may be at risk.
- (2) A facility licensed for 13 or more beds shall have a written agreement with the pharmacy provider for dispensing services and a licensed pharmacist or prescribing practitioner for pharmaceutical care services according to Rule 10 NCAC 42C .3809. The written agreement shall include a statement of the responsibility of each party.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-153; S.L. 1999-0334;
Eff. January 1, 1977;
Amended Eff. April 22, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. April 1, 1984;
Temporary Amendment Eff. December 1, 1999
Amended Eff. July 1, 2000.

SECTION .1900 - SPECIAL CARE UNITS FOR ALZHEIMER AND RELATED DISORDERS

10 NCAC 42D .1901 DEFINITIONS APPLICABLE TO SPECIAL CARE UNITS

The following definitions shall apply throughout this Section:

- (1) "Alzheimer's Disease" means a progressive, degenerative disease that attacks the brain and results in impaired memory, thinking and behavior. Characteristic symptoms of the disease include gradual memory loss, impaired judgment, disorientation,

personality change, difficulty in learning, and loss of language skills.

- (2) "Related disorders" means dementing or memory impairing conditions characterized by irreversible memory dysfunction.
- (3) "Special care unit for persons with Alzheimer's Disease or related disorders" means an entire facility or any section, wing or hallway within an adult care home separated by closed doors from the rest of the home, or a program provided by an adult care home, that is designated or advertised especially for special care of residents with Alzheimer's Disease or related disorders.
- (4) "Care coordinator" means a staff person in a special care unit who oversees resident care and coordinates, supervises and evaluates resident services to assure that each resident receives services appropriate to the individual's needs.

History Note: Authority G.S. 131D-2; 131D-4.5; 131D-4.6; 131D-8; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42D .1902 SPECIAL CARE UNIT DISCLOSURE

- (a) Only those facilities with units that meet the requirements of this Section may advertise, market or otherwise promote themselves as providing special care units for persons with Alzheimer's Disease or related disorders.
- (b) The facility shall disclose information about the special care unit according to G.S. 131D-8 and which addresses policies and procedures listed in Rule .1905 of this Section.

History Note: Authority G.S. 131D-2; 131D-4.5; 131D-4.6; 131D-8; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42D .1904 SPECIAL CARE UNIT BUILDING REQUIREMENTS

In addition to meeting all applicable building codes and licensure regulations for adult care homes, the special care unit shall meet the following building requirements:

- (1) Plans for new or renovated construction or conversion of existing building areas shall be submitted to the Construction Section of the Division of Facility Services for review and approval.
- (2) If the special care unit is a portion of a facility, it shall be separated from the rest of the building by closed doors.
- (3) Unit exit doors may be locked only if the locking devices meet the requirements outlined in the N.C. State Building Code for special locking devices.
- (4) Where exit doors are not locked, a system of security monitoring shall be provided.
- (5) The unit shall be located so that other residents, staff and visitors do not have to routinely pass through the unit to reach other areas of the building.
- (6) At a minimum the following service and storage areas shall be provided within the special care unit: staff work area, nourishment station for the preparation and

provision of snacks, lockable space for medication storage, and storage area for the residents' records.

- (7) Living and dining space shall be provided within the unit at a total rate of 30 square feet per resident and may be used as an activity area.
- (8) Direct access from the facility to a secured outside area shall be provided.
- (9) A toilet and hand lavatory shall be provided within the unit for every five residents.
- (10) A tub and shower for bathing of residents shall be provided within the unit.
- (11) Use of potentially distracting mechanical noises such as loud ice machines, window air conditioners, intercoms and alarm systems shall be minimized or avoided.

History Note: Authority G.S. 131D-2; 131D-4.5; 131D-4.6; 131D-8; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42D .1906 ADMISSION TO THE SPECIAL CARE UNIT

In addition to meeting all requirements specified in the rules of this Subchapter for the admission of residents to the home, the facility shall assure that the following requirements are met for admission to the special care unit:

- (1) A physician shall specify a diagnosis on the resident's FL-2 that meets the conditions of the specific group of residents to be served.
- (2) There shall be a documented pre-admission screening by the facility to evaluate the appropriateness of an individual's placement in the special care unit.
- (3) Family members seeking admission of a resident to a special care unit shall be provided disclosure information required in G.S. 131D-8 and any additional written information addressing policies and procedures listed in Rule .1905 of this Subchapter that is not included in G.S. 131D-8. This disclosure shall be documented in the resident's record.

History Note: Authority G.S. 131D-2; 131D-4.5; 131D-4.6; 131D-8; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42D .1908 SPECIAL CARE UNIT STAFFING

- (a) Staff shall be present in the unit at all times in sufficient number to meet the needs of the residents; but at no time shall there be less than one staff person, who meets the orientation and training requirements in Rule .1909 of this Section, for up to eight residents on first and second shifts and 1 hour of staff time for each additional resident; and one staff person for up to 10 residents on third shift and .8 hours of staff time for each additional resident.
- (b) There shall be a care coordinator on duty in the unit at least eight hours a day, five days a week. The care coordinator may be counted in the staffing required in Paragraph (a) of this Rule for units of 15 or fewer residents.
- (c) In units of 16 or more residents and any units that are freestanding facilities, there shall be a care coordinator as

required in Paragraph (b) of this Rule in addition to the staff required in Paragraph (a) of this Rule.

History Note: Authority G.S. 131D-2; 131D-4.5; 131D-4.6; 131D-7; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

SECTION .2000 - SPECIAL CARE UNITS FOR MENTAL HEALTH DISORDERS

10 NCAC 42D .2001 DEFINITIONS APPLICABLE TO SPECIAL CARE UNITS

The following definitions shall apply throughout this Section:

- (1) "Special care unit for persons with a mental health disability" means an entire facility or any section, wing or hallway within an adult care home separated by closed doors from the rest of the home a special care unit as defined in G.S. 131D-4.6, that is, "a wing or hallway within an adult care home, or a program provided by an adult care home," that is designated or advertised especially for special care of residents with a mental health disability.
- (2) "Care coordinator" means a staff person in a special care unit who oversees resident care and coordinates, supervises and evaluates resident services to assure that each resident receives services appropriate to the individual's needs.
- (3) "Mental health disability" means a lessened capacity to use self-control, judgment, and discretion in the conduct of an individual's affairs and social relations that is related to a diagnosed mental illness and which makes it necessary or advisable for the individual to be under treatment for the mental illness and to receive care, supervision, and guidance.

History Note: Authority G.S. 131D-2; 131D-4.5; 131D-4.6; 131D-8; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42D .2002 SPECIAL CARE UNIT DISCLOSURE

- (a) Only those facilities with units that meet the requirements of this Section may advertise or represent themselves to the public as providing special care for persons with a mental health disability.
- (b) The facility shall disclose information about the special care unit according to G.S. 131D-8 and which addresses policies and procedures listed in Rule .2005 of this Section.

History Note: Authority G.S. 131D-2; 131D-4.5; 131D-4.6; 131D-8; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42D .2004 SPECIAL CARE UNIT BUILDING REQUIREMENTS

In addition to meeting all applicable building codes and licensure regulations for adult care homes, the special care unit shall meet the following building requirements:

- (1) Plans for new or renovated construction or conversion of existing building areas shall be submitted to the Construction Section of the Division of Facility Services for review and approval. No special care unit for residents with a mental health disability shall serve more than 12 residents. A facility shall have no more than one special care unit for residents with a mental health disability.
- (2) If the special care unit is a portion of a facility, it shall be separated from the rest of the building by closed doors.
- (3) Unit exit doors may be locked only if the locking devices meet the requirements outlined in the N.C. State Building Code for special locking devices.
- (4) Where exit doors are not locked, a system of security monitoring shall be provided.
- (5) The unit shall be located so that other residents, staff and visitors do not have to routinely pass through the unit to reach other areas of the building.
- (6) At a minimum the following service areas shall be provided within the special care unit: staff work area, nourishment station for the preparation and provision of snacks, and lockable space for medication storage.
- (7) Living and dining space shall be provided within the unit at a total rate of 30 square feet per resident and may be used as an activity area.
- (8) Direct access to an outside area shall be provided.
- (9) A toilet and hand lavatory shall be provided within the unit for every five residents.
- (10) A tub and shower for residents' bathing shall be provided within the unit.

History Note: Authority G.S. 131D-2; 131D-4.5; 131D-4.6; 131D-7; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

10 NCAC 42D .2006 ADMISSION TO THE SPECIAL CARE UNIT

In addition to meeting all requirements specified in the rules of this Subchapter for the admission of residents to the home, the facility shall assure that the following requirements are met for admission to the special care unit:

- (1) A psychiatrist shall specify a diagnosis on the resident's FL-2 that meets the conditions of the specific group of residents to be served.
- (2) There shall be a documented pre-admission screening by the facility to evaluate the appropriateness of an individual's placement in the special care unit.
- (3) Any person seeking to be admitted to a special care unit shall be provided disclosure information required in G.S. 131D-7 and any additional written information addressing policies and procedures listed in Rule .2005 of this Subchapter that is not included in G.S. 131D-8. This disclosure shall also be provided to family members of the person seeking admission upon request of the person or the family of the person and this disclosure shall be documented in the resident's record.
- (4) There shall be documented evidence that for any individual who is to be admitted to a special care unit for mental health disabilities, the facility has made

arrangements with an area mental health program for evaluation and case management. Arrangements for treatment of the individual's mental illness and for any other needed mental health services shall be made in accordance with the signed procedures required by Rule .2005(3)(c) of this Section.

History Note: Authority G.S. 131D-2; 131D-4.5; 131D-4.6; 131D-8; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000.

SUBCHAPTER 42E - ADULT DAY CARE STANDARDS FOR CERTIFICATION

SECTION .1500 - SPECIAL CARE FOR PERSONS WITH ALZHEIMER'S DISEASE OR OTHER DEMENTIAS, MENTAL HEALTH DISABILITIES OR OTHER SPECIAL NEEDS DISEASES OR CONDITIONS IN ADULT DAY CARE CENTERS

10 NCAC 42E .1501 DISCLOSURE

The rules of this Chapter are established to govern the disclosure requirements for adult day care programs that provide or promote themselves as providing special care services for persons with Alzheimer's or other dementias, mental health disabilities, or other special needs diseases or conditions. Only those centers that meet these requirements may advertise or represent themselves as providing special care services as defined in Rule 10 NCAC 42E .0801.

History Note: Authority G.S. 131D-6; 143B-153; S.L. 1999-334; Temporary Adoption Eff. September 28, 1999; Eff. July 17, 2000.

10 NCAC 42E .1504 ENROLLMENT – SPECIAL CARE SERVICES

In addition to meeting enrollment policies and procedures requirements in Rule .1101(a) of this Subchapter, an adult day care center or home shall assure the following requirements are met for participants who are enrolled for special care services:

- (1) Disclosure information shall be provided to an individual or the responsible party of an individual seeking enrollment in a center or home providing special care services. The disclosure information shall be written and address policies and procedures listed in Rule .1502 of this Subchapter.
- (2) The participant's medical examination report shall specify a diagnosis, disability or condition consistent with the special care service offered by the program.
- (3) Any individual with a developmental disability being considered for adult day services programming enrollment or discharge must proceed through the Developmental Disabilities Single Portal of Entry and Exit process pursuant to G.S. 122C-132.1 and 10 NCAC 16A .0400.
- (4) A participant transferring from standard day care services to special care services must meet the criteria for that special care service. Family or responsible persons shall agree to the transfer decision.

History Note: Authority G.S. 131D-6; 143B-153; S.L. 1999-334; Eff. July 17, 2000.

10 NCAC 42E .1508 REQUIREMENTS FOR SPECIAL CARE SERVICES UNIT

In addition to meeting all other special care services requirements, an adult day care center with a special care services unit shall assure the following:

- (1) An area designated as a special care services unit located within a center that also serves other participants, shall have the unit providing special care separated by closed doors and located so that other participants, visitors or staff do not have to pass through the section to reach other areas of the building.
- (2) A special care services unit separated by closed doors from the rest of the adult day center shall meet equipment and furnishing requirements as stated in Rule .1003(a)(1),(2),(3) and (b) of this Subchapter.
- (3) At least one toilet shall be located in the unit.
- (4) An area designated as a special care services unit shall provide space on the unit for each participant as stated in Rule .1001(d)(1) of this Subchapter.
- (5) An area designated as a special care services unit within an adult day center shall meet existing adult day care staffing ratio requirements as stated in Rule .0905(c)(2) of this Subchapter.

History Note: Authority G.S. 131D-6; 143B-153; S.L. 1999-334; Eff. July 17, 2000.

SUBCHAPTER 42Z - ADULT DAY HEALTH STANDARDS FOR CERTIFICATION

SECTION .1000 - SPECIAL CARE FOR PERSONS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS, MENTAL HEALTH DISABILITIES, OR OTHER SPECIAL NEEDS DISEASES OR CONDITIONS IN ADULT DAY CARE CENTERS

10 NCAC 42Z .1002 THE FACILITY – SPECIAL CARE SERVICES

In addition to meeting the general requirements for facility grounds as set forth in 10 NCAC 42E .1001(a), an adult day health home or center or combination center providing special care services shall assure that participants receiving this service have access to an outside area. This area shall be secured or supervised when participants have a physical or cognitive impairment and their safety and well-being would otherwise be compromised.

History Note: Authority G.S. 131D-6; 143B-153; S.L. 1999-334; Eff. July 17, 2000.

10 NCAC 42Z .1007 REQUIREMENTS FOR SPECIAL CARE SERVICES UNIT

(a) In addition to meeting all other special care services requirements, an adult day health center or combination center with a special care services unit shall assure the following:

- (1) A special care services unit separated by closed doors from the rest of the center shall meet equipment and furnishing requirements set forth in 10 NCAC 42E .1003(a)(1),(2),(3) and (b).
- (2) An area designated as a special care services unit shall provide space on the unit for each participant as stated in Rule .0701(b)(1)(A),(B) of this Subchapter.
- (3) An area designated as a special care services unit within the center shall meet existing adult day health staffing ratio requirements as stated in Rule .0603(b) and (c) of this Subchapter.

(b) The Requirements for Special Care Services Unit standards as set forth in 10 NCAC 42E .1508(1),(3) shall control for this Subchapter.

*History Note: Authority G.S. 131D-6; 143B-153; S.L. 1999-334;
Eff. July 17, 2000.*

CHAPTER 43 - SERVICES PROGRAM PLAN

SUBCHAPTER 43L - SOCIAL SERVICES BLOCK GRANT

SECTION .0400 - ADMINISTRATIVE REQUIREMENTS

10 NCAC 43L .0401 FISCAL MANAGEMENT

The fiscal requirements for the Social Services Block Grant (SSBG) are as follows:

- (1) Allocation of Funds. Any allocation of SSBG Funds made directly to Department of Health and Human Services divisions or public or private agencies by the Department of Health and Human Services is based on the following criteria:
 - (a) identified need for the service program as specified in Rule .0201 of this Subchapter;
 - (b) established priorities of the department as specified in Rules .0201 and .0207 of this Subchapter;
 - (c) allowability of the program under federal and state rules and regulations as specified in Rule .0206 of this Subchapter and as established by the General Assembly;
 - (d) assessed or potential performance of the service program as specified in Rule .0206 of this Subchapter;
 - (e) resource utilization as specified in this Rule and as established by the General Assembly; and
 - (f) availability of funds necessary to secure federal financial participation as specified in this Rule and as established in federal regulations and by the General Assembly.
- (2) The amount of SSBG funds allocated by the Department of Health and Human Services through the Division of Social Services to each county department of social services will be based on the average of the following two factors applied to the total amount of SSBG funds available for county departments of social services:

- (a) the percentage of the statewide population residing within each county; and
 - (b) the percentage of the statewide unduplicated count of SSI recipients, food stamp recipients, TANF recipients and medicaid eligible individuals residing in each county.
- (3) Matching Rates for Financial Participation. The following matching rates apply to financial participation in services funded by the SSBG:
- (a) 75 percent financial participation - financial participation for provision of any service listed in Rule .0201 of this Subchapter is available at a rate of 75 percent of the cost of providing the service;
 - (b) 87-1/2 percent financial participation - financial participation for provision of in-home services - day care services for adults, preparation and delivery of meals, housing and home improvement services, and in-home aide services (levels I through IV) -- is available at a rate of 87-1/2 percent of the cost of providing the service;
 - (c) 90 percent financial participation - financial participation for provision of family planning services and the family planning component of health support services is available at a rate of 90 percent of the cost of providing the service;
 - (d) 100 percent financial participation - financial participation for provision of child day care and developmental day services for children is available at a rate of 100 percent of the cost of services for those child day care services reimbursed from an agency's designated 100 percent day care allocation.
- (4) Transferred Funds. If funds from the Temporary Assistance for Needy Families (TANF) Block Grant are transferred to the SSBG for services previously funded by SSBG, the matching rates outlined in Item (3) of this Rule shall apply. If funds from TANF are transferred to SSBG for services not previously funded by SSBG, the matching rates as outlined in Item (3) of this Rule shall not apply.

*History Note: Authority G.S. 143B-153;
Eff. July 1, 1983;
Amended Eff. December 1, 1991; July 1, 1990; December 1, 1983;
Temporary Amendment Eff. November 10, 1999;
Amended Eff. July 17, 2000.*

TITLE 13 - DEPARTMENT OF LABOR

SUBCHAPTER 7F - STANDARDS

SECTION .0200 - CONSTRUCTION STANDARDS

13 NCAC 07F .0201 CONSTRUCTION

The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926 promulgated as of January 20, 2000, and exclusive of subsequent amendments, are incorporated by reference except as follows:

- (1) Subpart C -- General Safety and Health Provisions -- Personal protective equipment, §1926.28(a) is amended to read as follows: "(a) The employer is responsible for requiring the wearing of appropriate personal protective equipment (as described in §1926.28) in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees."
- (2) Subpart D -- Occupational Health and Environmental Controls:
 - (a) Addition to 29 CFR 1926.54, Nonionizing radiation, after subpart (a) to read:

"(a1) This standard shall apply to all direct or reflected laser equipment except unmodified Class I equipment maintained in accordance with the manufacturer's recommendations. Class I equipment is defined as intrinsically safe lasers having less than 0.001 milliwatt power and lasers which cannot create eye damage if viewed accidentally or which present no direct ocular hazard, diffuse ocular hazard or fire hazards."
 - (b) Incorporation by reference of modified final rule for 29 CFR 1926.59, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 except that 1926.59(b)(6)(ii) is amended to read:

"(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"
- (3) Subpart E --Personal Protective and Life Saving Equipment -- addition of (g) to 1926.104 *Safety belts, lifelines, and lanyards*, as follows:

"(g) Snaphooks shall be a locking type designed and used to prevent disengagement of the snaphook keeper by the connected member. Locking type snaphooks have self-closing, self-locking keepers which remain closed and locked until unlocked and pressed open for connection or disconnection."
- (4) Subpart U--Blasting and Use of Explosives -- additions and amendments to 29 CFR 1926.900 *General Provisions, through 1926.914 Definitions applicable to this subpart, as follows:*

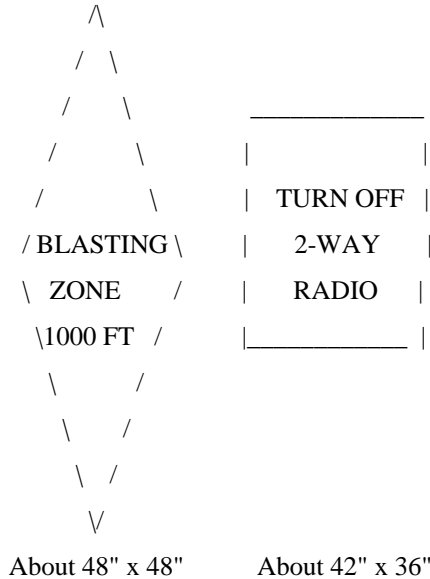
"Section 1926.900 General provisions:

 - (a) The employer shall permit only persons qualified pursuant to §1926.901 to handle and use explosives. A blaster shall be in charge of each blasting operation; hereafter, referred to as the Blaster-in-Charge.
 - (b) Smoking, firearms, sparks, open flame or heat producing devices shall be prohibited where explosives are being stored, handled, transported or used. Exception: This does not apply to devices specifically designed to initiate detonation.
 - (c) See 1926.901(b).
 - (d) All explosives shall be accounted for at all times. Explosives not being used and not attended shall be kept in a magazine or container that meets the U.S. Bureau of Alcohol, Tobacco and Firearms (hereafter, ATF) storage and access requirements contained in 27 CFR Part 55, which is incorporated herein by reference, including any subsequent amendments and editions. Each employer shall maintain an inventory and use record of all explosives in that employer's possession. The employer, or employer authorized person, shall comply with all applicable local, State and federal laws and regulations requiring notification of any loss, theft, or unauthorized entry into a magazine or container.
 - (g) Original containers, ATF Type 2, Type 3, Type 4 or Type 5 magazines or Institute of Makers of Explosives (hereafter, IME) - 22 containers, shall be used for taking detonators and other explosives from storage magazines to the blast site.
 - (h) In proximity to people, a structure, railway, highway or any other installation, the blaster shall take additional precautions to control the throw of fragments and to prevent bodily injury to employees and people not working directly on the blasting operation. Such additional precautions shall be taken in the loading, delaying, initiation and confinement of each blast and shall include confinement with mats or with mats and other methods.
 - (i) All blast site employees shall follow the directions of the Blaster-in-Charge. All blast site employees shall use and adhere to every precaution to ensure employee safety including, but not limited to, visual and audible warning signals, flags, or barricades.
 - (k) Precautions shall be taken to prevent accidental discharge of electric detonators from current induced by radar, radio transmitters including 2-way radios and mobile telephones, lightning, adjacent power lines, dust storms, or other sources of extraneous electricity. These precautions shall include:
 - (1) See Section 1926.906(a) and (b).
 - (2) At the approach and progress of an electric storm, blasting operations shall be suspended and personnel removed to an area safe from concussion (shock wave), flying material, or gases from an explosion.
 - (3) (i) The prominent display of adequate signs, warning against the use of mobile radio transmitters, (e.g., telephones and 2-way radios) on all roads within 1,000 feet of electric blasting operations. If adherence to the 1,000-foot distance would create an operational handicap, then a competent person (as defined in 29 CFR 1926 Subparts L and P) shall be consulted to evaluate the particular

situation, and alternative provisions may be made which are designed to prevent any premature firing of electric detonators. A description of any such alternatives shall be reduced to writing and shall be certified by the competent person consulted as meeting the purposes of this subdivision. The description shall be maintained at the construction during

the duration of the work, and shall be available for inspection by representatives of the Commissioner of Labor.

(ii) Examples of signs which would meet the requirements of paragraphs (i) and (k)(3) of this section are the following:



- (4) Ensuring that mobile transmitters including telephones and 2-way radios which are less than 100 feet away from electric detonators, in other than original containers, shall be de-energized and effectively prevented from operating, (e.g., locked);
- (5) The Blaster-in-Charge shall comply with the recommendations of IME with regard to blasting in the vicinity of radio transmitters as stipulated in Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commerical Electric Detonators (Blasting Caps), IME Safety Library Publication No. 20, 2000, which is incorporated herein by reference, including any subsequent amendments and editions.
- (l) Empty boxes and associated paper and fiber packing materials, which have previously contained explosives, shall not be used for any purpose, other than that associated with the blasting operation. Such boxes, paper and packing materials shall be disposed of in a manner that prevents reuse and does not constitute a hazard, i.e., burned. The method used for disposal shall comply with all applicable local, State or federal laws.
- (n) Delivery and issue of explosives shall only be made by and to authorized persons (as defined in 27 CFR Part 55) and into magazines or temporary storage or handling areas that meet the ATF storage requirements contained in 27 CFR Part 55.
- (o) Blasting operations in the proximity of overhead power lines, communication lines, utility services, or other services and structures shall not commence until the operators or owners have been notified and measures for safe control have been taken.
- (q) All loading and firing shall be directed and supervised by the Blaster-in-Charge.
- (r) All blasts shall be fired under the control of a blaster, with an initiation system in accordance with manufacturer's recommendations. All blasts shall be fired in accordance with the manufacturer's recommendations.
- (s) Buildings used for the mixing of blasting agents or water-based explosives shall conform to the requirements of this section.
- (3) All fuel oil storage facilities shall be separated from the mixing plant and located in such a manner that in case of tank rupture, the oil will be contained and will not drain toward the mixing plant building.
- (4) The building shall be adequately ventilated to prevent explosive or hazardous substance hazards.
- (5) Heating units may be used in the building if they do not depend on combustion processes, and are properly designed and located to prevent explosive or other hazards. All direct sources of heat shall be provided exclusively from units located outside the mixing building.
- (6) All internal-combustion engines used for electric power generation shall be located outside the mixing plant building, or shall be isolated by a firewall and shall be properly

ventilated to prevent explosive or exhaust gas hazards to employees. The exhaust systems on all such engines shall be located so any heat or spark generated or emitted cannot be a hazard to any materials in or adjacent to the plant.

- (t) See .900(s).
 - (1) See .900(s)(1).
 - (2) See .900(s)(2).
 - (3) See .900(s)(3).
 - (4) See .900(s)(4).
 - (5) See .900(s)(5).
 - (6) See .900(s)(6).
- (u) To guard against unauthorized entry or initiation of a blast, a blast site shall be attended if loading is suspended or loaded holes are awaiting firing. Additionally, the blast site shall be barricaded, posted, and flagged as necessary to prevent unauthorized access.
- (v) No one shall carry explosives or explosives detonating materials (e.g., blasting caps, detonators, fuse, primers) of any kind on his or her person. This does not prohibit hand-carrying or passing such materials when a hole is being loaded."

"§ 1926.901 Blaster qualifications:

- (a) Blasters shall be able to understand and give written and oral orders.
- (b) Blasters and others authorized to handle or transport explosive materials or conduct blast site activities shall be in sufficiently good physical condition to perform the work safely and not be addicted to, or under the influence of, narcotics, intoxicants, or similar types of drugs.
- (c) Blasters shall be qualified, by reason of training, knowledge, or experience, in the field of transporting, storing, handling, and use of explosives, and have a working knowledge of State, federal and local laws and regulations which pertain to explosives.
- (d) Blasters shall be required by the employer to furnish evidence satisfactory to the employer of competency in handling explosives and performing in a safe manner the type of blasting that will be required.
- (e) Blasters shall be knowledgeable in the use of each type of blasting method used.
- (f) Pursuant to 29 CFR 1926.21(b), the employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to the employee's work and work environment."

"Section 1926.902 Surface transportation of explosives:

- (a) Surface transportation of explosives and blasting agents shall be in accordance with applicable U.S. Department of Transportation (hereafter, DOT) regulations. Where DOT regulations do not normally apply (e.g., off-road vehicles), compliance shall be in accordance with either the directly related DOT regulation or §1926.902(b)

through §1926.902(1), as applicable. Where DOT regulations do not exist, §1926.902(b) through §1926.902(l) apply.

- (b) Motor vehicles or conveyances transporting explosives shall only be driven by, and be in the charge of, a licensed driver. The driver shall be familiar with the local, State, and Federal regulations governing the transportation of explosives.
- (d) Explosives, blasting agents, and blasting supplies shall not be transported with other materials or cargoes. Blasting caps and detonators shall not be transported in the same vehicle with other explosives unless the provisions of the IME Safety Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," which is incorporated herein by reference including subsequent amendments and editions, are followed.
- (f) When explosives are transported by a vehicle with an open body, an ATF Type 2, ATF Type 3, IME 22 or original manufacturer's container shall be securely attached to the vehicle to contain the cargo.
- (h) Every motor vehicle or conveyance used for transporting explosives shall be marked or placarded on both sides, the front, and the rear with the word "Explosives" in red letters, not less than 4 inches in height, on white background. The motor vehicle or conveyance may also display, in such a manner that it will be readily visible from all directions, a red flag 18 inches by 30 inches, with the word "Explosives" painted, stamped, or sewed thereon, in white letters, at least 6 inches in height.
- (i) Each vehicle used for transportation of explosives shall be equipped with a fully charged fire extinguisher, in good condition (as described in 29 CFR 1926.150). An extinguisher, approved by a nationally recognized testing laboratory, of not less than 10-ABC rating will meet the minimum requirement. The driver shall be trained in the use of the extinguisher on the vehicle.
- (j) Motor vehicles or conveyances carrying explosives or blasting agents, shall not be taken inside a garage or shop for repairs or servicing.
- (l) In order to prevent explosives hazards, explosive materials shall be transported to the storage or blast site without delay."

"Section 1926.903 Underground transportation of explosives:

- (a) In order to prevent explosives hazards, all explosives or blasting agents in transit underground shall be taken to the place of use or storage without delay.
- (b) The quantity of explosives or blasting agents taken to an underground loading area shall not exceed the amount estimated by the Blaster-in-Charge to be necessary for the blast.
- (h) Vehicles containing explosive material shall be occupied only by persons necessary for handling the explosive material while in transit.

- (m) Any powder car or conveyance used for transporting explosives or blasting agents shall bear a reflecting sign on each side with the word "Explosives". The sign's letters shall be a minimum of 4 inches in height and shall be on a background of sharply contrasting color.
- (n) Compartments for transporting detonators and explosives in the same car or conveyance shall meet IME-22 container specifications or shall be physically separated by a distance of 24 inches or by a solid partition at least 6 inches thick.
- (q) Explosives or blasting agents, not in original containers, shall be placed in a nonconductive, closed container when transported manually."

"Section 1926.904 Storage of explosives and blasting agents:

- (a) Explosives and blasting agents shall be stored in magazines or containers that meet the applicable provisions of the regulations contained in 27 CFR Part 55, Commerce in Explosives.
- (b) Blasting caps and other detonators shall not be stored in the same magazine or container with other explosives or blasting agents. Surplus primers shall be disassembled and components stored separately.
- (c) Smoking and open flames shall not be permitted within 50 feet of explosives, detonators, or blasting agents storage.
- (d) No explosives or blasting agents shall be permanently stored in any underground operation until the operation has at least two modes of exit.
- (e) Permanent underground explosive materials storage shall be at least 300 feet from any shaft, adit, or active underground working area.
- (f) Permanent underground explosive materials storage containing detonators shall not be located closer than 50 feet to any storage containing other explosives or blasting agents."

"Section 1926.905 Loading of explosives or blasting agents:

- (a) Procedures that permit safe and efficient loading shall be established by the Blaster-in-Charge or the employer before loading is started.
- (b) Drill holes shall be sufficiently large to admit easy insertion of the cartridges of explosives.
- (c) Tamping shall be done only with non-metal, non-sparking tamping poles without exposed metal parts, except that nonsparking metal connectors may be used for jointed poles. Violent tamping shall be prohibited. The primer shall never be tamped.
- (d) No holes shall be loaded except those to be fired in the next round of blasting. After loading, remaining explosives and detonators shall be promptly moved to a safe location and attended or stored pursuant to ATF storage requirements contained in 27 CFR Part 55.
- (e) Drilling shall not be started until all visible butts of old holes are examined for unexploded charges, and if any are found, they shall be disposed of in accordance with §1926.911, before work proceeds.

- (h) Machines, personnel and tools not required for the blasting operation shall be removed from the blast site before explosives are removed from storage or transportation vehicles. Blasting operation related vehicles or equipment shall not be driven over, or near enough to, explosive material or initiation systems to come into contact with the explosive material or initiation systems. Equipment not needed for the final blast shall not be operated within 50 feet of loaded holes.
- (i) During loading the only activity permitted within the blast site shall be that required to successfully and safely load the hole.
- (j) Powerlines and portable electric cables for equipment being used shall be kept a safe distance from explosives or blasting agents. The blaster shall assure that cables in the proximity of loaded holes are deenergized and locked out. Additionally, when using electric detonators, the provisions of §1926.906(b) apply.
- (k) Holes shall be checked prior to loading to determine depth and conditions. Only those holes determined by the Blaster-in-Charge to be satisfactory shall be loaded.
- (l) When loading a line of holes with more than one loading crew, the crews shall be separated by practical distance consistent with safe and efficient operation and supervision of crews.
- (m) No explosive shall be loaded or used underground in the presence of combustible gases or combustible dusts, unless the work is performed in accordance with the Mine Safety and Health Administration (MSHA) standards at 30 CFR 75 related to such environments, which are incorporated herein by reference, including subsequent amendments and editions, and unless the explosives have been approved as permissible explosives for use in gassy or dusty environments by MSHA.
- (n) No explosives other than those in IME Fume Class 1 shall be used. However, explosives complying with the requirements of IME Fume Class 2 and IME Fume Class 3 may be used if adequate ventilation has been provided to prevent explosive or hazardous substance hazards to employees.
- (q) A bore hole shall never be sprung when there is a risk of a premature detonation of a loaded hole.
- (s) Areas in which loading is suspended or loaded holes are awaiting firing shall be attended, and barricaded, posted, or flagged as needed to guard against unauthorized entry or initiation.
- (t) The blaster shall keep an accurate, up-to-date record of explosives, blasting agents, and blasting supplies used in each blast and shall keep an accurate running inventory of all explosives and blasting agents in the blaster's custody.
- (u) When loading blasting agents pneumatically over electric detonators, semiconductive delivery hose shall be used and the equipment shall be bonded and grounded.

- (v) Primers shall be made up just before their time of use and at the point of use.
 - (w) Holes shall not be drilled in a manner that disturbs or intersects a loaded hole."
- "Section 1926.906 Initiation of explosive charges-electric blasting:
- (a) Electric detonators shall not be used where sources of extraneous electricity make the use of electric detonators dangerous. Except during testing, electronic detonator leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.
 - (b) If the presence of extraneous electricity is possible, the blaster shall conduct a stray current survey. No holes shall be loaded using electric detonators until the danger of extraneous electricity is eliminated.
 - (c) In any single blast using electric detonators, all detonators shall be of the same style or function, and of the same manufacture.
 - (d) Electric initiation shall be carried out by using blasting machines or power circuits in accordance with the manufacturer's recommendations.
 - (e) When firing a circuit of electric detonators, an adequate quantity of delivered current must be available, in accordance with the manufacturer's recommendations.
 - (h) When firing electrically, the insulation on all firing lines shall be in good condition and shall be adequate to prevent voltage leaks.
 - (i) A power circuit used for firing electric detonators shall not be grounded.
 - (k) In underground operations there shall be a "lightning" gap of at least 15 feet in the firing system ahead of the main firing switch; that is, between this switch and the source of power. This gap shall be bridged by a flexible jumper cord just before firing the blast.
 - (n) When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric detonators used.
 - (o) The number of electric detonators connected to a blasting machine shall not be in excess of its rated capacity. A series circuit shall contain no more detonators than the limits recommended by the manufacturer of the electric detonators in use.
 - (p) A blaster shall be in charge of the blasting machines.
 - (q) A blaster shall test blasting circuits for:
 - (1) Continuity of electric detonator in the blast hole prior to stemming and connection of the blasting line.
 - (2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.
 - (3) Continuity of blasting lines prior to the connection of electric detonator series.
 - (4) Total blasting circuit resistance prior to connecting to the power source. A blasting galvanometer, or other instrument specifically

designed for testing blasting circuits, shall be used to conduct these tests.

- (r) Whenever the possibility exists that a leading line or blasting wire might be thrown over a live powerline by the force of an explosion, the total length of wires shall be kept too short to hit the lines, or the wires shall be securely anchored to the ground. If neither of these requirements can be satisfied, a nonelectric system shall be used.
- (s) The blaster shall assure that all connections are made from the bore hole back to the source of firing current, and that the leading wires remain shorted, except during testing, and not connected to the blasting machine or other source of current until the blast is to be fired. Only the blaster, or a qualified person (as described in 1926.900(a) and 1926.901) under the direct control of the blaster, shall make lead wire connections or fire the shot."

"Section 1926.907 Use of safety fuse:

- (a) A safety fuse that has been hammered or injured in any way shall not be used.
- (d) Only a cap crimper shall be used for attaching blasting caps to safety fuse. Crimpers shall be kept in good repair and accessible for use.
- (h) Safety fuses of at least the following minimum lengths shall be used:
 - (1) At least a 36-inch length for 40-second-per-foot safety fuse and
 - (2) At least a 48-inch length for 30-second-per-foot safety fuse.
- (i) At least two people shall be present when multiple cap and fuse blasting is done by hand lighting methods."

"Section 1926.908 Use of detonating cord and shock tube:

- (a) A detonating cord consistent with the type and physical condition of the bore hole and stemming and the type of explosives shall be used.
- (b) Detonating cord shall be handled and used in the same manner as other explosives.
- (d) Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking-up. Shock tube shall never be pulled, stretched, kinked, twisted, mashed or abused in any way which could cause the tube to break or otherwise malfunction.
- (e) Detonating cord connections, shock tube connections and splices shall be competent and positive in accordance with the manufacturer's recommendations. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry. Down-the-hole shock tube splices are prohibited.
- (g) All detonating cord connections, shock tube connections and splices shall be inspected before firing the blast.
- (h) When detonating cord or shock tube millisecond-delay connectors or short-interval-delay electric detonators are used with detonating cord or shock tube, the practice

shall conform strictly to the manufacturer's recommendations.

- (i) When connecting a detonator to detonating cord or shock tube, the detonator shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the detonator containing the explosive charge pointed in the direction in which the detonation is to proceed.
- (k) Shock tube shall not be connected to the initiation device until the blast is to be fired.

"Section 1926.909 Firing the blast:

- (a) The Blaster-in-Charge shall establish a code of blasting signals and all blast site employees shall familiarize themselves with and conform to the code. As a minimum, the code shall:
 - (1) contain audible pre-blast and audible all clear signals, and
 - (2) contain an emergency method for guards, flagmen, or other authorized employees to signal "do not fire", and
 - (3) prohibit sounding of the all clear signal until the blaster has checked the blast site for misfires. Table U-1 is an example of a code of blasting signals that would meet these requirements. Further, the Blaster-in-Charge shall require the placement of Danger signs and posting of the blasting signals when personnel not associated with the blasting operation are within the blast area.
- (b) Before a blast is fired, the Blaster-in-Charge shall make certain that all surplus explosives are in an area meeting the ATF explosive storage requirements contained in 27 CFR 55 and that all persons are at a safe distance, or under sufficient cover.
- (c) Flagmen shall be safely stationed on highways which pass through the blast area so as to stop traffic during blasting.
- (d) The Blaster-in-Charge shall fix the time of blasting.
- (e) Before firing an underground blast, warning shall be given, and all possible entries into the blast area, and any entrances to any working place where a drift, raise, or other opening is about to hole through, shall be carefully guarded to prevent entry into the area. The Blaster-in-Charge shall make sure that all surplus employees have been removed from the blast area and that all personnel are out of the blast area."

"Section 1926.910 Inspection after blasting:

- (b) Sufficient time shall be allowed, not less than 15 minutes in tunnels, for the smoke and fumes to dissipate before returning to the blast site. Subsequently, the blaster shall inspect the blast site and surrounding rubble for signs of misfires. If a misfire is found, employee access to the blast area shall be controlled pursuant to §1926.911. Where fumes, fire, or dust are a potential hazard (e.g., in tunnels), the muck pile shall be wetted down prior to general employees returning to the blast site."

"Section 1926.911 Misfires:

- (a) If a misfire is found, the Blaster-in-Charge shall invoke sufficient safeguards to exclude all employees from the potential blast area.
- (b) No work shall be done except that necessary to remove the hazard of the misfire. Only those employees necessary to do the work shall enter the potential blast area. Only the Blaster-in-Charge, and the absolute minimum number of competent, personnel (as defined in 29 CFR 1926 Subparts Land P), necessary to assess the situation shall approach the hole to inspect the misfire.
- (c) The Blaster-in-Charge shall determine the safest steps for removing the hazard of the misfire. During development and implementation of these steps, the Blaster-in-Charge shall comply with the manufacturer's recommendations. Further, the guidelines of the Safety in the Transportation, Storage, Handling and Use of Explosive Materials, IME Safety Library Publication No. 17, which is incorporated herein by reference, including any subsequent amendments and editions, shall be utilized.
- (d) If there are any misfires while using safety fuse and blasting cap, all employees shall remain out of the potential blast area for at least 30 minutes. If electric detonators, shock tube, gas tube or detonating cord systems or materials were used and a misfire occurred, the waiting period may be reduced to 15 minutes. In either case, the Blaster-in-Charge shall assess the circumstances and invoke a safe waiting period before allowing any personnel to enter the potential blast area. All lines shall be carefully traced and a search made for unexploded charges.
- (e) No drilling, digging, or picking shall be permitted until all misfires have been detonated or the Blaster-in-Charge approves the work."

"Section 1926.912 Underwater blasting:

- (a) In underwater blasting, no shot shall be fired without the approval of the Blaster-in-Charge.
- (c) Only water-resistant detonators and detonating cords shall be used for all marine blasting. Loading shall be done through a nonsparking loading tube when tube is necessary.
- (d) No blast shall be fired while any vessel under way is closer than 1,500 feet to the blast site. Those on board vessels or craft moored or anchored within 1,500 feet shall be notified before a blast is fired. Note: The warning signals and personnel safety provisions of §1926.909 also apply.
- (g) The storage and handling of explosives aboard vessels used in underwater blasting operations shall be in accordance with the provisions of this Standard on handling and storing explosives.
- (h) Prior to firing the blast, the blaster shall determine the method(s) that will be used for detecting misfires and take preparatory steps (e.g., noting obvious indications of misfire, attaching float(s) that will be released by the firing, staging underwater cameras, or other appropriate means).

Misfires shall be handled in accordance with the requirements of §1926.911."

"Section 1926.913 Blasting in excavation work under compressed air:

- (b) When detonators or explosives are brought into an air lock, the only employees who shall be permitted to enter the airlock are the powderman, blaster, lock tender and the employees necessary for carrying the detonators or explosives. No other material, supplies, or equipment shall be locked through with the explosives.
- (d) See 1926.900(a) and 1926.901.
- (f) The explosives suitable for use in wet holes shall be water-resistant and shall be IME Fume Class 1."

"Section 1926.914 Definitions applicable to this subpart:

- (a) "American Table of Distances" (also known as Quantity Distance Tables)-- the current edition of the American Table of Distances for Storage of Explosives approved by IME.
- (b) "Approved storage facility"-A facility for the storage of explosive materials conforming to the requirements of this part and covered by a license or permit issued under authority of the ATF. (See 27 CFR Part 55.)
- (c) "Blast area" - The area within the influence of flying debris, gases, and concussion from an explosion that may cause injury to property or persons.
- (e) "Blasting agent" - A blasting agent is a mixture consisting of a fuel and oxidizer used for blasting where the finished (mixed) product cannot be detonated with a No. 8 test blasting cap when confined.
- (j) "Detonator"- Blasting caps, electric blasting caps, electric delay blasting caps, and non-electric delay blasting caps.
- (k) "Electric detonator" - A detonator designed for and capable of detonation by means of an electric current.
- (l) "Electric blasting circuitry"
 - (1) Bus wire. An expendable wire, used in parallel or series, in parallel circuits, to which are connected the leg wires of electric detonators.
 - (2) Connecting wire. An insulated expendable wire used between electric detonators and the leading wires or between the bus wire and the leading wires.
 - (3) Lead wire. An insulated wire used between the electric power source and the electric detonator circuit.
 - (4) Permanent firing line. A permanently mounted insulated wire used between the electric power source and the electric detonator circuit.
- (m) "Electric delay detonators" - Detonators designed to detonate at a predetermined period of time after energy is applied to the ignition system.
- (n) "Explosives"

- (1) Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat, unless such compound, mixture or device is otherwise specifically classified by the U.S. Department of Transportation (USDOT).
- (2) Any material designated as a Class 1 Explosive by the USDOT. Under the USDOT classification system, Class 1 materials are divided into the following six divisions:
 - Division 1.1 - Mass exploding (Formerly Class A)
 - Division 1.2 - Projection hazard (Formerly Class A or B)
 - Division 1.3 - Fire hazard, minor blast or projection hazard (Formerly Class B)
 - Division 1.4 - Minor explosion hazard, not mass detonating (Formerly Class C)
 - Division 1.5 - Insensitive explosives, very little probability of initiation or transition from burning to detonation during transport. (Formerly Blasting Agent).
 - Division 1.6 - Insensitive articles which do not mass detonate. (No commercial explosives in this division)
- (p) "Magazine" - Any container, building or structure, other than an explosives manufacturing building, used for the storage of explosives.
- (s) "Non-electric delay detonator" - A detonator with an integral delay element in conjunction with and capable of being detonated by a detonation impulse or signal from miniaturized detonating cord or shock tube.
- (v) "Safety fuse"- A flexible cord containing an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing detonators.
- (x) "Stemming" - An inert incombustible material or device used to confine or separate explosives in a drill hole, or to cover explosives in mud-capping.
- (z) "Water-based explosives" - Explosive materials that contain substantial quantities of water in their formulation. They may be bulk or packaged products and may be cap sensitive or non cap sensitive (blasting agents). Examples of water-based explosives include emulsions, slurries and water gels.
- (bb) "Appropriate authorities" or "Authorities having jurisdiction" - local, State and federal law enforcement authorities required to be notified by law or permit or this Standard.
- (cc) "Blaster-in-Charge" - The person who meets the qualifications contained in §1926.901 and who is authorized to oversee the blasting operations and to use explosives for blasting purposes.
- (dd) "Blast site" - The area where explosive material is handled during loading, including the perimeter formed by loaded blast holes, and 50 feet (15.2 meters) in all directions from loaded holes. A minimum distance of 30 feet (9.1 meters) may

replace the 50 feet (15.2 meters) if the perimeter of loaded holes is demarcated with a barrier. The 50 feet (15.2 meters) and alternative 30 feet (9.1 meters) requirements also apply in all directions along the full depth of the holes. In underground mines, 15 feet of solid rib or pillar may be substituted for the 50 feet distance.

(ee) "Shock tube" - A small diameter plastic tube used for initiating detonators. Shock tube contains a limited amount of reactive material so that the energy transmitted through the tube by means of detonation wave is guided through, and confined within, the walls of the tube.

(ff) "Blasting operation" - Any work or activities associated with the use of explosives on a blast site.

(gg) "Attended" - Presence of an individual or continuous monitoring to prevent unauthorized entry or access."

(5) Subpart V -- Power Transmission and Distribution -- 1926.950(c)(1)(i) is rewritten to read as follows:

"(i) The employee is insulated or guarded from the energized part (insulating gloves or insulating gloves with sleeves rated for the voltage involved shall be considered insulation of the employee only with regard to the energized part upon which work is being performed), or"

(6) Subpart Z -- Toxic and Hazardous Substances -- incorporation of the existing standard for Bloodborne Pathogens, 29 CFR 1910.1030, excluding subparagraph (e) HIV and HBV Research Laboratories and Production Facilities, into the Safety & Health Regulations for Construction at 29 CFR 1926.1130. Final rule as published in 56 FR (December 6, 1991) pages 64175 - 64182, including Appendix A -- Hepatitis B Vaccine Declination (Mandatory) -- with corrections as published in 57 FR (July 1, 1992) page 29206, and with the following revision to the definition of Occupational Exposure under subsection (b) Definitions:

"Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of collateral first aid duties by an employee in the areas of construction, alteration, or repair, including painting and decorating."

History Note: Authority G.S. 95-131; 150B-21.6;

Eff. August 2, 1993;

Amended Eff. September 1, 2000; February 22, 1999; October 8, 1998; July 1, 1998; April 8, 1998; March 7, 1997; February 11, 1997; September 1, 1996; February 1, 1996; January 1, 1996; October 1, 1995; September 6, 1995.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

15 NCAC 2D .0951 MISCELLANEOUS VOLATILE ORGANIC COMPOUND EMISSIONS

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all facilities that use volatile organic compounds as solvents, carriers, material processing media, or industrial chemical reactants, or in other similar uses, or that mix, blend, or manufacture volatile organic compounds for which there is no other applicable emissions control rule in this Section except Rule .0958 of this Section. If the only other applicable emissions control rule for the facility in this Section is Rule .0958, then both this Rule and Rule .0958 apply.

(b) This Rule does not apply to architectural or maintenance coating.

(c) The owner or operator of any facility to which this Rule applies shall:

- (1) install and operate reasonable available control technology; or
- (2) limit emissions of volatile organic compounds from coating lines not covered by Rules .0917 through .0924, .0934, or .0935 to no more than 6.7 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator.

(d) If the owner or operator of a facility chooses to install reasonable available control technology under Subparagraph (c)(1) of this Rule, the owner or operator shall submit:

- (1) the name and location of the facility;
- (2) information identifying the source for which a reasonable available control technology limitation or standard is being proposed;
- (3) a demonstration that shows the proposed reasonable available control technology limitation or standard satisfies the requirements for reasonable available control technology; and
- (4) a proposal for demonstrating compliance with the proposed reasonable control technology limitation or standard.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

Eff. July 1, 1994;

Amended Eff. July 1, 2000; July 1, 1996.

15A NCAC 2D .0958 WORK PRACTICES FOR SOURCES OF VOLATILE ORGANIC COMPOUNDS

(a) This Rule applies to all facilities that use volatile organic compounds as solvents, carriers, material processing media, or industrial chemical reactants, or in other similar uses, or that mix, blend, or manufacture volatile organic compounds, or emit volatile organic compounds as a product of chemical reactions.

(b) This Rule does not apply to:

- (1) architectural or maintenance coating, or
- (2) sources subject to 40 CFR Part 63, Subpart JJ.

(c) The owner or operator of any facility subject to this Rule shall:

- (1) store all material, including waste material, containing volatile organic compounds in containers covered with

- a tightly fitting lid that is free of cracks, holes, or other defects, when not in use,
- (2) clean up spills as soon as possible following proper safety procedures,
- (3) store wipe rags in closed containers,
- (4) not clean sponges, fabric, wood, paper products, and other absorbent materials,
- (5) drain solvents used to clean supply lines and other coating equipment into closable containers and close containers immediately after each use,
- (6) clean mixing, blending, and manufacturing vats and containers by adding cleaning solvent, closing the vat or container before agitating the cleaning solvent. The spent cleaning solvent shall then be poured into a closed container.
- (d) When cleaning parts, the owner or operator of any facility subject to this Rule shall:
 - (1) flush parts in the freeboard area,
 - (2) take precautions to reduce the pooling of solvent on and in the parts,
 - (3) tilt or rotate parts to drain solvent and allow a minimum of 15 seconds for drying or until all dripping has stopped, whichever is longer,
 - (4) not fill cleaning machines above the fill line,
 - (5) not agitate solvent to the point of causing splashing.
- (e) The owner or operator of a source on which a control device has been installed to comply with 15A NCAC 2D .0518(d) shall continue to maintain and operate the control device unless the Director determines that the removal of the control device shall not cause or contribute to a violation of the ozone ambient air quality standard (15A NCAC 2D .0405).
- (f) The owner or operator of a source that has complied with 15A NCAC 2D .0518 by complying with a Rule in this Section, shall continue to comply with that rule unless the Director determines that if the source ceases to comply with that rule, it shall not cause or contribute to a violation of the ozone ambient air quality standard (15A NCAC .0405).
- (g) All sources at a facility subject to this Rule shall be permitted unless they are exempted from permitting by 15A NCAC 2Q .0102, Activities Exempted From Permit Requirements.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 2000.

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

15A NCAC 02D .1201 PURPOSE AND SCOPE

- (a) This Section sets forth rules for the control of the emissions of air pollutants from incinerators.
- (b) The rules in this Section apply to all types of incinerators as defined by 15A NCAC 2D .0101(20), including incinerators with heat recovery and industrial incinerators.
- (c) This Section does not apply to:
 - (1) afterburners, flares, fume incinerators, and other similar devices used to reduce emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;

- (2) any boilers or industrial furnaces that burn waste as a fuel, except hazardous waste as defined in 40 CFR 260.10;
- (3) air curtain burners, which shall comply with Section .1900 of this Subchapter; or
- (4) incinerators used to dispose of dead animals or poultry that meet the following requirements:
 - (A) The incinerator is located on a farm and is owned and operated by the farm owner or by the farm operator;
 - (B) The incinerator is used solely to dispose of animals or poultry originating on the farm where the incinerator is located;
 - (C) The incinerator is not charged at a rate that exceeds its design capacity; and
 - (D) The incinerator complies with Rules .0521 (visible emissions) and .0522 (odorous emissions) of this Subchapter.
- (d) If an incinerator can be defined as being more than one type of incinerator, then the following order shall be used to determine the standards and requirements to apply:
 - (1) hazardous waste incinerators;
 - (2) sewage sludge incinerators;
 - (3) sludge incinerators;
 - (4) municipal waste combustors;
 - (5) hospital, medical, or infectious waste incinerators (HMIWIs);
 - (6) conical incinerators;
 - (7) crematory incinerators; and
 - (8) other incinerators.
- (e) Referenced document Sw-846 "Test Methods For Evaluating Solid Waste", Third Edition, cited by Rules in this Section is hereby incorporated by referenced and does not include subsequent amendments or editions. A copy of this document is available for inspection at the North Carolina Department of Environment and Natural Resources Library located at 512 North Salisbury Street, Raleigh, NC 27603. Copies of this document may be obtained through the US Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or by calling (202) 783-3238. The cost of this document is three hundred nineteen dollars (\$319.00).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(1),(3),(4),(5); Eff. October 1, 1991; Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; April 1, 1995; December 1, 1993.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0400 - COASTAL ENERGY POLICIES

15A NCAC 07M .0403 POLICY STATEMENTS

- (a) The placement and operations of major energy facilities in or affecting any land or water use or natural resource of the North Carolina coastal area shall be done in a manner that allows for protection of the environment and local and regional

socio-economic goals as set forth in the local land-use plan(s) and State guidelines in 15A NCAC 7H and 7M. The placement and operation of such facilities shall be consistent with state rules and statutory standards and shall comply with local land use plans and with rules for land uses in AECs.

(b) Proposals, plans and permit applications for major energy facilities to be located in or affecting any land or water use or natural resource of the North Carolina coastal area shall include a full disclosure of all costs and benefits associated with the project. This disclosure shall be prepared at the earliest feasible stage in planning for the project and shall be in the form of an impact assessment prepared by the applicant as defined in 15A NCAC 7M .0402. If appropriate environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review will satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are submitted in sufficient time to be used to review state permit applications for the project or subsequent consistency determinations.

(c) Local governments shall not unreasonably restrict the development of necessary energy facilities; however, they may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities.

(d) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. In instances when shoreline portions of the coastal zone area are necessary locations, shoreline siting shall be acceptable only if it can be demonstrated that coastal resources and public trust waters will be protected, the public's right to access and passage will not be unreasonably restricted, and all reasonable mitigating measures have been taken to minimize impacts to AECs. Whether restrictions or mitigating measures are reasonable shall be determined after consideration of, as appropriate, economics, technical feasibility, areal extent of impacts, uniqueness of impacted area, and other relevant factors.

(e) The scenic and visual qualities of coastal areas shall be considered and protected as important public resources. Energy development shall be sited and designed to provide maximum protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration of natural landforms.

(f) All energy facilities in or affecting any land or water use or natural resource of the coastal area shall be sited and operated so as to comply with the following criteria:

- (1) Activities that could result in adverse impacts on resources of the coastal area, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and adverse impacts on land or water uses in the coastal area shall be avoided unless site specific information demonstrates that each such activity will result in no adverse impacts on land or water uses or natural resources of the coastal area.
- (2) Necessary data and information required by the state for state permits and federal consistency reviews, pursuant to 15 CFR part 930, shall completely assess the risks of oil spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best available technology to be followed in the event of a spill. The information must demonstrate that the

potential for oil spills and ensuing damage to coastal resources has been minimized and shall factor environmental conditions, currents, winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. For facilities requiring an Oil Spill Response Plan, this information shall be included in such a plan.

- (3) Dredging, spoil disposal and construction of related structures that are reasonably likely to affect any land or water use or natural resource of the coastal area shall be minimized, and any unavoidable actions of this sort shall minimize damage to the marine environment.
- (4) Damage to or interference with existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational value, such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided to the extent that such damage or interference is reasonably likely to affect any land or water use or natural resource of the coastal area.
- (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults, shall be avoided to the extent that damage to such structures resulting from geological phenomena is reasonably likely to affect any land or water use or natural resource of the coastal area.
- (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated sufficiently in advance of the commencement of severe weather to ensure that adverse impacts on any land or water use or natural resource of the coastal area shall be avoided.
- (7) Adverse impacts on species identified as threatened or endangered on Federal or State lists shall be avoided.
- (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites.
- (9) No energy facilities shall be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and areas in the vicinity of existing inlets.
- (10) In the siting of energy facilities and related structures, the following areas shall be avoided:
 - (A) areas of high biological significance, including offshore reefs, rock outcrops and hard bottom areas, sea turtle nesting beaches, freshwater and saltwater wetlands, primary or secondary nursery areas and essential fish habitat-habitat areas of particular concern as designated by the appropriate fisheries management agency, submerged aquatic vegetation beds, shellfish beds, anadromous fish spawning and nursery areas, and colonial bird nesting colonies;
 - (B) Tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for

registration or dedication by the North Carolina Natural Heritage Program;

- (C) crossings of streams, rivers, and lakes except for existing readily-accessible corridors;
- (D) anchorage areas and congested port areas;
- (E) artificial reefs, shipwrecks, and submerged archaeological resources;
- (F) dump sites;
- (G) primary dunes and frontal dunes;
- (H) established recreation areas, such as federal, state and local parks, and other areas used in a like manner.

(11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be avoided.

(12) If facilities located in the coastal area are abandoned, habitat of equal value to or greater than that existing prior to construction shall be restored as soon as practicable following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions as soon as practicable if the abandonment of the structure is reasonably likely to affect any land or water use or natural resource of the coastal area.

(g) As used in this Section, an event that is "reasonable likely" to occur if credible evidence supports the conclusion that the event will likely occur.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;

Eff. March 1, 1979;

Amended Eff. April 1, 1992;

Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;

Temporary Amendment Eff. July 8, 1999; December 22, 1998;

Amended Eff. August 1, 2000.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0200 - HUNTING

15A NCAC 10B .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 shall be closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

(1) Deer With Visible Antlers. 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 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt,

Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:

Cumberland: All of the county except that part east of US 401, north of NC 24, and west of I-95;

Harnett: That part west of NC 87;

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

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

**Refer to 15A NCAC 10D .0103(f) (54)(B) for seasons on Sandhills Game Land.

(B) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsythe, Iredell, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.

(C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.

(D) Monday before Thanksgiving week through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties, and in the following parts of counties:

Cumberland: That part east of US 401, north of NC 24 and west of I-95;

Harnett: That part east of NC 87;

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

(E) Monday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge;

(F) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland, Gaston, Lincoln, and Rutherford counties.

(2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Monday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those

parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island 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 through 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) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Avery, Buncombe, Haywood, Henderson, Madison, Mitchell, Polk, Transylvania, and Yancey counties and the following parts of counties:
 Robeson: That part west of I-95.
 Scotland: That part south of US 74.
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, and Watauga and the following parts of counties:
 Camden: That part south of US 158.
 Dare: Except the Outer Banks north of Whalebone.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Carteret, Cleveland, Harnett, Hoke, Richmond, Rutherford, counties and in the following parts of counties:
 Columbus: That part west of US 74, SR 1005, and SR 1125.
 Cumberland: That part west of I-95.
 Moore: All of the county except that part north of NC 211 and west of US 1.
 Robeson: That part east of I-95.
 Scotland: That part north of US 74.
- (G) The first six open days, open days the week of Thanksgiving, and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Pasquotank, Tyrrell, Wayne and Wilson counties and in the following parts of counties:
 Camden: That part north of US 158.

Chowan: That part north of US 17 and west of NC 32.

Currituck: All of the county except the Outer Banks.

Nash: That part south of NC 97.

Johnston: That part north of US 70 or west of I-95. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season in the counties listed in this Part.

- (H) All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Caswell, Chatham, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Hertford, Hyde, Iredell, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, New Hanover, Northampton, Onslow, Orange, Pamlico, Pender, Perquimans, Person, Pitt, Randolph, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Union, Vance, Wake, Warren, Washington, Wilkes and Yadkin counties, and in the following parts of counties:

Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280.

Chowan: That part south of US 17 or east of NC 32.

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

Cumberland: That part east of I-95.

Dare: That part of the Outer Banks north of Whalebone.

Henderson: That part east of NC 191 and north and west of NC 280.

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

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

Nash: That part north of NC 97.

- (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 Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land and the area known as the Outer Banks in Currituck County.

- (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 Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln Counties.

- (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 Deer With Visible Antlers specified by Part (C) of Subparagraph (b)(1) of this Rule and in Cleveland and Rutherford counties.
- (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 Deer With Visible Antlers 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 (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:
- (A) Monday on or nearest October 8 to the following Saturday in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Parts (A) and (C) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) Monday to Saturday of the week preceding Thanksgiving week in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln counties.
- (C) Monday to Saturday of the second week before Thanksgiving week in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.
- (2) Restrictions
- (A) Deer of either sex may be taken during muzzle-loading firearms season in and east of the following counties: Rutherford, McDowell, Burke, Caldwell, Wilkes, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms season in all other counties.
- (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms seasons.
- (C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms seasons.
- (e) In those counties or parts of counties listed in Part (b)(1)(A) of Subparagraph (b)(1) of this Rule and those counties or parts

of counties listed in Part (b)(1)(D) of this Rule in which hunting deer with dogs is allowed, the daily bag limit shall be two and the possession limit six, two of which shall be antlerless. The season limit shall be six, two of which shall be antlerless. In all other counties or parts of counties, the daily bag limit shall be two and the possession limit six, four of which shall be antlerless. The season limit shall be six, four of which shall be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described above do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season antlerless bag limits shall be set by the number of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, shall be tagged with these special tags but the hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license.

(f) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2;

Eff. February 1, 1976;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000.

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. The waters listed herein or in 15A NCAC 10D .0104 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1) through (6) of this Paragraph. 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 listed waters in the counties in Subparagraphs (1)(A)-(Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein. Otherwise, Wild Trout regulations apply to the tributaries.

(A)	<p>Alleghany County:</p> <p>New River (not trout water)</p> <p>Little River (Whitehead to McCann Dam)</p> <p>Crab Creek</p> <p>Brush Creek (except where posted against trespass)</p> <p>Big Pine Creek</p> <p>Laurel Branch</p> <p>Big Glade Creek</p> <p>Bledsoe Creek</p> <p>Pine Swamp Creek</p> <p>South Fork New River (not trout water)</p> <p>Prather Creek</p> <p>Cranberry Creek</p> <p>Piney Fork</p> <p>Meadow Fork</p> <p>Yadkin River (not trout water)</p> <p>Roaring River (not trout water)</p> <p>East Prong Roaring River (that portion on Stone Mountain State Park)</p> <p>Delayed Harvest Waters regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.</p>	<p>to South Fork New River)</p> <p>Nathans Creek</p> <p>Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)</p> <p>Trout Lake (Delayed harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.)</p> <p>Roan Creek</p> <p>North Beaver Creek</p> <p>Pine Swamp Creek (all forks)</p> <p>Old Fields Creek</p> <p>Mill Creek (except where posted against trespass)</p>
(B)	<p>Ashe County:</p> <p>New River (not trout waters)</p> <p>North Fork New River (Watauga Co. line to Sharp Dam)</p> <p>Helton Creek (Virginia State line to New River) [Delayed Harvest rules apply. See Subparagraph (5) of Paragraph (a) of this Rule.]</p> <p>Big Horse Creek (SR 1361 bridge to Tuckerdale)</p> <p>Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)</p> <p>Big Laurel Creek</p> <p>Three Top Creek (portion not on game lands)</p> <p>Hoskins Fork (Watauga County line to North Fork New River)</p> <p>South Fork New River (not trout waters)</p> <p>Cranberry Creek (Alleghany County line</p>	<p>(C) Avery County:</p> <p>Nolichucky River (not trout waters)</p> <p>North Toe River (headwaters to Mitchell County line, except where posted against trespass)</p> <p>Squirrel Creek</p> <p>Elk River (SR 1306 crossing to Tennessee State line, including portions of tributaries on game lands)</p> <p>Catawba River (not trout water)</p> <p>Johns River (not trout water)</p> <p>Wilson Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]</p> <p>Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (4) of Paragraph (a) of this Rule]</p> <p>Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]</p> <p>Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]</p> <p>Boyde Coffey Lake</p>

	Archie Coffey Lake	Parks	Creek
	Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]	(portion not on game lands not trout water)	
	Milltimber Creek	Carroll	
(D)	Buncombe County:	Creek (game lands portion above SR 1405 including tributaries)	
	French Broad River (not trout water)	Linville River (game lands portion below the Blue Ridge Parkway including portions of tributaries on game lands and from first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)	
	Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)	(F)	Caldwell County:
	Dillingham Creek (Corner Rock Creek to Big Ivy Creek)	Catawba River (not trout water)	
	Stony Creek	Johns River (not trout water)	
	Mineral Creek (including portions of tributaries on game lands)	Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)	
	Corner Rock Creek (including tributaries, except Walker Branch)	Estes Mill	
	Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)	Creek (not trout water)	
	Swannanoa River (SR 2702 bridge near Ridgecrest to Sayles Bleachery in Asheville, except where posted against trespass)	Thorps	
	Bent Creek (headwaters to N.C. Arboretum boundary line, including portions of tributaries on game lands)	Creek (falls to NC 90 bridge)	
	Lake Powhatan	Mulberry Creek (portion not on game lands not trout water)	
	Cane Creek (headwaters to SR 3138 bridge)	Boone Fork (not Hatchery Supported trout water. See Subparagraph (2) of Paragraph (a) of this Rule)	
(E)	Burke County:	Boone	
	Catawba River (not trout water)	Fork Pond	
	South Fork Catawba River (not trout water)	(G)	Cherokee County:
	Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)	Hiwassee River (not trout water)	
	Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) Delayed Harvest	Shuler Creek (headwaters to Tennessee line, except where posted against trespass including portions of tributaries on game lands)	
	Regulations apply. See Subparagraph (a)(5) of this Rule.	North Shoal Creek (Crane Creek) (headwaters to SR 1325, including portions of tributaries on game lands)	
	Johns River (not trout water)	Persimmon Creek	
		Davis Creek (including portions of tributaries on game lands)	
		Bald Creek (including portions of tributaries on game lands)	
		Beaver Dam Creek (headwaters to SR 1326	

	bridge, including portions of tributaries on game lands)	excluding Johns Branch)
	Valley River	(Big) Snowbird Creek (old railroad junction to mouth, including portions of tributaries on game lands
	Hyatt Creek (including portions of tributaries on game lands)	Mountain Creek (game lands boundary to SR 1138 bridge)
	Webb Creek (including portions of tributaries on game lands)	Long Creek (portion not on game lands)
	Junaluska Creek (Ashturn Creek to Valley River, including portions of tributaries on game lands)	Tulula Creek (headwaters to lower bridge on SR 1275)
(H)	Clay County:	Franks Creek
	Hiwassee River (not trout water)	Cheoah Reservoir
	Fires Creek (first bridge above the lower game land line on US Forest Service road 442 to SR 1300)	Fontana Reservoir (not trout water)
	Tusquitee Creek (headwaters to lower SR 1300 bridge, including portions of Bluff Branch on game lands)	Stecoah Creek
	Tuni Creek (including portions of tributaries on game lands)	Sawyer Creek
	Chatuge Lake (not trout water)	Panther Creek (including portions of tributaries on game lands)
	Shooting Creek (SR 1349 bridge to US 64 bridge at SR 1338)	(J) Haywood County:
	Hothouse Branch (including portions of tributaries on gamelands)	Pigeon River (not trout water)
	Vineyard Creek (including portions of tributaries on game lands)	Hurricane Creek (including portions of tributaries on game lands)
(I)	Graham County:	Cold Springs Creek (including portions of tributaries on game lands)
	Little Tennessee River (not trout water)	Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)
	Calderwood Reservoir (Cheoah Dam to Tennessee State line)	Jonathans Creek - upper [SR 1302 bridge (west) to SR 1307 bridge]
	Cheoah River (not trout water)	Hemphill Creek
	Yellow Creek	West Fork Pigeon River (triple arch bridge on highway NC 215 to Champion International property line, including portions of tributaries within this section located on game lands, except Middle Prong)
	Santeelah Reservoir (not trout water)	Richland Creek (Russ Avenue bridge to US 19A- 23 bridge) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.
	West Buffalo Creek	(K) Henderson County:
	Huffman Creek (Little Buffalo Creek)	
	Santeelah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands,	

(L)	<p data-bbox="332 123 787 787"> Jackson County: (Rocky) Broad River (one-half mile north of Bat Cave to Rutherford County line) Green River - upper (mouth of Bobs Creek to mouth of Rock Creek) Green River - lower (Lake Summit Dam to I-26 bridge) Camp Creek (SR 1919 to Polk County line) (Big) Hungry River Little Hungry River French Broad River (not trout water) Mills River (not trout water) North Fork Mills River (game lands portion below the Hendersonville watershed dam). Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule. Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1392 bridge at Wilnot) Delayed Harvest Regulations apply to that portion between NC 107 bridge at Love Field and the Dillsboro dam. See Subparagraph (a)(5) of this Rule. Scott Creek (entire stream, except where posted against trespass) Dark Ridge Creek (Jones Creek to Scotts Creek) Buff Creek (SR 1457 bridge below Bill Johnson's place to 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) 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 </p>	<p data-bbox="909 123 1546 1950"> (M) Macon County: West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake) Shoal Creek (Glenville Reservoir pipeline to mouth) 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 Burningtown Creek (including portions of tributaries on game lands) Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Big Buck Creek and Turtle Pond Creek on game lands. Wild trout regulations apply. See Subparagraphs (2) and (6) of Paragraph (a) of this Rule.) Ellijay Creek (except where posted against trespass, including portions of tributaries on game lands) Skitty Creek 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, including portions of tributaries within this Section located on game lands) (N) Madison County: French Broad River (not trout water) </p>
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	<p>Shut-In Creek (including portions of tributaries on game lands)</p> <p>Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line, including portions of tributaries on game lands)</p> <p>Meadow Fork Creek</p> <p>Roaring Fork (including portions of tributaries on game lands)</p> <p>Little Creek</p> <p>Max Patch Pond</p> <p>Mill Ridge Pond</p> <p>Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)</p> <p>Big Laurel Creek (NC 208 bridge to US 25-70 bridge)</p> <p>Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.</p> <p>Shelton Laurel Creek (headwaters to NC 208 bridge)</p> <p>Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)</p> <p>Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.</p> <p>Big Creek (headwaters to lower game land boundary, including tributaries)</p> <p>Mill Creek</p> <p>Big Pine Creek</p> <p>Puncheon Fork (Hampton Creek to Big Laurel Creek)</p>	<p>(P)</p> <p>Mitchell County:</p> <p>Nolichucky River (not trout water)</p> <p>Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)</p> <p>Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)</p> <p>Cane Creek (SR 1219 to NC 226 bridge)</p> <p>Cane Creek (NC 226 bridge to NC 80 bridge) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.</p> <p>Grassy Creek (East Fork Grassy Creek to mouth)</p> <p>East Fork Grassy Creek</p> <p>North Toe River (Avery County line to SR 1121 bridge)</p> <p>(Q)</p> <p>Polk County:</p> <p>Broad River (not trout water)</p> <p>North Pacolet River (Pacolet Falls to NC 108 bridge)</p> <p>Fork Creek (Fork Creek Church on SR 1100 to North Pacolet River)</p> <p>Big Fall Creek (portion above and below water supply reservoir)</p> <p>Green River (Fishtop Falls Access Area to mouth of Brights Creek) Delayed Harvest regulations apply to the portion from Fishtop Falls Access Area to Cove Creek. See Subparagraph(a)(5) of this Rule.</p> <p>Little Cove Creek (including portions of tributaries on game lands)</p> <p>Cove Creek (including portions of tributaries on game lands)</p>	<p>North Fork Catawba River (headwaters to SR 1569 bridge)</p> <p>Armstrong Creek (Cato Holler line downstream to upper Greenlee line)</p> <p>Mill Creek (upper railroad bridge to U.S. 70 Bridge, except where posted against trespass)</p>
<p>(O)</p>	<p>McDowell County:</p> <p>Catawba River (portion not on game lands, not trout water)</p> <p>Buck Creek (portion not on game lands, not trout water)</p> <p>Little Buck Creek (game land portion including portions of tributaries on game lands)</p> <p>Curtis Creek game lands portion downstream of US Forest Service boundary at Deep Branch) Delayed Harvest regulations apply. See Subparagraph (a)(5) of this Rule.</p>		

	Camp Creek [Henderson County line (top of falls) to Green River]	National Park boundary line to Tuckasegee River)
(R)	Rutherford County: (Rocky) Broad River (Henderson County line to US 64/74 bridge, except where posted against trespass)	Connelly Creek (including portions of tributaries on game lands)
(S)	Stokes County: Dan River (SR 1416 bridge downstream to a point 200 yards below the end of SR 1421)	(V) Transylvania County: French Broad River (junction of west and north forks to US 276 bridge)
(T)	Surry County: Yadkin River (not trout water) Ararat River (SR 1727 downstream to the Business US 52 bridge) Delayed Harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule. Stewarts Creek (not trout water) Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line) Fisher River (Cooper Creek) (Virginia State line to NC 89 bridge) Little Fisher River (Virginia State line to NC 89 bridge) Mitchell River (0.6 mile upstream of the end of SR 1333 to Kapps Mill Dam) Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.	Davidson River (Avery Creek to Ecusta intake) East Fork French Broad River (Glady Fork 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, including portions of tributaries within this section located on game lands)
		(W) Watauga County: New River (not trout waters) North Fork New River (from confluence with Maine and Mine branches to Ashe County line) Maine Branch (headwaters to North Fork New River) South New Fork 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 (Confluence of Boone Fork and Watauga River to NC 105 bridge). Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule. Beech Creek Buckeye Creek Reservoir Coffee Lake
(U)	Swain County: Little Tennessee River (not trout water) Calderwood Reservoir (Cheoah Dam to Tennessee State line) Cheoah Reservoir Fontana Reservoir (not trout water) Alarka Creek (game lands boundary to Fontana Reservoir) Nantahala River (Macon County line to existing Fontana Reservoir water level) Tuckasegee River (not trout water) Deep Creek (Great Smoky Mountains	

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| | Laurel Creek | confluence |
| | Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha) | with North Fork Reddies River) |
| | Dutch Creek (second bridge on SR 1134 to mouth) | Lewis Fork Creek (not trout water) |
| | Boone Fork (headwaters to SR 1562) | South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church) |
| (X) | Wilkes County: | Fall Creek (except portions posted against trespass) |
| | Yadkin River (not trout water) | |
| | Roaring River (not trout water) | (Y) Yancey County: |
| | 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. | Nolichucky River (not trout water) |
| | Stone Mountain Creek (Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.) | Cane River [Bee Branch (SR 1110) to Bowlens Creek] |
| | Middle Prong Roaring River (headwaters to second bridge on SR 1736) | Bald Mountain Creek (except portions posted against trespass) |
| | Bell Branch Pond | Indian Creek (not trout water) |
| | Boundary Line Pond | Price Creek (junction of SR 1120 and SR 1121 to Indian Creek) |
| | West Prong Roaring River (not trout waters) | North Toe River (not trout water) |
| | Pike Creek | South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass) |
| | Pike Creek Pond | (2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless specifically classified otherwise in (A)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters. |
| | Reddies River (not trout water) | (A) Alleghany County: |
| | Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580) | Big Sandy Creek (portion on Stone Mountain State Park) |
| | South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River) | Ramey Creek (entire stream) |
| | North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559) | Stone Mountain Creek (that portion on Stone Mountain State Park) |
| | Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to | (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. Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) |
| | | Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule. |
| | | (C) Avery County: |
| | | Birchfield Creek (entire stream) |

	Cow Camp Creek (entire stream)		Whitewater River (downstream from Silver Run Creek to South Carolina State line)
	Cranberry Creek (entire stream)		Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
	Gragg Prong (entire stream)		
	Horse Creek (entire stream)		
	Jones Creek (entire stream)		
	Kentucky Creek (entire stream)		
	North Harper Creek (entire stream)	(K)	Madison County:
	Plumtree Creek (entire stream)		Spillcorn Creek (entire stream)
	Roaring Creek (entire stream)		[Wild Trout/Natural Bait Waters regulations apply. See Subparagraph (6) of Paragraph (a) of this Rule.]
	Rockhouse Creek (entire stream)		
	South Harper Creek (entire stream)		
	Webb Prong (entire stream)		
	Wilson Creek (Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.)	(L)	Mitchell County:
			Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
			Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
(D)	Buncombe County:		Wiles Creek (game land boundary to mouth)
	Carter Creek (game land portion) (Catch and Release/Artificial Lures only regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.)	(M)	Polk County
(E)	Burke County:		Green River (Henderson County line to Fishtop Falls Access Area)
	All waters located on South Mountain State Park, except the main stream of Jacob Fork between the mouth of Shinny Creek and the lower park boundary where delayed harvest regulations, and Henry Fork and tributaries where catch and release/artificial lures only regulations apply. See Subparagraphs (3) and (5) of Paragraph (a) of this Rule.	(N)	Rutherford County:
	Nettle Branch (game land portion)		North Fork (First Broad River) and tributaries (game lands portion)
			Brier Creek and tributaries (game lands portion)
		(O)	Transylvania County:
			Whitewater River (downstream from Silver Run Creek to South Carolina State line)
		(P)	Watauga County:
(F)	Caldwell County:		Dutch Creek (headwaters to second bridge on SR 1134)
	Buffalo Creek (Watauga County line to Long Ridge Branch)		Howards Creek (headwaters to lower falls)
	Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)		Watauga River (Avery County line to SR 1580)
	Rockhouse Creek (entire stream)	(Q)	Wilkes County:
(G)	Cleveland County: Brier Creek and tributaries (game lands portions)		Big Sandy Creek (portion on Stone Mountain State Park)
(H)	Graham County:		Garden Creek (portion on Stone Mountain State Park)
	South Fork Squally Creek (entire stream)		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.]
	Squally Creek (entire stream)		Widow Creek (portion on Stone Mountain State Park)
(I)	Henderson County:		
	Green River (I-26 bridge to Henderson/Polk County line)	(R)	Yancey County:
(J)	Jackson County:		Licksillet Creek (entire stream)
	Gage Creek (entire stream)		Middle Creek (game land boundary to mouth)
	North Fork Scott Creek (entire stream)		
	Tanasee Creek (entire stream)		

- Rock Creek (game land boundary to mouth)
South Toe River (game land boundary downstream to Clear Creek)
- (3) Catch and Release/Artificial Lures Only Trout Waters. 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:
- (A) Ashe County:
Big Horse Creek (Virginia State line to SR 1361 bridge excluding tributaries)
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:
Wilson Creek (game land portion)
- (C) Buncombe County:
Carter Creek (game land portion)
- (D) Burke County:
Henry Fork (portion on South Mountains State Park)
- (E) Jackson County:
Flat Creek
Tuckasegee River (upstream of Clarke property)
- (F) McDowell County:
Newberry Creek (game land portion)
- (G) Wilkes County:
Harris Creek (portion on Stone Mountain State Park)
- (H) Yancey County:
Lower Creek
Upper Creek
- (4) Catch and Release/Artificial Flies Only Trout Waters. 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:
- (A) Avery County:
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Yancey County:
South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Big Lost Cove Creek)
- (5) Delayed Harvest Trout Waters. 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 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules:

- (A) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)
- (B) Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Haywood County:
Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
- (D) Henderson County:
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (E) Jackson County:
Tuckasegee River (NC 107 bridge at Love Field Downstream to the Dillsboro dam)
- (F) Macon County:
Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light power house discharge canal)
- (G) Madison County:
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)
- (H) McDowell County:
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)
- (I) Mitchell County:
Cane Creek (NC 226 bridge to NC 80 bridge)
- (J) Polk County:
Green River (Fishtop Falls Access Area to confluence with Cove Creek)
- (K) Surry County:
Aarat River (SR 1727 downstream to Business US 52 bridge)
Mitchell River (0.6 mile upstream of the end of SR 1333 to Kapps Mill Dam)
- (L) Watauga County:
Watauga River (Confluence of Boone Fork and Watauga River to NC 05 bridge)
- (M) Wilkes County:

East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)

Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)

- (6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].

- (A) Cherokee County:
Tellico River (Fain Ford to Tennessee state line excluding tributaries)
- (B) Clay County:
Buck Creek (game land portion downstream of US 64 bridge)
- (C) Graham County:
Deep Creek
Long Creek (game land portion)
- (D) Jackson County:
Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)
- (E) Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)
- (F) Madison County:
Spillcorn Creek (entire stream, excluding tributaries)
- (G) Transylvania County:
North Fork French Broad River (game land portions downstream of SR 1326)

(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 designated, 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 .0104(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (3), (4), and (6) 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 natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).
- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

*History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993;
October 1, 1992;
Temporary Amendment Eff. July 1, 1999;
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SECTION .0300 - GAME FISH

15A NCAC 10c .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.	ALL YEAR (exc. 2)

APPROVED RULES

Hatchery Supported Trout Waters and undesignated waters	7	None	All year, except March 1 to 6:00 a.m. on first Saturday in April (exc. 2)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (exc. 8)	None	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass: Largemouth	5	14 in. (excs. 3, 7 & 9)	ALL YEAR (exc. 16)
Smallmouth and Spotted	5	12 in. (excs. 3, 7 & 9)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	2	18 in. (exc. 19)	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1, 5 & 12)	16 in. (excs. 1, 5 & 10)	ALL YEAR (excs. 5, 12, & 14)
Shad: (American and hickory)	10 aggregate (exc. 17)	None	ALL YEAR (excs. 17 & 18)
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 4, 11 & 15)	None (exc. 11)	ALL YEAR (exc. 4)
NONGAME FISHES	None (exc. 13)	None (exc. 13)	ALL YEAR (excs. 6)

(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, and Lake Norman, 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) Bass taken from Calderwood Reservoir may be retained without restriction as to size limit.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Cape Fear, Neuse, Pee-Dee, Pungo and Tar-Pamlico rivers and their tributaries and the Roanoke River and its tributaries, including the

- Cashie, Middle and Eastmost rivers, extending upstream to the first impoundment, and Lake Mattamuskeet, the daily creel limit for striped bass and their hybrids is three fish in aggregate and the minimum length limit is 18 inches. In the Roanoke River and its tributaries, including the Cashie, Middle, and Eastmost rivers, in the Tar Pamlico River and its tributaries upstream of the Grimesland bridge and in the Neuse River and its tributaries upstream of the NC 55 bridge in Lenoir County no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches shall be retained during the period April 1 through May 31.
- (6) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
 - (7) 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, in Lake Rim in Cumberland County, 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 High Rock Lake downstream of I-85, in Badin Lake, in Falls Lake, in Lake Tillery, in Blewett Falls Lake, in Tuckertown Lake and in the New River and its tributaries in Onslow County. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir and in Falls of the Neuse Reservoir, east of SR 1004, a minimum size limit of 16 inches, with no exception, applies to largemouth bass. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass.
 - (8) 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.
 - (9) 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;
 - (B) Lake Thom-A-Lex in Davidson County; and
 - (C) Sutton Lake in New Hanover County.
 - (10) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (5), 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.
 - (11) In Lake Tillery, Falls Lake, High Rock Lake, Badin Lake, Tuckertown Lake, Lake Hyco, Lake Ramseur, Cane Creek Lake and the Roanoke River downstream of the US 17 bridge in Williamston and its tributaries (including the Cashie, Middle and Eastmost rivers and their tributaries) a daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie. In Lake James and Hiwassee Reservoir, a daily creel limit of 20 fish applies to crappie.
 - (12) 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 the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
 - (13) The daily creel and length limits for channel, white, and blue catfish in designated urban lakes are provided for in 15A NCAC 10C .0401(d).
 - (14) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
 - (15) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
 - (16) In Sutton Lake, no largemouth bass may be retained from December 1 through March 31.
 - (17) In the Pee Dee River downstream from the Blewett Falls dam, shad may be taken with special fishing devices without restriction to creel limits as provided for in 15A NCAC 10C .0404 (b) during the permitted special fishing device seasons specified in 15A NCAC 10C .0407. American and hickory shad taken under this Subparagraph may be sold as authorized under subsection 10C .0401.
 - (18) The season for taking American and hickory shad with dip nets and bow nets is March 1 through April 30, except in Pee Dee River downstream from Blewett Falls dam where the season prescribed in 15A NCAC 10C .0407 (4) and (75) is in effect.
 - (19) No red drum greater than 27 inches in length may be retained.

History Note: Filed as a Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Filed as a Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991; Filed as a Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990; Filed as a Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990; Authority G.S. 113-134; 113-292; 113-304; 113-305; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; October 1, 1992; Temporary Amendment Eff. November 1, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000.

SECTION .0400 - NONGAME FISH

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, except that no trotlines or set-hooks may be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters. In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30. The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.

(b) Nongame fishes, except bowfin, alewife and blueback herring taken by hook and line, grabbling or by licensed special devices may be sold. Eels less than six inches in length taken from inland waters may not be possessed and possession of eels 6 inches or larger in length is limited to 200 per day for bait.

(c) Freshwater mussels may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County.

(d) In the posted Community Fishing Program waters listed below it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate:

Cedarrock Pond, Alamance County
 Lake Tomahawk, Buncombe County
 Frank Liske Park Pond, Cabarrus County
 Lake Rim, Cumberland County
 C.G. Hill Memorial Park Pond, Forsyth County
 Kernersville Lake, Forsyth County
 Winston Pond, Forsyth County
 Bur-Mil Park Ponds, Guilford County
 Oka T. Hester Pond, Guilford County
 San-Lee Park Ponds, Lee County
 Kinston Neuseway Park Pond, Lenoir County
 Freedom Park Pond, Mecklenburg County
 Hornet's Nest Pond, Mecklenburg County
 McAlpine Lake, Mecklenburg County
 Lake Luke Marion, Moore County
 Lake Michael, Orange County
 River Park North Pond, Pitt County
 Big Elkin Creek, Surry County
 Apex Community Lake, Wake County
 Lake Crabtree, Wake County
 Shelley Lake, Wake County
 Simpkins Pond, Wake County
 Lake Toisnot, Wilson County
 Ellerbe Community Lake, Richmond County

History Note: Temporary Amendment Eff. December 1, 1994;

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

Eff. February 1, 1976;

Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; May 1, 1992;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - MOTORBOAT REGISTRATION

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone; Restricted Firearms Zone, or Restricted Zone.

(1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.

(2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.

(3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.

(4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission.

(5) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and

by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. Furthermore, only shotguns with any size shot may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License: Hunting and Trapping

(1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(2) Exceptions

(A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.

(B) The resident and nonresident sportsman's licenses include game lands use privileges.

(C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.

(D) On the game lands described in Rule .0103(e)(2) of this Section the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first

having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge;
- (7) on the John's River Waterfowl Refuge in Burke County;
- (8) on the Dupont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) Use of Weapons. In addition to zone restrictions described in Paragraph (a) no person shall discharge a weapon from a vehicle, or within 150 yards of any Game Lands building or designated Game Lands camping area, or within 150 yards of any residence located on or adjacent to game lands.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
 - (2) holds a Disabled Access Program Permit as described in (n) below and is abiding by the rules described in that paragraph.
- (i) **Camping.** No person shall camp on any game land except on an area designated by the landowner for camping. Camping and associated equipment in designated Hunter Camping Areas at Butner-Falls of the Neuse, Caswell, and Sandhills Game Lands is limited to Sept. 1- Feb. 29 and Apr. 7 - May 14.
- (j) **Swimming.** Swimming is prohibited in the lakes located on the Sandhills Game Land.
- (k) **Disabled Sportsman Program.** In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0103 an individual shall have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant shall provide medical certification of one or more of the following disabilities:
- (1) amputation of one or more limbs;
 - (2) paralysis of one or more limbs;
 - (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
 - (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
 - (5) legal deafness, meaning the inability to hear or understand oral communications with or without assistance of amplification devices.
- Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion permit issued with the Disabled Sportsman permit.
- (l) **Release of Animals and Fish.** It is unlawful to release pen-raised animals or birds, wild animals or birds, or hatchery-raised fish on game lands without prior written authorization. Also, it is unlawful to move wild fish from one stream to another on game lands without prior written authorization.
- (m) **Non-Highway Licensed Vehicles.** It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. People who have obtained a Disabled Access Program permit are exempt from this rule but must comply with the terms of their permit.
- (n) **Disabled Access Program.** Permits issued under this program shall be based upon competent medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands where this special rule applies shall be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular

access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It shall be unlawful for anyone other than those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

History Note: Temporary Amendment Eff. October 11, 1993; Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; April 1, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000.

15A NCAC 10D .0103 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 enacted by the National Park Service 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 this Chapter, 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 shall 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. 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. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. 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) Definitions:

- (1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).
- (2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.
- (3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. 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.
- (4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons, except that:
 - (A) Bears shall not be taken on lands designated and posted as bear sanctuaries;
 - (B) Wild boar shall 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;
 - (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, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
 - (ii) In the counties of Cherokee, Clay, Graham, 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 bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15;
- (f) Game Lands Seasons and Other Restrictions:
 - (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
 - (2) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (3) Anson Game Land in Anson County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (4) Bachelor Bay Game Land in Bertie and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program.
 - (C) Handguns shall not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used or possessed.
 - (D) On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting.
 - (E) Wild turkey hunting is by permit only.
 - (7) Brushy Mountains Game Land in Caldwell County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (8) Bullard and Branch Hunting Preserve Game Lands in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (9) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
 - (A) Six Days per Week Area

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- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) 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. Waterfowl shall not be taken after 1:00 p.m. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
 - (D) Horseback riding, including all equine species, is prohibited.
 - (E) Target shooting is prohibited
 - (F) Wild turkey hunting is by permit only.
 - (10) Cape Fear Game Land in Pender County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
 - (11) Caswell Game Land in Caswell County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.
 - (C) Horseback riding is allowed 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.
 - (12) Caswell Farm Game Land in Lenoir County-Dove-Only Area
 - (13) Catawba Game Land in Catawba and Iredell counties
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
 - (14) Chatham Game Land in Chatham and Harnett counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (15) Cherokee Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (16) Cherry Farm Game Land in Wayne County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of centerfire rifles and handguns is prohibited.
 - (17) Chowan Game Land in Chowan County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.
 - (18) Chowan Swamp Game Land in Gates County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (19) Columbus County Game Land in Columbus County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (20) Croatan Game Land in Carteret, Craven and Jones counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) 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.
 - (21) Currituck Banks Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Permanent waterfowl blinds in Currituck Sound adjacent to these game lands shall be hunted by permit only after November 1.
 - (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a fire arm.
 - (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
 - (22) Dare Game Land in Dare County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) No hunting on posted parts of bombing range.
 - (D) The use and training of dogs is prohibited from March 1 through June 30.
 - (23) Dupont State Forest Game Lands in Henderson and Transylvania counties
 - (A) Hunting is by Permit only.
 - (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
 - (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal
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- weapon on the Saturday prior to the first segment of the Western-bow and arrow season.
- (24) Dysartsville Game Land in McDowell and Rutherford counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (25) Elk Knob Game Land in Ashe and Watauga counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (26) Gardner-Webb Game Land in Cleveland County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (27) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) On posted waterfowl impoundments 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. After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.
- (28) Green River Game Land in Henderson, Polk and Rutherford counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season in that portion in Rutherford County; and deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion in Polk and Henderson counties.
 - (C) Horseback riding is prohibited except on designated trails May 16 through-August 31 and all horseback riding is prohibited from September 1 through May 15. This rule includes all equine species.
- (29) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (30) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) 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.
- (31) Hickorynut Mountain Game Land in McDowell County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (32) Hofmann Forest Game Land in Jones and Onslow counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (33) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program
 - (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.
- (34) Huntsville Community Farms Game Land in Yadkin County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (35) Hyco Game land in Person County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (36) Jordan Game Land in Chatham, Durham, Orange and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) 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.
 - (D) Horseback riding, including all equine species, is prohibited.
 - (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only.
- (37) Lantern Acres Game Land in Tyrrell and Washington counties
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- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.
- (38) Lee Game Land in Lee County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (39) Linwood Game Land in Davidson County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (40) Little Alligator River Game Land in Tyrrell County, Permit Only Area
- (41) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
 - (C) 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 the Monday on or nearest October 15.
- (42) Neuse River Game Land in Craven County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (43) New Lake Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (44) North River Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.
 - (C) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- (45) Northwest River Marsh Game Land in Currituck County
 - (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.
- (C) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- (46) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.
- (47) Perkins Game Land in Davie County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (48) Person Game Land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) 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.
- (49) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery and Yancey counties and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.
 - (C) 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 the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.
- (50) Pungo River Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (51) Roanoke River Wetlands in Bertie, Halifax and Martin counties-Hunting is by Permit only. Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.
- (52) Robeson Game Land in Robeson County
 - (A) Three Days per Week Area

- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (53) Sampson Game Land in Sampson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (54) Sandhills Game Land in Moore, Richmond and Scotland counties
- (A) Three Days per Week Area
- (B) The Deer With Visible Antlers season for deer consists of the open hunting dates from the second Monday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving through 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 Deer With Visible Antlers season.
- (C) Deer of either-sex may be taken during the first 3 open days of the Deer With Visible Antlers season. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer seasons indicated in the preceding paragraph and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
- (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
- (E) Wild turkey hunting is by permit only.
- (F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.
- (55) Sauratown Plantation Game Land in Stokes County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (56) Scuppernong Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.
- (57) Shearon Harris Game Land in Chatham and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) The use or construction of permanent hunting blinds is prohibited.
- (E) Wild turkey hunting is by permit only.
- (58) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (59) Suggs Mill Pond Game Land in Bladen County; Hunting is by Permit only.
- (60) Sutton Lake Game Land in New Hanover County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (61) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (62) Thurmond Chatham Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow

on the Saturday prior to Northwestern bow and arrow season.

- (C) Horseback riding is only allowed 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. Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.

(63) Toxaway Game Land in Transylvania County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.

(64) Uwharrie Game Land in Davidson, Montgomery and Randolph counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.

(65) Vance Game Land in Vance County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.

(66) White Oak River Impoundment Game Land in Onslow County

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.

(67) Yadkin Game Land in Caldwell County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

(g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications

must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperator agent or by phone.

(h) The following game lands and refuges shall be 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
 Bladen County--Suggs Mill Pond Game Lands
 Burke County--John's River Waterfowl Refuge
 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
 Henderson and Transylvania counties--Dupont State Forest Game Lands

History Note: Temporary Amendment Eff. October 3, 1991; Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305;

Eff. February 1, 1976;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994;

Temporary Amendment Eff. October 1, 1999; July 1, 1999;

Amended Eff. July 1, 2000.

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21F - CHILDREN'S SPECIAL HEALTH SERVICES: CHILDREN AND YOUTH SECTION

SECTION .1200 - NEWBORN SCREENING PROGRAM

15A NCAC 21F .1203 SCREENING REQUIREMENTS

(a) The attending physician shall order that each neonate, born in North Carolina, be physiologically screened in each ear for the presence of permanent hearing loss. Medical facilities that provide birthing or inpatient neonatal services shall maintain the equipment necessary to perform physiologic hearing screenings for neonates prior to discharge home.

(b) Parents or guardians may object to the hearing screening in accordance with G.S. 130A-125(b).

(c) When the attending physician has issued a standing order that diagnostic brainstem auditory evoked response testing shall be performed for neonates who exhibit medically recognized risk indicators of auditory deficits, the order for the hearing screening may be superseded but the outcome of the diagnostic testing procedure shall be reported in accordance with 15A NCAC 21F .1204.

History Note: Authority G.S. 130A-125; S.L. 1998, c. 131, s. 13;

Temporary Adoption Eff. October 1, 1999;

Eff. August 1, 2000.

15A NCAC 21F .1204 REPORTING REQUIREMENTS

(a) The attending physician shall order and all persons performing physiologic hearing screenings for infants less than six months of age shall identify and report to the local health department of residence all infants who were not successfully screened or who failed to pass the physiologic hearing screening. When the infant's residence is out-of-state, the report shall be made to CSHS. These reports shall be submitted within 30 days after medical facility discharge, and within 30 days after the date of the screening following discharge and the date of any missed scheduled appointment for such screening.

(b) All persons performing neonatal physiologic hearing screenings shall report quarterly to CSHS, within 30 days after the end of each quarter in the calendar year, the following:

- (1) Total number of neonates who were screened by each tester and the number who passed that screening, with the results of multiple screenings for the same neonate being clarified.
- (2) Total number of neonates whose parents or guardians objected to the hearing screening.
- (3) Total number of live births, if the report is being submitted by a medical facility.

(c) All persons performing diagnostic auditory tests which supercede or follow physiologic hearing screenings for infants less than six months of age shall identify the child and report the outcome of the diagnostic testing procedure to the local health department of residence, within 30 days following the infant's initial testing date and the date of any missed scheduled appointment for such testing. When the infant's residence is out-of-state, the report shall be made to CSHS.

*History Note: Authority G.S. 130A-125;
Temporary Adoption Eff. October 1, 1999;
Eff. August 1, 2000.*

**TITLE 19A - DEPARTMENT OF STATE
TRANSPORTATION**

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS

SECTION .0200 - OUTDOOR ADVERTISING

19A NCAC 02E .0201 DEFINITIONS FOR OUTDOOR ADVERTISING CONTROL

In addition to the definitions set forth in G.S. 136-128, the following definitions shall apply for purposes of outdoor advertising control:

- (1) Abandoned Sign: A sign that is not being maintained as required by the rules in this Section. The absence of a valid lease is one indication of an abandoned sign. An outdoor advertising sign structure shall be considered to be abandoned if for a period of 12 months the sign has been without a message, contains obsolete advertising matter, or is significantly damaged or dilapidated.
- (2) Automatic Changeable Facing Sign: A sign, display, or device which changes the message or copy on the sign

facing electronically by movement or rotation of panels or slats.

- (3) Blank Sign: A sign structure on which all faces contain no message, or which contains only a telephone number advertising its availability.
- (4) Comprehensive Zoning: Zoning by local zoning authorities of each parcel of land under the jurisdiction of the local zoning authority placed in a zoning classification pursuant to a comprehensive plan, or reserved for future classification.
 - (a) A comprehensive plan means a development plan which guides decisions by the local zoning authority relating to zoning and the growth and development of the area.
 - (b) Even if comprehensively enacted, the following criteria shall determine whether such zoning is enacted primarily to permit outdoor advertising:
 - (i) The zoning classification provides for limited commercial or industrial activity only incidental to other primary land uses;
 - (ii) The commercial or industrial activities are permitted only by variance or special exceptions; or
 - (iii) The zoning constitutes spot or strip zoning. "Spot zoning" or "strip zoning" is zoning designed primarily for the purpose of permitting outdoor advertising signs in an area which would not normally permit outdoor advertising.
- (5) Conforming Sign: A sign legally erected in a zoned or unzoned commercial or industrial area which meets all current legal requirements for erecting a new sign at that site.
- (6) Controlled Access Highway: A highway on which entrance and exit accesses are permitted only at designated points.
- (7) Controlled Route: Any interstate or federal-aid primary highway as it existed on June 1, 1991, and any highway which is or becomes a part of the National Highway System (NHS).
- (8) Destroyed Sign: A sign no longer in existence due to factors other than vandalism or other criminal or tortious acts. An example of a destroyed sign includes a sign which has been blown down by the wind and sustains damage in excess of 50 percent as determined by the criteria in 19A NCAC 02E .0225(f).
- (9) Dilapidated Sign: A sign which is shabby, neglected, or in disrepair, or which fails to be in the same form as originally constructed, or which fails to perform its intended function of conveying a message. Characteristics of a dilapidated sign include, but are not limited to, structural support failure, a sign not supported as originally constructed, panels or borders missing or falling off, intended messages cannot be interpreted by the motoring public, or a sign which is blocked by overgrown vegetation outside the highway right of way.
- (10) Directional Sign: A sign which contains directional information about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena,

historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. Directional and other official signs and notices include, but are not limited to, public utility signs, service club and religious notices, or public service signs.

- (a) **Public Service Sign:** A sign located on a school bus stop shelter which meets all the following requirements:
 - (i) identifies the donor, sponsor or contributor of said shelter;
 - (ii) is located on a school bus shelter which is authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved;
 - (iii) contains only safety slogans or messages which shall occupy not less than 60 percent of the area of the sign;
 - (iv) does not exceed 32 square feet in area; and
 - (v) contains not more than one sign facing in any one direction.
- (b) **Public Utility Sign:** A warning sign, informational sign, notice or other marker customarily erected and maintained by publicly or privately owned utilities, which are essential to their operations.
- (c) **Service Club and Religious Notices:** Any sign or notice authorized by law which relates to meetings of nonprofit service clubs, charitable associations, or religious services. These signs shall not exceed eight square feet in area.
- (11) **Discontinued Sign:** A sign no longer in existence. A discontinued sign includes a sign of which any part of a sign face is missing more than 180 days. In some cases, a sign may be both discontinued and dilapidated.
- (12) **Freeway:** A divided arterial highway for through traffic with full control of access.
- (13) **Highway:** A highway that is designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System. A highway shall be a part of the National Highway System on the date the location of the highway has been approved finally by the appropriate federal authorities.
- (14) **Lease:** An agreement, in writing, by which possession or use of land or interests therein is given for a specified purpose and period of time, and which is a valid contract under North Carolina laws.
- (15) **Main Traveled Way or Traveled Way:** Part of a highway on which through traffic is carried, exclusive of paved shoulders. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a traveled way. It does not include frontage roads, turning roadways, or parking areas.
- (16) **Nonconforming Sign:** A sign which was lawfully erected but which does not comply with the provisions of State law or rules passed at a later date or which later fails to comply with State law or rules due to changed conditions. For purposes of the outdoor advertising

rules, nonconforming signs also include those signs which have become nonconforming pursuant to 19A NCAC 02E .1002(d) on scenic byways which were part of the interstate or federal-aid primary highway system as of June 1, 1991, or which are or become a part of the National Highway System.

- (17) **Official Sign/Notice:** A sign or notice erected and maintained by public officers or public agencies within their territorial or zoning jurisdictions and pursuant to and in accordance with federal, state, or local law for the purpose of carrying out an official duty or responsibility. Official signs and notices include, but are not limited to, historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies.
- (18) **On-premise/On-property Sign:** A sign which advertises the sale or lease of property upon which it is located or which advertises an activity conducted or product for sale on the property upon which it is located. An on-premise sign may not be converted to a permitted outdoor advertising sign unless it meets all rules in effect at the time of the conversion request. An on-premise sign must be located on property contiguous to the property on which the activity is located. Tracts not considered to be contiguous include, but are not limited to:
 - (a) Tracts of land separated by a federal, state, city, or public access maintained road;
 - (b) Tracts of land not under common ownership; or
 - (c) Tracts of land held in different estates or interests.
- (19) **Parkland:** Any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.
- (20) **Permit Holder:** A permit holder shall be the sign owner, and for purposes of the rules in this Section the terms and definitions shall be interchangeable, unless the Department of Transportation, through the appropriate district office, has been notified in writing that the permit holder is a person or entity other than the actual owner of the sign. In this case, the actual sign owner's name, mailing address, and telephone number must be declared.
- (21) **Salvageable Sign Components:** Components of the original sign structure prior to the damage that can be repaired or replaced on site by the use of labor only. If any materials, other than nuts, bolts, nails or similar hardware, are required in order to repair a component, the component is not considered to be salvageable.
- (22) **Scenic Area:** Any area of particular beauty or historical significance as determined by the federal, state, or local official having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation and enhancement of beauty.
- (23) **Scenic Byway:** A scenic highway or scenic byway designated by the Board of Transportation, regardless of whether the route so designated was part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System.
- (24) **Sign:** Any outdoor sign, sign structure, display, light, device, figure, painting, drawing, message, placard,

poster, billboard, or other object which is designed, intended, or used to advertise or inform. A sign includes any of the parts or material of the structure, such as beams, poles, posts, and stringers, the only eventual purpose of which is to ultimately display a message or other information for public view. For purposes of these rules, the term "sign" and its definition shall be interchangeable with the following terms: outdoor advertising, outdoor advertising sign, outdoor advertising structure, outdoor advertising sign structure, sign structure, and structure.

- (25) Sign Conforming by Virtue of the "Grandfather Clause:" A sign legally erected prior to the effective date of the Outdoor Advertising Control Act or prior to the addition of a route to the interstate or federal-aid primary system or NHS in a zoned or unzoned commercial or industrial area which does not meet all current standards for erecting a new sign at that site.
- (26) Sign Face: The part of the sign, including trim and background, which contains the message or informative contents. For purposes of measuring the maximum area or height of a sign, embellishments or extended advertising shall be excluded.
- (27) Sign Location/Site: A sign location or site for purposes of these rules shall be measured to the closest 1/100th of a mile, in conformance with Department of Transportation methods of measurement for all state roads. The location or site shall be determined and listed on each outdoor advertising permit application by DOT personnel.
- (28) Sign Owner: A sign owner shall be the permit holder of record, and for purposes of the rules in this Section the terms and definitions shall be interchangeable, unless the Department of Transportation, through the appropriate district office, has been notified in writing that the sign owner is a person or entity other than the actual holder of the permit. In this case, the actual sign owner's name, mailing address, and telephone number must be declared.
- (29) Significantly Damaged Sign: A sign which has been damaged or partially destroyed due to factors other than vandalism or other criminal or tortious acts to such extent that the damage to the sign is greater than fifty percent as determined by the criteria in 19A NCAC 02E .0225(f).
- (30) Unzoned Commercial or Industrial Area: An area which is not zoned by state or local law, regulation, or ordinance, and which is within 660 feet of the nearest edge of the right of way of the interstate or federal-aid primary system or NHS, in which there is at least one commercial or industrial activity that meets all requirements specified in 19A NCAC 02E .0203(5).
- (31) Zoned Commercial or Industrial Area: An area which is zoned for business, industry, commerce, or trade pursuant to a state or local zoning ordinance or regulation. Local zoning action must be taken pursuant to the state's zoning enabling statute or constitutional authority in accordance therewith. Zoning which is not part of comprehensive zoning or which is created primarily to permit outdoor advertising structures shall not be recognized as valid zoning for purposes of the

Outdoor Advertising Control Act and the rules promulgated thereunder, unless the land is developed for commercial or industrial activity as defined under 19A NCAC 02E .0203(5).

History Note: Authority G.S. 136-130;

Eff. July 1, 1978;

Amended Eff. August 1, 2000; December 1, 1993; March 1, 1993; December 1, 1990; January 1, 1984.

19A NCAC 02E .0203 OUTDOOR ADVERTISING ON CONTROLLED ROUTES

The following standards shall apply to the erection and maintenance of outdoor advertising signs in all zoned and unzoned commercial and industrial areas located within 660 feet of the nearest edge of the right of way of the controlled route. The standards shall not apply to those signs enumerated in G.S. 136-129(1), (2), (2a) and (3), which are directional and other official signs and notices, signs advertising the sale or lease of property upon which they are located, signs advertising the sale of crops at roadside stands, and signs which advertise activities conducted on the property upon which they are located.

(1) Configuration and Size of Signs:

- (a) The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron, embellishments, extended advertising space, supports, and other structural members.
- (b) The area shall be calculated by measuring the outside dimensions of face, excluding any apron, embellishments, or extended advertising space.
- (c) The maximum size limitations shall apply to each side of a sign structure; the signs may be placed back-to-back, side-by-side; or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.
- (d) Side-by-side signs shall be structurally tied together to be considered as one sign structure.
- (e) V-type and back-to-back signs shall not be considered as one sign if located more than 15 feet apart at their nearest points.
- (f) The height of any portion of the sign structure, excluding cutouts or embellishments, as measured vertically from the adjacent edge of pavement of the main traveled way shall not exceed 50 feet.
- (g) Double-decking of sign faces so that one is on top of the other is prohibited.

(2) Spacing of Signs:

- (a) Signs may not be located in a manner to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, or to obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.
- (b) Controlled Routes with Fully Controlled Access (Freeways):
 - (i) No two structures shall be spaced less than 500 feet apart.

- (ii) Outside the corporate limits of towns and cities, no structure may be located within 500 feet of an interchange, collector distributor, intersection at grade, safety rest area or information center regardless of whether the main traveled way is within or outside the town or city limits. The 500 feet spacing shall be measured from the point at which the pavement widens and the direction of measurement shall be along the edge of pavement away from the interchange, collector distributor, intersection at grade, safety rest area or information center. In those interchanges where a quadrant does not have a ramp, the 500 feet for the quadrant without a ramp shall be measured along the outside edge of main traveled way for freeways as follows:
 - (A) Where a route is bridged over a freeway, the 500 foot measurement shall begin on the outside edge of pavement of the freeway at a point directly below the edge of the bridge. The direction of measurement shall be along the edge of pavement away from the interchange.
 - (B) Where a freeway is bridged over another route, the 500 foot measurement shall be made from the end of the bridge in the quadrant. The direction of measurement shall be along the edge of main traveled way away from the bridge.
 - (C) Where the routes involved are both freeways, measurements on both routes shall be made according to (A) or (B) of this Subitem, whichever applies. Should there be a situation where there is more than one point at which the pavement widens along each road within a quadrant, the measurement shall be made from the pavement widening which is farthest from the intersecting roadways.
 - (c) Controlled Routes Without Fully Controlled Access:
 - (i) Outside of incorporated towns and cities --no two structures shall be spaced less than 300 feet apart.
 - (ii) Within incorporated towns and cities --no two structures shall be spaced less than 100 feet apart.
 - (d) The foregoing provisions for the spacing of signs do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.
 - (e) Official and "on-premise" signs, as permitted under the provisions of G.S. 136-129(1), (2), (2a) and (3), and structures that are not lawfully maintained shall not be included nor shall measurements be made from them for purposes of determining compliance with spacing requirements.
 - (f) The minimum distance between structures shall be measured along the nearest edge of the main traveled way between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highways.
- (3) Lighting of Signs; Restrictions:
- (a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights including animated or scrolling advertising, are prohibited, unless expressly allowed under Item 4, of this rule except those giving public service information such as time, date, temperature, weather, or similar information.
 - (b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the controlled routes and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with the operation of a motor vehicle are prohibited.
 - (c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.
 - (d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the state.
 - (e) Lighting shall not be added to or used to illuminate nonconforming signs or signs conforming by virtue of the grandfather clause.
- (4) Automatic Changeable Facing Sign:
- (a) Automatic changeable facing signs shall be permitted on the controlled routes under the following conditions:
 - (i) The sign does not contain or display flashing, intermittent, or moving lights, including animated or scrolling advertising;
 - (i) The changeable facing remains in a fixed position for at least eight seconds;
 - (iii) If a message is changed electronically, it must be accomplished within an interval of two seconds or less;
 - (iv) The sign is not placed within 1,000 feet of another automatic changeable facing sign on the same side of the highway;
 - (v) The 1000-foot distance shall be measured along the nearest edge of the pavement and between points directly opposite the signs along each side of the highway;
 - (vi) A legally conforming structure may be modified to an automatic changeable facing upon compliance with these standards and approval by the Department. Nonconforming or grandfathered structures shall not be modified to an automatic changeable facing;
 - (vii) The sign must contain a default design that will freeze the sign in one position if a malfunction occurs; and

- (viii) The sign application meets all other permitting requirements.
- (b) The outdoor advertising permit shall be revoked for failure to comply with this Item.
- (5) Unzoned Commercial or Industrial Area Qualification for Signs:
 - (a) To qualify an area unzoned commercial or industrial for the purpose of outdoor advertising control, one or more commercial or industrial activities shall meet all of the following criteria prior to submitting an outdoor advertising permit application:
 - (i) The activity shall maintain all necessary business licenses as may be required by applicable state, county or local law or ordinances;
 - (ii) The property used for the activity shall be listed for ad valorem taxes with the county and municipal taxing authorities as required by law;
 - (iii) The activity shall be connected to basic utilities including but not limited to power, telephone, water, and sewer, or septic service;
 - (iv) The activity shall have direct or indirect vehicular access and be a generator of vehicular traffic;
 - (v) The activity shall have a building designed with a permanent foundation, built or modified for its current commercial or industrial use, and the building must be located within 660 feet from the nearest edge of the right of way of the controlled route. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements also apply:
 - (A) The mobile home unit or recreational vehicle shall meet the North Carolina State Building Code criteria for commercial or business use.
 - (B) A self-propelled vehicle shall not qualify for use as a business or office for the purpose of these rules.
 - (C) All wheels, axles, and springs shall be removed.
 - (D) The unit shall be permanently secured on piers, pad, or foundation.
 - (E) The unit shall be tied down in accordance with local, state, or county requirements;
 - (vi) The commercial or industrial activity must be in active operation a minimum of six months prior to the date of submitting an application for an outdoor advertising permit;
 - (vii) The activity shall be open to the public during hours that are normal and customary for that type of activity in the same or similar communities but not less than 20 hours per week;
 - (viii) One or more employees shall be available to serve customers whenever the activity is open to the public; and
 - (ix) The activity shall be visible and recognizable as commercial or industrial from the main traveled way of the controlled route. An activity is visible when that portion on which the permanent building designed, built, or modified for its current commercial use can be clearly seen twelve months a year by a person of normal visual acuity while traveling at the posted speed on the main traveled way of the controlled route adjacent to the activity. An activity is recognizable as commercial or industrial when its visibility from the main traveled way of the controlled route is sufficient for the activity to be identified as commercial or industrial.
 - (b) Each side of the controlled route shall be considered separately. All measurements shall begin from the outer edges of regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activity, not from the property line of the activity and shall be along the nearest edge of the main traveled way of the controlled route.
 - (c) The proposed sign location must be within 600 feet of the activity.
 - (d) To qualify an area as unzoned commercial or industrial for the purpose of outdoor advertising control, none of the following activities shall be recognized:
 - (i) Outdoor advertising structures;
 - (ii) On-premise or on-property signs defined by Rule .0201(18) of this Section if the on-premise/on-property sign is the only part of the commercial or industrial activity that is visible from the main-traveled way;
 - (iii) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to temporary wayside fresh produce stands;
 - (iv) Transient or temporary activities;
 - (v) Activities not visible and recognizable as commercial or industrial from the traffic lanes of the main traveled way;
 - (vi) Activities more than 660 feet from the nearest edge of the right of way;
 - (vii) Activities conducted in a building principally used as a residence;
 - (viii) Railroad tracks and minor sidings;
 - (ix) Any outdoor advertising activity or any other business or commercial activity carried on in connection with an outdoor advertising activity; and
 - (x) Illegal junkyards, as defined in G.S. 136-146, and nonconforming junkyards as set out in G.S. 136-147;

History Note: Authority G.S. 136-130; Eff. July 1, 1978; Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; November 1, 1988.

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

**SUBCHAPTER 3G - SCHOOL BUS AND TRAFFIC
SAFETY SECTION**

SECTION .0200 - SCHOOL BUS DRIVER TRAINING

**19A NCAC 03G .0205 ISSUING OF ORIGINAL
CERTIFICATE**

Any applicant for certification as a school bus driver shall meet the following minimum requirements:

(1) Legal:

- (a) Shall be at least 18 years of age with at least 6 months driving experience as an operator of a motor vehicle, and shall possess a valid North Carolina driver license of Class A, B, or C. In the event a prospective driver shall have his place of residence in another state, he may be certified as a school bus driver if he submits a copy of his driving record from the state in which he is licensed before his initial certification. Also, he must notify both his employer and the N.C. School Bus and Traffic Safety Section within 30 days of a conviction of any moving violation no matter what type of vehicle he was driving.
- (b) Shall within a period of one year (12 months) immediately preceding certification have on his driving record:
 - (i) No more than one conviction of any moving violation;
 - (ii) No conviction whatever of:
 - (A) Reckless driving,
 - (B) Speeding in excess of 15 mph above the posted limit, or
 - (C) Passing a stopped school bus;
 - (iii) No conviction of a moving violation which was the proximate cause of an accident.
- (c) Shall within a period of two years (24 months) immediately preceding certification have on his driving record no suspension or revocation of the driving privilege other than for such status offenses as:
 - (i) Lapsed liability insurance;
 - (ii) Failure to appear in court;
 - (iii) Failure to comply with out-of-state citation; or
 - (iv) A 30 day revocation not accompanied by a subsequent conviction of driving while impaired.
- (d) Shall within a period of five years (60 months) immediately preceding certification have on his driving record:
 - (i) No more than three convictions of moving violations of any kind;
 - (ii) No more than two convictions of moving violations which were the proximate causes of accidents;
 - (iii) No conviction of driving while impaired;
 - (iv) No suspension or revocation of the driving privilege other than for:
 - (A) Those status offenses enumerated in Paragraph (c) of this Rule,

(B) Those offenses enumerated in G.S. 20-16(a), Subsections (9) and (10).

- (e) Shall have on his driving record no more than one conviction of driving while impaired.
 - (f) Shall have no "STOP" entry appearing on his driving record at the time of certification.
 - (g) Shall have no record of any conviction of a violation of the criminal code greater than a misdemeanor for a period of at least five years immediately preceding certification. Further, shall never have had in any jurisdiction a conviction of an offense against the public morals, including but not limited to rape and child molestation.
 - (h) Shall have a driving record which in its overall character arouses no serious question about the reliability, judgment, or emotional stability of the applicant.
 - (i) Shall successfully complete the training course for school bus drivers.
- (2) Physical Standards for School Bus Drivers. Every school bus driver shall:
- (a) Meet the physical standards set forth in The North Carolina Physician's Guide To Driver Medical Evaluation, published in June 1995 by the Division of Epidemiology, North Carolina Department of Health and Human Services, which is available without charge from the School Bus & Traffic Safety Section of the Division of Motor Vehicles including any subsequent amendments and editions.
 - (b) On and after July 1, 2001 at the time of his original certification as a school bus driver submit a medical report on a form provided by the Division and signed by a physician licensed to practice in North Carolina, and submit such a medical form every two years thereafter.
 - (c) On or before June 30, 2002 if he is certified before June 30, 2001, submit a medical report on a form provided by the division and signed by a physician licensed to practice in North Carolina and submit such a medical report form every two years thereafter.
 - (d) Be required at any time to submit a medical report on a form provided by the Division and signed by a physician license to practice in North Carolina if the Division has good and sufficient cause to believe the driver may not meet the physical standards noted in Subitem (2)(a) of this Rule.

*History Note: Authority G.S. 20-39(b); 20-218;
Eff. April 1, 1989;
Amended Eff. August 1, 2000; January 1, 1994.*

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

**CHAPTER 12 - LICENSING BOARD FOR GENERAL
CONTRACTORS**

SECTION .0200 - LICENSING REQUIREMENTS

21 NCAC 12 .0202 CLASSIFICATION

(a) A general contractor must be certified in one of five classifications. These classifications are:

- (1) **Building Contractor.** This classification covers all types of building construction activity including but not limited to: commercial, industrial, institutional, and all types of residential building construction; covers parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, curbs and gutters which are ancillary to the aforementioned types of construction; and covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), and S(Swimming Pools).
- (2) **Residential Contractor.** This classification covers all types of construction activity pertaining to the construction of residential units which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; covers all site work, driveways and sidewalks ancillary to the aforementioned construction; and covers the work done as part of such residential units under the specialty classifications of S(Insulation), S(Masonry Construction), S(Roofing), and S(Swimming Pools).
- (3) **Highway Contractor.** This classification covers all types of highway construction activity including but not limited to: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. Includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of signage, runway lighting and marking; and covers work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction) and S(Railroad Construction).
- (4) **Public Utilities Contractor.** This classification includes those whose operations are the performance of construction work on the subclassifications of facilities set forth in G.S. 87-10(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(3) for which the applicant has successfully completed the appropriate examination. Within appropriate subclassification, a public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), and S(Swimming Pools).
- (5) **Specialty Contractor.** This classification shall embrace that type of construction operation and performance of contract work outlined as follows:
 - (A) **H(Grading and Excavating).** Covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be

executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. Covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. Also includes clearing and grubbing, and erosion control activities.

- (B) **S(Boring and Tunneling).** Covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. Includes preparation of the ground surfaces at points of ingress and egress.
- (C) **PU(Communications).** Covers the installation of the following:
 - (i) All types of pole lines, and aerial and underground distribution cable for telephone systems;
 - (ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;
 - (iii) Underground conduit and communication cable including fiber optic cable; and
 - (iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.
- (D) **S(Concrete Construction).** Covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots and highways.
- (E) **PU(Electrical-Ahead of Point of Delivery).** Covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.
- (F) **PU(Fuel Distribution).** Covers the construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals and slurries through pipeline from one station to another. Includes all excavating, trenching and backfilling in connection therewith. Covers the installation, replacement and removal of above ground and below ground fuel storage tanks.
- (G) **PU(Water Lines and Sewer Lines).** Covers construction work on water and sewer mains, water service lines, and house and building sewer lines as

- defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. Includes pavement patching, backfill and erosion control as part of such construction.
- (H) PU(Water Purification and Sewage Disposal). Covers the performance of construction work on water and wastewater treatment facilities and covers all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. Covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of such work on water and wastewater treatment facilities.
- (I) S(Insulation). Covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. Does not include the insulation of mechanical equipment and ancillary lines and piping.
- (J) S(Interior Construction). Covers the installation of acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. Includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine Construction). Covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. Does not include structures required on docks, slips and piers.
- (L) S(Masonry Construction). Covers the installation, with or without the use of mortar or adhesives, of the following:
- (i) Brick, concrete block, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry;
 - (ii) Installation of fire clay products and refractory construction;
 - (iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). Covers the building, construction and repair of railroad lines including:
- (i) The clearing and filling of rights-of-way;
 - (ii) Shaping, compacting, setting and stabilizing of road beds;
 - (iii) Setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and
 - (iv) Construction and repair of tool sheds and platforms.
- (N) S(Roofing). Covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" shall be defined for purposes of this Subparagraph to include, among other things, cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). Covers:
- (i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and
 - (ii) The layout, assembly and erection by welding, bolting or riveting such metal products as, but not limited to, curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.
- (P) S(Swimming Pools). Covers the construction, service and repair of all swimming pools. Includes:
- (i) Excavation and grading;
 - (ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
 - (iii) Installation of all equipment including pumps, filters and chemical feeders. Does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.
- (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified."

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. June 1, 1994; June 1, 1992; May 1, 1989;
January 1, 1983;
Temporary Amendment Eff. February 18, 1997;
Amended Eff. August 1, 2000; August 1, 1998.*

21 NCAC 12 .0209 APPLICATION

(a) Any application made pursuant to G.S. 87-10, shall be accompanied by a Certificate of Assumed Name when filing is required with the Register of Deeds office in the county in which the applicant is to conduct its business, pursuant to G.S. 66-68. A copy of such certification must be provided with the application to the Board. Applications submitted to the Board on behalf of corporations, limited liability companies and partnerships must be accompanied by a copy of any documents (Articles of Incorporation, Certificate of Authority, etc.) filed with the North Carolina Secretary of State's office.

(b) All licensees must comply with the requirements of G.S. 66-68 and must notify the Board within 30 days of any change in the name in which the licensee is conducting business in the State of North Carolina.

*History Note: Authority G.S. 87-1; 87-4; 87-10;
Eff. August 1, 2000.*

SECTION .0400 - EXAMINATION

21 NCAC 12 .0402 SUBJECT MATTER

(a) In light of the requirements of G.S. 87-10, the examinations given by the Board are designed to ascertain:

- (1) the applicant's general knowledge of the practice of contracting in areas such as plan and specification reading, cost estimation, safety requirements, construction theory and other similar matters of general contracting knowledge;
- (2) the applicant's knowledge of the practice of contracting within the classification or classifications of general contracting as indicated by the applicant to the Board in his application;
- (3) the applicant's knowledge of the laws of the State of North Carolina relating to contractors, construction and liens, and the aspects and fundamentals of business management and operations.

(b) The content of the examination will depend on the classification or classifications of general contracting for which the applicant seeks licensure, as indicated by his application. Also, within the specialty contractor classification, examinations given by the Board are designed to test the applicant's knowledge of the particular trade, category or categories of specialty contracting indicated in his application.

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;*

*Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2000; June 1, 1994; May 1, 1989.*

21 NCAC 12 .0405 EXAMINATION SCHEDULE

Upon approval of the application by the Board, applicants will be notified as to the instructions for scheduling the required examination or examinations. Applicants may receive details from the examinations provider concerning the actual date, time and location to report for the examination or examinations requested.

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2000; May 1, 1989.*

21 NCAC 12 .0410 FAILING EXAMINATION

Persons taking the examination must receive a score of at least 70 in order to pass the examination.

*History Note: Authority G.S. 87-10;
Eff. December 1, 1995;
Amended Eff. August 1, 2000.*

SECTION .0900 - HOMEOWNERS RECOVERY FUND

21 NCAC 12 .0907 HOMEOWNERS RECOVERY FUND HEARING

(a) If it is determined by the Recovery Fund Review Committee that the Board should conduct a hearing on an application, the Board shall give the applicant and general contractor notice of hearing not less than 15 days before the hearing. Notice of hearing to the general contractor shall be sufficient if mailed to the last known address of the general contractor at least 15 days prior to the date of the hearing. This notice shall contain the following information:

- (1) The name, position, address and telephone number of a person at the offices of the Board to contact for further information or discussion;
- (2) The date, time, and place for a pre-hearing conference, if any; and
- (3) Any other information being relevant to informing the parties as to the procedure of the hearing.

(b) All homeowners recovery fund hearings shall be conducted by the Board or a panel consisting of a majority of the members of the Board.

(c) The provisions of 21 NCAC 12 .0825 governing disqualification of Board members shall also govern hearings conducted pursuant to this Section.

(d) Should a party fail to appear at a hearing, the Board may proceed with the hearing and make its decision in the absence of the party, provided that the party has given proper notice.

(e) Any party may be a witness and may present witnesses on the party's behalf at the hearing. The Board staff may also present evidence and participate at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party, the presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

(f) At the hearing, the applicant shall be required to show:

- (1) He has suffered a reimbursable loss as defined in G.S. 87-15.5(6) and Rule .0901(c) of this Chapter in the construction or alteration of a single-family dwelling unit owned or previously owned by that person, provided, that if there have been findings entered in a contested civil action relevant to the issue of whether the applicant has suffered a reimbursable loss, then such findings shall be presumed as established for purposes of this Section subject to rebuttal by the general contractor;
- (2) He did not, directly or indirectly, obtain the building permit in his own name or did use a general contractor;
- (3) He has made application within one year after the termination of all judicial proceedings, including appeals, in connection with the unsatisfied judgment or within the period prescribed in Rule .0904(a) of this Chapter for claims based upon the automatic stay provisions of Section 362 of the U.S. Bankruptcy Code;
- (4) He has diligently pursued his remedies against the general contractor and on any applicable bond, surety agreement or insurance contract, and attempted execution on the judgments against all judgment debtors without success.

(g) The general contractor shall be permitted to participate in the hearing as a party and shall have recourse to all appropriate means of defense, including the examination of witnesses.

History Note: Authority G.S. 87-15.5; 87-15.6; 87-15.7; 87-15.8;

Eff. January 4, 1993.

Amended Eff. August 1, 2000.

CHAPTER 21 - BOARD OF GEOLOGISTS

SECTION .0500 - DISCIPLINARY ACTION AND PROCEDURE

21 NCAC 21 .0501 FILING OF CHARGES

Any person may file with the Board a charge of negligence, incompetence, dishonest practice, or other misconduct or of any violation of G.S. 89E or of these Rules. Upon receipt of such charge or upon its own initiative, the Board may, consistent with procedures required by G.S. 150B, suspend or revoke the license or certificate of registration, may impose a civil penalty not in excess of five thousand dollars (\$5,000), may issue a reprimand or caution as provided in Rules .0502 and .0504 of this Section or may upon a statement of the reasons therefore dismiss the charge as unfounded or trivial, which statement shall be mailed to the geologist and the person who filed the charge by certified mail.

History Note: Authority G.S. 89E-5; 89E-17;

Eff. February 1, 1986;

Amended Eff. April 1, 1989;

Temporary Amendment Eff. November 24, 1999;

Amended Eff. August 1, 2000.

SECTION .1100 – PROFESSIONAL CONDUCT

21 NCAC 21 .1101 RULES OF PROFESSIONAL CONDUCT

(a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the profession of geology, these rules of professional conduct shall be binding upon every person holding a certificate of license as a geologist, and on all partnerships or corporations or other legal entities authorized to offer or perform geologic services in this state. All persons licensed or registered under the provisions of G.S. 89E are charged with having knowledge of the existence of these Rules of professional conduct.

(b) The geologist shall conduct his practice in order to protect the public health, safety, and welfare.

(1) The geologist shall at all times recognize his primary obligation to protect the safety, health, and welfare of the public in the performance of his professional duties. If his geologic judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, he shall inform his employer of the possible consequences and notify other proper authority of the situation, as may be appropriate.

(2) The geologist shall protect the public health, safety, and welfare by maintaining sufficient personal on-site involvement and continual direction and review of the activities of subordinates that constitute public practice of geology while such activities are in progress. The licensee must provide such supervision and have sufficient knowledge of the project and site conditions necessary to assure accuracy and compliance with all applicable laws and regulations (including, but not limited to, G.S. 89E and the rules of this Chapter).

(c) The geologist shall perform his services only in areas of his competence:

(1) The geologist shall undertake to perform geologic assignments only when qualified by education or experience in the specific technical field of geology involved.

(2) The geologist may accept an assignment requiring education or experience outside of his own field of competence, but only to the extent that his services are restricted to those phases of the project in which he is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.

(3) The geologist shall not affix his signature and seal to any document dealing with subject matter for which he lacks competence by virtue of education or experience or to any such plan or document not prepared under his direct supervisory control, except that the geologist may affix his seal and signature to drawings and documents depicting the work of two or more professionals provided he designates by note under his seal the specific subject matter for which he is responsible.

(d) The geologist shall issue public statements only in an objective and truthful manner:

(1) The geologist shall be completely objective and truthful in all professional reports, statements, or testimony. He shall include all relevant and pertinent information in such reports, statements or testimony.

(2) The geologist when serving as an expert or technical witness before any court, commission, or other tribunal shall express an opinion only when it is founded upon

adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony.

- (3) The geologist will issue no statements, criticisms, or arguments on geologic matters connected with public policy which are inspired or paid for by an interested party or parties unless he has prefaced his comments by explicitly identifying himself, by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest he may have in the instant matters.
- (4) The geologist shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of another geologist, nor shall he maliciously criticize another geologist's work in public. If he believes that another geologist is guilty of misconduct or illegal practice, he shall present such information to the Board for action.
- (e) The geologist shall not attempt to supplant another geologist in a particular employment after becoming aware that the other has been selected for the employment.
- (f) The geologist shall avoid conflicts of interest:
 - (1) The geologist shall conscientiously avoid conflicts of interest with his employer or client, but when unavoidable, the geologist shall forthwith disclose the circumstances to his employer or client.
 - (2) The geologist shall avoid all known conflicts of interest with his employer or client, and shall promptly inform his employer or client of any business association, interest, or circumstances which could influence his judgment or the quality of his services.
 - (3) The geologist shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all those parties.
 - (4) The geologist shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
 - (5) The geologist shall not solicit or accept substantial gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his client or employer in connection with work for which he is responsible.
 - (6) When in public service as a member, advisor, or employee of a governmental body or department, the geologist shall not participate in considerations or actions with respect to services provided by him or his organization in private geological practices.
 - (7) The geologist shall not solicit or accept a geologic contract from a governmental body on which a principal or officer of his business serves as a member.
- (g) The geologist shall solicit or accept work only on the basis of his qualifications:

- (1) The geologist shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.

- (2) The geologist shall compete for professional employment on the basis of qualification and competence for proper accomplishment of the work. He shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive, or unfair statement or claim regarding the cost, quality or extent of services to be rendered.
- (3) The geologist shall not falsify or permit misrepresentation of his, or his associates', academic or professional qualifications. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and those of his work associates.
- (h) The geologist shall associate only with reputable persons or organizations:
 - (1) The geologist shall not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.
 - (2) If the geologist has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of the North Carolina Geologist Licensing Act, he shall present such information to the Board and furnish such further information or assistance as may be required by the Board.
- (i) Conviction of a felony without restoration of civil rights, or the revocation or suspension of the license of a geologist by another jurisdiction, if for a cause which in the State of North Carolina would constitute a violation of G.S. 89E or of these rules, shall be grounds for a charge of violation of these Rules and may result in the revocation of the certificate of licensure or corporate registration issued by this Board and the imposition of a civil penalty not to exceed five thousand dollars (\$5,000).

*History Note: Authority G.S. 89E-5; 89E-16;
Temporary Adoption Eff. November 24, 1999;
Eff. August 1, 2000.*

CHAPTER 26 - LICENSING BOARD OF LANDSCAPE ARCHITECTS

SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

21 NCAC 26 .0101 AUTHORITY: NAME AND LOCATION OF BOARD

The "North Carolina Landscape Architecture Act," G.S. 89A, establishes and authorizes the "North Carolina Board of Landscape Architects," hereafter called the "board." Unless otherwise directed, all communications shall be addressed to the board at Post Office Box 41225, Raleigh, North Carolina 27629.

*History Note: Authority G.S. 89A-3.1
Eff. February 1, 1976;*

*Readopted Eff. September 30, 1977;
Amended Eff. August 1, 2000; July 2, 1979.*

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

**SUBCHAPTER 32R - CONTINUING MEDICAL
EDUCATION (CME) REQUIREMENTS**

**SECTION .0100 – CONTINUING MEDICAL EDUCATION
(CME) REQUIREMENTS**

**21 NCAC 32R .0101 CONTINUING MEDICAL
EDUCATION (CME) REQUIRED**

(a) Continuing Medical Education (CME) is defined as knowledge and skills generally recognized and accepted by the profession as within the basic medical sciences, the discipline of clinical medicine, and the provision of healthcare to the public. CME should maintain, develop, or improve the physician's knowledge, skills, professional performance and relationships which physicians use to provide services for their patients, their practice, the public, or the profession.

(b) Each person licensed to practice medicine in the State of North Carolina shall complete no less than 150 hours of practice relevant CME every three years in order to enhance current medical competence, performance or patient care outcome. At least 60 hours shall be in the educational provider-initiated category as defined in Rule .0102 of this Section. The remaining hours, if any, shall be in the physician-initiated category as defined in Rule .0102 of this Section.

(c) The three year period described in Paragraph (b) of this Rule shall run from the physician's birthday beginning in the year 2001 or the first birthday following initial licensure, which ever occurs later.

*History Note: Authority G.S. 90-14(a)(15);
Eff. January 1, 2000;
Amended Eff. January 1, 2001.*

21 NCAC 32R .0102 APPROVED CATEGORIES OF CME

The following are the approved categories of CME:

- (1) Educational Provider-Initiated CME: All education offered by institutions or organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME) and reciprocating organizations or American Osteopathic Association (AOA) including:
 - (a) Formal courses
 - (b) Scientific/clinical presentations, or publications
 - (c) Enduring Material (printed or electronic materials)
 - (d) Skill development
- (2) Physician-Initiated CME:
 - (a) Practice based self study
 - (b) Colleague Consultations
 - (c) Office based outcomes research
 - (d) Study initiated by patient inquiries
 - (e) Study of community health problems
 - (f) Successful Specialty Board Exam for certification or recertification
 - (g) Teaching (professional, patient/public health)
 - (h) Mentoring
 - (i) Morbidity and Mortality (M&M) conference
 - (j) Journal clubs

- (k) Creation of generic patient care pathways and guidelines
- (l) Competency Assessment

*History Note: Authority G.S. 90-14(a)(15);
Eff. January 1, 2000;
Amended Eff. January 1, 2001.*

CHAPTER 33 - MIDWIFERY JOINT COMMITTEE

SECTION .0100 – MIDWIFERY JOINT COMMITTEE

**21 NCAC 33 .0101 ADMINISTRATIVE BODY AND
DEFINITIONS**

(a) The responsibility for administering the provisions of G.S. 90, Article 10A shall be assumed by an administrative body, the Midwifery Joint Committee, hereinafter referred to as the "Committee." The certified nurse midwife shall hereinafter be referred to as "midwife."

(b) Definitions:

- (1) "Primary Supervising Physician" means the licensed physician, who by signing the certified nurse-midwife application, is held accountable for the on-going supervision, consultation, collaboration and evaluation of the medical acts performed by the certified nurse-midwife as defined in the site specific written clinical practice guidelines. A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician. A physician in a graduate medical education program who is also practicing in a non-training situation may supervise a certified nurse-midwife in the non-training situation if fully licensed.
- (2) "Back-up Primary Supervising Physician" means the licensed physician who, by signing an agreement with the certified nurse-midwife and the primary supervising physician(s) shall be held accountable for the supervision, consultation, collaboration and evaluation of medical acts by the certified-nurse midwife in accordance with the site specific written clinical practice guidelines when the Primary Supervising Physician is not available. The signed and dated agreements for each back-up primary supervising physician(s) shall be maintained at each practice site. A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up primary supervising physician. A physician in a graduate medical education program who is also practicing in a non-training situation may be a back-up primary supervising physician to a certified nurse-midwife in the non-training situation if fully licensed and has signed an agreement with the certified nurse-midwife and the primary supervising physician.
- (3) "Obstetrics" means a branch of medical science that deals with birth and with its antecedents and sequels including but not limited to prenatal, intrapartum, postpartum, newborn, gynecology and otherwise unspecified primary health services for women.

*History Note: Authority G.S. 90-178.4;
Eff. February 1, 1984;
Amended Eff. July 1, 2000; October 1, 1988.*

**CHAPTER 37 - BOARD OF NURSING HOME
ADMINISTRATORS**

SUBCHAPTER 37D - NEW LICENSES

SECTION .0400 - ADMINISTRATOR-IN-TRAINING

21 NCAC 37D .0403 TRAINING PERMIT

(a) After the interview and approval, and upon notification from the preceptor of the starting date of the AIT program, the Board shall issue an AIT training permit to the applicant for a maximum one-year period beginning on the date the permit is issued.

(b) Should the AIT or the Preceptor fail to follow the individualized curriculum (submitted pursuant to Rule 37D .0402), follow the training program (presented pursuant to Rule 37D .0405), timely submit a report (required by Rule 37D .0406), serve at least a minimum number of hours (required by Rule 37D .0407), or otherwise comply with any applicable statute or rule, the Board may revise, suspend, or rescind the AIT training permit.

*History Note: Authority G.S. 90-278; 90-285;
Eff. February 1, 1976;
Amended Eff. April 8, 1977;
Readopted Eff. October 1, 1981; December 15, 1977;
Amended Eff. August 2, 1993; May 1, 1989;
Transferred and Recodified from 21 NCAC 37A .0504 Eff. April 1, 1996;
Amended Eff. July 1, 2000; April 1, 1996.*

**CHAPTER 50 - BOARD OF EXAMINERS OF
PLUMBING, HEATING AND FIRE SPRINKLER
CONTRACTORS**

SECTION .0300 - EXAMINATIONS

21 NCAC 50 .0304 SPECIAL EXAMINATIONS

The Board may implement a program of additional regular examinations, on dates other than April and October, at the same cost as set for the regular examinations.

*History Note: Authority G.S. 87-18; 87-21(a); 87-21(b);
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 2000; May 1, 1989.*

SECTION .0400 - GENERAL PROCEDURES

21 NCAC 50 .0402 PERMITS

(a) A licensed contractor shall assure that a permit is obtained from the local Code Enforcement official before commencing any work for which a license is required by the Board. The contractor shall also assure that a request for final inspection is made within 10 days of substantial completion of the work for which license is required, absent agreement with the owner and the local Code Enforcement official. Absent agreement with the

local Code Enforcement official the licensee is not relieved by the Board of responsibility to arrange inspection until a certificate of compliance or the equivalent is obtained from the local code enforcement official or the licensee has clear evidence of his effort to obtain same.

(b) A licensed contractor shall not authorize permits to be obtained or allow his license number to appear on permits except for work over which he will provide general supervision until the completion of the work, for which he holds the contract and for which he receives all contractual payments.

*History Note: Authority G.S. 87-18; 87-26;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 2000; September 1, 1995; November 1, 1993; May 1, 1989.*

SECTION .1100 - FEES

21 NCAC 50 .1101 EXAMINATION FEES

(a) An application to reissue or transfer license to a different corporation, partnership or individual name requires a fee of twenty-five dollars (\$25.00), consistent with G.S. 87-26.

(b) An application to issue or transfer license to the license of an existing licensee requires a fee of twenty-five dollars (\$25.00), consistent with G.S. 87-26.

(c) An application for license by examination requires a fee of fifty dollars (\$50.00) for the examination and a fee for issuance of license as set forth in 21 NCAC 50 .1102 or this Rule.

*History Note: Filed as a Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990;
Authority G.S. 87-18; 87-22.1; 87-22; 87-26;
Eff. May 1, 1989;
Amended Eff. August 1, 2000; November 1, 1993; March 1, 1990.*

**CHAPTER 56 - BOARD OF PROFESSIONAL
ENGINEERS AND LAND SURVEYORS**

**SECTION .0400 - RECORDS AND REPORTS OF BOARD:
RETENTION AND DISPOSITION**

21 NCAC 56 .0402 RECORDS OF APPLICATIONS

All records of applications for registration which are active are retained at the office of the Board. However, application files once submitted to the Board are Board property and are not returnable. During the time records are physically held in the Board office an applicant can obtain a copy of the two-page application form by request to this office. Inactive applications will be destroyed after one year after giving 30 day notice to the last known address of the applicant, upon approval of the Department of Cultural Resources in accordance with G.S. 121-5.

*History Note: Authority G.S. 89C-10(a); 89C-12;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 2000; January 1, 1982.*

SECTION .0500 - PROFESSIONAL ENGINEER**21 NCAC 56 .0501 REQUIREMENTS FOR LICENSING**

(a) Education. The education of an applicant shall be considered in determining eligibility for licensing as a Professional Engineer. The following terms used by the Board for the specific educational requirements to be eligible to be licensed as a Professional Engineer are defined by the Board as follows:

- (1) Engineering Curriculum of Four or more Years Approved by the Board is defined as a curriculum that has been accredited by the Accreditation Board for Engineering and Technology (ABET). This curriculum is incorporated by reference including subsequent amendments and editions. This material is available for inspection at the office of the North Carolina Board of Examiners for Engineers and Surveyors. Copies may be obtained at the Board office at a cost of five dollars (\$5.00) per copy.
- (2) Engineering or Related Science Curriculum of Four or more Years Other than Ones Approved by the Board is defined as a curriculum, although not accredited by ABET, of technical courses which contains engineering or scientific principles.
- (3) Equivalent Education Satisfactory to the Board:
 - (A) A graduate degree in Engineering from an institution in which the same discipline undergraduate engineering curriculum has been accredited by ABET shall be considered equivalent to an engineering curriculum of four or more years approved by the Board.
 - (B) A bachelor's degree in Engineering Technology shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
 - (C) An associate degree in an engineering related curriculum with an additional two years of progressive engineering experience shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
 - (D) A high school diploma with an additional four years of progressive engineering experience shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
 - (E) Foreign degrees shall be considered only after receipt of an evaluation from the Foreign Engineering Education Evaluation Program (FEEEP) of the National Council of Examiners for Engineering and Surveying (NCEES), or from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The Board shall equate the degree to one of the education categories in Subparagraphs (a)(1)-(3) of this Rule.
- (b) Experience:
 - (1) General. The experience of an applicant shall be considered in determining whether an applicant is eligible to be licensed as a Professional Engineer.
 - (2) Required Experience. In evaluating the work experience required, the Board may consider the total experience record and the progressive nature of the record. (Not less than half of required engineering experience shall be of a professional grade and character, and shall be performed under the responsible charge of a licensed Professional Engineer, or if not, a written explanation shall be submitted showing why the experience should be considered acceptable and the Board may approve if satisfied of the grade and character of the progressive experience.
 - (3) Definition. The terms "progressive engineering experience" or "progressive experience on engineering projects" mean that during the period of time in which an applicant has made a practical utilization of acquired knowledge, continuous improvement, growth and development have been shown in the utilization of that knowledge as revealed in the complexity and technical detail of the work product or work record. The applicant must show continuous assumption of greater individual responsibility for the work product over that period of time. The progressive experience on engineering projects shall be of a grade and a character which indicates to the board that the applicant may be competent to practice engineering.
 - (4) Specific Credit for Experience. In evaluating progressive engineering experience, the Board may give credit for experience in the following areas of work:
 - (A) Graduate schooling or research in an approved engineering curriculum resulting in award of an advanced engineering degree, one year for each such degree - maximum two years;
 - (B) Progressive land surveying - maximum two years;
 - (C) Teaching of engineering subjects at the university level in an approved engineering curriculum offering a four year or more degree approved by the Board - maximum two years.

The Board, however, shall not accept combinations, restricted only to the categories noted above, as fulfilling all the necessary statutory experience requirements. Every applicant for licensure as a Professional Engineer, as part of the total experience requirement, shall show a minimum of one year experience of a progressive engineering nature in industry, or government, or under a licensed Professional Engineer offering service to the public.

Full-time engineering faculty members who teach in an approved engineering curriculum offering a four year or more degree approved by the Board, may request waiver of the minimum one year experience in industry, government, or private practice if they demonstrate consulting or research work of at least one year's duration, which was pursued to fruition, and which is of a progressive engineering nature. The faculty applicant shall document the work and demonstrate that the work meets the Board's requirement.

- (5) Other Experience is Considered if it is:
- (A) Experience obtained prior to graduation as part of an ABET accredited engineering program which must be shown on the transcript, with a maximum credit of one year;
 - (B) Experience obtained in a foreign country that is performed under direct supervision of a Professional Engineer licensed with a member Board of the National Council of Examiners for Engineering and Surveying (NCEES).

*History Note: Authority G.S. 89C-10; 89C-13;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 2000; August 1, 1998; November 2, 1992; April 1, 1989; January 1, 1982.*

**21 NCAC 56 .0502 APPLICATION PROCEDURE:
INDIVIDUAL**

- (a) General. A person desiring to become licensed as a Professional Engineer must make application to the Board on a form prescribed and furnished by the Board.
- (b) Request. A request for an appropriate application form may be made at the Board address.
- (c) Applicable Forms:
 - (1) Engineering Intern Form. This form requires the applicant to set forth personal history, educational background, provide character references, and furnish a photograph for identification purposes. The form is for use by those graduating, or those having graduated, from an engineering curriculum approved by the Board as follows:
 - (A) Students graduating within two semesters, or the equivalent, of the semester in which the fundamentals of engineering examination is administered.
 - (B) Graduates with less than two years since graduation.
 - (2) Professional Engineer Form:
 - (A) All persons, including comity applicants and graduates of an engineering curriculum approved by the Board with more than two years progressive engineering experience, shall apply for licensure by using the Professional Engineer form. The submission of this form shall signify that the applicant seeks licensure, and will result in seating for each examination required, when the applicant is so qualified. This form requires the applicant to set forth personal and educational background, engineering experience and character references. A passport-type photograph for identification purposes is required.
 - (B) Persons who have previously completed the fundamentals examination by use of the Engineering Intern Form shall submit the Professional Engineer Form to request licensure when qualified to take the final eight-hour examination.
 - (3) Supplemental Form. Persons who initially applied for the fundamentals of engineering exam using the Professional Engineer form must supplement the initial

application upon applying for the principles and practice examination. The supplemental form requires that engineering experience from the date of the initial application until the date of the supplemental application be listed. Five references shall be submitted which are current to within one year of the examination date.

- (4) Reference Forms:
 - (A) Persons applying to take the examination for fundamentals of engineering must submit to the Board names of three individuals who are familiar with the applicant's work, character and reputation. Persons applying to take the examination for principles and practices of engineering must submit to the Board names of five individuals who are familiar with the applicant's work, character and reputation. Two of these individuals must be licensed Professional Engineers.
 - (B) In addition to the applicant submitting names to the Board of individuals familiar with the applicant's work, character and reputation, those individuals listed shall submit to the Board their evaluations of the applicant on forms supplied them by the applicant.
 - (C) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's engineering experience, character and reputation.
 - (D) The reference forms shall be received by the applicant with the application. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall see that the individuals listed as references return the reference forms to the Board prior to the filing deadline for the examination.
- (d) Fees:
 - (1) Engineering Intern Form. The examination fee for applicants applying for examination on the fundamentals of engineering using the engineering intern form is payable with the filing of the application. Once the applicant passes the examination on the fundamentals of engineering, the licensure fee of one hundred dollars (\$100.00) and the examination fee for the principles and practice of engineering examination are payable with the applicant's subsequent application for licensure as a Professional Engineer using the Professional Engineer form.
 - (2) Professional Engineer Form. The licensure fee of one hundred dollars (\$100.00) and appropriate examination fee for applicants applying for the examination on the fundamentals of engineering or the principles and practice of engineering using the Professional Engineer form are payable with the filing of the application.
 - (3) Comity. The licensure fee for applicants for comity licensure is payable with the filing of the application in accordance with G.S. 89C-14.
 - (4) Examination. The examination fee for any applicant is payable with the filing of the application in accordance with G.S. 89C-14.

(e) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure the NCEES record is accepted in lieu of completing the experience, education and references sections of the application.

(f) Model Law Engineer. The term "Model Law Engineer" refers to a person who meets the requirements of this Section by meeting the requirements of NCEES and has a current NCEES record on file and is designated as a "Model Law Engineer". A "Model Law Engineer" application is administratively approved by the Executive Director based upon the designation, without waiting for the next regular meeting of the Board at which time the action is reported to the Board for final approval.

(g) Personal interview. During the application process, the applicant may be interviewed by the Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to education and experience.

History Note: Authority G.S. 89C-10; 89C-13; 89C-14;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. May 1, 1994; November 2, 1992; April 1, 1989; December 1, 1984;

RRC Objection due to lack of Statutory Authority Eff. November 17, 1994;

Amended Eff. August 1, 2000; August 1, 1998; January 1, 1995.

SECTION .0600 - LAND SURVEYOR

SECTION .0600 - PROFESSIONAL LAND SURVEYOR

21 NCAC 56 .0601 REQUIREMENTS FOR LICENSING

(a) Education. The following terms used by the Board for the specific education requirements to be eligible to be licensed as a Professional Land Surveyor are defined by the Board as follows:

(1) B.S. in Surveying or Other Equivalent Curricula. These degrees must contain a minimum of 45 semester hours, or their quarter-hour equivalents, of subjects directly related to the practice of surveying. Of the 45 semester hours, a minimum of 12 semester hours of surveying fundamentals, 12 semester hours of applied surveying practice and 12 semester hours of advanced or theoretical surveying courses are required. The remainder of the required surveying courses may be elective-type courses directly related to surveying; and

(2) Associate Degree in Surveying Technology. This degree must contain a minimum of 20 semester hours, or quarter-hour equivalents, of subjects directly related to the practice of surveying. Courses in surveying practices, subdivision design and planning, surface drainage and photogrammetry must be successfully completed.

(b) Experience:

(1) Definition. As used in the North Carolina Engineering and Land Surveying Act, the term "progressive practical surveying experience" means that during the period of time in which an applicant has made a practical utilization of the knowledge of the principles of geometry and trigonometry in determining the shape, boundaries, position and extent of the earth's surface, continuous improvement, growth and development in

the utilization of that knowledge have been shown. In addition, the applicant must show the continuous assumption of greater individual responsibility for the work product over that period of time.

(2) Experience Accepted. In evaluating the work experience required, the Board may consider the total experience record and the progressive nature of the record. (Not less than half of required land surveying experience shall be of a professional grade and character, and shall be performed under the responsible charge of a Professional Land Surveyor, or if not, a written explanation shall be submitted showing why the experience should be considered acceptable and the Board may approve if satisfied of the grade and character of the progressive experience.

(3) Other Experience. Work done in the following areas requires evidence to the Board of its equivalency to land surveying:

(A) construction layout;

(B) engineering surveying; or

(C) part-time surveying work.

(c) Exhibits, Drawings, Plats:

(1) Required Exhibit Before Fundamentals of Land Surveying Examination. The applicant must submit, along with the application, an actual plat or an example plat prepared by, or under the direct supervision of, the applicant which discloses that the applicant is knowledgeable in the elements of good mapping practices.

(2) Required Exhibit Before Principles and Practices of Land Surveying Examination:

(A) General. The applicant must submit, along with the application, an actual plat of a boundary survey of an actual project prepared by, or under the direct supervision of, the applicant which discloses that the applicant is knowledgeable of the contents of the Standards of Practice for Land Surveying in North Carolina (Section .1600) and also is able to apply this knowledge by preparing a plat in accordance with the various legal and professional requirements of land surveying.

(B) Physical Requirement. The map submitted must be a clean, clear, legible print of an original map in the file of a Professional Land Surveyor.

(3) Specific Requirements. The specific details that shall be evaluated are those applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina (Section .1600) and as described in G.S. 47-30. In addition, the exhibit shall contain a statement that the field work, calculation and mapping were performed by the applicant under the supervision of a Professional Land Surveyor, attested to by the Professional Land Surveyor.

(4) Requirements for Comity Applicant. The map submitted by an applicant under comity may be a sample plat of a project or work performed in the state of licensure which shall be evaluated in accordance with legal requirements of North Carolina.

History Note: Authority G.S. 47-30; 89C-10; 89C-13;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2000; August 1, 1998; November 2, 1992; April 1, 1989; December 1, 1984; January 1, 1982.

21 NCAC 56 .0602 APPLICATION PROCEDURE: INDIVIDUAL

(a) General. A person desiring to become a Professional Land Surveyor must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for the application form may be made at the Board address.

(c) Application Form. All persons applying to be licensed as a Professional Land Surveyor shall apply using the standard application form. This form requires the applicant to set forth personal background, plus educational background, land surveying experience, and references. A passport-type photograph for identification purposes is required also.

(d) Supplemental Form. Persons who initially applied for licensure as a land surveyor, but were not eligible initially to be admitted to the examination for principles and practice of land surveying, must supplement their initial applications upon ultimately applying for the second examination. The applicant must supplement the initial application by using the supplemental form, which requires the listing of land surveying experience from the date of the initial application to the date of the supplemental application. Five references shall be submitted which are current to within one year of the examination date.

(e) Reference Forms:

- (1) Persons applying to take the examination for the fundamentals of land surveying or the examination for principles and practice must submit to the Board names of individuals who are familiar with the applicant's work, character and reputation. The names are submitted by the applicant on the application form.
- (2) Persons applying for the fundamentals of land surveying examination must submit three references, one of which must be a Professional Land Surveyor. Persons applying for the principles and practice examination must submit five references, two of which must be Professional Land Surveyors.
- (3) In addition to the applicant submitting names to the Board of such individuals, those individuals shall submit to the Board their evaluations of the applicant on reference forms supplied them by the applicant.
- (4) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's land surveying experience, character and reputation.
- (5) The reference forms shall be received by the applicant along with the application for licensure. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall see that the individuals listed as references return the forms to the Board prior to the filing deadline for the examination applied for by the applicant.

(f) Fees:

- (1) Regular. The licensure fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for licensure based upon examination,

experience, character and exhibit are payable with the filing of the application.

- (2) Comity. The licensure fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for licensure based upon comity are payable with the filing of the application.

- (3) Examination. The examination fee for any applicant is payable with the filing of the application in accordance with G.S. 89C-14.

(g) Personal Interview. During the application process, the applicant may be interviewed by Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to education and experience.

History Note: Authority G.S. 89C-10; 89C-13; 89C-14;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2000; August 1, 1998; May 1, 1994; April 1, 1989; January 1, 1982.

SECTION .0700 – RULES OF PROFESSIONAL CONDUCT

21 NCAC 56 .0701 RULES OF PROFESSIONAL CONDUCT

(a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the professions of engineering and land surveying, the following rules of professional conduct are promulgated in accordance with G.S. 89C-20 and shall be binding upon every person holding a certificate of licensure as a Professional Engineer or Professional Land Surveyor (licensee), and on all business entities authorized to offer or perform engineering or land surveying services in this state. All persons licensed under the provisions of G.S. 89C of the General Statutes are charged with having knowledge of the existence of the rules of professional conduct, and shall be deemed to be familiar with their several provisions and to understand them.

(b) The licensee shall conduct the practice in order to protect the public health, safety and welfare. The licensee shall at all times recognize the primary obligation to protect the public in the performance of the professional duties. If the licensee's engineering or land surveying judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, the licensee shall inform the employer, the contractor and the appropriate regulatory agency of the possible consequences of the situation.

(c) The licensee shall perform services only in areas of the licensee's competence and:

- (1) Shall undertake to perform engineering and land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or land surveying involved.
- (2) May accept an assignment or project requiring education or experience outside of the licensee's own field of competence, but only to the extent that the services are restricted to those portions or disciplines of the project in which the licensee is qualified. All other portions or disciplines of such project shall be performed by associates, consultants, or employees who

are licensed and competent in those portions or disciplines.

- (3) Shall not affix the signature or seal to any engineering or land surveying plan or document dealing with subject matter for which the licensee lacks competence by virtue of education or experience, nor to any such plan or document not prepared under the licensee's direct supervisory control. Direct supervisory control (responsible charge) requires a licensee or employee to carry out all client contacts, provide internal and external financial control, oversee employee training, and exercise control and supervision over all job requirements to include research, planning, design, field supervision and work product review. A licensee shall not contract with a non-licensed individual to provide these professional services. Research, such as title searches and soil testing, may be contracted to a non-licensed individual, provided that individual is qualified or licensed to provide such service and provided the licensee reviews the work. The licensee may affix the seal and signature to drawings and documents depicting the work of two or more professionals provided it is designated by a note under the seal the specific subject matter for which each is responsible.
- (d) The licensee shall issue public statements only in an objective and truthful manner and:
 - (1) Shall be objective and truthful in all professional reports, statements or testimony. The licensee shall include all relevant and pertinent information in such reports, statements or testimony.
 - (2) When serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of the licensee's testimony.
 - (3) Shall issue no statements, criticisms, or arguments on engineering or land surveying matters connected with public policy which are inspired or paid for by an interested party, or parties, unless the licensee has prefaced the comment by explicitly identifying the licensee's name, by disclosing the identities of the party or parties on whose behalf the licensee is speaking, and by revealing the existence of any pecuniary interest the licensee may have in the instant matters.
 - (4) Shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another engineer or land surveyor, nor indiscriminately criticize another engineer or land surveyor's work in public. Indiscriminate criticism includes statements without valid basis or cause or that are not objective and truthful or that fail to include all relevant and pertinent information. If the licensee believes that another engineer or land surveyor is guilty of misconduct or illegal practice, such information shall be presented to the North Carolina Board of Examiners.
- (e) The licensee shall avoid conflicts of interest and:
 - (1) Shall promptly inform the employer or client of any business association, interests, or circumstances which could influence judgment or the quality of services.
 - (2) Shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.
 - (3) Shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
 - (4) Shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with the client or employer in connection with work for which the licensee is responsible.
 - (5) When in public service as a member, advisor, or employee of a governmental body or department, shall not participate in considerations or actions with respect to services provided by the licensee or the licensee's organization in private engineering and land surveying practices.
 - (6) Shall not solicit or accept an engineering or land surveying contract from a governmental body on which a principal or officer of the licensee's organization serves as a member.
 - (7) Shall not attempt to supplant another engineer or land surveyor in a particular employment after becoming aware that the other has been selected for the employment.
- (f) The licensee shall solicit or accept work only on the basis of qualifications and:
 - (1) Shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.
 - (2) Shall compete for employment on the basis of professional qualification and competence to perform the work. The licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement or claim regarding the cost, quality or extent of services to be rendered.
 - (3) Shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31, and shall not knowingly cooperate in a violation of any provision of G.S. 143-64.31.
 - (4) Shall not falsify or permit misrepresentation of academic or professional qualifications and shall only report educational qualifications when a degree or certificate was awarded, unless it is clearly stated that no degree or certificate was awarded. The licensee shall not misrepresent degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing qualifications and work.

(g) The Licensee shall perform services in an ethical and lawful manner and:

- (1) Shall not knowingly associate with or permit the use of the licensee's name or firm name in a business venture by any person or firm which the licensee knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature or is not properly licensed.
- (2) If the licensee has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of the North Carolina Engineering and Land Surveying Act, shall present such information to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board. The licensee shall timely respond to all inquiries and correspondence from the Board and shall timely claim correspondence from the U. S. Postal Service, or other delivery service, sent to the licensee from the Board.

(h) A Professional Engineer or Professional Land Surveyor who has received a reprimand or civil penalty or whose professional license is revoked, suspended, denied, or surrendered as a result of disciplinary action by another jurisdiction shall be subject to discipline by the Board if the licensee's action constitutes a violation of G.S. 89C or the rules adopted by the Board.

History Note: Authority G.S. 89C-17; 89C-20;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2000; August 1, 1998; November 2, 1992; April 1, 1989; January 1, 1982; March 1, 1979.

SECTION .0800 - FIRM REGISTRATION

21 NCAC 56 .0802 PROCEDURE

- (a) Professional Corporations and Limited Liability Companies:
 - (1) Request. A request for an application for licensure as a professional corporation or professional limited liability company engaged in the practice of engineering or land surveying may be made at the Board address.
 - (2) Applicable Form. All professional corporations and professional limited liability companies complying with the statutory requirements of G.S. 89C, G.S. 55B and G.S. 57C which desire to practice engineering or land surveying shall apply by using a form prepared by the Board. This form shall require the applicant, by and through an officer, director and shareholder of the professional corporation or limited liability company who is currently licensed with the North Carolina Board of Examiners for Engineers and Surveyors in the field(s) of professional services to be offered, to certify that it and the stockholders of the corporation or members of the limited liability company have complied with the provisions of the applicable provisions of the General Statutes and requires that the officers, directors, shareholders, members and professional employees be listed on that application.
 - (3) Certificate of Licensure:
 - (A) Upon receiving the application with application fee of one hundred dollars (\$100.00), the Board, after determining that the firm has complied with the

statutory requirements, will then issue a certificate of compliance.

- (B) The firm, then, must forward the certificate of compliance to the Secretary of State along with its articles of incorporation or articles of organization.
- (C) Upon approval by the Secretary of State, the firm then must forward to the Board a certified copy of its articles of incorporation or articles of organization.
- (D) Upon receipt of the certified copy of the articles of the firm, if all statutory requirements have been met, the Board will approve the application and issue the firm a certificate of licensure.

(b) Business Firms and Chapter 87 Corporations:

- (1) Request. A request for an application for licensure as a business firm or Chapter 87 corporation [as defined in G.S. 55B-15(a)(2)] engaged in the practice of engineering or land surveying may be made at the Board address. A sole proprietorship owned and operated by the individual licensee in the licensee's name as reflected in the Board's records is exempt from firm licensure.
- (2) Applicable Form. All business firms or Chapter 87 corporations that desire to practice engineering or land surveying shall apply by using a form prepared by the Board. The form shall require the applicant, through a principal officer, partner or owner, to certify that the business firm shall be operated in compliance with the laws of the State of North Carolina and the rules of the North Carolina Board of Examiners for Engineers and Surveyors.
- (3) Certificate of Licensure. Upon receiving the application with application fee of one hundred dollars (\$100.00), the Board, after determining that the firm has complied with the statutory requirements, shall then issue a certificate of licensure.

History Note: Authority G.S. 55B-4; 55B-10; 57C-2.01; 89C-10; 89C-24;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2000; February 1, 1996; May 1, 1994; April 1, 1989; January 1, 1982.

SECTION .1100 - SEAL

21 NCAC 56 .1101 GENERAL

It is misconduct for a Professional Engineer or Professional Land Surveyor to seal work done by another individual unless the work is performed under the "responsible charge" of the Professional Engineer or Professional Land Surveyor.

History Note: Authority G.S. 89C-3(10); 89C-10; 89C-16;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2000; April 1, 1989; December 1, 1984; January 1, 1982.

21 NCAC 56 .1106 CERTIFICATION OF STANDARD DESIGN PLANS

Standard design plans that were initially prepared and sealed by an individual who is a licensed engineer in the state of origin of such plans may then be reviewed by a North Carolina Professional Engineer for code conformance, design adequacy, and site adaptation for the specific application within North Carolina. The Professional Engineer who is licensed in North Carolina assumes responsibility for such standard designs. Standard plans, which bear the seal of an individual who is a licensed engineer in another state, shall be sealed by the North Carolina Professional Engineer who is assuming responsibility. In addition to the seal, a statement shall be included as follows: "These plans have been properly examined by the undersigned. I have determined that they comply with existing local North Carolina codes, and have been properly site adapted for use in this area."

History Note: Authority G.S. 89C-10; 89C-16;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2000; August 1, 1998; April 1, 1989; December 1, 1984; January 1, 1982.

SECTION .1300 - BOARD DISCIPLINARY PROCEDURES

21 NCAC 56 .1301 IMPROPER PRACTICE BY A LICENSEE

(a) General. Alleged improper practice by a licensee shall be subject to Board investigation and disciplinary action by the Board if necessary.

(b) Preferring Charges. Any person who believes that any licensed Professional Engineer, Professional Land Surveyor or firm holding a certificate of authorization is in violation of the provisions of G.S. 89C or the rules in this Chapter may prefer charges against that person or firm by setting forth in writing those charges and swearing to their authenticity, along with providing corroborative evidence. The charges shall be filed at the Board's office in Raleigh, North Carolina.

(c) Preliminary Review:

- (1) Upon receipt of a properly filed charge, an investigation shall be initiated.
- (2) A written notice and explanation of the charge shall be forwarded to the person or firm against whom the charge is made and a response is requested of the person or firm so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt requested.
- (3) In the discretion of the executive director, a field investigation may be performed.
- (4) After preliminary evidence has been obtained, the matter shall be referred to the Board's review committee which is made up of the following individuals:
 - (A) one member of the Board who is licensed in the respective profession,
 - (B) the legal counsel of the Board, and
 - (C) the executive director of the Board.

(5) Upon review of the available evidence, the review committee shall present to the Board a written recommendation that:

- (A) The charge be dismissed as unfounded or trivial;
- (B) When the charge is admitted as true, the Board accept the admission of guilt by the person charged and order that person not to commit in the future the specific act or acts admitted and also not to violate any of the provisions of the Board Rules or the statutes at any time in the future;
- (C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of the rules in 21 NCAC 56 .1400 and the provisions of G.S. 150B; or
- (D) Whether the charge is admitted or denied, the Board give notice to the licensee of a contemplated action as set out in 21 NCAC 56 .1403(b).

(d) Consultant. A consultant to the review committee shall be designated by the Board Chair if a current board member is a complainant, witness or respondent in a case. The consultant shall be a currently licensed professional engineer or professional land surveyor, depending on the nature of the case, selected from a list provided by the executive director of former Board members or other licensed professionals who are knowledgeable with the Board's processes and have expressed an interest in serving as a consultant. The consultant shall review all case materials and make a recommendation for consideration by the review committee as to the merits of the case. The consultant shall review any new information presented in the event of a settlement conference and make a recommendation to the settlement conference committee.

(e) Board Decision. Notice of the decision by the Board on recommendations of the review committee shall be given to the party against whom the charges have been brought and the party submitting the charge. Though it is not forbidden to do so, the Board is not required to notify the parties of the reasons of the Board in making its determination.

(f) Settlement Conference. When the Board issues a citation for hearing or notice of a contemplated action, the licensee may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the licensee and Board's settlement committee do not agree to a resolution of the dispute for the full Board's consideration, the original administrative proceeding shall commence. During the course of the settlement conference, no sworn testimony shall be taken nor shall any witnesses be cross-examined.

- (1) The Board's settlement committee shall be made up of the following individuals:
 - (A) the member of the Board who served on the review committee or the replacement if no longer a member of the Board,
 - (B) one public member from the Board,
 - (C) the legal counsel of the Board, and
 - (D) the executive director of the Board.
- (2) Upon review of the available evidence, the settlement committee shall present to the Board a written recommendation that:

- (A) the charge be dismissed as unfounded or trivial;
- (B) when the charge is admitted as true, the Board accept the admission of guilt by the person charged and order the person not to commit in the future the specific act or acts admitted and, also, not to violate any provisions of the Board Rules or the statutes at any time in the future;
- (C) the charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
- (D) whether the charge is admitted or denied, the Board give notice to the licensee of a contemplated action as set out in 21 NCAC 56 .1403(b).

History Note: Authority G.S. 89C-10; 89C-21; 89C-22;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 2000; August 1, 1998; March 1, 1996;
April 1, 1989; December 1, 1984; January 1, 1982.

SECTION .1500 - FEES

21 NCAC 56 .1501 GENERAL

Fees for returned checks shall be in the maximum amount established by G.S. 25-3-506.

History Note: Authority G.S. 89C-14; 89C-17; 89C-18;
Eff. May 1, 1989;
Amended Eff. August 1, 2000.

SECTION .1600 - STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA

21 NCAC 56 .1601 GENERAL

In order to better serve the general public in regulating the practice of land surveying in North Carolina, the minimum standards of practice set forth in this Section are established, and shall be observed by Professional Land Surveyors in the practice of land surveying.

History Note: Authority G.S. 89C-10; 89C-20;
Eff. July 1, 1989;
Amended Eff. August 1, 2000.

21 NCAC 56 .1602 SURVEYING PROCEDURES

- (a) A Professional Land Surveyor shall spend the necessary time and effort to make adequate investigation to determine if there are encroachments, gaps, lappages, or other irregularities along each line surveyed. Points may be placed on the line from nearby closed or verified traverses and the necessary investigations made from these points. If these investigations are not made, then the surveyor shall not certify to an actual survey of that line and the plat must contain the appropriate qualifications in accordance with the rules in this Section.
- (b) Any and all visible or determined encroachments or easements on the property being surveyed shall be accurately located and clearly indicated.

(c) With respect to investigation of property boundaries and recorded easements, the surveyor shall, at a minimum, examine the most recent deeds and recorded plats adjacent to the subject property as well as all deeds and plats recorded after the date of the deed or plat upon which the survey is being based (the survey reference deed or plat).

(d) Except as provided in Paragraph (e) of this Rule, metal stakes or materials of comparable permanence shall be placed at all corners.

(e) Where a corner falls in a right-of-way, in a tree, in a stream, or on a fence post, boulder, stone, or similar object, one or more monuments or metal stakes shall be placed in the boundary line so that the inaccessible point may be located accurately on the ground and the map.

(f) The results of a survey when reported to the user of that survey, whether in written or graphic form, shall be prepared in a clear and factual manner. All reference sources shall be identified. Artificial monuments called for in such reports shall be described as found or set. When no monument is found or set for points described in Paragraph (d) of this Rule, that fact shall be noted.

(g) Where the results of a survey are reported in the form of a plat or a written description, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey, where such monument is within 2000 feet of the subject property, right-of-way, easement or other surveyed entity. Where the North Carolina grid system coordinates of said monument are on file in the North Carolina Office of State Planning, the coordinates of both the referenced corner or point and the monument(s) shall be shown in X (easting) and Y (northing) coordinates on the plat or in the written description or document. The coordinates shall be identified as based on 'NAD 83', indicating North American Datum of 1983 or as 'NAD 27' indicating North American Datum of 1927. The tie lines to the monuments must be sufficient to establish true north or grid north bearings for the plat or description if the monuments exist in pairs. Control monuments within a previously recorded subdivision may be used in lieu of grid control. In the interest of bearing consistency with previously recorded plats, existing bearing control may be used where practical. In the absence of Grid Control, other natural or artificial monuments or landmarks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.

(h) Area is to be computed by double meridian distance or equally accurate method and shown on the face of the plat, written description or other document. Area computations by estimation, by planimeter, by scale, or by copying from another source are not acceptable methods, except in the case of tracts containing inaccessible areas and in these areas the method of computation shall be clearly stated.

History Note: Authority G.S. 89C-10; 89C-20;
Eff. July 1, 1989;
Amended Eff. August 1, 2000; August 1, 1998; February 1, 1996.

21 NCAC 56 .1603 CLASSIFICATION OF BOUNDARY SURVEYS

General. Boundary surveys are defined as surveys made to establish or to retrace a boundary line on the ground, or to obtain data for constructing a map or plat showing a boundary line. For the purpose of this Rule the term refers to all surveys, including "loan" or "physical" surveys, which involve the determination or depiction of property lines. For the purpose of specifying minimum allowable surveying standards for boundary surveys, the following four general classifications of lands in North Carolina are established from the standpoint of their real value, tax value, or location. Each map shall contain a statement of the calculated ratio of precision before adjustments. Positional accuracy may be used in addition to Ratio of Precision when a network of multiple traverse loops is used in the field and the network has been adjusted by the least squares method.

- (1) Local Control Network Surveys (Class AA). Local control network surveys are traverse networks utilizing permanent points for the purpose of establishing local horizontal control networks for future use of local surveyors. For Class AA boundary surveys in North Carolina, the angular error of closure shall not exceed ten seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 20,000 feet of perimeter of the parcel of land (1:20,000). When using positional accuracy standards for Class AA control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.05 feet or 0.015 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.
- (2) Urban Land Surveys (Class A). Urban surveys include lands which normally lie within a town or city. For Class A boundary surveys in North Carolina, the angular error of closure shall not exceed 20 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 10,000 feet of perimeter of the parcel of land (1:10,000). When using positional accuracy standards for Class A control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.10 feet or 0.030 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.
- (3) Suburban Land Surveys (Class B). Suburban surveys include lands in or surrounding the urban properties of a town or city. For Class B boundary surveys in North Carolina, the angular error of closure shall not exceed 25 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 7,500 feet of perimeter of the parcel of land (1:7,500). When using positional accuracy standards for Class B control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.12 feet or 0.037 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.

- (4) Rural and Farmland Surveys (Class C). Rural and farmland surveys include lands located in rural areas of North Carolina and generally outside the suburban properties. For Class C boundary surveys in North Carolina, the angular error of closure shall not exceed 30 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 5,000 feet of perimeter of the parcel of land (1:5,000). When using positional accuracy standards for Class C control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.15 feet or 0.046 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.

History Note: Authority G.S. 89C-10; 89C-20;

Eff. July 1, 1989;

Amended Eff. August 1, 2000; August 1, 1998; November 2, 1992; January 1, 1992.

21 NCAC 56 .1604 MAPPING REQUIREMENTS FOR BOUNDARY SURVEYS

- (a) The size of a map shall be such that all details can be shown clearly.
- (b) Any lines that are not actually surveyed must be clearly indicated on the map and a statement included revealing the source of information from which the line is derived.
- (c) Any revision on a map after a surveyor's seal is affixed shall be noted and dated.
- (d) All surveys based on the North Carolina grid system shall contain a statement identifying the coordinate system referenced datum used.
- (e) All plats (maps), unless clearly marked as "Preliminary Plat - Not for recordation, conveyances, or sales" shall be sealed, signed and dated by the Professional Land Surveyor and shall contain the following:
 - (1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' or 'NAD27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if determined) shall be clearly indicated.
 - (2) The azimuth or courses and distances of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.
 - (3) All plat lines shall be horizontal or grid measurements. All lines shown on the plat shall be correctly plotted to the scale shown. Enlargements of portions of a plat are acceptable in the interest of clarity, where shown as inserts. Where the North Carolina grid system is used, the combined grid factor shall be shown on the face of the plat. If grid distances are used, it must be shown on the plat.
 - (4) Where a boundary is formed by a curved line, the following data must be given: actual survey data, or as a series of subchords with bearings and distances

around the curve. If standard curve data is used, the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on the face of the plat.

- (5) Where a subdivision of land is set out on the plat, all streets and lots shall be accurately plotted with dimension lines indicating widths and all other information pertinent to retracing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.
- (6) Where control corners have been established in compliance with G.S. 39-32.1, G.S. 39-32.2, G.S. 39-32.3, and G.S. 39-32.4, as amended, the location and information as required in the referenced statute shall be shown on the plat. All other corners that are marked by monument or natural object shall be so identified on all plats, and where practical all corners of adjacent owners along the boundary lines of the subject tract that are marked by monument or natural object shall be shown.
- (7) The surveyor shall show one of the following where they could be determined:
 - (A) The names of adjacent land owners; or
 - (B) The lot, block, parcel and subdivision designations; or
 - (C) Other legal reference where applicable.
- (8) All visible and apparent rights-of-way, easements, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
- (9) Tie lines as required and defined in Rule .1602(g) of this Section shall be clearly and accurately shown on the face of the plat, whether or not the plat is to be recorded.
- (10) A vicinity map (location map) shall appear on the face of the plat.
- (11) Each map shall contain the property designation, name of owner or prospective owner, location (including township, county, and state), and the date or dates the survey was conducted. In addition each map shall contain a scale of the drawing listed in words or figures; a bargraph; the name, address, license number, and seal of the surveyor; the title source; and a legend depicting nomenclature or symbols not otherwise labeled.

History Note: Authority G.S. 89C-10; 89C-20;
 Eff. July 1, 1989;
 Amended Eff. August 1, 2000; August 1, 1998; February 1, 1996; November 2, 1992; January 1, 1992.

21 NCAC 56 .1606 SPECIFICATIONS FOR TOPOGRAPHIC SURVEYS

(a) The accuracy for all topographic surveys shall be determined by the following method:

The elevation represented by any contour line as plotted on the final plat shall not have a vertical error greater than one-half of the interval of the platted contours over 90 percent of the area covered. (e.g., 5-foot contour interval = 2.5 feet maximum vertical error.)

(b) Locations of significant items such as horizontal control lines or control points, buildings, utilities, roads, walks, trees, boundary, easements and setbacks, and similar information shall be shown within scaling accuracy of and in relationship to the horizontal control line, or control points and each other.

(c) A minimum of one benchmark on site and the vertical datum used shall be shown.

History Note: Authority G.S. 89C-10; 89C-20;
 Eff. November 2, 1992;
 Amended Eff. August 1, 2000.

21 NCAC 56 .1607 GLOBAL POSITIONING SYSTEM SURVEYS

(a) General. Global Positioning System (GPS) surveys are defined as any survey performed by using the GPS 3-dimensional measurement system based on observations of the radio signals of the Department of Defense's NAVSTAR (Navigation Satellite Timing and Ranging) GPS System. All GPS boundary and geodetic control surveys, aerial photography control surveys, and GIS/LIS collection surveys of features included in G.S. 89C-3(7) performed in North Carolina shall be performed by a Professional Land Surveyor licensed in North Carolina.

(b) Geodetic control surveys for inclusion of the data in the National Spatial Data Network (Blue Book) shall be performed in accordance with specifications established by the Federal Geographic Data Committee (FGDC) and the National Geodetic Survey. These specifications are incorporated by reference including subsequent amendments and editions. The material is available for inspection at the office of the North Carolina Geodetic Survey, 121 W. Jones Street (Elks Building), Raleigh, North Carolina 27603. Copies may be obtained at the office of the North Carolina Geodetic Survey at no cost. GPS surveys performed to other Federal Standards shall conform to the appropriate Federal standard procedures for the specific project. The Professional Land Surveyor in responsible charge of the GPS survey shall certify, sign and seal all prepared documents. When a map or document consists of more than one sheet, only one sheet must contain the certificate and all others must be signed and sealed. The certificate shall contain the following information:

- (1) Class of GPS survey.
- (2) Type of GPS field procedure (Static, Kinematic, Pseudo-Kinematic).
- (3) Type of adjustment used.
- (4) Dates of survey.
- (5) Type and model of GPS receivers used.
- (6) What datum coordinates or geographic positions are based on.

The certificate shall be substantially in the following form:

"I, _____, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision; that this GPS survey was performed to _____ FGCC specifications and that I used _____. GPS field procedures and coordinates were obtained by _____ adjustment. That this survey was performed on _____ using (type) (number) of receivers and all coordinates are based on _____.

Prepared documents shall include coordinates (see paragraph f. below for the list of data to show) of all monuments and a map showing all non-trivial vectors measured. The map shall also contain the following information:

- (1) Scale (bar or numerical).
- (2) Legend.
- (3) Loop closures before any adjustment.
- (4) Certification.
- (5) Company name, address and phone number.

(c) GPS surveys performed to provide local control networks for use as a network base shall be performed using static or rapid static methods. These surveys shall be performed in such a manner that a 95% confidence level of the positional accuracy of each point relative to the published positions of the control points used and shall meet the accuracy standards of a Class AA survey as set out in Rule .1603.

(d) GPS surveys performed to provide local horizontal or vertical Grid control on a parcel of land where the boundary or topography of that parcel will be shown relative to NC Grid horizontal or vertical datum shall be performed using static or rapid static techniques, or kinematic or real time kinematic techniques. These surveys shall be performed using techniques that will provide the standards of accuracy for the class of survey being performed while determining the horizontal or vertical positions of objects as set out in Rule .1603 or Rule .1606 of this Section, as applicable.

(e) All plats, maps, and reports published based upon this type of GPS survey shall contain a statement worded substantially as follows: "The NC Grid coordinates shown on this [plat or report] were derived by [static or rapid static or kinematic or real time kinematic] differential GPS observations using [number of receivers] [brand name] [model number] receivers. The vectors were adjusted using the fixed station(s) shown using [software brand and program name] software producing a weighted least squares adjustment of the [WGS 84 or NAD 83 or other system] positions. The median vector error is computed to be [x.x] ppm. A loop of [miles or kilometers or feet or meters] using the un-adjusted vectors passing through the fixed and derived control stations yields a loop precision of [1:xxx or xx.x ppm]."

(f) A list or note showing the fixed station(s) used for the project shall appear on the map, plat, or report. The minimum data shown for each fixed station shall be station name, latitude, longitude, elevation (ellipsoid or orthometric), and geoid height and epoch (93, 96, 99, etc.), and the coordinate reference system. State plane coordinates may be added if desired.

History Note: Authority G.S. 89C-10; 89C-20;
Eff. November 2, 1992;
Amended Eff. August 1, 2000.

21 NCAC 56 .1608 CLASSIFICATION/LAND INFORMATION SYSTEM/GEOGRAPHIC INFORMATION SYSTEM SURVEYS

(a) General: Land Information System/Geographic Information System (LIS/GIS) surveys are defined as the measurement of existing surface and subsurface features for the purpose of determining their accurate geospatial location for inclusion in an LIS/GIS database. All LIS/GIS surveys as they relate to property lines, rights-of-way, easements, subdivisions of land, the position for any survey monument or reference point, the determination of the configuration or contour of the earth's

surface or the position of fixed objects thereon, and geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry, shall be performed by a Land Surveyor who is a licensee of this Board. For the purpose of specifying minimum allowable surveying standards, three general classifications of LIS/GIS surveys are established:

- (1) Urban and Suburban LIS/GIS surveys (Class A). Urban and suburban LIS/GIS surveys include the location of features within lands which lie in or adjoining a town or city. For Class A LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 0.5 meter (1.64 feet).
- (2) Rural LIS/GIS surveys (Class B). Rural LIS/GIS surveys include the location of features within lands which lie outside of suburban areas. For Class B LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 2 meters (6.56 feet).
- (3) Regional LIS/GIS surveys (Class C). Regional LIS/GIS surveys include the location of features within lands which lie in multi-county areas. For Class C LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 5 meters (16.40 feet).

(b) Nothing in this Section shall be construed to negate or replace the relative accuracy standards found in Rules .1601 through .1609 of this Section.

(c) The Professional Land Surveyor in responsible charge of the LIS/GIS boundary or geodetic control survey shall certify to all of the following in either written or digital form:

- (1) Class of LIS/GIS survey,
- (2) Method of measurement (i.e. global positioning system, theodolite and electronic distance meter, transit and tape),
- (3) Date(s) of the survey,
- (4) Datum used for the survey.

History Note: Authority G.S. 89C-10; 89C-20;
Eff. February 1, 1996;
Amended Eff. August 1, 2000.

21 NCAC 56 .1609 MINIMUM PHOTOGRAMMETRIC PRODUCTION STANDARDS

(a) General. Photogrammetric surveys are defined as the use of photogrammetry for obtaining reliable information about physical objects and the environment through the process of recording, measuring, and interpreting images and patterns of electromagnetic radiant energy and other phenomena. Minimum allowable photogrammetric production procedures and standards are hereby established for photogrammetric mapping and digital data production.

(b) Production procedures for photogrammetric mapping surveys shall be in accordance with the standards established by the Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standard and applicable extensions and revisions. These standards are incorporated by reference including subsequent amendments and editions. The material is

available from the Board office at a cost of five dollars (\$5.00) per copy or from the FGDC.

(c) Topographic maps, unless clearly marked as "Preliminary Map," shall meet FGDC Standards for horizontal and vertical accuracies and shall be sealed, signed and dated by the licensee. All orthophotos and planimetric maps, unless clearly marked as "Preliminary Orthophoto" or "Preliminary Map," shall be produced to meet FGDC Standards for horizontal accuracies and shall be sealed, signed and dated by the licensee.

Sheet or otherwise cannot be signed and sealed, a project report shall be certified, signed and sealed.

(d) When the resulting product is a digital (electronic) data set, or a map or document consists of more than one sheet or otherwise cannot be signed and sealed, a project report shall be certified, signed and sealed.

(e) Ground control for photogrammetric projects shall be in North Carolina Grid coordinates and distances when the project is tied to Grid.

(f) The project map or report shall contain the applicable following information.

- (1) Date of Photography or original data acquisition;
- (2) Scale of Photography;
- (3) Date of document or data set compilation;
- (4) If hard copy product is produced, the maps shall contain a north arrow, map legend, final document scale and contour interval, as applicable;
- (5) Coordinate system for horizontal and vertical denoting SI or English units (i.e., NAD83, assumed, or other coordinate system);
- (6) A list or note showing the control points used for the project. The minimum data shown for each point shall include: physical attributes (i.e. iron rod, railroad spike, etc), latitude and longitude (or X and Y Grid coordinates), and elevation if applicable;
- (7) If other data is included which was obtained by means other than photogrammetry, the source and accuracy of those items must be clearly indicated;
- (8) A statement of accuracy complying with FGDC standards;
- (9) For topographic maps or data sets, contours in areas obscured by man made or natural features shall be uniquely identified or enclosed by a polygon clearly identifying the obscured area. The accuracies of the contours or of features in this obscured area shall be noted to the extent they deviate from the general accuracy of the map or data set;
- (10) A vicinity map depicting the project location shall appear on the first sheet of all hard copy maps or in the report accompanying digital files;
- (11) Company name, address and phone number; and
- (12) The name of the client for whom the project was conducted.

(g) Nothing in this Section shall be construed to negate or replace the relative accuracy standards found in Rules .1601 through .1608.

(h) A certificate, substantially in the following form, shall be affixed to all maps or reports.

"I, _____, certify that this project was completed under my direct and responsible charge from an actual photogrammetric survey made under my supervision: that this photogrammetric survey was performed to meet Federal Geographic Data Committee Standards as applicable; that the imagery and/or original data was obtained on _____; that the photogrammetric survey was completed on _____; that contours shown as [broken lines] may not meet the stated standard; and all coordinates are based on _____.

(i) Documents transmitted electronically shall have the computer-generated seal removed from the original file and a copy of the project report shall be signed, sealed and sent to the client. The electronic data shall have the following inserted in lieu of the signature and date:

"This document originally issued and sealed by (name of sealer), (license number), on (date of sealing). This electronic media shall not be considered a certified document. See the project report for certificate and seal.

*History Note: Authority G.S. 89C-10; 89C-20;
Eff. August 1, 2000.*

SECTION .1700 - CONTINUING PROFESSIONAL COMPETENCY

21 NCAC 56.1702 DEFINITIONS

Terms used in this Section are defined as follows:

- (1) Professional Development Hour (PDH) - A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.
- (2) Continuing Education Unit (CEU) - Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 contact hours of instruction or presentation.
- (3) College/Unit Semester/Quarter Hour - Credit for Accreditation Board for Engineering and Technology approved course or other related college course.
- (4) Course/Activity - Any course or activity with a clear purpose and objective which will maintain, improve, and expand the skills and knowledge relevant to the licensee's field of practice.
- (5) Dual Licensee - A person who is licensed as both an engineer and a land surveyor.
- (6) Sponsor - Organization or individual that has supplied information on a form prescribed and furnished by the Board with respect to the organization or individual's ability to provide instruction in "for credit" courses. Courses offered by those designated as "Sponsor" must contain a clear purpose and objective, and result in the maintenance, improvement, and expansion of skills and knowledge relevant to a licensee's field of practice. Courses offered by "Sponsors" are deemed acceptable for PDH credit without scrutiny of individual course content.

*History Note: Authority G.S. 89C-10(a); 89C-17;
Eff. December 1, 1994;
Amended Eff. August 1, 2000.*

21 NCAC 56 .1703 REQUIREMENTS

Every licensee shall obtain 15 PDH units during the renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal period. Selection of courses and activities which meet the requirements of Rule .1702(4) of this Section is the responsibility of the licensee. Licensees may select courses other than those offered by sponsors. Post evaluation of courses offered by other than sponsors as defined in Rule .1702(6) of this Section may result in non-acceptance. PDH units may be earned as follows:

- (1) Completion of college courses;
- (2) Completion of continuing education courses;
- (3) Completion of correspondence, televised, videotaped, audiotaped, and other short courses/tutorials;
- (4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;
- (5) Teaching or instructing in Items (1) through (4) of this Rule;
- (6) Authoring published papers, articles, or books;
- (7) Active participation in professional or technical societies;
- (8) Patents; and
- (9) Authoring exam questions accepted for use in the engineering or land surveying exams.

*History Note: Authority G.S. 89C-10(a); 89C-17;
Eff. December 1, 1994;
Amended Eff. August 1, 2000; August 1, 1998.*

21 NCAC 56 .1706 RECORDKEEPING

The licensee shall maintain records to be used to support credits claimed. Records required include, but are not limited to:

- (1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned;
- (2) attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance; or
- (3) records as maintained by the National Professional Development Registry for Engineers and Surveyors (NPDRES) of the National Society of Professional Engineers (NSPE).

These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

*History Note: Authority G.S. 89C-10(a); 89C-17;
Eff. December 1, 1994;
Amended Eff. August 1, 2000.*

CHAPTER 63 - CERTIFICATION BOARD FOR SOCIAL WORK

SECTION .0200 - CERTIFICATION

21 NCAC 63 .0202 APPLICATION PROCESS

Applications, inquiries and forms shall be obtained from and returned to the Board. Applicants must submit only forms obtained directly from the Board office.

*History Note: Authority G.S. 90B-6; 90B-7;
Eff. August 1, 1987;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. July 1, 2000.*

21 NCAC 63 .0211 WORK EXPERIENCE

(a) For the Licensed Clinical Social Worker credential:

- (1) Two years of post-MSW clinical social work experience shall mean 3,000 clock hours of work or employment for a fee or salary while engaged in the practice of clinical social work. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six years, with no more than 1500 hours accumulated in any one year. Practicum or internship experience gained as part of any educational program shall not be included.
- (2) Appropriate supervision shall mean face-to-face supervision in person by a licensed clinical social worker, as defined in G.S. 90B-3, of an applicant during the applicant's two years of post-MSW clinical social work experience. Appropriate supervision shall be that which is provided on a regular basis throughout the applicant's two years of experience with at least one hour of supervision during every 30 hours of experience. A minimum of 100 hours of individual or group supervision is required, of which at least 75 of the 100 hours shall be individual supervision. The clinical supervisor is responsible for supervision within the content areas of clinical skills, practice management skills, skills required for continuing competence, development of professional identity, and ethical practice.

(b) For the Certified Social Work Manager credential:

- (1) Two years of experience shall mean 3,000 clock hours of employment for a salary while engaged in administrative social work duties including, but not limited to, policy and budgetary development and implementation, supervision and management, program evaluation, planning, and staff development. Such duties shall be carried out in an administrative setting where social work or other mental health services are delivered. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six years, with no more than 1500 hours accumulated in any one year. Practicum or internship experience gained as part of any educational program shall not be included.
- (2) Appropriate supervision shall mean supervision in person by a social work administrator certified by the Board on at least one level who has a minimum of five years of administrative experience in a social work or mental health setting. Appropriate supervision shall be that which is provided on a regular basis throughout the applicant's two years of administrative social work experience. A minimum of 100 hours of individual or

group supervision is required, of which at least 50 of the 100 hours shall be individual supervision.

*History Note: Authority G.S. 90B-6; 90B-7;
Temporary Adoption Eff. October 1, 1999;
Eff. July 1, 2000.*

SECTION .0300 - EXAMINATIONS

21 NCAC 63 .0302 REPORTING OF SCORES

Each applicant for certification or licensure shall be informed in writing whether he/she has passed the examination. If an applicant fails the examination, he/she shall receive his/her numerical score. If his/her failing score is within three points below the passing score he/she may have his/her test hand-scored provided that a written request is received by the Board within five days of the date of the examination.

*History Note: Authority G.S. 90B-6; 90B-8;
Eff. August 1, 1987;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. July 1, 2000.*

21 NCAC 63 .0304 CANCELLATION

An applicant who provides written cancellation that is received by the Board at least 30 days before the date of examination will receive a refund of the examination fee. An applicant whose written cancellation is received by the Board less than 30 days before the date of examination shall not receive a refund of the examination fee. However, he/she may apply to sit for another examination within 12 months of the missed examination without incurring any additional examination fee. An applicant whose written cancellation is received by the Board on or after the date of the examination, or an applicant who fails to appear for an examination, shall be required to reapply and pay another examination fee.

*History Note: Authority G.S. 90B-6;
Eff. August 1, 1987;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. July 1, 2000.*

21 NCAC 63 .0305 REVIEW OF EXAMINATIONS BY UNSUCCESSFUL APPLICANTS

(a) An applicant who has not passed a certification or licensure examination may review his/her test in accord to the Association of Social Work Board's (ASWB) regulations. In order to do so, the applicant must:

- (1) make a written request for review of his/her examination directly to the Board within seven days from the date of the examination;
- (2) review the examination in the Office of the Board and in the presence of a board member;
- (3) not take notes or reproduce in any manner the contents of the examination;
- (4) sign a statement of confidentiality regarding the contents of the examination.

(b) The Board shall obtain a copy of the examination together with the applicant's answers and the scoring key. The Board shall maintain strict security of all testing materials.

(c) An applicant's score shall not be changed by the Board, and any questions about the score will be transmitted to the national examination service for review.

*History Note: Authority G.S. 90B-6;
Eff. August 1, 1987;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. July 1, 2000.*

SECTION .0400 - RENEWAL OF CERTIFICATION

21 NCAC 63 .0403 RENEWAL FEES

(a) Fees for renewal of certificates or licenses which are due for renewal on or before June 30, 2000 shall be as follows:

- (1) For Certified Social Workers (CSW's) the renewal fee shall be fifty-five dollars (\$55.00).
- (2) For Certified Master Social Workers (CMSW's) the renewal fee shall be sixty-five dollars (\$65.00).
- (3) For Licensed Clinical Social Workers (LCSW's) the renewal fee shall be one hundred dollars (\$100.00).
- (4) For Certified Social Work Managers (CSWM's) the renewal fee shall be one hundred dollars (\$100.00).

(b) Fees for renewal of certificates or licenses which are due for renewal after June 30, 2000 shall be as follows:

- (1) For Certified Social Workers (CSW's) the renewal fee shall be sixty dollars (\$60.00).
- (2) For Certified Master Social Workers (CMSW's) the renewal fee shall be seventy-five dollars (\$75.00).
- (3) For Licensed Clinical Social Workers (LCSW's) the renewal fee shall be one hundred twenty-five dollars (\$125.00).
- (4) For Certified Social Work Managers (CSWM's) the renewal fee shall be one hundred twenty-five dollars (\$125.00).

(c) Persons who fail to apply for renewal prior to the expiration date shall be assessed a minimum late renewal fee of fifteen dollars (\$15.00) Persons whose applications for renewal are received by the Board after the renewal date of their certificate or license, but no later than 60 days after the renewal date, shall be assessed a late renewal fee of fifty dollars (\$50.00) in addition to any other applicable fees.

*History Note: Authority G.S. 90B-6; 90B-6.2; 90B-9(b);
Eff. August 1, 1987;
Amended Eff. August 1, 1990;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. July 1, 2000.*

SECTION .0500 - ETHICAL GUIDELINES

21 NCAC 63 .0501 PURPOSE AND SCOPE

(a) Ethical principles affecting the practice of social work are rooted in the basic values of society and the social work profession. The principal objective of the profession of social work is to enhance the dignity and well-being of each individual who seeks its services. It does so through the use of social work theory and intervention methods including psychotherapy.

(b) The primary goal of this code is to set forth principles to guide social workers' conduct in their profession. Violation of these standards may be considered gross unprofessional conduct and may constitute dishonest practice or incompetence in the

practice of social work. Such violations may result in disciplinary action by the Board.

(c) The ethical principles in this Section serve as a standard for social workers in their various professional roles, relationships and responsibilities. Social workers shall consider all the principles in the code that bear upon any situation on which ethical judgment is to be exercised, and to select a course of action consistent with the spirit as well as the letter of this code.

(d) Upon approval of certification or licensure, each applicant shall review these Ethical Guidelines and return a signed statement to the Board agreeing to abide by these standards.

*History Note: Authority G.S. 90B-6; 90B-11;
Eff. August 1, 1987;
Amended Eff. March 1, 1994;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. July 1, 2000.*

21 NCAC 63 .0509 PUBLIC STATEMENTS

(a) Public statements, announcements of services and promotional activities of social workers serve the purpose of providing sufficient information to aid consumers in making informed judgments and choices. Social workers shall state accurately, objectively and without misrepresentation their professional qualifications, affiliations and functions as well as those of the institutions or organizations with which they or their statement may be associated. They shall correct misrepresentations by others with respect to these matters.

(b) In announcing availability for professional services, a social worker shall use his or her name, type and level(s) of certification and licensure; and may use highest relevant academic degree from an accredited institution; specialized post-graduate training; address and telephone number; office hours; type of services provided; appropriate fee information; foreign languages spoken; and policy with regard to third-party payments.

(c) Social workers shall not offer to perform any service beyond the scope permitted by law or beyond the scope of their competence. They shall not engage in any form of advertising which is false, fraudulent, deceptive, or misleading. They shall neither solicit nor use recommendations or testimonials from clients.

(d) Social workers shall respect the rights and reputations of professional organizations with which they are affiliated. They shall not falsely imply sponsorship or certification by such organizations. When making public statements, the social worker shall make clear which are personal opinions and which are authorized statements on behalf of an organization.

*History Note: Authority G.S. 90B-6; 90B-11;
Eff. March 1, 1994;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. July 1, 2000.*

SECTION .0600 - DISCIPLINARY PROCEDURES

21 NCAC 63 .0603 NOTICE OF CHARGES AND HEARING

If an investigation produces any credible evidence indicating a violation of G.S. 90B or these Rules the Board may initiate disciplinary proceedings. Disciplinary proceedings conducted

by the Board are governed by G.S. 90B. Prior to any Board action, written notice outlining the particular statutes and rules involved, the alleged facts, and the date, location and nature of any hearing shall be sent to the social worker involved and the complainant. Nothing herein shall abridge the right of the Board to summarily suspend a certificate or license pursuant to G.S. 150B-3(c).

*History Note: Authority G.S. 90B-6; 90B-11; 150B-38;
Eff. September 1, 1989;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. July 1, 2000.*

CHAPTER 68 - CERTIFICATION BOARD FOR SUBSTANCE ABUSE PROFESSIONALS

SECTION .0200 - CERTIFICATION

21 NCAC 68 .0203 DESIGNATION AS SUBSTANCE ABUSE COUNSELOR INTERN

(a) An applicant may choose to by-pass early registration at the entry level and seek designation as a Counselor Intern.

(b) To be designated as a Substance Abuse Counselor Intern, a counselor shall submit and successfully complete the following:

- (1) A registration form provided by the Board.
- (2) Documentation provided by the Board verifying the successful completion of 300 hours of Supervised Practical Training.
- (3) Successful completion of the written examination developed by the IC&RC/AODA, Inc. or its successor organization.
- (4) Payment of a non-refundable, one hundred dollar (\$100.00) written exam fee plus a one hundred dollar (\$100.00) registration fee if not already registered with the Board.

(c) Upon the failure of an applicant to achieve a passing score, the applicant may request a retest and pay a non-refundable retest fee of one hundred dollars (\$100.00) after the period of three months from the date of the test.

(d) Once an individual has been designated as a Substance Abuse Counselor Intern, he or she may function as a counselor intern under an approved supervisor at a ratio of one hour of supervision for every 40 hours of practice.

*History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.38; 90-113.39; 90-113.40; 90-113.41;
Eff. August 1, 1996;
Amended Eff. August 1, 2000.*

21 NCAC 68 .0205 CERTIFIED SUBSTANCE ABUSE COUNSELOR CERTIFICATION

Requirements for certification as a Certified Substance Abuse Counselor shall be as follows:

- (1) Successful completion of at least 6000 hours of paid or volunteer supervised experience earned in not less than three years, 300 hours of which shall be supervised practice. If the work setting is not exclusively substance abuse focused, the applicant may accumulate experience proportional to the substance abuse services performed;

- (2) Board approved education and training of at least 270 clock hours as follows:
 - (a) Substance Abuse Specific (SAS) education and training in the amount of at least 190 hours;
 - (b) Up to 80 hours may be directed toward general professional skill building (GSB) to enhance counselor development;
 - (c) No more than 25% of the 270 hours (67.5) hours may be inservice education received within the applicant's organization by staff of the same organization;
 - (d) All 270 clock hours needed for initial certification must be in the core competencies. Core competencies are listed as follows:
 - (i) Basic alcoholism, drug addiction and cross addiction knowledge;
 - (ii) Screening, intake, orientation and assessment;
 - (iii) Individual, group and family counseling and intervention techniques;
 - (iv) Case management, treatment planning, reporting and record keeping;
 - (v) Crisis intervention skills;
 - (vi) Prevention and education;
 - (vii) Consultation, referral and networking that utilizes community resources;
 - (viii) Ethics, legal issues, and confidentiality;
 - (ix) Special populations which include but are not limited to individuals or groups with specific ethnic, cultural, sexual orientation, and gender characteristics as well as persons dealing with HIV, co-occurring disabilities and perinatal issues;
 - (x) Physiology and pharmacology of alcohol and other drugs that include the licit and illicit drugs, inhalants and nicotine;
 - (xi) Psychological, emotional, personality and developmental issues; and
 - (xii) Traditions and philosophies of 12-step and other recovery support groups;
 - (e) Of the 270 clock hours, applicants for certification as a Substance Abuse Professional must document twelve hours of HIV or AIDS training and education and six hours professional ethics training and education;
- (3) A one hundred dollar (\$100.00) oral examination and case preparation fee plus a one hundred dollar (\$100.00) written exam fee and a one hundred dollar (\$100.00), non-refundable registration fee, unless previously paid. The applicant may request a retest and pay a non-refundable retest fee of one hundred dollars (\$100.00) if a passing score is not achieved and at least three months have passed from the date of test;
- (4) Successful completion of the IC&RC/AODA, Inc. or its successor organization written exam;
- (5) Successful completion of an IC&RC/AODA, Inc. or its successor organization oral examination and case presentation administered by the Board following review and approval by the Board of the requirements in this Rule;

- (6) Completed evaluation forms and contracts for supervision, these forms must be mailed directly to the Board by three references: a supervisor, co-worker, and colleague;
- (7) A signed form attesting to the applicant's adherence to the Ethical Standards of the Board;
- (8) Documentation of high school graduation, completion of GED, baccalaureate or advanced degree;
- (9) Completed registration forms;
- (10) Resume; and
- (11) Job description which verifies job function.

History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.36; 90-113.39; 90-113.40;
Eff. August 1, 1996;
Amended Eff. August 1, 2000.

21 NCAC 68 .0206 PROCESS FOR PREVENTION CONSULTANT CERTIFICATION

- (a) This certification shall be offered to those persons whose primary responsibilities are to provide substance abuse prevention and education, alternative activities, community organization, networking, and referral. Prevention consultants may be either based in human service agencies or other settings.
- (b) Requirements for certification shall be as follows:
 - (1) 10,000 hours (five years) without a baccalaureate degree or 4,000 hours (two years) with a baccalaureate degree in a human services field from a regionally accredited college or university;
 - (2) 270 hours of board approved academic and didactic training divided in the following manner:
 - (A) 170 hours in the area of primary and secondary prevention and life skills training; and
 - (B) 100 hours in substance abuse specific studies;
 - (3) A minimum of 300 supervised practice hours documented by a Board approved alcohol, drug or substance abuse professional;
 - (4) Evaluations from a supervisor on this practice as well as two evaluations from colleagues or co-workers;
 - (5) Successful completion of an IC&RC/AODA, Inc. or its successor organization written examination;
 - (6) A signed form attesting to the applicant's adherence to the Ethical Standards of the Board;
 - (7) A registration and testing fee of two hundred twenty-five dollars (\$225.00), twenty-five dollars (\$25.00) of which is due when the request is made for the application packet and the remainder at the time of filing.

History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.40; 90-113.41;
Eff. August 1, 1996;
Amended Eff. August 1, 2000.

21 NCAC 68 .0208 CONTINUING EDUCATION REQUIRED FOR COUNSELOR AND PREVENTION CONSULTANT RECERTIFICATION

- (a) Each certified Counselor and Prevention Consultant shall receive 60 hours of Board approved education during the current certification period which shall be documented. A minimum of 30 hours shall be substance abuse specific (SAS) and no more

than 25 percent or 15 hours can be inservice education. This education may include a combination of hours including attending workshops, receiving clinical supervision and providing workshops.

(b) Recertification educational guidelines as a Substance Abuse Professional require:

- (1) No more than 25 percent or 15 hours may be inservice education, received within your organization by staff of the same employment.
- (2) No more than 25 percent or 15 hours of workshop presentation with one hour of presentation translating to one hour of education. Workshop presentation shall be a part of an event pre-approved by the Board.
- (3) No more than 25 percent or 15 hours of Alcohol/Drug Education Traffic School (ADETS) and Drug Education School (DES) events.
- (4) An applicant shall include documentation of each event submitted.
- (5) All applicants shall include six hours of HIV/AIDS training and education and three hours of professional ethics training and education for each recertification.
- (6) No more than 25 percent self study, pre-approved by the Board pursuant to Rule .0213 of this Section.

(c) To be recertified, a certified professional must submit the following:

- (1) A completed application form with continuing education documented; and
- (2) A non-refundable one hundred dollar (\$100.00) recertification fee.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.38;
Eff. August 1, 1996;
Amended Eff. August 1, 2000.

21 NCAC 68 .0211 PROCESS FOR CLINICAL SUPERVISOR CERTIFICATION

(a) Clinical Supervisor is an aspect of staff development dealing with the clinical skills and competencies for persons providing counseling.

(b) Requirements for certification shall be:

- (1) Applicant shall obtain and maintain certification as a Substance Abuse Counselor or a Clinical Addictions Specialist in order to be eligible for Clinical Supervisor Certification;
- (2) All applicants shall be required to hold a master's degree or higher education in a human services field with a clinical application from a regionally accredited college or university;
- (3) 8,000 hours or four years experience in the field of alcohol and other drug abuse (10,000 hours to insure reciprocity pursuant to IC&RC/AODA, Inc. or its successor organization's requirements);
- (4) Thirty hours of clinical supervision specific education for initial certification and 15 hours of clinical supervision specific education for re-certification (which will occur every two years). These hours shall be reflective of clinical supervision or clinical supervision of the twelve core functions in their clinical application and practice and may also be used as re-certification hours for Substance Abuse Counselor or

Clinical Addictions Specialist certification. For the purpose of re-certification as a Clinical Supervisor, 25 percent of the required total hours may be obtained by providing supervision of a Substance Abuse Counselor or Clinical Addictions Specialist;

- (5) Three letters of reference: one from a substance abuse professional who can attest to supervisory competence and two from either substance abuse counselors who have been supervised by the candidate or substance abuse professionals who can attest to the applicant's competence;
- (6) Successful completion of an IC&RC/AODA, Inc. or its successor-organization's written examination;
- (7) Payment of all fees. A fee of twenty-five dollars (\$25.00) shall be submitted to the Board with a letter of intent in order to receive the application packet. A fee of two hundred dollars (\$200.00) shall be submitted to the Board when the application packet is completed and mailed (one hundred dollars (\$100.00) shall be the registration and processing fee and one hundred dollars (\$100.00) is the written test fee); and
- (8) A fee of one hundred dollars (\$100.00) shall be required as a re-certification fee.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.38; 90-113.40; 90-113.41;
Eff. August 1, 1996;
Amended Eff. August 1, 2000.

21 NCAC 68 .0212 PROCESS FOR RESIDENTIAL FACILITY DIRECTOR CERTIFICATION

(a) Residential facility director certification can be obtained and continued by any person certified as a Substance Abuse Counselor or Clinical Addictions Specialist.

(b) Requirements for certification are as follows:

- (1) 50 hours of Board approved academic and didactic management specific training;
- (2) Recommendation of applicant's current supervisor;
- (3) Positive recommendation of a colleague and co-worker of the applicant; and
- (4) Registration and application fee of two hundred twenty-five dollars (\$225.00), twenty-five dollars (\$25.00) of which is due when requesting application and the remainder is due upon filing.

(c) In addition to meeting the continuing education requirements provided to practice as a Certified Counselor or Clinical Addictions Specialist, in order to maintain uninterrupted certification as a Residential Facility Director, the applicant shall take 40 hours of continuing education every two years and maintain documentation of such training. Anyone allowing certification to lapse beyond three months of the re-certification due date shall be required to reapply as a new applicant.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.35; 90-113.38; 90-113.39; 90-113.40;
Eff. August 1, 1996;
Amended Eff. August 1, 2000.

21 NCAC 68 .0213 CONTINUING EDUCATION APPROVAL POLICY

(a) The Board shall approve educational events for professional certification. One certified hour is defined as one contact hour of participation in an organized continuing education experience. Continuing education used to meet the certification requirements shall be reviewed and approved by the Board. If the sponsor does not obtain credit from the Board, the individual participants shall be responsible for supplying all of the required information for each session at the time of request for certification or re-certification or conversion. The Standards and Credentials Committee shall review requests once monthly. Submission of approval requests should be postmarked 45 days prior to opening day of the event.

(b) Any applicant for training approval shall submit:

- (1) Title of course, date, location, individual or organization sponsor, whether it will be held only once or recurring.
- (2) Presenter(s) who shall attach a resume outlining expertise in the subject area and content of the session.
- (3) Brief but thorough description of contents of track, course, seminar, and the type of credit hours being requested, to include substance abuse specific or general skill building.
- (4) Agenda, to include the breakdown of time including a 15 minute break for every two hours of education and amount of time allowed for meals.
- (5) Application for training approval shall include a copy of the objective evaluation tool to be used.
- (6) A summary of evaluation that shall be submitted to the Board within 45 days following the program date(s).

(c) The Board may review programs by sending a Board member or designee to monitor the event or a portion of the event. When fulfilling this quality assurance role, the designated Board member shall present a letter of introduction to the presenter. The Board member shall not receive certification or re-certification hours for attendance at these events.

(d) Certification hours may be awarded only for actual hours completed.

(e) Certificates shall not be released until the event ends or they shall be modified to reflect the actual hours completed.

(f) Providers of Board approved events shall document attendance at individual events for schools, courses, curricula and conferences.

(g) Event sponsors shall maintain attendance and evaluation records for no less than three years.

(h) Training approved by IC&RC/AODA, Inc. member boards and organizations granted deemed status shall be accepted with documentation of completion.

(i) Employer Inservice events shall meet the same requirements as set out in Paragraphs (a) through (h) of this Rule. Inservice includes any event provided in the applicant's organization by a person under the same employment as the applicant (military employment is considered within the same department). However, if 20% of the participants are non-employees of the sponsoring and presenting agency, the standard fee schedule shall be in effect. Education received within the organization by outside trainers is not considered inservice.

(j) Credit shall not be given for the following:

- (1) Banquet speakers unless the content meets the requirements in this Rule;
- (2) Making one's own case presentation; or
- (3) Registration time.

(k) Presenters shall be given one hour of credit for every one hour presented. However, if the original presentation is repeated, hours can only be credited for the original presentation.

(l) The Board may revise or rescind credit hours if information is received documenting that a previously approved event was not presented as it was approved.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40;

Eff. August 1, 1996;

Amended Eff. August 1, 2000.

SECTION .0500 - ETHICAL PRINCIPLES OF CONDUCT

21 NCAC 68 .0503 COMPETENCE

(a) The substance abuse professional shall recognize that the profession is founded on national standards of competency which promote the best interests of society, of the client and of the profession as a whole. The substance abuse professional shall obtain continuing education as a component of professional competency.

- (1) The substance abuse professional shall assist in the prevention of practices by unqualified or unauthorized persons in the field.
- (2) The substance abuse professional who is aware of unethical conduct or of unprofessional modes of practice shall report such violations to the appropriate certifying authority.
- (3) The substance abuse professional shall recognize boundaries and limitations of his or her competencies and not offer services or use techniques outside of these professional competencies.
- (4) The substance abuse professional shall recognize the effect of impairment on professional performance and shall be willing to seek appropriate treatment for oneself or for a colleague. The substance abuse professional shall support peer assistance programs in this respect.

(b) The application of this Rule is limited to actions by substance abuse professionals acting within the substance abuse professional fields.

(c) No person shall be certified as a substance abuse professional who is sentenced to an active or probationary term by the courts of this land and any part of the sentence is unserved.

History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Authority G.S. 90-113.30; 90-113.34; 90-113.36; 90-113.37; 90-113.39; 90-113.40; 90-113.41; 90-113.43; 90-113.44;

Eff. February 1, 1996;

Amended Eff. August 1, 2000.

21 NCAC 68 .0507 CLIENT WELFARE

The substance abuse professional shall respect the integrity and protect the welfare of the person or group with whom he or she is working.

- (1) The substance abuse professional shall define for self and others the nature and direction of loyalties and

responsibilities and keep all parties concerned informed of these commitments.

- (2) The substance abuse professional, in the presence of professional conflict, shall be concerned primarily with the welfare of the client.
- (3) The substance abuse professional shall end a professional relationship under the following conditions:
 - (a) The substance abuse professional shall end a counseling or consulting relationship when the professional knows or should know that the client is not benefiting from it.
 - (b) The substance abuse professional shall withdraw services only after giving consideration to all factors in the situation and taking care to minimize adverse actual or possible effects.
 - (c) The substance abuse professional who anticipates the cessation or interruption of service to a client shall notify the client promptly and seek the cessation, transfer, referral, or continuation of service in relation to the client's needs and preferences.
- (4) The substance abuse professional who asks a client to reveal personal information from or about other professionals or allows information to be divulged shall inform the client concerning the duties and responsibilities resulting from dissemination of the information. The information released or obtained with informed consent shall be used for expressed purposes only, unless the release is otherwise required by law.
- (5) The substance abuse professional shall not use a client in a demonstration role in a workshop setting where such participation would foreseeably seriously harm the client.
- (6) The substance abuse professional shall ensure the presence of an appropriate setting for clinical work to protect the client from harm and the substance abuse professional and the profession from censure.
- (7) The substance abuse professional shall collaborate with other health care professionals in providing a supportive environment for the client who is receiving prescribed medications.

History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.43; 90-113.44;
Eff. February 1, 1996;
Amended Eff. August 1, 2000.

SECTION .0700 - APPEALS PROCESS

21 NCAC 68 .0701 HEARING BEFORE BOARD: TIME REQUIREMENT

- (a) Upon denial, suspension or revocation of certification, the applicant may request a hearing before the Board which will serve as the appeals hearing body.
- (b) Requests for an appeals hearing shall be made in writing to the President of the Board within 30 days after receipt of the notification that certification had been denied or revoked.

History Note: Authority G.S. 90-113.30; 90-113.39; 90-113.40;
Eff. August 1, 1996;
Amended Eff. August 1, 2000.

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

CHAPTER 2 - COMMUNITY COLLEGES

SUBCHAPTER 2D - COMMUNITY COLLEGES: FISCAL AFFAIRS

SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL MANAGEMENT

23 NCAC 2D .0323 REPORTING OF STUDENT HOURS IN MEMBERSHIP FOR CURRICULUM CLASSES

(a) Academic Semester. The academic semester for all credit courses shall be designed so that all classes may be scheduled to include the number of instructional hours shown in the college catalog and the approved curriculum program of study compliance document and reported for FTE purposes (see Paragraph (a) of 23 NCAC 2E .0201 and Subparagraph (a)(3) of Rule .0301 of this Subchapter). Instructional hours include scheduled class and laboratory sessions as well as examination sessions. Length of semesters or courses may vary as long as credit hours are assigned consistent with 23 NCAC 1A .0101 and as long as membership hours are reported consistent with the other provisions of this Rule. Also, note 23 NCAC 2D .0327 which identifies the reporting periods for submission of Institution Class Reports.

(b) Regularly-Scheduled Classes.

- (1) A class is regularly scheduled if it meets all of the following criteria:
 - (A) assigned definite beginning and ending time;
 - (B) specific days the class meets is predetermined;
 - (C) specific schedule included on the Institution Master Schedule or other official college documents;
 - (D) class hours assigned consistent with college catalog and curriculum standard requirements; and
 - (E) identified class time and dates are the same for all students registered for the class excluding clinical or cooperative:
 - (i) Classes which have a regularly scheduled lecture section and a non-regularly scheduled laboratory section will satisfy this criteria. The census date (10% point) must be determined from the regularly scheduled portion of the class. Verification of student participation in the laboratory section of the class must be available for review;
 - (ii) A student is considered absent if that student did not attend during the specified times or days the class was scheduled to meet.
- (2) A student is considered to be in class membership when the student meets all the following criteria:

- (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in G.S. 115D-5(b);
 - (B) attended one or more classes prior to or on the 10 percent point in the class; and
 - (C) has not withdrawn or dropped the class prior to or on the 10 percent point.
- (3) **Student Membership Hour.** A student membership hour is one hour of scheduled class or laboratory for which the student is enrolled. A college shall provide a minimum of 50 minutes of instruction for each scheduled class hour. A college must provide sufficient time between classes to accommodate students changing classes. A college may not report more hours per student than the number of class hours scheduled in the approved curriculum program of study compliance document.
- (4) **Calculation of Student Membership Hours for Regularly Scheduled Classes.** Student membership hours are obtained by multiplying the number of students in membership at the 10 percent point in the class by the total number of hours the class is scheduled to meet for the semester as stated in the college catalog and the approved curriculum program of study compliance document (see Item (4) of 23 NCAC 2E .0204).
- (5) **Maintenance of Records of Student Membership Hours.** Accurate attendance records shall be maintained for each class through the 10 percent point of the class. Colleges are encouraged to maintain attendance records for the duration of all classes. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits (see the Public Records Retention & Disposition Schedule for Institutions in the Community College System). Student membership hours shall be summarized in the Institution's Class Report and certified by the president or designee. For classes identified as non-traditional delivery (see Subparagraph (e)(1) of this Rule), documentation of student contact prior to the 10 percent point shall be maintained in the same manner as the attendance records mentioned in this Rule.
- (c) **Non-Regularly Scheduled Classes.**
- (1) A non-regularly scheduled class may include any or all of the following:
 - (A) a class where a definitive beginning and ending time is not determined; or
 - (B) a class offered in a learning laboratory type setting (see Subparagraph (b)(6) of Rule .0324 of this Subchapter for definition of learning laboratory); or
 - (C) a class self-paced in that the student progresses through the instructional materials at the student's own pace, and can complete the courses as soon as the student has successfully met the educational objectives. Classes offered as independent study are generally offered in this manner; or
 - (D) a class in which a student may enroll during the initial college registration period or in which the student may be permitted to enroll at any time during the semester; or
 - (E) any class not meeting all criteria for a regularly scheduled class, as shown in Subparagraph (b)(1) of this Rule, is considered to be a non-regularly scheduled class for reporting purposes. Note classes defined as non-traditional (see Paragraph (e) of this Rule) which are identified as a separate student hour reporting category and are not subject to the above provisions in Paragraph (c).
- (2) **Definition of Student Membership.** A student is considered to be in class membership when the student meets the following criteria:
- (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in Paragraph (a) of Rule .0202 of this Subchapter; and
 - (B) attended one or more classes.
- (3) **Definition of a Student Contact Hour.** For non-regularly scheduled classes, student contact hours is defined as actual hours of student attendance in a class or lab. Sixty minutes shall constitute an hour.
- (4) **Calculation of Student Contact Hours for Non-Regularly Scheduled Classes.** For these classes, actual time of class attendance for each student determined to be in membership shall be reported. Student contact hours for these classes are the sum of all the hours of actual student attendance in a class in a given semester.
- (5) **Maintenance of Records of Student Contact Hours.** Accurate attendance records shall be maintained for each class of the nature described in this Rule through the entire semester. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits (see the Public Records Retention & Disposition Schedule for Institutions in the Community College System). Student contact hours shall be summarized in the Institution's Class Report and certified by the president or designee.
- (d) **Skills Laboratory or Computer Tutorial Laboratory.** Individualized instructional laboratories are similar to learning laboratories (see Subparagraph (b)(6) of Rule .0324 of this Subchapter) except the participants are curriculum students. Skills labs or computer tutorial labs are remedial or developmental in nature and intended for students who are experiencing academic difficulty in a particular curriculum course. A skills laboratory instructor shall be qualified in the single-subject area of the skills laboratory. A computer tutorial laboratory coordinator need not be qualified in any of the subject area(s) provided in a computer tutorial laboratory. Student contact hours may be reported for budget/FTE when students are required by their instructor to attend either of the laboratories for remedial or developmental work and when the skills laboratory instructors or computer tutorial coordinators are paid with curriculum instructional funds:
- (1) Documentation of instructor referral shall be maintained for auditing purposes. Maintain documentation until released by audit;
 - (2) Homework assignments shall not be reported for budget/FTE. Note 23 NCAC 2D .0325(a);

- (3) Calculation of Student Contact Hours for Skills Laboratory or Computer Tutorial Laboratory. For these classes, actual time of class attendance shall be reported; 60 minutes shall constitute an hour. Student hours generated for these types of classes are the sum of all the hours of actual student attendance in a class in a given semester.
- (e) Classes Identified as Curriculum Non-Traditional Delivery.
- (1) Definition. Due to the methodology by which instruction is delivered, non-traditional delivery classes are not consistent with the definitions of regularly scheduled or non-regularly scheduled classes described in this Rule. Non-traditional delivery classes are defined as those classes which are offered through media such as radio, television, and other media as well as through correspondence or newspapers. The instruction delivered is pre-structured into identifiable units. Non-traditional delivery classes do not include classes identified as independent study which are not media based or are not correspondence or newspaper based.
 - (2) For those classes identified as non-traditional delivery, student attendance in class or in an orientation session, submission of a written assignment or submission of an examination, is the basis for the determination of class membership at the 10 percent point of the class. Student membership hours earned in non-traditional delivery classes shall be calculated by multiplying the number of students in membership, as defined in the prior sentence, times the number of hours assigned to the class in official college documents. For these classes, the number of hours assigned shall be consistent with the credit hours assigned according to 23 NCAC 1A .0101, as well as the appropriate curriculum standard.
 - (3) Rule 23 NCAC 2E .0604 specifies that if two or more colleges jointly offer credit courses or programs, the colleges shall enter into a written collaborative agreement. Individual courses developed by a college or jointly by colleges and delivered via media are not subject to this rule (Collaborative Agreements) as long as a degree, diploma, or a certificate is not awarded. In this situation, the sending college shall have an approved curriculum standard and an approved Program of Study. The receiving college may offer the course by virtue of the sending colleges approval.
 - (4) Service area agreement requirements, as set forth in Rule 23 NCAC 2C .0107, shall be adhered to when a class meets physically as a group supervised by faculty or staff outside the sending college's service area.
 - (5) Sharing FTE's for Non-traditional Courses Jointly Offered by Colleges:
Definitions
(A) Sending college--The college that designs, develops, and delivers the course and makes it available to students on any one or several media. Instructional cost incurred by a college for courses delivered in a non-traditional format is eligible to generate budget/FTE. Instructional cost includes salaries, fringe benefits, supplies, materials, access fees, license fees, broadcast and other directly related production costs. Students who register through the sending college are included in the college's student hour reports which generate FTE.
 - (B) Receiving college--The college providing physical facilities or services for students enrolled in courses originating from the sending college. The college incurs a lesser instructional cost than the sending college and is eligible to report 50 percent of the FTE generated by the students who register through the receiving college. The remaining FTE of the students registered through the receiving college may be reported by the sending college unless otherwise agreed.
 - (C) In situations where there are multiple sending colleges or multiple receiving colleges or both, the FTE split noted in Part (e)(5)(B) of this Rule is applied.
 - (f) Curriculum Student Work Experience and Clinical Practice. The following criteria apply to the reporting guidelines for students enrolled in curriculum work experience and clinical practice courses, exclusive of in-plant training as specified in 23 NCAC 2E .0402. Examples of student work experience include cooperative education, practicums, and internships. Clinical practice refers to work experience in health occupation programs.
 - (1) Student membership hours for student work experience and clinical practice shall not generate budget/FTE without prior approval by the System Office of such activities through the appropriate curriculum standard.
 - (2) Work Experience. Work experience for curriculum courses shall earn budget/FTE at the 100 percent rate of assigned work experience hours and shall not exceed a maximum of 320 membership hours per student per semester.
 - (A) These classes shall be coordinated by college personnel paid with college instructional funds and may be located in one or more sites.
 - (B) These classes shall be specified in the approved curriculum of the college consistent with the applicable curriculum standard (see Paragraph (a) and Part (3)(D) of 23 NCAC 2E .0204).
 - (C) Formal or informal apprenticeship on-the-job training activities of a cooperative skill training program funded under a special project allocation shall not earn budget/FTE. Classroom instruction funded with college regular budget instructional dollars for related or supplemental instruction as required by formal or informal apprenticeship programs shall earn budget/FTE.
 - (3) Clinical Practice. Curriculum clinical practice, as defined in 23 NCAC 1A .0101, refers to clinical experience in health occupation programs which shall earn budget/FTE at the 100 percent rate for student membership hours. The applicable classes shall be consistent with the curriculum standards policy as noted in Paragraph (a) of 23 NCAC 2E .0204. The maximum membership hours in a clinical experience which may be reported per student in a given semester is 640. These classes shall be supervised by college instructors who are qualified to teach in the particular program and

are paid with college instructional funds. These classes may be located in one or more sites.

History Note: Filed as an Emergency Amendment Eff. August 10, 1978 for a period of 120 days to expire on December 8, 1978;

Authority G.S. 115D-5; S.L. 1995, c. 625;

Eff. September 30, 1977;

Amended Eff. July 24, 1978;

Emergency Amendment Made Permanent With Change Eff. December 8, 1978;

Amended Eff. September 1, 1993; September 1, 1988; September 1, 1985; November 1, 1983;

Temporary Amendment Eff. June 1, 1997;

Amended Eff. August 1, 2000; July 1, 1998.

23 NCAC 2D .0324 REPORTING OF STUDENT HOURS IN MEMBERSHIP FOR EXTENSION (NON-CREDIT) CLASSES

(a) Regularly Scheduled Classes.

(1) Definition of Regularly Scheduled Class. A class is considered to be regularly scheduled if it meets all of the following criteria:

- (A) Assigned definite beginning and ending time;
- (B) Specific predetermined days and time the class meets;
- (C) Specific schedule included on the Institution Master Schedule or other official college documents;
- (D) Class hours assigned consistent with official college documents; and
- (E) Identified class time and dates are the same for all students registered for the class excluding clinical or work experience:

- (i) Classes which have a regularly scheduled lecture section and a non-regularly scheduled laboratory section will satisfy the criteria. The census date (10% point) shall be determined from the regularly scheduled portion of the class. Verification of student participation in the laboratory section of the class shall be available for review; or

- (ii) A student is considered absent if that student did not attend during the specified times or days the class was scheduled to meet.

(2) Definition of Student Membership. A student is considered to be in class membership when the student meets all the following criteria:

- (A) Enrolled as evidenced by payment of the applicable registration fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter;
- (B) Attended one or more classes held prior to or on the 10 percent point in the class; and
- (C) Has not withdrawn or dropped the class prior to or on the 10 percent point of the class.

(3) Student Membership Hour. A student membership hour is one hour of scheduled class or laboratory for which the student is enrolled. A college shall provide a minimum of 50 minutes of instruction for each

scheduled class hour. A college shall not report more hours per student than the number of class hours scheduled in official college documents. Colleges shall not report more hours per student, excluding non-traditional classes, than the number of hours specified in the instructor's contract.

(4) Calculation of Student Membership Hours for Regularly Scheduled Classes. Student membership hours are obtained by multiplying the number of students in membership at the 10 percent point in the class by the total number of hours the class is scheduled to meet for the semester as stated in official college documents.

(5) Maintenance of Records of Student Membership Hours. Accurate attendance records shall be maintained for each class throughout the entire class or semester. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits as provided in the Public Records Retention & Disposition Schedule for Institutions in the Community College System. Student membership hours shall be summarized in the Institution's Class Report and certified by the president or designee. For classes identified as non-traditional delivery, (see Paragraph (c) of this Rule) documentation of student contact hours prior to the 10 percent point shall be maintained in the same manner as the attendance records mentioned in this Rule.

(b) Non-Regularly Scheduled Classes.

(1) Definition of Non-Regularly Scheduled Class. A non-regularly scheduled class may include any or all of the following:

- (A) a class where a definitive beginning and ending time is not determined; or
- (B) a class offered in a learning laboratory type setting (see Subparagraph (b)(6) of this Rule for definition of learning laboratory); or

- (C) A class is self-paced in that the student progresses through the instructional materials at the student's own pace, and can complete the courses as soon as the student has successfully met the educational objectives. Classes offered as independent study are generally offered in this manner; or

- (D) A class in which a student may enroll during the initial college registration period or in which a student may be permitted to enroll at any time during the semester; or

- (E) Any class not meeting all criteria for a regularly scheduled class as shown in Subparagraph (a)(1) of this Rule is considered to be a non-regularly scheduled class for reporting purposes. Note classes defined as non-traditional (see Paragraph (c) of this Rule) which are identified as a separate student hour reporting category and are not subject to the provisions in Paragraph (b) of this Rule.

(2) Definition of Student Membership. A student is considered to be in class membership when the student meets the following criteria:

-
- (A) Enrolled as evidenced by payment of the applicable registration fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter; and
 - (B) Attended one or more classes.
 - (3) **Definition of Student Contact Hour.** A student contact hour is one hour of student attendance in a class for which the student is in membership as defined in Subparagraph (b)(2) of this Rule. Sixty minutes shall constitute an hour.
 - (4) **Calculation of Student Contact Hours for Non-Regularly Scheduled Classes.** For these classes, actual time of class attendance for each student determined to be in membership shall be reported. Sixty minutes shall constitute an hour. Student contact hours for these classes are the sum of all the hours of actual student attendance in a class in a given semester.
 - (5) **Maintenance of Records of Student Contact Hours.** Accurate attendance records shall be maintained for each class throughout the entire class or semester. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits as provided in the Public Records Retention and Disposition Schedule for Institutions in the Community College System. Student membership hours shall be summarized in the Institution's Class Report and certified by the president or designee. For classes identified as non-traditional delivery, (see Paragraph (c) of this Rule), documentation of student contact hours prior to the 10 percent point shall be maintained in the same manner as the attendance records mentioned in this Rule.
 - (6) **Learning Laboratory.** Learning laboratory programs consist of self-instruction using programmed text, audio-visual equipment, and other self-instructional materials. A learning laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the laboratory. Contact hours shall be calculated as noted in Subparagraph (b)(4) of this Rule.
 - (c) **Classes Identified as Extension Non-Traditional Delivery.**
 - (1) **Definition.** Due to the methodology by which instruction is delivered, non-traditional delivery classes are not consistent with the definitions of regularly scheduled or non-regularly scheduled classes described in this Rule. Non-traditional delivery classes are defined as those classes which are offered through media such as radio, television and other media as well as through correspondence or newspapers. The instruction delivered is pre-structured into identifiable units. Non-traditional delivery classes do not include classes identified as independent study which are not media based or are not correspondence or newspaper based.
 - (2) For those classes identified as non-traditional delivery, student attendance in class or in an orientation session, submission of a written assignment or a submission of examination is the basis for the determination of class membership at the 10 percent point of the class.
- Student membership hours in such classes shall be calculated by multiplying the number of students in membership, as defined in the prior sentence, times the number of instructional hours delivered which is determined as follows:
 - (A) Determine the number of hours of instruction delivered via non-traditional delivery; and
 - (B) Add the number of hours of class meetings, review sessions;
 - (C) For those non-traditional continuing education classes which are approved by a local college staff review committee and the Director of Continuing Education Services for the System Office additional hours above the level noted in Parts (c)(2)(A) and (B) in this Rule may be approved commensurate with course content.
 - (3) Individual non-traditional classes which may be developed by a college or jointly by colleges and sent via media are subject to service area agreement requirements as set forth in Rule 23 NCAC 2C .0107 when the class meets physically as a group and is supervised by faculty or staff, outside the sending college's service area.
 - (4) **Sharing FTE's for Non-traditional Classes Jointly Offered by Colleges**
 - Definitions**
 - (A) **Sending college**--The college that designs, develops, and delivers the course and makes it available to students on any one or several media. Instructional cost incurred by a college for courses delivered in a non-traditional format is eligible to generate budget/FTE. Instructional cost includes salaries, fringe benefits, supplies, materials, access fees, license fees, broadcast and other directly related production costs. Students who register through the sending college shall be included in that college's student hour reports which generate FTE.
 - (B) **Receiving college**--The college offering physical facilities or services for students enrolled in courses originating from the sending college. This college incurs a lesser instructional cost than the sending college and is eligible to report 50 percent of the FTE generated by the students who register through the receiving college. The remaining FTE of the students registered through the receiving college may be reported by the sending college unless otherwise agreed upon.
 - (C) In situations where there are multiple sending colleges or multiple receiving colleges or both, the FTE split noted in Part (c)(4)(B) of this Rule is applied.
 - (d) **Extension Student Work Experience and Clinical Practice.** The following criteria apply to the reporting guidelines for students enrolled in extension work experience and clinical practice courses, exclusive of in-plant training as specified in 23 NCAC 2E .0402. To be eligible for approval, these work experience or clinical practice courses shall be required by a licensing agency or accrediting body. Examples of student work experience include cooperative education, practicums, and internships.
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- (1) Student membership hours for student work experience and clinical practice shall not generate budget FTE without prior approval of such activities by the System Office. Approval of student work experience and clinical practice approved prior to November 1, 1983 by the System Office shall be resubmitted for reapproval. When the number of approved student work experience membership hours increases by more than 30 percent per course, a new request for approval shall be submitted.
- (2) Work Experience. Work experience for extension courses shall earn budget/FTE at the 100 percent rate for student membership hours, as required by a licensing agency or accrediting body, and shall not exceed a maximum of 320 membership hours per student per semester. A maximum of 320 hours may be reported per student per year for a given licensing or accrediting requirement.
 - (A) These classes shall be coordinated by college personnel paid with college instructional funds and may be located in one or more sites.
 - (B) Formal or informal apprenticeship on-the-job training activities of a cooperative skill training program funded under a special project allocation shall not earn budget/FTE. Classroom instruction funded with regular budget instructional dollars for related or supplemental instruction as required by formal or informal apprenticeship programs shall earn budget/FTE.
- (3) Clinical Practice. Clinical practice, as defined in 23 NCAC 1A .0101, refers to clinical experience in health occupation courses which shall earn budget/FTE at the 100 percent rate for student membership hours, as defined in Subparagraph (a)(3) of this Rule, and shall not exceed a maximum of 320 membership hours per student per semester unless North Carolina licensure or program accreditation standards require additional hours. In such cases, work activity hours shall earn budget/FTE at the 100 percent rate in accordance with licensure or program accreditation standards up to a maximum of 640 membership hours per student per semester. These classes shall be supervised by college instructors who are qualified to teach in the particular program and are paid with college instructional funds. These classes may be located in one or more sites.
- (e) The Adult High School Diploma work experience shall not exceed 160 hours per student.

History Note: Authority G.S. 115D-5; S.L. 1995, c. 625; Eff. September 1, 1988; Amended Eff. September 1, 1993; Temporary Amendment Eff. June 1, 1997; Amended Eff. August 1, 2000; July 1, 1998.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 1 - GENERAL

SECTION .0100 - GENERAL

26 NCAC 01 .0103 COST FOR COPIES

- (a) Copies of any public documents filed in the Office of Administrative Hearings are available in the following forms:
 - (1) looseleaf form at a cost of twenty-five cents (\$.25) per page with a minimum cost of two dollars and fifty cents (\$2.50);
 - (2) 3 1/2 inch diskette at a cost of five dollars (\$5.00) per diskette if the document is available in electronic form;
 - (3) email at no cost if the document is available in an electronic form.
- (b) Certified copies of any public document filed in the Office of Administrative Hearings are available at a cost of one dollar (\$1.00) per certification in addition to the looseleaf copying cost. Diskette certification is not available.
- (c) Transcripts or tapes are available of contested case hearings. Procedures for requesting and costs of transcripts or tapes are in 26 NCAC 3 .0122.
- (d) North Carolina sales tax shall be added if applicable.

History Note: Authority G.S. 150B-21.25; 150B-37; Eff. August 1, 1986; Amended Eff. April 1, 1990; January 1, 1989; Recodified from 26 NCAC 1 .0001 Eff. January 1, 1991; Amended Eff. August 1, 2000; February 1, 1994; August 2, 1993.

CHAPTER 2 - RULES DIVISION

SUBCHAPTER 2C - SUBMISSION PROCEDURES FOR RULES AND OTHER DOCUMENTS TO BE PUBLISHED IN THE NORTH CAROLINA REGISTER AND THE NORTH CAROLINA ADMINISTRATIVE CODE

SECTION .0100 - GENERAL

26 NCAC 02C .0108 GENERAL FORMAT INSTRUCTIONS

The agency shall format each rule submitted to OAH for publication in the Register or Code as follows:

- (1) Paper Specifications:
 - (a) an 8½ by 11 inch sheet of plain white paper, 16 to 32 lb.;
 - (b) one side of the sheet only;
 - (c) black ink;
 - (d) print font size shall be 10 point;
 - (e) portrait print (8½ x 11), no landscape printing (11 x 8½);
 - (f) numbered lines on the left margin with each page starting with line 1;
 - (g) 1.5 line spacing;
 - (h) each rule that has more than one page of text shall have page numbers appearing at the bottom of the page; and
 - (i) no staples.
- (2) Tab and Margin Settings:
 - (a) tab settings for all rules shall be set relative from the left margin at increments of .5;
 - (b) text shall be with a one inch margin on all sides.
- (3) The Introductory Statement shall start on page 1, line 1 of each rule.

- (4) When a new chapter, subchapter, or section of rules is adopted, the Chapter, Subchapter, and Section names shall be provided in bold print with the first rule following the introductory statement. One line shall be skipped between the introductory statement and each chapter, subchapter, and section name.
- (5) One line shall be skipped before starting the line that provides the rule number and rule name. The decimal in the rule number shall be placed in position 1. One tab shall be between the rule number and rule name. The rule name shall be in capital letters and the rule number and name shall be in bold print.
- (6) Body of the Rule:
 - (a) the body of the rule shall start on the line immediately following the rule name with the following markings:
 - (i) adoptions - new text shall be underlined;
 - (ii) amendments - any text to be deleted shall be struck through and new text shall be underlined;
 - (iii) repeals - text of the rule shall not be included;
 - (b) there shall be no lines skipped in the body of the rule except before and in tables;
 - (c) the first level of text shall be flush left and with two spaces after parenthesis if the paragraph is identified by a letter;
 - (d) the second level of text shall start with one tab and one hanging indent after parenthesis;
 - (e) the third level of text shall start with two tabs and one hanging indent after parenthesis;
 - (f) the fourth level of text shall start with three tabs and one hanging indent after parenthesis;
 - (g) the fifth level of text shall start with four tabs and one hanging indent after parenthesis;
 - (h) the sixth level of text shall start with five tabs and one hanging indent after parenthesis.
- (7) Punctuation shall be considered part of the previous word when underlining or striking through text, such as:
 - (a) when the previous word is deleted, the punctuation shall also be struck through with the previous word; and
 - (b) when punctuation is added after an existing word, the existing word shall be struck through and followed by the word and punctuation underlined.
 The smallest unit of text to be struck through or underlined shall be an entire word or block of characters separated from other text by spaces.
- (8) Charts or Tables shall be in a format that is accommodated by the most recent version of Word for Windows.
- (9) History Note:
 - (a) shall be in italic font;
 - (b) start on the second line following the body of the rule;
 - (c) the first line of the History Note shall start in the first position; all lines following shall be two tabs;
 - (d) the first line shall start with the words "History Note:", followed by one tab and the word "Authority". The agency shall then cite the authority(ies) in numerical order for that rule;
 - (e) the effective date of the original adoption of the rule shall be the next line following the authority. The abbreviation "Eff." shall be followed by this date;
 - (f) on the line following the "Eff." date, the amended dates shall be preceded with the words "Amended Eff." and the dates shall be listed in chronological order, with the most recent amended date listed first;
 - (g) a temporary rule shall be listed as a separate item in the history note with the following words: "Temporary (Adoption, Amendment, or Repeal) Eff. (date)";
 - (h) the repealed date of a rule shall be the last line of the history note and start with the words "Repealed Eff." followed by the date;
 - (i) all items in the history note shall be separated by semicolons with the last line ending with a period;
 - (j) all history of a rule shall be in chronological order following the authority for the rule;
 - (k) all dates in the history note shall be complete with the month spelled out, and shall not contain any abbreviations.
- (10) Numbers within the text shall be as follows:
 - (a) numbers from one to nine shall be spelled out;
 - (b) figures shall be used for numbers over nine;
 - (c) if a phrase contains two numbers, only one of which is over nine, figures shall represent both.
- (11) Monetary figures within the text shall be spelled out followed by the numerical figure in parenthesis. Decimal and zeros shall be used only for even dollar amounts of sums less than one thousand dollars (\$1,000).

Note: Examples of proper formatting can be found on the OAH website located at www.oah.state.nc.us.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. August 1, 2000.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, August 17, 2000, 10:00 a.m., at 1307 Glenwood Ave., Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, August 11, 2000, at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Teresa L. Smallwood, Chairman
John Arrowood
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

R. Palmer Sugg, 1st Vice Chairman
Jennie J. Hayman, 2nd Vice Chairman
Walter Futch
Paul Powell
George Robinson

RULES REVIEW COMMISSION MEETING DATES

August 17, 2000

September 21, 2000

October 19, 2000

LOG OF FILINGS

RULES SUBMITTED: *June 20, 2000 through July 20, 2000*

AGENCY/DIVISION	RULE NAME	RULE CITATION	ACTION
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION			
	Activities Deemed to Comply with Wetlands Standard	15A NCAC 2B .0230	Adopt
	Broad River Basin	15ANCAC 2B .0306	Amend
DENR/WILDLIFE RESOURCES COMMISSION			
	Wildlife Collectors	15A NCAC 10B .0119	Amend
	Protection of Endangered Species	15A NCAC 10I .0102	Amend
	Endangered Species Listed	15A NCAC 10I .0103	Amend
	Threatened Species Listed	15A NCAC 10I .0104	Amend
	Special Concern Species Listed	15A NCAC 10I .0105	Amend
DENR/DHHS			
	Application for Initial Permit	15A NCAC 19B .0301	Amend
	Limitation of Permit	15A NCAC 19B .0302	Amend
	Conditions for Renewal of Permit	15A NCAC 19B .0304	Amend
	Qualifications of Maintenance Personnel	15A NCAC 19B .0309	Amend
	Log	15A NCAC 19B .0311	Amend
	Breath-Testing Instruments	15A NCAC 19B .0313	Amend
	Intoxilyzer: Model 5000	15A NCAC 19B .0320	Amend
	Preventive Maintenance: Intoxilyzer: Model 5000	15A NCAC 19B .0321	Amend
	Approval: Alcohol Screening Test Devices	15A NCAC 19B .0502	Amend
SECRETARY OF STATE			
	Application for Registration of Salesmen	18 NCAC 6 .1402	Amend
	Salesmen Examination Required	18 NCAC 6 .1413	Amend
	Examination for Investment Advisers and Represent	18 NCAC 6 .1709	Amend
STATE BOARDS/COSMETIC ART EXAMINERS, STATE BOARD OF			
	Definitions	21 NCAC 14A .0101	Amend
	Withdrawals	21 NCAC 14I .0104	Amend
	Student Daily Records	21 NCAC 14I .0106	Amend
	Application/Licensure/Individuals Convicted	21 NCAC 14I .0401	Amend
	Identifications Pins	21 NCAC 14O .0105	Amend
	Temporary Employment Permit	21 NCAC 14P .0103	Amend
	Renewals;Expired Licenses;Licenses Required	21 NCAC 14P .0105	Amend

RULES REVIEW COMMISSION

License to be posted	21 NCAC 14P .0107	Amend
Revocation of Licenses and other Measures	21 NCAC 14P .0108	Amend
Sanitary Ratings	21 NCAC 14P .0115	Amend

RULES REVIEW COMMISSION

July 20, 2000 MINUTES

The Rules Review Commission met on July 20, 2000, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners in attendance were Chairman Teresa Smallwood, John Arrowood, R. Palmer Sugg, Paul Powell, Walter Futch, and George Robinson. Robert Saunders, who is waiting for his appointment to be signed by the governor, was also in attendance.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; Judith Moore; and Celia Cox.

The following people attended:

David Tuttle	Engineers & Land Surveyors
Dedra Alston	DENR
Al Eisele	DHHS
Emily Lee	TRANSPORTATION/Division of Motor Vehicles
Paul Glover	DHHS
Larry D. Michael	DENR/Health Services
Shirley Bullard	DHHS
Portia Rochelle	DHHS
Andrew Wilson	DHHS/DMA
Jessica Gill	DENR/ Coastal Management
Bill Crowell	DENR/ Coastal Management
Stephanie Montgomery	Secretary of State
Scott Templeton	Secretary of State
Peter Goolsby	Secretary of State
Denise Stanford	Dental Board
Dale Herman	DHHS
Susan Grayson	DENR
Jim Payne	DHHS/DMA

APPROVAL OF MINUTES

The meeting was called to order at 10:10 a.m. with Chairman Teresa Smallwood presiding. The Chairman asked for any discussion, comments, or corrections concerning the minutes of the June 15, 2000 meeting. There being none, the minutes were approved.

FOLLOW-UP MATTERS

10 NCAC 26B .0113: DHHS/Division of Medical Assistance - The Commission approved the rewritten rule.

10 NCAC 42C .2506: DHHS/Medical Care Commission- The Commission approved the rewritten rule.

10 NCAC 42E .0704: DHHS/Social Services Commission- No action was necessary.

10 NCAC 42Q .0016: DHHS/Social Services Commission- No action was necessary.

10 NCAC 42S .0501: DHHS/Social Services Commission- No action was necessary.

18 NCAC 10 .0201, .0303, .0304, .0305, .0306, .0307, .0307, .0701, .0801, .0802 and .0901: Secretary of State- The Commission approved the rewritten rules with the exception of .0802. This rule was returned to the agency at the agency request.

21 NCAC 56 .0503, .0603, .0804 and .0901: NC Board of Examiners of Engineers and Surveyors- A bill passed by the General Assembly gave the Board the authority for these rules; rules were approved.

LOG OF FILINGS

Chairman Teresa Smallwood presided over the review of the log and all rules were approved with the following exceptions:

10 NCAC 3R- all rules: DHHS/Division of Family Services- These rules were withdrawn by the agency.

10 NCAC 50B .0305: DHHS/Division of Medical Assistance – The Commission objected to this rule due to ambiguity. In (2), it is not clear what is meant by "reduce substantially." How much reduction would be considered "substantial?" There appears to be a contradiction between (3) and (3)(d). In (3), deprivation means continued absence for a reason other than hospitalization, yet (3)(d) says that absence may be for treatment or medical care. That would seem to mean hospitalization. It is not clear which is meant. In (f), it is not clear what is meant by a "definite plan" for bringing the child back into the home. This objection applies to existing language in the rule.

15A NCAC 7H .0209: DENR/Coastal Resources Commission – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (b), it is not clear what is meant by the statement that the shorelines are "especially vulnerable" to erosion, etc. In (e)(3)(b), it is not clear what is meant by "adequate" erosion control devices or structures. In (e)(4), it is not clear what is meant by "significant adverse impact." In (e)(5), it is not clear what is meant by "significantly interfere." In (e)(6), it is not clear what is meant by "extraordinary public expenditures." In (e)(7), it is not clear what is meant by "major...damage to valuable, documented historic architectural or archeological resources." In (e)(9), it is not clear what is meant by "temporary." In (g)(4)(A)(ii), it is not clear who would be considered a "licensed design professional" and if no law requires certification by a licensed professional then the Coastal Resources Commission has no authority to require it. In (g)(4)(B)(ii)(VIII), it is not clear what is meant by "significant adverse impacts." This objection applies to existing language in the rule.

15A NCAC 18A .2806: DENR/Commission for Health Services – The Commission objected to this rule due to ambiguity. In (d), it is not clear what is meant by "properly protected food."

15 NCAC 18A .2812: DENR/Commission for Health Services – The Commission objected to this rule due to ambiguity. In (c), it is not clear what is meant by "proper handling of soiled utensils." In (e)(2), it is not clear what is meant by the phrase "hot detergent solution that is kept clean."

In (h), it is not clear what the standards are for approval of a testing method or equipment. This objection applies to existing language in the rule.

15A NCAC 19B .0301, .0302, .0304, .0309, .0311, .0320, .0321, .0502: DHHS/Commission for Health Services – These rules were postponed until the August meeting at the request of the agency.

15A NCAC 19B .0313: DHHS/Commission for Health Services – This rule was withdrawn by the agency.

15A NCAC 26B .0104: DHHS/Commission for Health Services – The Commission objected to this rule due to lack of statutory authority. In (a), there is no authority to require adherence to an Operation's Manual that has not been adopted as a rule.

18 NCAC 7 .0102: Secretary of State – The Commission objected to this rule due to lack of unnecessary. This rule contains no requirements or standards and is thus not necessary. This objection applies to existing language in the rule.

21 NCAC 16W .0103: State Board of Dental Examiners – This rule was withdrawn by the agency.

COMMISSION PROCEDURES AND OTHER MATTERS

Mr. DeLuca reported that there was \$48,000 in this year's budget to cover accrued attorney's fees and that \$200,000 had been placed in a special Office of State Budget Management reserve for future attorney fees.

The next meeting will be on August 17, 2000.

The meeting adjourned at 11:30 a.m.

Respectfully submitted,
Judith Moore

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. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.state.nc.us/OAH/hearings/decision/caseindex.htm>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter

James L. Conner, II
Robert Roosevelt Reilly Jr.
Beryl E. Wade

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
00 EDC 0800

KINGS MOUNTAIN BOARD OF)
EDUCATION, LARRY ALLEN, MELONY)
BOLIN, RONALD HAWKINS, SHEARRA)
MILLER, STELLA PUTNAM, JOANNE)
COLE, OTIS COLE, CHARLIE SMITH,)
FRANK SMITH, and ANGELA SMITH)
Petitioners,)
)
v.)
)
NORTH CAROLINA STATE BOARD OF)
EDUCATION,)
Respondent,)
)
and)
)
CLEVELAND COUNTY BOARD OF)
COMMISSIONERS,)
Respondent-Intervenor.)

RECOMMENDED DECISION

This matter originally came before the Office of Administrative Hearings on petitioners' motion to stay the implementation of the plan merging the Cleveland County, Kings Mountain District, and Shelby City Schools. The undersigned conducted a hearing on that motion on June 16, 2000. Because the merger is currently scheduled to become effective on July 1, 2000, the parties agreed to dispense with any additional hearing on the merits of the petition and asked the undersigned to issue a Recommended Decision pursuant to N.C. Gen. Stat. § 150B-34. In the interests of justice, the undersigned agreed to that proposed course of action.

Based upon the record in this case and the arguments of counsel for all parties, the undersigned makes the following:

FINDINGS OF FACT

1. Cleveland County currently contains three school administrative units, *i.e.*, the Shelby City Schools, the Kings Mountain District Schools, and the Cleveland County Schools. On April 18, 2000, the Cleveland County Board of Commissioners, acting pursuant to its authority under N.C. Gen. Stat. § 115C-68.1(a), voted to merge those three school administrative units into one school administrative unit to be known as the Cleveland County Schools. According to the merger plan, the Cleveland County Schools would initially be governed by a single nine (9) member board to be appointed by the Cleveland County Board of County Commissioners from members of the boards of education of the existing school administrative units and residents of Cleveland County. Under the merger plan, over the next three years, successors to those appointed members will be elected so that after November 2003 all the members of the new Cleveland County Board of Education will be elected. The merger plan calls for the merger to be effective July 1, 2000.

2. All plans to merge existing local school administrative units are subject to the approval of the State Board of Education. N.C. Gen. Stat. §§ 115C-67 to 68.2. Consequently, the Cleveland County Commissioners submitted their plan to the State Board of Education for approval. The State Board of Education placed the plan on the agenda for its May 4, 2000 meeting.

3. Before the State Board of Education could take action at its May meeting, the Kings Mountain Board of Education obtained a temporary restraining order from a Superior Court Judge, but that order was subsequently dissolved. The State Board then rescheduled the matter for its June meeting. At its meeting on June 1, 2000, the State Board heard presentations from counsel for the petitioners and counsel for the Kings Mountain Board of Education. Prior to that meeting, respective counsel also had provided the State Board with written submissions on the boundary issue. The State Board also heard statements from the chairs of the Shelby City and Cleveland County Boards of Education. State Board members also questioned all of the participants about various aspects of the merger plan including the boundary issue. At the conclusion of those discussions, the State Board of Education adopted the plan of merger by a vote of 9-3. Petitioners in this action now request a stay of the action by the State Board of Education.

4. Some of the individual petitioners are residents of the City of Kings Mountain and also of Gaston County. Those petitioners represent that they have children attending school in the Kings Mountain City School District.

5. The petitioners allege that the Cleveland County Commissioners did not have authority to adopt a plan of merger under N.C. Gen. Stat. § 115C-68.1(a), which applies in circumstances where the affected school administrative units are “located wholly within the county.” Petitioners allege that a portion of the Kings Mountain District is legally located in Gaston County, and that as a result, the Cleveland County Commissioners were required to act under N.C. Gen. Stat. § 115C-68.1(b). That statute, which applies when one local school administrative unit is located in more than one county, requires the boards of commissioners of both counties to “jointly adopt plans for each of their counties, including a plan of consolidation and merger for such unit that is located in more than one county.” N.C. Gen. Stat. § 115C-68.1(b).

6. In the June 16th hearing, counsel for petitioners also disagreed with the funding formula adopted as part of the plan of merger. However, in a status call between the undersigned and counsel for the various parties on June 21, 2000, counsel for petitioners indicated that petitioners were not seeking relief based on any funding issue (except as such an issue is also implicit in the petitioners’ main theory).

7. In 1905, the North Carolina General Assembly created the “Kings Mountain Graded School District” with the following language:

That all the territory embraced in the incorporate limits of the town of Kings Mountain shall be and is hereby constituted the “Kings Mountain Graded School District” for white and colored children.

1905 N.C. Sess. Laws, Ch. 381.

8. Petitioners contend that this language means that the Kings Mountain School District expands automatically each time that the City of Kings Mountain expands its city limits through annexation or otherwise. Respondents disagree, pointing to other city school systems such as those in Kinston and Monroe (neither of which currently exist) where the General Assembly passed specific legislation addressing automatic expansion through legislation. Respondents also maintain that the statutory structure of the Kings Mountain School District’s boundaries was changed to a metes and bounds description as a result of the 1960 consolidation and that the new boundary definition did not include any right of automatic expansion through city annexation.

9. The location of the Cleveland – Gaston county line in the vicinity of Kings Mountain was disputed in the early 1900s. A referendum and related legislation in 1917 (1917 N.C. Sess. Laws, Ch. 31) resolved the dispute. This old dispute over the county line is not germane to the issues in the present case.

10. The first annexation by the City of Kings Mountain into Gaston County was in 1962. McCarter Aff. at ¶ 2.

11. In 1935, the General Assembly passed an Act allowing the Cleveland County Board of Commissioners and the Cleveland County Board of Education to alter the school districts in the county if presented with an appropriate petition from the voters in the affected area. 1935 N.C. Sess. Laws, Ch. 559.

12. In 1960, voters from Kings Mountain along with others from Grover, Parkgrace, Bethware and Compact school areas petitioned for the creation of a consolidated school district expanding west from the Gaston/Cleveland County line in Kings Mountain. Pursuant to statute, a taxing district was created, and a separate public vote was held in May 1960 to enlarge the Kings Mountain City Administrative Unit to include the Grover, Parkgrace, Bethware, and Compact areas – essentially the southeast corner of Cleveland County. *See* Alexander and McCarter Affs. and exhibits thereto. As a result, the newly formed Kings Mountain School District was comprised of the then-city limits of Kings Mountain (all of which was in Cleveland County) and expanded westward to encompass the Grover, Bethware, Compact and Parkgrace school areas. Exhibit B to McCarter Aff. The newly consolidated Kings Mountain School district was defined by a metes and bounds description. Petitioners, through counsel, conceded at the hearing on June 16, 2000, that this metes and bounds description did not include any territory in Gaston County because the city of Kings Mountain had not at that time annexed any territory in Gaston County. *See also* McCarter Aff. at ¶ 2 and Exhibit B thereto.

13. The description of the consolidated school district did not contain any language providing for the automatic expansion of the boundaries of the Kings Mountain school system as the City of Kings Mountain expanded.

14. In 1961 – prior to any annexation by the City of Kings Mountain into Gaston County -- the General Assembly amended the method of electing members of the Kings Mountain Board of Education. The law specifically recognized the 1960 consolidation by stating that “Chapter 960 of the Session Laws of 1955 applying to the Kings Mountain School Board shall remain in force and effect since the school district has been enlarged by consolidation except as herein amended.” 1961 N.C. Sess. Laws Ch. 63, sec. 1.

15. The 1961 legislation provided that three school board members were to reside in the City of Kings Mountain and two were to reside in the territory outside the corporate limits. The legislation specifically directed the provision of voting places for members of the former Bethware, Parkgrace, and Grover school districts – all of which lie to the west of the 1960 city limits of Kings Mountain. None of those areas was or ever has been a part of Gaston County.

16. In 1967, after the City of Kings Mountain had already begun annexing previously unincorporated territory in Gaston County, the General Assembly adopted legislation allowing a referendum on the consolidation of schools in Gaston County. 1967 N.C. Sess. Laws Ch. 906. That legislation called for one administrative unit and one board of education as its governing body “to the end that all of the public schools in Gaston County shall be administered and operated by one Board * * *.” That referendum passed on February 20, 1968.

17. In April 1972, Robert Phay (then a professor at the North Carolina Institute of Government) wrote to Jack H. White, who was the attorney for the Kings Mountain Board of Education. Mr. Phay opened his letter as follows:

In your letter of April 19 you ask “Would the children living in the annexed portion of Gaston County be a part of the Kings Mountain school district under section 1 of the 1905 Act * * *?” The answer is yes. This section of the Kings Mountain School Administrative Act automatically extends the jurisdictional boundaries of the city school unit to include all new areas incorporated into the city.

Mr. Phay’s letter reflects that – in 1972 – the Kings Mountain Board of Education had been charging tuition to Gaston County residents who lived within the city limits – an action inconsistent with the theory that the boundaries of the school district automatically extend with those of the city.

18. Mr. Phay’s letter makes no mention of (a) the 1960 consolidation of the Kings Mountain School District which changed the description to a static metes and bounds description wholly within Cleveland County; (b) the 1968 consolidation of the schools in Gaston County (an action that took place *after* the City of Kings Mountain had annexed Gaston County territory; and (c) actions of the General Assembly such as those regarding Kinston and Monroe that gave specific expansion power to school districts based upon city annexation.

19. On August 4, 1972, Jack H. White, acting on behalf of the Kings Mountain Board of Education, presented petitions to the Cleveland County Board of Education seeking the issuance of \$2,500,000 in additional bond money to provide school improvements. Mr. White’s letter states in pertinent part:

We would like to respectfully request that these signatures be verified as voters within the Kings Mountain School District and respectfully request that the Cleveland County Board of Education petition the Board of Commissioners for Cleveland County to order a special election to be held in said Kings Mountain School District of Cleveland County for the purpose of voting upon the question of issuing bonds to provide funds for payment of the cost of erecting, enlarging, altering, and equipping school buildings and purchasing sites in Kings Mountain School District * * *.

See Alexander Aff. at ¶ 2, Exhibit A. Those bond funds were used in part to build the present Kings Mountain Middle School and the Barnes auditorium at the Kings Mountain High School.

20. The petition enclosed with Mr. White’s letter states, in part, as follows:

That pursuant to the provisions of Chapter 559, Public-Local Laws of North Carolina, 1935, as amended by Chapter 205, Public-Local Laws, 1939, and Chapter 1104, 1957 Session Laws of North Carolina, and acts amendatory thereof and supplemental thereto, including Chapter 1268, 1957 Session Laws and Chapter 1046, 1961 Session Laws, The Cleveland County Board of Education duly made and entered an order on February 24, 1960, creating the Kings Mountain School District of Cleveland County, and by such order defined the boundaries of said Kings Mountain School District of Cleveland County as follows:

"BEGINNING at the intersection of the Cleveland County-Gaston County line with the North Carolina-South Carolina line, thence west with the State Line to Buffalo Creek, thence north with the Buffalo Creek to the mouth of Beason's Creek, thence up Beason's Creek with the old #3 Township Special School Tax District line to the mouth of John McSwain's spring branch at Buffalo Creek, thence North with Buffalo Creek to a point in Coleman Goforth's farm due west the south boundary of Willis Williams' farm, thence with the northern boundary of the Bryan

Poston farm to the Oak Grove-Stony Point Road, thence south with said road to James C. Turner's west boundary, thence east to Muddy Fork Creek, thence south to Persimmon Creek, thence with said creek through the farms of Joe A. Goforth, Coleman Goforth, R. A. Ware, James M. Lackey, J. L. Lackey, R. L. Lackey, Lawrence Bell, H. A. McFarland, touching the farm of William Whetstone on the north side, through the farms of R. L. Plonk, (second tract) C. S. Plonk, thence east to the Gaston County-Cleveland County line, thence south with the Cleveland-Gaston county line to the BEGINNING."

See Alexander Aff. at ¶ 2.

21. The property described by the 1972 petition as the "Kings Mountain School District of Cleveland County" lies totally within Cleveland County. *McCarter Aff. at ¶ 4.*

22. The minutes of the November 6, 1972, meeting of the Cleveland County Board of Commissioners indicate that a map of the district as described in the 1972 petition was in the possession of the Kings Mountain Board of Education and was available for public inspection. When asked in March 2000 to produce that map from the records of his Board of Education, Superintendent McRae was unable to do so. *Middlebrooks Aff.*

23. Since the 1960s consolidation (as reflected in the 1972 petition and bond referendum process), there has been no legislative action to change the boundaries of the Kings Mountain School District.

24. Since the mid-1970s, the Division of School Planning for the North Carolina Department of Public Instruction has issued publications with conflicting statements as to the issues in this case. In a 1977-78 description of the Kings Mountain system, the Division of School Planning wrote: "Approximately 170 students who reside in Gaston County are in the Kings Mountain School District. The district receives the pro-rata portion of funds from the Gaston County Commissioners for these students."

In a 1985-86 publication setting forth maps of district boundaries, the Division of School Planning clearly indicated that the Kings Mountain School District boundary stopped at the Gaston County line and did not extend into Gaston County itself. *Alexander Aff. at ¶ 4.*

25. In 1976, A.C. Davis, then Controller of the State Board of Education, wrote to the North Carolina Attorney General to seek guidance regarding the funding for Gaston County students who attended Kings Mountain schools. That letter did not seek a determination of where the legal boundaries were, but instead assumed that the district crossed the county line. In a reply dated July 14, 1976, the Attorney General's office responded in a letter authored by Edwin M. Speas, Jr. That response repeated the assumption regarding the district lines and went on to address the funding issue.

26. Based on the Speas letter and annual reports from the schools as to the county in which the students reside, the Department of Public Instruction has directed Gaston County's Board of Commissioners to allot a per pupil amount to the Kings Mountain Board of Education. This allotment process has occurred annually since the mid-1970s. The State Board of Education has not taken part in this process. Instead, it has been totally a staff function.

27. The Gaston County Board of Commissioners has not contested the allotments because they are obligated to pay the same amount of money for those students whether it goes to the Gaston County Schools or some other school district. *Hinely Aff. at ¶ 2.*

28. Approximately 180 children who live in the Gaston County portion of the City of Kings Mountain attend Kings Mountain schools, which are all located in Cleveland County. Some children who live in the Gaston County portion of the City of Kings Mountain attend Gaston County schools.

29. According to attendance zone maps maintained on the website of the Gaston County School system, the boundary of the Gaston County school system as a whole runs with the Gaston County line. Those maps indicate that the Gaston County school boundary runs with the Cleveland/Gaston County line as it passes through the City of Kings Mountain. *See <http://www.gaston.k12.nc.us/schools/maps/contents.htm>.*

30. Petitioners presented no pupil assignment maps. They did produce a set of school board minutes from March 1991 indicating that the Kings Mountain Board of Education treats the Gaston County portion of the City of Kings Mountain as part of their school district. Petitioners rely on the 1905 legislation for this interpretation and proffered no other legislative authority for their position. Petitioners also did not offer a metes and bounds description grounded in legislative authority showing that the Kings Mountain School District had ever existed within Gaston County. The Kings Mountain Board does not own, administer, or operate any public schools in Gaston County.

31. Residents of the City of Kings Mountain who live in Cleveland County pay a special school supplemental tax that supports the current Kings Mountain school system. Gaston County residents of the City of Kings Mountain do not pay that special school supplemental tax. Alexander Aff. at ¶ 5. These residents can participate in elections for Kings Mountain school board members.

32. Philip Hinely has been the County Manager of Gaston County since 1980. He has no recollection that either the City of Kings Mountain nor the Kings Mountain Board of Education has ever approached the Gaston County Board of Commissioners to seek authority to obtain a supplemental school tax in the Gaston County portion of the City of Kings Mountain similar to the supplemental school tax that exists in the Kings Mountain school district within Cleveland County. Hinely Aff. at ¶ 5. Petitioners presented no evidence to the contrary.

33. In addition to per pupil or “headcount” local funds, the Gaston County Board of Commissioners provides capital outlay funding, bond funds, and fines and forfeiture proceeds to the Gaston County Board of Education. That Board of Commissioners has never provided any such funds to the Kings Mountain Board of Education, according to Mr. Hinely. To the best of Mr. Hinely’s recollection, the Kings Mountain Board has never made any such request during his 20-year tenure as County Manager. Hinely Aff. at ¶ 3. Again, petitioners presented no evidence to the contrary.

34. Mr. Hinely has no recollection at all of the Kings Mountain Board of Education ever submitting a budget to the Gaston County Board of Commissioners pursuant to N.C. Gen. Stat. § 115C-429. Hinely Aff. at ¶ 4. There was no evidence to the contrary.

35. For the past 20 years, the Kings Mountain Board of Education has not made any request for capital funds from the Gaston County Board of Commissioners and has not apprised that Board of its capital facility needs. Hinely Aff. at ¶ 6.

36. The Gaston County Board of Commissioners is aware that the merger process has taken place and is aware of the surrounding controversy being generated by Kings Mountain. The Gaston County Board of Commissioners has taken no action to become involved in the merger process. Hinely Aff. at ¶ 7.

37. The new Merged Board of Cleveland County is currently acting in an advisory capacity until the effective date of the merger. According to the chair of the Merged Board, Dr. George Litton, that Board has publicly indicated its intention of working with the Gaston County Board of Education to allow those Gaston County children who have been attending school in Cleveland County to continue to do so. Litton Aff. at ¶ 5.

Based upon the record in this case, the arguments of counsel, and the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Because the Kings Mountain Board of Education has standing to pursue this action, the undersigned need not determine whether the individual petitioners are “aggrieved parties” pursuant to N.C. Gen. Stat. § 150B-23(a).

2. In order to prevail, petitioners bear the burden of showing that, by approving the plan of merger, the State Board of Education (a) exceeded its authority or jurisdiction; (b) acted erroneously; (c) failed to use proper procedure; (d) acted arbitrarily or capriciously; or (e) failed to act as required by law or rule. N.C. Gen. Stat. § 150B-23(a). Petitioners contend that both the Gaston and Cleveland County Boards of County Commissioners should have adopted the plan of merger under N.C. Gen. Stat. § 115C-68.1(b). Since Gaston’s Board did not, petitioners contend that the State Board’s approval exceeded its authority, was erroneous, and was not in compliance with the law.

3. Because of the constitutional and statutory authority granted to the State Board of Education in dealing with the boundaries of city administrative units and in dealing with merger issues, the State Board’s determinations are entitled to substantial deference.

4. Article IX, Section 5 of the North Carolina Constitution gives broad power to the State Board of Education:
The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

5. The State Board of Education has the power to approve mergers of school units and the power, “in its discretion, to alter the boundaries of city school administrative units.” N.C. Gen. Stat. § 115C-12(7), §§ 115C-67 to –68.3.

6. Petitioners urge three alternative theories: (a) that the term “located” in N.C. Gen. Stat. § 115C-68.1(a) should be read to mean that, if Gaston County students are going to Kings Mountain schools, then the district is “located” in Gaston County; (b) that the 1905 chartering legislation means that the school district automatically expands as the City of Kings Mountain has annexed territory; and (c) that the OAH should conclude that the school district has legally changed its boundaries through “*de facto*” existence in Gaston County.

7. Notwithstanding their contention regarding the construction of the term “located,” petitioners have conceded through counsel that the issue is not how many students attend Kings Mountain schools but rather the actual location of the district’s boundaries. The undersigned agrees that the true issue in this case is the legal location of the boundaries.

8. Petitioners’ primary contention is that the original 1905 chartering legislation, with its formulation using “shall be and is” means that the school district automatically expands as the City of Kings Mountain annexes. Even were the 1905 act still valid, that argument cannot succeed.

Near the time of the 1905 legislation, the North Carolina General Assembly adopted other school charters using similar language. For example, the 1897 charter for the Monroe City Schools used the exact same formulation: “That all territory embraced within the corporate limits of the town of Monroe, Union county, shall be and is hereby constituted the Monroe Graded School District for the white and colored children.” 1897 N.C. Sess. Laws Ch. 147, Sec. 1.

In 1971, the General Assembly redefined the boundaries of the Monroe City School District by using a metes and bounds description. The legislature also specifically provided that “[a]ll annexations to the corporate boundaries of the City of Monroe after July 1, 1971, automatically extend the boundaries of the Monroe City School Administrative Unit to include the newly annexed by the City of Monroe.” 1971 N.C. Sess. Laws Ch. 735.

The General Assembly used similar language in Kinston’s 1899 charter: “That for the purpose and benefits of this act the city of Kinston shall be a graded school district for both white and colored children and is hereby named and designated as the ‘Kinston graded school district.’ 1899 N.C. Sess. Laws. Ch. 96. This language is functionally equivalent to that adopted in the 1905 Kings Mountain charter.

In 1967, the General Assembly expanded the Kinston school district boundaries as follows: “The boundary lines of the Kinston City Administrative School Unit are hereby extended so as to embrace all territory annexed, and to be annexed, by the City of Kinston outside of and beyond the present Kinston City Administrative School Unit.” 1967 N.C. Sess. Laws Ch. 499.

If petitioners’ legal arguments were correct, then the actions of the General Assembly with regard to the Kinston and Monroe school units would be totally unnecessary. The more rational conclusion is that the 1905 language in the Kings Mountain charter does not allow for the automatic expansion of the school district by virtue of the city’s annexation power.

9. Moreover, the Monroe legislation speaks as well to the 1960 consolidation of the Kings Mountain district. The City of Kings Mountain did not annex Gaston County territory until 1962, so petitioners have conceded that the school district could not have existed in Gaston County before that time. The metes and bounds description of the 1960 consolidation does not (a) go into Gaston County nor does it (b) provide for future expansion by virtue of the city’s annexation process. It is extremely important to note that the 1972 referendum process occurred *after* the City of Kings Mountain had expanded into Gaston County. The Kings Mountain Board of Education pursued the 1972 bond referendum based upon the expressly stated legal representation that it was wholly located within Cleveland County.

10. School district boundaries may be altered only through the delegation of specific legislative authority. School districts may not unilaterally expand unless given specific legal authority to do so. *Moore v. Board of Education of Iredell Co.*, 212 N.C. 499, 193 S.E.2d 732 (1937). In *Moore*, the Supreme Court ruled that “the legislature *alone* can create, directly or indirectly, * * school districts” and that such districts “can only exercise such powers as may be conferred upon them and in the way and manner prescribed by law.” *Id.* at 733-734.

11. In an opinion letter dated June 22, 1994, dealing with the Mooresville Graded School System, the North Carolina Attorney General’s Office dealt with the automatic expansion by annexation issue:

A city school system, in our opinion, has no inherent authority to expand unilaterally its size and by virtue of that expansion remove students and taxable property from its sister county school system. See, *Vaughn v. Commissioners of Forsyth County*, 118 N.C. 636, 640-42 (1986); see also, G.S. 115C-73 (authorizing expansion of city school system by mutual agreement of city and county school systems). The power of unilateral expansion exists only where expressly conferred by the General Assembly.

12. In August 1999, prior to the current discussion of merger in Cleveland County, Superintendent McRae wrote to Assistant Attorney General Laura Crumpler seeking an opinion as to whether the boundaries of the Kings Mountain School District expanded automatically by virtue of annexation of territory by the City of Kings Mountain. Ms. Crumpler responded on February 11, 2000:

In our opinion, the boundaries of the Kings Mountain District Schools do not expand with the city limits.

It is well settled that school systems are creatures of the legislature and have only those powers expressly conferred upon them by the legislature, or those powers necessarily implied from the express powers. [citing *Moore*.] The creation and dissolution of a school system is a legislative function, and unless the legislature has delegated these powers to the school systems, the latter are without authority to exercise them. [Citations omitted.]

When it made its decision on June 1, 2000, the State Board of Education was aware of all of the relevant opinion letters, including the ones from the mid-1970s.

13. Chapter 559 of the 1935 Session Laws gave the local governments in Cleveland County the power to create new school and taxing districts “[p]rovided, however, that all the territory embraced in a new school district shall be located in one county. Each school district shall be designated by the Board as the ‘_____ School District of _____ County,’ inserting in the blank spaces some name identifying the locality and the name of the County.”

14. In 1960, this legislative authority was exercised to create the Kings Mountain School District of Cleveland County by consolidating the then-existing Kings Mountain unit with the Grover, Bethware, Compact, and Parkgrace districts within the Cleveland County unit. All of the parties agree that the city limits of Kings Mountain did not extend into Gaston County at that time, and counsel for petitioners conceded at the June 16th hearing that the 1960 consolidated district metes and bounds description did not extend into Gaston County.

15. Accordingly, pursuant to direct legislative authority, the boundaries of the Kings Mountain School District were changed in a manner that made it very clear that the legal boundaries of the school district (a) were totally in Cleveland County and (b) did not provide for automatic expansion in any way. The boundaries clearly go to the Gaston County line and not beyond.

16. In 1972, the Kings Mountain School District petitioned the Cleveland County Board of Education to seek \$2.5 million in bond authority from the citizens of Cleveland County. That petition referred to the 1960 consolidation that created the “Kings Mountain School District of Cleveland County,” and contained a metes and bounds description that again placed the school district wholly within Cleveland County. Accordingly, the Kings Mountain position espoused in 1972 – well after city annexations into Gaston County – was that the entire Kings Mountain school district was within Cleveland County.

17. As noted in the 1972 petition, the authority for the bond referendum was the 1935 legislation that required that the school district involved be located totally in one county. 1935 N.C. Sess. Laws Ch. 559, Sec. 2. Had the Kings Mountain School District extended into Gaston County, no referendum could have been held in Cleveland County. Based on the fact that the Kings Mountain School District existed only in Cleveland County, the bond vote was proper. Cleveland County residents paid for those bonds over the next 22 years (through 1994). The funds directly benefited the Kings Mountain School District.

18. Six months prior to the 1972 bond petition, Professor Robert Phay had written to Jack H. White, the attorney for the Kings Mountain Board of Education, in response to Mr. White’s question about the 1905 legislation and subsequent city annexations. Given that Mr. Phay’s letter did not mention the 1960 consolidation that redefined the Kings Mountain School District, the 1968 Gaston County consolidation vote, or the intervening actions of the General Assembly that made it clear that automatic expansion through annexation was a power that had to be expressly granted, it is evident that the Kings Mountain Board of Education realized that the impact of the 1960 consolidation was that it no longer had the power of automatic expansion (even if one assumes it once did). The 1972 position of the Kings Mountain Board of Education when money was on the line was totally inconsistent with its legal argument that its boundaries continue to expand automatically with city annexation.

19. After the 1972 bond referendum process, the parties have been unable to point to any action pursuant to statutory authority to change the boundaries of the Kings Mountain School District. In March 1991, the Kings Mountain Board of Education went through a pupil reassignment process. Its minutes clearly indicate its belief at that time that its boundaries extend into Gaston County. Unilateral action by the Board of Education without legislative authority has no effect, and the undersigned has been unable to locate any legal change from the boundaries adopted in the 1960s consolidation process. The petitioners have produced no evidence tending to show a legislatively authorized change.

20. Even if the 1905 chartering legislation did provide for the automatic expansion of the Kings Mountain School District, that power was taken away in 1960 when the consolidated Kings Mountain School District was created pursuant to the legislated authority granted in the 1935 legislation. Because that 1935 legislation specifically provided that the resulting school district must be located wholly within the county, the power of automatic expansion (assuming it ever existed) was taken away. The Kings Mountain Board of Education itself agreed with this interpretation in 1972 by seeking additional bonding authority under the 1935 statute. It would be entirely illogical to allow a board of education to seek funding under a statute that requires that the school district be located entirely within one county while that board maintained its two-county existence in another context. When \$2.5 million in capital funds were at issue, the Kings Mountain Board of Education made its position clear: it was the “Kings Mountain School District of Cleveland County.”

21. Counsel for all the parties stated at the June 16th hearing that the State Board of Education was made aware of all of the contentions regarding the boundary situation at its meeting on June 1, 2000. The boundary issue was discussed by the lawyers at the State Board meeting and was referenced by at least three of the Board members in their discussions. Accordingly, that issue was clearly in front of them when the Board voted 9-3 to approve the proposed plan of merger.

22. Petitioners also urge the OAH to conclude that the Kings Mountain School District should have “*de facto*” status as a two-county school system such that the State Board of Education should be prevented from acting on the merger plan.

23. The *de facto* doctrine has been recognized in certain governmental contexts so that *prior* acts of putatively valid governmental entities and officials were not subject to wholesale attack. It has not, however, been used *prospectively* as the petitioners seek to use it here.

24. The parties agree that certain Gaston County children have gone to school in Kings Mountain schools and that the local boards of election let some Gaston County residents vote in elections for Kings Mountain board members. However, none of the entities cited by petitioners as having “accepted” the *de facto* school district is charged with the statutory power of determining school boundaries except for the State Board of Education.

25. Counsel for the State Board of Education explained persuasively in the June 16th hearing that student numbers are reported by the schools themselves and are accepted without scrutiny by the DPI staff for allotment purposes. Petitioners pointed to no true action of the State Board of Education itself that supports the contention that the State Board approved of the *de facto* encroachment. Indeed, when faced with the issue for the first time in June 2000, the State Board of Education rejected that contention as it had the power to do under N.C. Gen. Stat. §§ 115C-12(7) and 115C-67 to -68.1.

26. Moreover, as the discussion above indicates, the “operation” of the Kings Mountain School District in Gaston County has not been internally or externally consistent. Importantly, the Kings Mountain Board of Education clearly considered itself to be wholly located within Cleveland County when it sought \$2.5 million of bond funds in 1972. It still benefits from those funds. Its counsel has taken inconsistent positions on who can vote for board members. DPI has made conflicting statements as to the location of the boundary lines. Since 1968, the Gaston County Board of Education has treated the entirety of Gaston County as being within its jurisdiction.

27. If this were an adverse possession case, petitioners would fail because their “possession” of the disputed territory has not been exclusive and hostile. The inconsistencies in the stated positions of the Kings Mountain Board of Education and its authorized agents constitute grounds to conclude that the petitioners failed to make out a “*de facto*” case, even if one assumes North Carolina law would recognize such a doctrine in this context.

28. North Carolina case law is clear that the boundaries of school districts can only be changed through the power of the General Assembly. See *Moore, supra*. There is nothing in this record that supports the contention that the General Assembly has legislatively delegated an automatic power of expansion for the Kings Mountain school system. The undersigned is bound by the *Moore* decision that implicitly, if not expressly, rejects the *de facto* doctrine used in the manner urged by the petitioners.

29. Petitioners have failed to shoulder their burden of establishing that the State Board of Education exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule.

30. The General Assembly has granted broad discretion to the State Board of Education in this area. That agency’s determination as to the boundary issue is entitled to deference. Given the lack of any legislatively authorized change in the district’s boundaries after the 1972 bond referendum (when the Kings Mountain Board of Education itself conceded that its boundaries lie entirely within Cleveland County), the undersigned cannot conclude that the State Board of Education’s decision on this issue was arbitrary or capricious or erroneous.

31. Finally, N.C. Gen. Stat. § 115C-67 includes the following sentence:

Upon approval by the State Board of Education, the plan of consolidation and merger shall become final and shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the General Assembly.

32. The Petitioner failed to show likelihood of success on the merits, so the Motion for a Stay of the State Board of Education's action is denied.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDED DECISION

That the State Board of Education reaffirm its decision to approve the merger plan submitted by the Cleveland County Board of County Commissioners.

ORDER

It is hereby ordered that the agency making the final decision in this matter serve a copy of the final decision to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714, in accordance with N.C. Gen. Stat. § 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. N.C. Gen. Stat. § 150B-36(a).

The agency is required by N.C. Gen. Stat. § 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 case is the North Carolina State Board of Education.

This the 26th day of June, 2000.

Fred G. Morrison Jr.
Senior Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
98 EHR 1222

RONNIE L. STURDIVANT,)
 Petitioner,)
)
 v.)
)
N. C. DEPARTMENT OF ENVIRONMENT)
AND NATURAL RESOURCES,)
 Respondent.)

RECOMMENDED DECISION

On August 30 and September 28, 1999, Administrative Law Judge Melissa Owens Lassiter heard this contested case hearing in Hillsborough, North Carolina. At hearing, the undersigned granted Respondent's Motion in Limine to limit certain evidence and issues in this matter. The Motion in Limine excluded any testimony or evidence relating to a Durham County Superior Court injunction involving Petitioner's facility and Durham County, and prohibited any testimony or evidence related to settlement discussions in the case. The undersigned also ruled that as the court lacked jurisdiction to terminate county employees or recommend damages, it could not recommend those remedies should it rule for the Petitioner.

APPEARANCES

Petitioner: Pro se

Respondent: John P. Barkley
 Assistant Attorney General.

ISSUE

Whether Respondent properly denied Petitioner a lodging establishment permit for his business known as "Temporary Quarters Residential Inn"?

Based upon the evidence presented at the hearing, the exhibits admitted, and all other relevant material, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner is the owner of Temporary Quarters Residential Inn ("Temporary Quarters"), in Durham, North Carolina. This establishment has 131 lodging rooms.
2. From 1993 until May 22, 1997, Temporary Quarters possessed a lodging establishment permit issued by the Durham County Health Department (hereinafter DCHD). This permit licensed or "permitted" only five rooms in Temporary Quarters to be rented on a nightly basis.
3. On May 22, 1997, Temporary Quarters' manager informed DCHD's staff that Temporary Quarters no longer desired to rent rooms on a nightly basis, and planned to rent rooms on a weekly basis only.
4. Pursuant to N.C. Gen. Stat. § 130A-250, lodging facilities that do not rent rooms on a nightly basis, but only weekly, are exempt from the permitting and inspection requirements of Chapter 130A.
5. On June 4, 1998, DCHD staff visited Temporary Quarters to determine the status of its operation. At that time, the manager and Petitioner's wife informed them that Temporary Quarters was not renting rooms on a nightly basis.
6. As more than 365 days had elapsed since May 22, 1997, DCHD considered Temporary Quarters previous permit to have expired on May 22, 1998. The Department of Environment and Natural Resources (hereinafter DENR) confirmed this information.

7. Temporary Quarters' staff's statements to DCHD staff, testimony by Petitioner (T. Vol II, pp. 179-182), Petitioner's wife, and the manager in 1998, Ms. Leggett (T. Vol II, p.10), confirm that Petitioner had not intended to operate the facility by renting rooms on a nightly basis from May 22, 1997 until June 4, 1998.

8. On June 5, 1998, Ms. Leggett and Petitioner's wife advised Petitioner of their discussion with DCHD about Temporary Quarters establishment status. Petitioner told his wife and manager Leggett to request a new permit for Temporary Quarters. However, Petitioner requested that only five designated rooms be "permitted," as conditioned in the previous permit.

9. On June 5, 1998, DCHD Supervisor of Food and Lodging Marvin Hobbs and Durham County Environmental Health Director Donnie McFall advised Petitioner's staff to designate the five rooms, and DCHD would come back to determine if a permit could be issued.

10. In prior years, DCPH had interpreted "establishment", as defined in N. C. Gen. Stat. § 130-247(1) and -250(1), to mean five individual rooms. Based upon that interpretation, those individual rooms could be permitted without the entire facility being permitted. In other words, only the five designated rooms and the facility's common areas had to comply with the lodging sanitation regulations.

11. McFall questioned the correctness of this interpretation, especially in considering Petitioner's case. After discussing Petitioner's case with the Durham County health director Brian Letourneau, McFall and Letourneau consulted county attorney Leslie Moxley to determine what qualified as an "establishment." The Durham County attorney opined that the entire facility constituted an establishment, not just five rooms. Therefore, the entire facility, not just 5 designated rooms, must be evaluated, and meet all applicable requirements to be eligible for a lodging permit.

12. Pursuant to the county attorney's advice, DCHD changed its interpretation of what constituted an "establishment" under N.C. Gen. Stat. § 130A-247(1) and -250. DCHD adopted and implemented Moxley's interpretation in its own department, effectively immediately. Thereafter, DCHD applied its new interpretation to all establishments requesting lodging permits, and required the entire facility comply with the lodging sanitation regulations.

13. At approximately 3:30 p.m. on June 8, 1998, Mr. Hobbs and DCHD Environmental Health Specialist Mark Meyer returned to Temporary Quarters to evaluate the facility's eligibility for a lodging permit. Pursuant to the directive that the entire facility be evaluated, DCHD staff and Mr. Hobbs advised Temporary Quarters staff that the lodging permit must be issued for the entire facility and thus, all 131 rooms must be inspected for compliance. Petitioner's wife and manager asked to postpone the inspection, because they could not give their "residents" 24 hours notice of the inspection. Hobbs and Meyer left to discuss the matter with their supervisors. Hobbs and Meyer left the business voluntarily.

14. On June 10, 1999, Mr. Hobbs and Mr. Meyer returned to Temporary Quarters with two deputy sheriffs and an administrative warrant. The warrant indicated that Temporary Quarter's staff had denied Hobbs and Meyer entry to their business on June 8, 1999.

15. On July 1, 1998, Mr. Hobbs and Mr. McFall again visited Temporary Quarters to conduct an evaluation of the establishment for issuance of a lodging permit. They inspected 118 rooms at Temporary Quarters that day, including rooms currently occupied or rented by weekly residents.

16. Mr. Hobbs and Mr. McFall wrote notations of their July 1, 1998 inspection. (Respondent's Exhibit 3). They found both general problems throughout the facility, and specific problems in individual rooms, that violated state laws and rules governing lodging establishments. (Respondent's Exhibits 2 and 3). Tpp. 32-33.)

17. Specifically, Hobbs and McFall discovered numerous violations of the water temperature requirement. Water temperature was required to be between 116 and 126 degrees. Numerous rooms' water temperatures were as low as 95 degrees or as high as 140, 145, and 180 degrees. High water temperatures could cause scalding, and low water temperatures could lead to growth of organisms such as legionella. Tpp. 36-38

18. Other problems discovered included stained or dirty mattresses, torn or dirty carpets, infestations of live roaches, standing water in stairwell that appeared to be sewage, garbage in the parking lot, construction problems under sinks, mold and mildew problems in tubs and showers, furniture in disrepair, and ceilings and walls in need of repair. Tpp. 33-37

19. Hobbs and McFall considered all these problems significant deficiencies to deny issuing Petitioner a lodging establishment permit.

20. By letter dated July 8, 1998, Hobbs notified Petitioner that his establishment did not satisfy all the requirements to obtain a lodging establishment permit, and advised they would provide Petitioner a list of corrective measures when all the data was compiled.

21. By letter dated July 15, 1998, Hobbs listed in specific detail “the minimum requirements for Temporary Quarters Residential Inn to obtain” a lodging establishment permit under 15A NCAC 18A. 1800. Hobbs also indicated that “any rooms that were not visited on July 1, 1998, for the purpose of permitting, must also meet the requirements of the lodging rules. Any room that has incurred damage since the July visit must also meet the lodging rooms.” “The establishment, as a whole, will be considered for permitting.”

22. Specifically, Hobbs stated that water temperature requirements must be met in *all* rooms. (**Emphasis added**).

23. On August 18, 1998, Mr. Hobbs returned to Temporary Quarters to determine if Petitioner had corrected any of the noted problems. While many problems had been corrected, other serious problems had not been corrected. (Tp. 46) Hobbs found (1) water temperatures still exceeded the required maximum temperature, (2) roaches still existed, and (3) problems with construction, floors, and mattresses still existed. (See Respondent’s Exhibits 5 and 6 total list of other problems still present during this visit.) (Tpp. 46-48)

24. On August 25, 1998, Mr. Hobbs and Mr. McFall returned to Temporary Quarters. They again located water temperatures below and above the required limits, including temperatures of up to 135 degrees. They again found roaches, molded areas, and carpet that needed to be replaced. (Tpp. 161-162)

25. Both Hobbs and McFall were qualified as experts in the permitting and inspection of lodging facilities.

26. In both of their expert opinions, a lodging permit could not be issued for Petitioner’s establishment under the conditions existing at the establishment. (Tpp. 163)

27. By letter dated September 4, 1998, Mr. McFall denied Petitioner’s request for a lodging establishment permit.

28. Petitioner admitted that he has not requested further evaluation of Temporary Quarters for issuance of a lodging permit since the August 25, 1998 evaluation. (T. Vol. II, p.185)

29. Both Mr. Hobbs and Mr. McFall indicated that if the problems noted were corrected, a lodging permit would have been issued for the establishment.

30. Hobbs and McFall acknowledged that Petitioner had completed a number of corrections/improvements following each of their visits. However, problems remained that would not allow issuing a lodging permit to Temporary Quarters.

31. Even if DCHD was evaluating Temporary Quarters to issue a permit for only five rooms, Hobbs and McFall could not, and would not, issue a lodging permit to Petitioner. Continuing unsanitary conditions in general areas affected individual rooms even if the entire facility is not permitted. These problems included unsanitary and unsafe conditions in lobbies and hallways, unclean and ill-equipped laundry and linen area, improper garbage collection and storage, continued lack of vermin control, and improper water temperatures.

32. Particularly, water temperature and roach problems were found in at least two of the five rooms specifically designated by Petitioner for overnight rentals.

33. Petitioner conceded on cross-examination that on August 25, 1998, water temperatures in the facility were outside of the range of the rules. (T. Vol. II, p. 186)

34. On previous years’ inspections, when Temporary Quarters was only permitted for five rooms, DCHD evaluated general areas such as hallways, lobbies, dumpsters, and laundry rooms for compliance with the lodging sanitation rules. (Tp. 82)

35. Ms. Susan Grayson, Head of the Food and Lodging Sanitation Branch for DENR, was qualified as an expert in evaluating and inspecting lodging facilities in accordance with state laws and rules.

36. Ms. Grayson indicated that an establishment must meet all the lodging sanitation rules to obtain a lodging establishment permit. (Tp. 215)

37. She corroborated DCHD’s assertions, that (1) an evaluation, not an inspection, was performed when a permit was applied for, and (2) there were no required or standardized forms used in evaluating a business for a lodging permit. (Tp. 215)

38. Ms. Grayson confirmed that an establishment's owner must reapply for a new permit, as if it were a new establishment, when its previous lodging permit has expired. (Tpp. 218-219)

39. In Grayson's opinion, water temperature requirements are designed to prevent diseases such as legionella from developing in water temperatures below 116 degrees, and against scalding in water temperatures above 126 degrees. Temperatures between 130 to 140 degrees pose a risk to the public. (Tpp. 221)

40. As the Environmental Health Supervisor, Mr. McFall made the final decision to deny Temporary Quarters a lodging permit.

41. Both Hobbs and McFall maintained that no one told them "not" to issue a permit to Petitioner, if his establishment complied with the requirements for issuing a lodging permit.

42. Neither Hobbs nor McFall had any personal bias or vendetta against the Petitioner.

43. During each of DCHD's evaluations from June 4, 1998 until Respondent's September 4, 1998 denial of the permit, Temporary Quarters did not meet the requirements of the lodging sanitation statutes and rules.

44. Even if DCHD evaluated only five rooms for issuance of a lodging permit, Temporary Quarters did not satisfy the lodging sanitation requirements during any of DCHD's evaluations from June 4, 1998 until Respondent denied the permit on September 4, 1998.

45. Both Hobbs and McFall would still issue Petitioner a lodging permit if his facility met the requirements of the lodging sanitation statutes and regulations.

46. Petitioner contended that DCHD's changing its interpretation of "establishment" unfairly singled him out. The evidence showed that in evaluating Petitioner's facility, DCHD did not follow its standard procedures in evaluating an establishment for a lodging permit. First, DCHD admitted it had never inspected "occupied" or rooms currently being rented, in other permit evaluations, until they evaluated Petitioner's business. It was not common practice to evaluate or inspect rooms that were "occupied." (Grayson's testimony). Second, DCHD created specific forms to evaluate Petitioner's business, when it had not previously used any standardized forms in evaluating other businesses for a lodging permit. Third, DCHD staff photographed Temporary Quarters facility during its evaluation, when it had never done so in other permit evaluations.

47. According to DCHD staff and Ms. Grayson, there were no required or standardized forms used during lodging permit evaluations.

48. Given that DCHD used different procedures in evaluating Petitioner's facility for a permit, it is certainly reasonable for a person in Petitioner's shoes to think he has been treated unfairly. However, any harm or inconvenience Petitioner may have suffered was minimal.

49. However, the evidence showed that Petitioner's case was the first time DCHD had questioned its policy in interpreting what constituted an "establishment" under N.C. Gen. Stat. § 130A-247, et seq. Once DCHD consulted the county attorney and changed its interpretation of what is an "establishment," it applied that interpretation uniformly to all facilities permitted after that date (early June 1998).

50. Petitioner presented evidence suggesting that other establishments in Durham County, such as Ramada Inn and Extended Stay America, were permitted for individual rooms. However, only part of these establishments were permitted, because the other rooms in those facilities were either under construction or renovation, or were being used for storage, and thus, were not being rented.

51. Petitioner claimed that other facilities had a mixed use of permitted "overnight" rooms, and rooms rented on a weekly basis. However, in those cases, DCHD had permitted the entire facility and **all** those facilities' rooms for nightly use, but actually only used some rooms on a nightly basis. In comparison, Petitioner had requested only a few rooms be permitted for nightly occupancy.

52. Petitioner argued that (1) DCHD's policy change in interpreting an "establishment" under N.C. Gen. Stat. § 130-247 et seq. enacted a "rule" under N.C. Gen. Stat. § 150B-2(8)(a), and (2) DCHD failed to follow proper notice procedures when a new "rule" was enacted or amended.

53. Petitioner's "rule" argument fails. N.C. Gen. Stat. § 130A and 15 NCAC 18A .1800 et seq. are administered by the Department of Environment and Natural Resources to insure the public health throughout North Carolina. Upon DENR's request, the local health departments such as DCHD, enforce these rules and laws.

Ms. Grayson opined that DENR interprets "establishment" as an entire facility. The language of the lodging sanitation statutes and rules discusses the permitting of "establishments," not individual rooms. Grayson was unaware of situations where some individual rooms were permitted for nightly occupancy, while other individual rooms in that facility were occupied on a weekly basis. (Tp. 224)

54. Based upon her experience and knowledge, Ms. Grayson indicated that individual rooms alone could not be permitted because the general or common areas of a facility affect the "permitted" facility. One could not look at individual rooms without looking at other conditions in a facility such as garbage, hot water, and presence of roaches or other vermin. "[T]hings such as dumpsters, the outside premises, the laundry rooms, the handling of ice buckets, the types of chemicals... there are a number of things that would additionally feed into this." (Tpp. 223-224, 230)

55. When DCHD changed its policy in interpreting an "establishment," it did not change the language of or enact any new statutes or rules. It merely aligned its interpretation to be consistent with the State's interpretation of the term "establishment."

56. Lastly, Petitioner argued that DCHD should be estopped from applying their new interpretation to his permit request because DCHD had issued a lodging permit to Temporary Quarters for five individual rooms in the past. Raleigh v. Fisher, 232 N.C. 629, 635, 61 S.E.2d 897 (1950) provides that the police power of the state to protect public health, safety, and welfare cannot be lost to estoppel even if public officials inadvertently, or even knowingly, allowed violation of laws and rules.

Based upon the foregoing Findings of Fact, the undersigned concludes:

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings and the undersigned has subject matter and personal jurisdiction over this matter.

2. Petitioner has the burden of proving Respondent erred in its procedures or actions in denying Petitioner a lodging establishment permit.

3. N.C. Gen. Stat. § 130A-248(a3) provides: "For the protection of the public health, the Commission [of Health Services] shall adopt rules governing the sanitation of hotels, motels, tourist homes, and other establishments that provide lodging for pay."

(15A NCAC 18A .1800 et seq.)

4. Pursuant to N.C. Gen. Stat. § 130A-248(b1), "(a) permit shall expire one year after an establishment closes unless the permit is the subject of a contested case pursuant to Article 3 of Chapter 150B of the General Statutes."

5. N.C. Gen. Stat. § 130A-248(b) states that "(n)o establishment shall commence or continue operation without a permit or transitional permit issued by the Department." . . . A "permit shall be issued only when the establishment satisfies *all* of the requirements of the rules." (Emphasis added). See also 15A NCAC 18A .1802.

6. As Petitioner's previous permit expired on May 22, 1998, the Petitioner no longer had a valid permit pursuant to N.C. Gen. Stat. § 130A-248. Pursuant to N.C. Gen. Stat. § 130A-248(b), Petitioner was required to request an evaluation for a new lodging permit.

7. For purposes of a lodging permit, an "establishment" is defined as "an establishment that provides lodging" N.C. Gen. Stat. § 130A-247(1). G.S. 130A-248(a) refers to the adoption of rules "governing the sanitation of hotels, motels, tourist homes, and other establishments that provide lodging for pay." The statute's language and how that wording used in Chapter 130A refers to the permitting of a "hotel," a "motel" or other "establishment." It does not refer to the permitting of a "room or rooms" in a hotel or motel.

The ordinary meaning associated with the terms "establishment" or "hotel" is not limited to an isolated room or group of rooms, but applies to an entire building or facility. . . A "hotel" is "a public house that provides lodging and usually meals and other services." American Heritage Dictionary, Second Edition.

Without a more specific reference, the common meaning of a word must be applied in interpreting these statutes. Given the statutory language read in its entire context, the logical interpretation of these subject statutes is that a lodging establishment encompasses the entire facility, not one, or five individual rooms in a building or facility.

8. DCHD's policy change in interpreting the term "establishment" was not an enactment of any new laws or rules, but was merely a reinterpretation of the state's existing lodging sanitation laws and rules. DCHD's new interpretation was properly based upon the common meaning of the word, and was consistent with the DENR's interpretation of "establishment" and Chapter 130A. Their actions did not constitute an enactment or change of a "rule" pursuant to N.C. Gen. Stat. §150B-2.

9. Petitioner's interpretation of "establishment" would be difficult for the agency to implement, because it would be impossible to determine where the regulated facility ends and the exempted facility begins when both sections "house" nightly renters and weekly residents in the same buildings.

10. DCHD did not treat Petitioner unfairly, or discriminate against Petitioner when it changed its interpretation of what is an "establishment." Their new interpretation was uniformly applied to facilities permitted after that decision was made. An agency should not be expected to continue to follow an existing policy merely for consistency, once it has determined that its policy is not a proper interpretation of the law.

11. Petitioner's claims that other facilities have been permitted for less than the entire facility are not applicable because they are readily distinguishable from Petitioner's case. Those other facilities rooms that were either not occupied due to construction or renovation, or were exempt from Chapter 130A (by weekly occupancies only), but still included in the establishment's "permit" as nightly rentals.

12. The evidence does not support Petitioner's claims of discrimination. Respondent's witnesses were credible in their statements that they had no bias against Petitioner, and that they would issue a permit to Petitioner upon compliance with all requirements of the laws and rules. The testimony and other evidence presents ample documentation of significant violations of the rules that would prohibit the issuance of a permit to Petitioner pursuant to law and rule.

13. Petitioner suffered minimal harm when DCHD failed to follow standard evaluation procedures in evaluating Petitioner's establishment. However, the importance of ensuring the highest level of the public's health outweighed any minimal inconvenience Petitioner suffered and any right of Petitioner to obtain a lodging permit.

14. Petitioner's establishment failed to meet all of the requirements of the lodging sanitation statutory and rules. Therefore, Respondent properly concluded, pursuant to G.S. 130A-248(b), that it could not issue a lodging permit to Petitioner until all deficiencies were corrected at Temporary Quarters. As such, Respondent properly denied Petitioner lodging permit request.

15. Even if a permit could have been issued for only five rooms, the conditions existing at the Temporary Quarters still failed to meet the requirements for issuance of a lodging permit.

16. The Respondent did not exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily or capriciously, and did not fail to act as required by law or rule.

RECOMMENDED DECISION

Based on the above findings of facts and conclusions of law, the undersigned recommends that Respondent's denial of Petitioner's request for a lodging permit be **AFFIRMED**.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, 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.

CONTESTED CASE DECISIONS

The agency that will make the final decision in this contested case is the Office of the State Health Director.

This the 11th day of May, 2000.

Melissa Owens Lassiter
Administrative Law Judge

Russell J. Suga,)
Petitioner,)
))
v.)
))
Employment Security Commission of)
North Carolina,)
Respondent.)

This matter came on for hearing before the undersigned Judge presiding over the April 20, 2000 session of the Office of Administrative Hearings cases in New Bern, North Carolina. Two cases were consolidated per Order for Consolidation for Hearing, by Order dated February 7, 2000. At the April 20, 2000 session, the undersigned heard evidence presented by both sides in respect to both contested cases. After hearing the evidence, the presiding Judge requested counsel for the respondents to submit a Proposed Recommended Decision in 99 OSP 0768. The Judge requested that Petitioner to submit a decision in case no. 99 OSP 1649. Case no. 99 OSP 1649 involved the dismissal of Petitioner from his position as an Employment Consultant I with the Employment Security Commission.

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Respondent Thomas H. Hodges, Jr.
Employment Security Commission
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Upon consideration of the filings, the testimony and exhibits, and the arguments of counsel for both Petitioner and Respondent, the undersigned Administrative Law Judge makes the following:

1. The Petitioner in this case, Russell J. Suga, was employed by the Employment Security Commission at the Morehead City office as an Employment Consultant I until his dismissal from employment on or about November 5, 1999. At the time of his dismissal from employment, he was a pay grade 64, and had 88 months of continuous state employment.

2. Petitioner is a career state employee subject to the provisions of the State Personnel Act who only can be dismissed for “just cause” under the provisions of N.C.G.S. § 126-35.

3. On or about March 13, 1998, Petitioner was given a “letter of warning” alleging improper performance on his part. This warning letter was introduced into evidence as Petitioner’s Exhibit No. 8.

4. The letter of warning referenced three letters of complaint that had been received from customers and, generally, warned the Petitioner that he was to be courteous to customers and to offer his experience and knowledge in assisting them in respect to his contacts with such customers.

5. On or about the 31 of March 1998, Petitioner received a Performance Evaluation which contained specific reference to the letter of warning. This Performance Evaluation, which was introduced into evidence as Petitioner's Exhibit No. 5, specifically rated the Petitioner's performance in the area of "service orientation" as Unsatisfactory. (See page 4 of Petitioner's Exhibit No. 5.) This unsatisfactory performance mark was directly related to the letter of warning issued on 13 March 1998, and concerned the three "complaints" cited therein.

6. In March of 1999, Petitioner received an annual Performance Appraisal in respect to his work performance. At that time, Petitioner received a specific rating in respect to the subject matter of the March 1998 warning letter which appears under “service orientation” on page 4 of Petitioner’s Exhibit No. 6. His rating in this specific area which was the subject matter of the March 1998 letter of warning was “good”. Furthermore, the comment was made on the March 1999 rating that Petitioner had improved dramatically over the marking period and that “he treats clients fairly and courteously and with respect”.

7. In this same rating, the Petitioner received a “below good rating” in respect to one of his primary job responsibilities. He appealed this rating, and as a result of this appeal, his overall rating in respect to the performance appraisal was changed to “good” (see Petitioner’s Exhibit No. 7).

8. Therefore, the Petitioner’s Performance Appraisal in March of 1999 specifically rated him “good” in respect to the exact area which was the subject matter of the March 1998 warning letter. The overall rating on the Performance Appraisal also was “good”.

9. On March 4, 1999, Petitioner received a “second letter of warning” (see Petitioner’s Exhibit No. 9). This letter of warning was addressed to the Petitioner’s alleged failure to follow office procedures.

10. Neither letter of warning provided the Petitioner with any appeal rights set forth therein.

11. Neither letter of warning provided a time frame for the Petitioner to improve his performance, nor did either letter of warning specify any steps that the Petitioner should take to improve his performance.

12. On November 5, 1999, the Petitioner received a letter dismissing him from employment. (See Petitioner’s Exhibit No. 4.) This letter indicated that his dismissal was “due to unsatisfactory job performance”.

13. The letter specifically alleged that the Petitioner’s job performance had been unsatisfactory and that the reason he was being dismissed was “the rude manner used in relating to clients we serve”.

14. The letter specifically referenced the written warning from March 13, 1998 for unsatisfactory job performance and the written warning of March 4, 1999 for job performance.

15. The incidents stated in the November 5, 1999 dismissal letter alleged three incidents of alleged rudeness in respect to treating clients. These incidents were as follows:

- A. An incident with Lilian Barlow allegedly occurring on September 29, 1999.
- B. An incident with David Blair allegedly occurring on June 4, 1999.
- C. An incident with Illene River allegedly occurring on June 16, 1999.

16. The parties, at the hearing in this case, stipulated into evidence a transcript of hearing held before the Employment Security Commission in respect to Petitioner’s application for unemployment benefits. All three of these individuals testified under oath at that hearing as did the Petitioner.

17. The Court has reviewed the entire testimony of these individuals, along with the testimony of the Petitioner and finds as a fact that there was no conduct testified to by these individuals which could be construed to be anything other than job performance related matters. None of the testimony from these individuals, even if taken as completely true, would amount to “personal conduct” violations on the part of the Petitioner herein as defined under North Carolina Administrative Code. (See 25 N.C.A.C. 11.2305.)

CONCLUSIONS OF LAW

1. 25 N.C.A.C. 1J.0614(g)(2) provides as follows:

“Inactive Disciplinary Actions—Any disciplinary action issued after the effective date of this Section, is deemed inactive for the purpose of this Section in the event that: ...

- (2) the purpose for a performance-based disciplinary action has been achieved as evidenced by a summary performance rating of level 3 (Good) or other official designation of performance at an acceptable level or better and at least a level 3 or better in the

performance area cited in the warning or disciplinary action, following the disciplinary warning or action; or..."

2. The 13 March 1998 written warning had become inactive as of March of 1999 when the Petitioner achieved a summary performance rating of level 3 (good) and achieved a level 3 (good) or better in the specific performance area cited in the warning letter.

3. The Petitioner, prior to his dismissal, had only one active disciplinary warning, which was the written warning of 4 March 1999.

4. The Petitioner's dismissal from employment was solely related to matters concerning job performance, and there was no allegation or proof that he had engaged in any conduct referenced in the dismissal letter which rose to the level of "personal conduct" as defined under 25 N.C.A.C. 11.2304.

5. Petitioner, at the time of his dismissal for alleged failure in performance, did not have two active prior disciplinary actions, as required under the provisions of 25 N.C.A.C. 11.2302(c).

6. The Petitioner has carried his burden of demonstrating, by the preponderance of the evidence, that there was no just cause for his dismissal under the provisions of N.C.G.S. § 126-35 and the above cited provisions of the North Carolina Administrative Code. (See also *Ebron v. N.C. Department of Health and Human Services*, case no. 97 OSP 0881, 96 OSP 1406, State Personnel Commission decided on June 24, 1999.)

RECOMMENDED DECISION

The undersigned recommends that the State Personnel Commission REVERSE the Respondent's decision to dismiss Petitioner from employment, and that he be reinstated to his position, with all benefits of continued state employment from November 5, 1999.

It is recommended, in accordance with the foregoing Findings of Fact and Conclusions of Law, that the State Personnel Commission enter the following Order in respect to this case:

1. That Petitioner be reinstated to his position effective November 5, 1999, as an Employment Consultant I.
2. That Petitioner be granted all back pay and front pay, and all benefits of continuing state employment from the date of 5 November 1999 until his reinstatement is effected by the Respondents.
3. That Petitioner be awarded all attorney's fees and costs in respect to this matter.
4. That Petitioner's personnel record be expunged in respect to the warning of 13 March 1998, and all materials in respect to his dismissal from employment.

ORDER

It is hereby Ordered that the Agency serve a copy of the final decision on the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, North Carolina 27611-7447, in accordance with N.C.G.S. § 150B-36.

NOTICE

The Agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposed Recommended Decision and to present written arguments to those who will make the final decision. N.C.G.S. § 150B-36(a).

The Agency is required by N.C.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.

This the 9th day of June, 2000.

Beecher R. Gray
Administrative Law Judge