

NORTH CAROLINA REGISTER



Volume 15, Issue 5
Pages 511 -644

September 1, 2000

This issue contains documents officially filed
through August 8, 2000.

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North Carolina Register is published semi-monthly for \$195 per year by the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. (ISSN 15200604) to mail at Periodicals Rates is paid at Raleigh, NC. POSTMASTER: Send Address changes to the *North Carolina Register*, PO Drawer 27447, Raleigh, NC 27611-7447.

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
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20	Treasurer	Massage & Bodywork Therapy	30
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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>

**STATE BOARD OF ELECTIONS
133 Fayetteville Street Mall
Suite 100
Raleigh, North Carolina 27601**

GARY O. BARTLETT
Executive Secretary-Director

Mailing Address:
P.O. BOX 2169
RALEIGH, NC 27602
(919) 733-7173
FAX (919) 715-0135

April 12, 2000

Representative Julia C. Howard
1023 Legislative Building
Raleigh, NC 27601-1096

Dear Representative Howard:

We are in receipt of your request for an opinion pursuant to N.C.G.S.163-278-23 concerning your involvement in a golf event sponsored by the Cooleemee Historical Society and others. On March 22, 2000, our office provided you with an oral opinion, and this letter serves as our response to your request for a written opinion pursuant to N.C.G.S.163-278-23.

It is our understanding that you have been asked to lend your name and support to a golf tournament in which you will be honored for your service to citizens of Davie and Davidson Counties. All fees, donations and proceeds will be payable to the Cooleemee Historical Society. The event is not a campaign event and no proceeds will be payable to, deposited in, or used by your campaign account.

It is our opinion that your support of the charitable event and the use of your name does not constitute election activity that would be subject to the election laws of North Carolina, and therefore, would not need to be reported in any way as a campaign activity.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Gary O. Bartlett
Executive Secretary-Director

**STATE BOARD OF ELECTIONS
133 Fayetteville Street Mall
Suite 100
Raleigh, North Carolina 27601**

GARY O. BARTLETT
Executive Secretary - Director

Mailing Address:
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April 18, 2000

Mr. Scott R. Falmlen
Executive Director
North Carolina Democratic Party
Post Office Box 12196
Raleigh, North Carolina 27605

Re: Request for Opinion

Dear Mr. Falmlen:

We are in receipt of your letter dated March 8, 2000, in which you request an opinion pursuant to N.C.G.S. 163-278.23, regarding various sections of G.S. 163-278.39.

Question #1

When the Party produces a print advertisement that specifically endorses by name several of its nominees for office, does G.S. 163-278.39(a)(5) require that the disclosure statement list each candidate separately as authorizing the advertisement (i.e., "Authorized by John Doe for Governor, Jim Smith for Lt. Governor, Mary Jones for Attorney General, etc.") OR is it sufficient for the Party to simply state that the advertisement is "Authorized by the candidates herein named"?

Answer

N.C.G.S. 163-278.39(a)(5) requires the sponsor of a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, to state whether it is authorized by a candidate. It further requires that the sponsor shall state either "Authorized by (name of candidate), candidate for (name of office)" or "Not authorized by a candidate."

N.C.G.S. 163-278.39(a)(6) requires the sponsor of a print media advertisement that identifies a candidate the sponsor is opposing, to disclose in the advertisement the name of the candidate who is intended to benefit from the advertising. This applies only when the sponsor coordinates or consults about the advertisement or expenditure for it with the candidate who is intended to benefit.

The suggested statement "Authorized by the candidates herein named" does not supply the "candidate for (name of office)" statement. However, print media advertisements sponsored by a political party frequently name a full slate of party candidates in the advertisement. Thus, political party ads that support multiple candidates and do not oppose or name the candidates that oppose the party's candidates may use the statement "authorized by the candidates herein named," or, when appropriate, "not authorized by a candidate."

In print media advertisements that name or oppose one or more candidates who are the opponents of one or more of the political party's candidates, the sponsoring political party shall not use the statement "Authorized by the candidates herein named." Instead the sponsoring political party shall use for each candidate included in the advertisement the statement

IN ADDITION

"Authorized by (name of candidate), candidate for (name of office)," or "Not authorized by (name of candidate), candidate for (name of office)".

Question #2

Please confirm or refute our interpretation of the provisions of G.S. 163-278.39(b): In a print media advertisement, the area reserved or set aside for the disclosure statement must be at least five percent (5%) of the height of the printed space or print area of the advertisement and the type within that set-aside area must be at least 12 points in size. For example: If the height of the advertisement is eleven inches, the area set aside for the disclosure statement must be at least .55 inches and the type within that area must be at least 12 points in size.

Answer

The size requirement for print advertisement disclosure would be satisfied by setting aside five percent (5%) of the height of the printed space or print area of the advertisement for all disclosure statements with at least 12 point type used in the designated area.

Question #3

If our interpretation in Number Two above is correct, does the area set aside for the disclosure statement have to be defined by way of any marking such as boxed or shaded?

Answer

There is no requirement to define the area by boxing or shading, nor does the boxing or shading count toward the required size of the legend.

The undersigned officer issues the following opinions pursuant to G.S. 163-278.23:

Political Parties may, when paying for and sponsoring print media advertisements that support one or more of the Party's candidate, use the statement "Authorized by the candidates herein named", provided the advertisement does not oppose, name or show the picture of one or more of opponents of the Party candidates.

In an instance where opponents are named or pictured, the authorization shall be for each candidate and as follows: "Authorized by (name of candidate), candidate for (name of office)," or "Not authorized by (name of candidate), candidate for (name of office)."

The print advertisement disclosure size requirement will be satisfied by setting aside five percent (5%) of the height of the printed space or print area of the advertisement for all disclosure statements with at least 12 point type used in the designated area. The set-aside disclosure area does not require nor include additional area boxed or shaded.

Sincerely,

Gary O. Bartlett
Executive Secretary-Director

cc: William Cobey, Chairman
NC Republican Party
Sean Haugh, Chairman
NC Libertarian Party

STATE BOARD OF ELECTIONS
133 Fayetteville Street Mall
Suite 100
Raleigh, North Carolina 27601

GARY O. BARTLETT
Executive Secretary-Director

Mailing Address:
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June 8, 2000

Representative Richard T. Morgan
North Carolina General Assembly
Room 418 B
Legislative Office Building
Raleigh, North Carolina 27601-1096

Re: Request for an Opinion Pursuant to G.S. 163-278.23

Dear Representative Morgan,

You have requested an opinion letter pursuant to the third paragraph of G.S. 163-278.23. The questions you pose were obviously precipitated by the holding of the Court of Appeals in *Winborne v. Easley*, 136 N.C. App. ___, 523 S.E. 2d 149 (1999). The Court of Appeals upheld the trial court's ruling that part of the definition of a "limited contributtee" in G.S. 163-278.13B(a)(2) was overly broad. Although the language still appears in the statute, the Court effectively struck through part of the statute as shown:

"Limited contributtee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly. ~~or a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly.~~

This ruling has presented this office with the difficult administrative task of reconciling the Court's ruling with other language in G.S. 163-278.13B, with a previous opinion of the North Carolina Supreme Court, and with what we know to be common practices in conducting campaigns for the Council of State and the General Assembly. We realize that it also leaves candidates for these offices uncertain about what fund raising activity is prohibited during regular legislative sessions. In this opinion I will try to provide as much guidance as possible; however, without a specific set of facts I will be unable to answer your questions as definitively as I would like.

The questions you presented, and my best opinion at this time, are set forth below:

1. While the General Assembly is in regular session, may a legislative candidate'sⁱ political committee accept a contribution from a lobbyistⁱⁱ if the treasurer of that committee is someone other than the legislative candidate?

Answer: Yes, with possible exceptions.

Analysis: The difficulty lies in determining when the candidate has accepted a contribution and when the candidate's political committee has accepted the contribution. The North Carolina Supreme Court state in *In re Wright*, 313 N.C. 495, 497, 329 S.E. 2d 668,669 (1985): "The fact that a candidate has set up a committee to handle the contributions to his campaign does not insulate him from the contributors. Such a committee is the creature of the candidate who created it and is established for the convenience of the candidate. "Nevertheless, the Court of Appeals said in *Winborne* that a political committee, including a candidate's committee, may

IN ADDITION

not be prohibited from accepting contributions from lobbyists during a regular legislative session even though the candidate is prohibited from accepting contributions from lobbyists. Based on these rulings, so long as there is no evidence the candidate had a role in accepting the contribution, then it may be accepted by the candidate's political committee.

The approach of this office has always been to assume that candidates and political committees do their best to abide by the law. The representations of those filing disclosure reports are accepted as true and in accord with legal requirements. Under the *Winborne* ruling, if the Council of State or General Assembly candidate or incumbent is not listed on Campaign Reporting records as a treasurer or officer of the committee, there would be no basis, without other information, for finding improper a contribution accepted by the candidate's political committee from a lobbyist while the General Assembly was in regular session.

This office must treat seriously complaints supported by evidence that the law has been violated. Thus, a legislative candidate should take care during the regular sessions of the General Assembly to assure that his or her political committee handles acceptance of any contributions from lobbyists and that the candidate has no role in that acceptance.

2. While the General Assembly is in regular session, may a legislative candidate's political committee solicit a contribution from a lobbyist if the treasurer of that committee is someone other than the legislative candidate?

Answer: No

Analysis: G.S. 163-2278.13B(b) remains unchanged after the *Winborne* case. It prohibits solicitations by a "limited contributee or the real or purported agent of a limited contributee" while the General Assembly is in regular session. This statutory language is consistent with the North Carolina Supreme Court's statements quoted above. With the exception of the specific holding in the *Winborne* case, it is generally assumed that a candidate's political committee acts as his or her "real or purported agent" even when the candidate does not serve as treasurer. Thus, under the language of the statute the candidate's political committee may not solicit a contribution from a lobbyist even if the treasurer of the candidate's political committee is someone other than the legislative candidate.

If you have questions about this opinion or any need for additional information, please do not hesitate to contact me.

Sincerely,

Gary O. Bartlett
Executive Secretary-Director

cc: Codifier of Rules for Publication
in the N.C. Register and the
N.C. Administrative Code

**NOTICE OF REQUEST FOR PERMANENT VARIANCE
FROM OCCUPATIONAL SAFETY AND HEALTH STANDARD**

BY

NORTH CAROLINA DEPARTMENT OF LABOR

Statement of the Subject Matter: The Commissioner of Labor hereby gives notice that he is considering, in accordance with G.S. 95-132(b), an application for a permanent variance from DuPont Fluoroproducts (hereafter, "DuPont").

Reason for Proposed Action: On May 30, 2000, DuPont filed an application for a variance with the Occupational Safety and Health Division of the North Carolina Department of Labor. If granted, the variance will allow DuPont to use a non NIOSH-approved respirator under specified conditions in some of the process areas in its Fayetteville, NC facility. Unless the variance is granted, the usage of this respirator would be prohibited by Occupational Safety and Health General Industry Standard, 29 CFR 1910.134(d)(1)(ii), Respiratory Protection, which was adopted by reference by the North Carolina Division of Occupational Safety and Health.

Authority for Proposed Action: G.S. 95-132(b); 13 NCAC 7A .0700.

Comment and Hearing Procedures: Interested and potentially affected persons or parties are invited to make known their views, comments, information or arguments regarding the variance application and consideration of the granting of the variance. To review the application or to obtain a copy of it, contact Ann B. Wall at the address below. Affected employees and employers may request a public hearing by filing a written request for a hearing by the close of business on September 8, 2000. Written comments, data or other information relevant to this proceeding should be submitted by the close of business on September 15, 2000. Requests for a hearing and written comments should be submitted to Ann B. Wall, Agency Legal Specialist, Department of Labor, Legal Affairs Division, 4 West Edenton Street, Raleigh, NC 27601-1092. Fax transmittals may be directed to (919) 733-4235.

IN ADDITION

U.S. Department of Justice

Civil Rights Division

JDR:RAK:TAR:jdh
DJ 166-012-3
2000-1751

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

April 25, 2000

Mr. Gary O. Bartlett
Executive Secretary-Director
State Board of Elections
P.O. Box 2169
Raleigh, NC 27602

Dear Mr. Bartlett:

This refers to the establishment of two additional polling places at the Kehlin and Fountain emergency village sites to accommodate voters displaced by Hurricane Floyd; the procedures for counting the provisional ballots processed at the two additional polling places; and the allowance of "displacement and temporary relocation within the county" as an additional excuse for one-stop absentee voting for 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 April 24, 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 change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise required an objection comes to our attention during the remainder of the sixty day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

cc: Charles Roundtree
Chairperson, Edgecombe County
Board of Elections

IN ADDITION

U.S. Department of Justice

Civil Rights Division

JDR:GS:NT:nj
DJ 166-012-3
2000-1268

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

May 17, 2000

Mr. Gary O. Bartlett
Executive Secretary-Director
State Board of Elections
P.O. Box 2169
Raleigh, NC 27602

Dear Mr. Bartlett:

This refers to the decision to permit unaffiliated voters to participate in the May 2, 2000, primary election of the Libertarian Party of 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 March 23, 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 52 – VETERINARY DIVISION

Notice of Rule-making Proceedings is hereby given by The NC Board of Agriculture 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 52B .0213 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 106-307.5

Statement of the Subject Matter: Proposed new rule would require a permit from the State Veterinarian prior to importation of livestock from areas that have had outbreaks of tuberculosis in livestock, subject to certain conditions.

Reason for Proposed Action: Federal regulations establish various categories of livestock tuberculosis status for states and areas within states. A recent outbreak in Michigan has lead to concern that the federal rules are not sufficient to prevent the importation of infected or exposed animals.

Comment Procedures: Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

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

CHAPTER 22 - AGING

Notice of Rule-making Proceedings is hereby given by the Secretary of Health and Human Services 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: 10 NCAC 22L - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143B-181.1(c)

Statement of the Subject Matter: 10 NCAC 22L governs the provision of Information and Case Assistance for the Division of Aging.

Reason for Proposed Action: The current name of the service is inconsistent with the Older Americans Act of 1965 as amended. This change will make Federal and State language consistent. The North Carolina Division of Aging is reviewing and updating the rules pertinent to the Information and Case Assistance service to make them consistent with current needs and practices.

Comment Procedures: Anyone wishing to comment should contact Lynne Berry, NC Division of Aging, 693 Palmer Dr., Taylor Hall, 2101 Mail Service Center, Raleigh, NC 27699-2101, phone (919) 733-8395.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES**

CHAPTER 3 – MARINE FISHERIES

Notice of Rule-making Proceedings is hereby given by the NC Marine Fisheries 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 3M .0301 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113-134; 113-182; 113-221; 143B-289.52

Statement of the Subject Matter: Size limit for king mackerel taken in commercial fishing operations.

RULE-MAKING PROCEEDINGS

Reason for Proposed Action: Rules adopted by the National Marine Fisheries Service in accordance with the Coastal Migratory Pelagics Fishery Management Plan requires a size limit for king mackerel at 24 inches fork length. The change to North Carolina's recreational size was made by temporary rule effective January 1, 2000. The change to commercial size is currently accomplished through proclamation. The Marine Fisheries Commission plans to make this change by rule.

Comment Procedures: Written comments are encouraged and may be submitted to the Marine Fisheries Commission, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.

CHAPTER 6 – SOIL AND WATER CONSERVATION COMMISSION

Notice of Rule-making Proceedings is hereby given by DENR – Soil and Water Conservation 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 6E - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 139-3; 139-4; 139-8; 143-215.74

Statement of the Subject Matter: The rules are being proposed in order for the Commission to implement the North Carolina Conservation Reserve Enhancement Program.

Reason for Proposed Action: The North Carolina Conversation Reserve Enhancement Program (CREP) is a state/federal/local partnership that combines existing federal Conservation Reserve Program funding and state funding from various sources, including the Agriculture Cost Share Program, to take environmentally sensitive land out of crop production. The objectives of the program are to reduce agricultural non-point pollution; to enroll eligible land in conservation easements; to encourage voluntary sign-ups for the program; and to enhance ecological aspects of areas near to watercourses. The North Carolina Soil and Water Conservation Commission operates the program as the lead agency for the State of North Carolina. These rules are being proposed for adoption so as to establish the criteria by which the Commission will implement CREP. These rules will be adopted as temporary rules.

Comment Procedures: All persons interested in these proposed rules are encouraged to submit written comments to Vernon Cox, Division of Soil and Water Conservation, 1614

Mail Service Center, Raleigh, NC 27699-1614. Comments may also be submitted by electronic mail to Vernon.Cox@ncmail.net.

CHAPTER 7 – COASTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by the Coastal 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 7J .0403-.0404 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113A-119.1

Statement of the Subject Matter: The proposed amendment would allow for limited permit extension and continuation for major and minor CAMA and Dredge & Fill permits. The proposed amendment would make the rule consistent with existing laws regulating structures and clarify the meaning of "substantial development".

Reason for Proposed Action: Due to the three year timeframe currently allowed for beach bulldozing minor permits (7J .0403(a)), it is difficult to determine which property owners are authorized to conduct beach bulldozing, and effectively monitor and enforce this activity. Limiting bulldozing minor permits to 30 days will enhance monitoring and enforcement. Amending Section 7J .0403(e), will make the Coastal Resources Commission's definition of "substantial progress" consistent with the State Building Code. The Coastal Resources Commission is proposing to make Section 7J .0404(a)(5) consistent with an interpretation for "substantial development" that the Coastal Resources Commission adopted in March 1999, and has applied since that time.

Comment Procedures: Written comments may be submitted to James Rosich, 1638 Mail Service Center, Raleigh, NC 27604, phone (919) 733-2293.

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

Notice of Rule-making Proceedings is hereby given by the NC 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.

RULE-MAKING PROCEEDINGS

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

Authority for the Rule-making: *G.S. 113-134*

Statement of the Subject Matter: *Hunting, Fishing, Gamelands, Water Safety, Access Areas, Licensing, Conservation, Endangered, Threatened and Special Concern Species, Regulated Activities and Hunter Safety rules.*

Reason for Proposed Action: *To set/amend regulations necessary to manage and conserve wildlife resources and maintain safety.*

Comment Procedures: *The record will be open for receipt of written comments. Such comments must be delivered or mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

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 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Agriculture intends to amend the rule cited as 02 NCAC 52B .0406. Notice of Rule-making Proceedings was published in the Register on July 3, 2000.

Proposed Effective Date: March 1, 2001

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice) Any person may request a public hearing on the proposed rule by submitting a request in writing, no later than September 18, 2000, to David S. McLeod, Secretary, NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: Existing rules allow equine to be removed from a livestock market or other place of sale and commingled with other equine before EIA test results are known. The State Veterinarian believes that these equine should be isolated pending test results to prevent possible exposure of other equine.

Comment Procedures: Written comments may be submitted no later than October 2, 2000, to David S. McLeod, Secretary, NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Fiscal Impact

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

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0400 - EQUINE INFECTIOUS ANEMIA (EIA)

02 NCAC 52B .0406 EIA TEST REQUIRED

(a) All equine more than six months of age entering North Carolina for any purpose other than for immediate slaughter shall be accompanied by a copy of the certificate of test from a laboratory approved by the USDA showing the animal to be negative to an approved test for equine infectious anemia (EIA) within the past 12 months, except as provided in 2 NCAC 52B .0410. (See 2 NCAC 52B .0206 for other importation requirements.)

(b) No equine more than six months of age shall be sold, offered for sale, traded, given away, or moved for the purpose of change of ownership unless accompanied by the original official negative test for EIA administered within 12 months prior to sale or movement, except that equine which are offered for sale at auction markets or sales may have a blood sample drawn at the market by the market's veterinarian at the seller's expense. In such cases, the equine may be sold and transferred contingent upon receipt of an official negative EIA test. Until receipt of an official negative EIA test, the equine must be isolated in accordance with standards for isolation of positive reactors, pursuant to 2 NCAC 52B .0408(c)(2).

(c) All equine brought to or kept at any public stables or other public place for exhibition, recreation or assembly shall be accompanied by either the original or a copy of an official negative test for EIA administered within the previous 12 months. The owner, operator or person in charge of any public stables or other public place where equine are brought or kept for exhibition, recreation or assembly shall not permit an equine to remain on the premises without the test required by this Rule.

Authority G.S. 106-405.17; S.L. 1999-237, s. 13.6.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Sheriffs' Education & Training Standards Commission intends to adopt 12 NCAC 10B .0708-.0713, .0804-.0805, .0913-.0920, .1305-.1308, .1501-.1505, .1601-.1606; and amend the rules cited as 12 NCAC 10B .0304, .1101-.1104, .1302, .1403. Notice of Rule-making Proceedings was published in the Register on July 3, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: September 20, 2000

Time: 9:00 a.m.

Location: Forsyth County Jail, 201 N. Church Street, Winston-Salem, NC 27101

Reason for Proposed Action:

12 NCAC 10B .0304 - Clarification of language that makes no change in practice.

PROPOSED RULES

12 NCAC 10B .0708-.0713 - Adoption of Rule clarifies Division practice as previously detailed in the Telecommunicator Certification Course Management Guide, which was adopted in whole in previous rules.

12 NCAC 10B .0804 - Adoption of Rule merely requires the institution/agency offering the Telecommunication Certification Course to become accredited by filling out a form attesting that the Course will be delivered in accordance with rules and Course Management Guide.

12 NCAC 10B .0805 - Adoption of Rule clarifies Division practice as previously detailed in the Telecommunicator Certification Course Management Guide, which was adopted in whole in previous rules.

12 NCAC 10B .0913-.0920 - Adoption of rules sets out standards to be met by individuals seeking to teach in the Telecommunicator Certification Course. Existing instructor certification rules already require individuals to be General Instructor Certified through the N.C. Criminal Justice Commission. The proposed rules will require, in addition, that such individuals be either experience as a telecommunicator or have attended the one-week course. Tuition fees are waived by the Community College System for criminal justice personnel. In addition, such individuals are in a position to earn \$15.00 - \$20.00/hr for their instruction.

12 NCAC 10B .1101-.1104 - Amendments to rules allow certified Telecommunicators, rather than just Detention Officers, Deputy Sheriffs, and Sheriffs, to apply for and receive Service Awards. The Service Award Program is a voluntary program intended to reward individuals for long-standing service in the field of criminal justice. The only costs will be to the State for the production of the Advanced Service Awards. In parallel programs for Deputy Sheriffs and Detention Officers, approximately 5% of the total certified population is eligible for an Award. The current population of certified Telecommunicators is: 2854. Therefore, it is anticipated that approximately 142 telecommunicators may be eligible for an Award. 300 blank Advanced certificates can be printed at a cost of \$450.00. An additional \$5.50 is added to print the individuals name and date the award is issued. The basic and intermediate certificates are generated in-house at minimal cost. Therefore, the cost to the State for implementing this program will be approximately, \$1231.00.

12 NCAC 10B .1302 - Amended rule increases the existing 40-hour Telecommunicator Certification Course to 47-hours. However, as the Course remains structured to be delivered in a one-week period. Tuition fees are waived by the Community College System for criminal justice personnel.

12 NCAC 10B .1305-.1308 - Adoption of Rule clarifies Division practice as previously detailed in the Telecommunicator Certification Course Management Guide.

12 NCAC 10B .1501-.1505 - Adoption of rules creates a voluntary Service Award Program for certified individuals who serve their jurisdiction in a reserve capacity. The only costs will be to the State for the production of the Advanced Service Awards. In parallel programs for full-time Deputy Sheriffs and Detention Officers, approximately 5% of the total certified population is eligible for an Award. The last reported population of certified Reserve Deputy Sheriffs and Detention

Officers is: 5116. Therefore, it is anticipated that approximately 256 reserve deputy sheriffs, detention officers and telecommunicators may be eligible for an Award. 300 blank Advanced certificates can be printed at a cost of \$450.00. An additional \$5.50 is added to print the individuals name and date the award is issued. The basic and intermediate certificates are generated in-house at minimal cost. Therefore, the cost to the State for implementing this program will be approximately, \$1858.

12 NCAC 10B .1601-.1606 - Adoption of rules creates a voluntary Professional Certificate Program by which certified Telecommunicators can seek recognition for achieving a combination of training and experience beyond the state minimum mandate. The only costs will be to the State for the production of the Advanced Professional Certificates. In parallel programs for Deputy Sheriffs and Detention Officers, approximately 5% of the total certified population is eligible for an Award. The current population of certified Telecommunicators is: 2854. Therefore, it is anticipated that approximately 142 telecommunicators may be eligible for some type of Professional Certificate. 300 blank Advanced certificates can be printed at a cost of \$450.00. An additional \$5.50 is added to print the individuals name and date the award is issued. The basic and intermediate certificates are generated in-house at minimal cost. Therefore, the cost to the State for implementing this program will be approximately, \$1231.00.

12 NCAC 10B .1403 - Clarification of language that makes no change in practice.

Comment Procedures: Any person interested in this Notice of Text may present oral or written comments relevant to the above stated subject matter for a period of 30 days from this notice. Written comments should be directed to Julia Lohman, Director, Sheriffs' Standards Division, Room G-41, Old Education, 114 W. Edenton Street, PO Drawer 629, Raleigh, NC 27602.

Fiscal Impact

- ☒ **State** 12 NCAC 10B .1101-.1104, .1501-.1505, .1601-.1606
- ☐ **Local**
- ☐ **Substantive** (\geq \$5,000,000)
- ☒ **None** 12 NCAC 10B .0304, .0708-.0713, .0804-.0805, .0913-.0920, .1302, .1305-.1308, .1403

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0300 - MINIMUM STANDARDS FOR EMPLOYMENT AND CERTIFICATION AS A JUSTICE OFFICER

12 NCAC 10B .0304 MEDICAL EXAMINATION

(a) Each applicant or enrollee in a commission-accredited basic training course shall complete, sign and date the Commission's

PROPOSED RULES

Medical History Statement Form (F-1) and shall be examined by a physician or surgeon licensed in North Carolina to help determine his/her fitness in carrying out the physical requirements of the position of justice officer.

(b) Prior to conducting the examination, the physician shall:

- (1) read the "Medical Screening Guidelines Implementation Manual for Certification of Justice Officers" in the State of North Carolina as published by the North Carolina Department of Justice. Copies of this publication may be obtained at no cost at the time of the adoption of this Rule by contacting the North Carolina Department of Justice, Sheriffs= Standards Division, PO Box 629, Raleigh, North Carolina 27602; and
- (2) read, sign, and date the Medical History Statement Form (F-1); and
- (3) read the F-2A Form attached to the Medical Examination Report Form (F-2).

(c) The examining physician shall record the results of the examination on the Medical Examination Report Form (F-2) and sign and date the form.

(d) The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be valid one year from the date the examination was conducted and shall be completed prior to ~~whichever of the following occurs first:~~ to:

- (1) the applicant's or enrollee=s beginning the Detention Officer Certification Course, the Basic Law Enforcement Training Course, or the Telecommunicator Certification Course; ~~or and~~
- (2) the applicant's applying to the Commission for Certification.

(e) Although not presently required by these Rules, it is recommended by the Commission that each candidate for the position of justice officer be examined by a licensed psychiatrist or clinical psychologist, or be administered a psychological evaluation test battery, to determine his/her suitability to perform the essential job functions of a justice officer.

Authority G.S. 17E-7.

SECTION .0700 - MINIMUM STANDARDS FOR JUSTICE OFFICER SCHOOLS AND TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 10B .0708 ADMINISTRATION OF TELECOMMUNICATOR CERTIFICATION COURSE

(a) The executive officer or officers of the institution or agency sponsoring a Telecommunicator Certification Course shall have primary responsibility for implementation of these Rules and standards and for administration of the school.

(b) The executive officers shall designate a compensated staff member who is certified by the Commission who may apply to be the school director. No more than two school directors shall be certified at each accredited institution/agency to deliver a Telecommunicator Certification Course. The school director shall have administrative responsibility for planning scheduling, presenting, coordinating, reporting, and generally managing each sponsored detention officer certification course and shall be

readily available at all times during course delivery as specified in 12 NCAC 10B .0709(b).

(c) The executive officers of the institution or agency sponsoring the Telecommunicator Certification Course shall:

- (1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;
- (2) provide adequate secretarial, clerical, and other supportive staff assistance as required by the school director;
- (3) provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, as required in the "Telecommunicator Certification Course Management Guide."

Authority G.S. 17E-4.

12 NCAC 10B .0709 RESPONSIBILITIES: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE

(a) In planning, developing, coordinating, and delivering each commission accredited Telecommunicator Certification Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the rules in this Chapter.
- (2) Select and schedule instructors who are properly certified by the Commission.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
- (4) Review each instructor's lesson plans and other instructional materials for conformance to the rules in this Chapter and to minimize repetition and duplication of subject matter.
- (5) Permanently maintain records of all Telecommunicator Certification Courses sponsored or delivered by the school, reflecting:
 - (A) Course title;
 - (B) Delivery hours of course;
 - (C) Course delivery dates;
 - (D) Names and addresses of instructors utilized within designated subject-matter areas;
 - (E) A roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful including individual test scores indicating each trainee's proficiency in each topic area and methods or instruments;
 - (F) Copies of all rules, regulations and guidelines developed by the school director;
 - (G) Documentation of any changes in the initial course outline, including substitution of instructors; and
 - (H) Documentation of make-up work achieved by each individual trainee, including test scores and methods or instruments, if applicable.

- (6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas as required in the "Telecommunicator Certification Course Management Guide".
- (7) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
 - (A) Effective course delivery;
 - (B) Establishing responsibilities and obligations of agencies or departments employing course trainees; and
 - (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A-T. A copy of such rules shall also be given to each trainee and to the sheriff or agency head of each trainee's employing agency at the time the trainee enrolls in the course.
- (8) If appropriate, recommend housing and dining facilities for trainees.
- (9) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A-T) along with the following attachments:
 - (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;
 - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for certification of instructors. The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission rules; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval will be withheld until all matters are in compliance with the Commissions' rules.
- (10) Administer the course delivery in accordance with the rules in this Chapter and ensure that the training offered is as effective as possible.
- (11) Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall recommend approval or denial of requests for Telecommunicator Instructor Certification or Professional Lecturer Certification.
- (12) Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. Instructor evaluations shall be prepared on commission-approved forms in accordance with the rules in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request.
- (13) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall, at a minimum, hold certification in the same instructional topic area as that being taught.
- (14) Administer or designate a person to administer appropriate tests as determined necessary at various intervals during course delivery.
- (15) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
- (16) During a delivery of the Telecommunicator Certification Course, make available to authorized representatives of the Commission three hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
- (17) Not more than ten days after receiving from the Commission's representative the Report of Examination Scores, the school director shall submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B-T).
 - (b) In addition to the requirements in 12 NCAC 10B .0708(a), the school director shall be readily available to students and Division staff at all times during course delivery by telephone, pager, or other means. The means, and applicable numbers, shall be filed with the accredited training delivery site and the Division prior to the beginning of a scheduled course delivery.

Authority G.S. 17E-4.

12 NCAC 10B .0710 CERTIFICATION: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE

- (a) Any person designated to act and who performs the duties of a school director in the delivery or presentation of a commission-accredited telecommunicator training course as of the effective date of this Rule shall remain certified by the Commission as a school director, so long as they maintain compliance with 12 NCAC 10B .0711 and .0712.
- (b) To qualify for certification as school director of the Telecommunicator Certification Course, the applicant shall:

- (1) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs and for

whom the applicant will be the designated school director.

- (2) Be currently certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission;
- (3) Attend or must have attended the most current offering of the school director's orientation as developed and presented by the Commission staff; and
- (4) Attend or must have attended the most current offering of the school director's conference as presented by the Commission staff and staff of the North Carolina Criminal Justice Education and Training Standards Commission and Standards Division.

Authority G.S. 17E-4.

12 NCAC 10B .0711 TERMS AND CONDITIONS OF TELECOMMUNICATOR SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a school director is two years from the date the Commission issues the certification unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of Rule .0710(b)(1) of this Section.

(b) To retain certification as a school director, the school director shall:

- (1) Adequately perform the duties and responsibilities of a school director as specifically required in Rule .0709 of this Section; and
- (2) Maintain an updated copy of the "Telecommunicator Certification Training Manual" assigned to each accredited school.

Authority G.S. 17E-4.

12 NCAC 10B .0712 SUSPENSION: REVOCATION: OR DENIAL: TELECOMMUNICATOR SCHOOL DIRECTOR CERT

The Commission may deny, suspend, or revoke certification of a school director when the Commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification, or any of the terms and conditions as specified in 12 NCAC 10B .0711, or through performance fails to comply with rules of the Commission or otherwise demonstrates incompetence.

Authority G.S. 17E-4.

12 NCAC 10B .0713 ADMISSION OF TRAINEES

(a) The school may not admit any individual younger than 21 years of age as a trainee in any non-academic Commission-accredited basic training course without the prior written approval of the Director of the Standards Division for those individuals who will turn 21 years of age during the course, but prior to the ending date.

(b) The school shall give priority admission in Commission-accredited basic training courses to individuals holding full-time employment with criminal justice agencies.

(c) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Detention Officer Certification Course. The specific type of test instrument shall be determined by the school director and shall be administered no later than by the end of the first two weeks of a presentation of the Detention Officer Certification Course. The grade level results on each trainee shall be submitted to the Commission on each trainee's Report of Student Course Completion (Form F-7d).

(d) The school shall not admit any individual as a trainee in a presentation of the Detention Officer Certification Course or the Telecommunicator Certification Course unless as a prerequisite the individual has provided to the certified school director a Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) in compliance with 12 NCAC 10B .0304, properly completed by a physician licensed to practice medicine in North Carolina; however, the Director of the Standards Division is authorized to grant an exception to this requirement where the school director can document exceptional or emergency circumstances. The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) required by the North Carolina Criminal Justice Education and Training Standards Commission shall be recognized by the Commission for the purpose of complying with this Rule.

Authority G.S. 17E-7.

SECTION .0800 - ACCREDITATION OF JUSTICE OFFICER SCHOOLS AND TRAINING COURSES

12 NCAC 10B .0804 ACCREDITATION: DELIVERY/TELECOMMUNICATOR CERTIFICATION COURSE

(a) To be accredited to deliver a Telecommunicator Certification Course, an institution or agency must submit a Form F-7-T requesting school accreditation.

(b) School accreditation shall remain effective until surrendered, suspended, or revoked.

(c) The Commission may suspend or revoke the accreditation of a school when it finds that the school has failed to meet or continuously maintain any requirement, standard, or procedure for school accreditation or course delivery as required by Section .0700 of this Subchapter.

Authority G.S. 17E-4.

12 NCAC 10B .0805 REPORTS/ TELECOMMUNICATOR CERT COURSE PRESENTATION/COMPLETION

Each presentation of the Telecommunicator Certification Course shall be reported to the Commission as follows:

- (1) After acquiring accreditation for the course and before commencing each delivery of the course, the school director shall, no less than 30 days prior to the scheduled delivery, notify the Division of the school's

intent to offer the training course by submitting a Pre-Delivery Report of Training Course Presentation (Form F-7A-T); and

- (2) Upon completing delivery of the accredited course, and not more than ten days after receiving from the Commission's representative the Report of Examination Scores, the school director shall notify the Division regarding the progress and achievement of each enrolled trainee by submitting a Post-Delivery Report of Training Course Presentation (Form F-7B-T).

Authority G.S. 17E-4; 17E-7.

SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS

12 NCAC 10B .0913 CERT: INSTRUCTORS FOR TELECOMMUNICATOR CERTIFICATION COURSE

- (a) Any person participating in a commission-accredited Telecommunicator Certification Course as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor. A waiver may be granted by the Director upon receipt of a written application to teach in a designated school.
- (b) The Commission shall certify Telecommunicator Certification Course instructors under the following categories:

- (1) Telecommunicator Instructor Certification; or
- (2) Professional Lecturer Certification.

- (c) In addition to all other requirements of this Section, all instructors certified by the Commission to teach in a Commission-accredited Telecommunicator Certification Course shall remain knowledgeable and attend and complete any instructor training updates related to curriculum content and delivery as may be offered by the curriculum developer and within the time period as specified by the curriculum developer.

Authority G.S. 17E-4.

12 NCAC 10B .0914 TELECOMMUNICATOR INSTRUCTOR CERTIFICATION

- (a) An applicant for Telecommunicator Instructor Certification shall present documentary evidence demonstrating that the applicant:

- (1) has attended and successfully completed the North Carolina Sheriffs' Education and Training Standards Commission-approved Telecommunicator Training Course; or holds a valid general or grandfather certification as a telecommunicator; and
- (2) holds General Instructor certification issued by the North Carolina Criminal Justice Education and Standards Commission.

- (b) Persons holding Telecommunicator Instructor Certification may teach any topical areas of instruction in the Commission-mandated course.

Authority G.S. 17E-4.

12 NCAC 10B .0915 TERMS AND CONDITIONS OF

TELECOMMUNICATOR INSTRUCTOR CERTIFICATION

- (a) An applicant meeting the requirements for certification as a Telecommunicator Instructor shall, for the first 12 months of certification, be in a probationary status. The Telecommunicator Instructor Certification, probationary status, shall automatically expire 12 months from the date of issuance.

- (b) The probationary instructor shall be awarded full Telecommunicator Instructor Certification at the end of the probationary period if the instructor, through application, submits to the Division:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during his/her probationary year; or
- (2) a favorable written evaluation by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-accredited Telecommunicator Certification Course. Such evaluation shall be certified on a commission-approved Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during his/her probationary year; and
- (3) documentation that certification required in 12 NCAC 10B .0914(a)(2) remains valid.

- (c) Telecommunicator Instructor Certification is continuous so long as the instructor submits to the Division every two years:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during the previous two year period. The date full Instructor Certification is originally issued is the anniversary date from which each two year period is figured; or
- (2) a favorable written evaluation by a commission member or staff member based on a minimum eight hours, on-site classroom observation of the instructor in a commission-accredited Telecommunicator Certification Course; and
- (3) a renewal application to include documentation that certification required in 12 NCAC 10B .0914(a)(2) remains valid.

- (d) If an instructor does not teach a minimum of eight hours during each two year period following the awarding of his full Telecommunicator Instructor Certification, his/her certification automatically expires, and the instructor must then apply for probationary instructor certification status and must meet all applicable requirements.

Authority G.S. 17E-4.

12 NCAC 10B .0916 PROFESSIONAL LECTURER

**CERTIFICATION: TELECOMMUNICATOR
CERTIFICATION COURSE**

(a) The Commission may issue Professional Lecturer Certification to a licensed attorney-at-law or a person with a law degree to teach "Civil Liability for the Telecommunicator" in the Telecommunicator Certification Course.

(b) To be eligible for such certification an applicant shall present documentary evidence demonstrating that the applicant has:

- (1) graduated from an accredited law school;
- (2) obtained the endorsement of a commission recognized school director who shall:
 - (A) recommend the applicant for certification as a professional lecturer; and
 - (B) describe the applicant's expected participation, topical areas, duties and responsibilities.

Authority G.S. 17E-4.

**12 NCAC 10B .0917 TERMS AND CONDITIONS OF
PROFESSIONAL LECTURER CERT:**

TELECOMMUNICATOR CERTIFICATION COURSE
Certification as a professional lecturer shall remain effective for 24 months from the date of issuance. The lecturer shall apply for recertification at or before the end of the 24 month period.

Authority G.S. 17E-4.

**12 NCAC 10B .0918 USE OF GUEST
PARTICIPANTS: TELECOMMUNICATOR
CERTIFICATION COURSE**

The use of guest participants in a delivery of the Telecommunicator Certification Course is permissible. Such guest participants are subject to the direct on-site supervision of a commission-certified instructor and must be authorized by the school director. A guest participant shall only be used to complement the primary certified instructor of the topic area and shall in no way replace the primary instructor.

Authority G.S. 17E-4.

**12 NCAC 10B .0919 SUSPENSION: REVOCATION:
DENIAL OF TELECOMMUNICATOR INSTRUCTOR
CERTIFICATION**

(a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;

(4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; or

(5) revoking the individual's certification.

(c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise by failing to attend and successfully complete any instructor training updates pursuant to 12 NCAC 10B .0913(c); or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
- (4) has failed to follow specific guidelines outlined in the "Telecommunicator Certification Course Management Guide" which shall be used and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation.

Authority G.S. 17E-4.

**12 NCAC 10B .0920 PERIOD/SUSPENSION:
REVOCATION: OR DENIAL OF
TELECOMMUNICATOR INSTRUCTOR
CERTIFICATION**

The period of suspension, revocation or denial of the certification of an instructor pursuant to 12 NCAC 10B .0918 shall be:

- (1) no more than one year where the cause of sanction is:
 - (a) failure to deliver training in a manner consistent with the instructor lesson plans; or
 - (b) failure to follow specific guidelines outlined in the "Telecommunicator Certification Course Management Guide" which is shall be used and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (c) unprofessional personal conduct or demonstration of instructional incompetence in the delivery of the Telecommunicator Certification Course.

PROPOSED RULES

(2) no more than five years where the sanction is knowingly and willfully obtaining or attempting to obtain instructor certification by deceit, fraud, or misrepresentation.

(3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

(a) failure to meet and maintain any of the requirements for qualification; or

(b) failure to remain currently knowledgeable in the person's areas of expertise.

Authority 17E-4.

SECTION .1100 - SHERIFFS' AND JUSTICE OFFICERS' SERVICE AWARD PROGRAM

12 NCAC 10B .1101 PURPOSE

In order to recognize Sheriffs=, deputy ~~sheriffs=~~ sheriffs=, and detention ~~officers=~~ officers', and telecommunicators' loyal and competent service to a particular sheriff's office, and also to the State of North Carolina, the Commission establishes the ~~Sheriffs', deputy sheriffs= and detention officers=~~ Sheriffs' and Justice Officers' Service Award Program. This program is a method by which dedicated officers may receive local, state-wide and nation-wide recognition for their loyal and competent law enforcement service.

Authority G.S. 17E-4.

12 NCAC 10B .1102 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the service awards, a Deputy Sheriff, Detention Officer, Telecommunicator, or Sheriff shall first meet the following preliminary qualifications:

(1) Be an elected or appointed sheriff or be a deputy sheriff, sheriff or detention officer officer, or telecommunicator that holds a valid general or grandfather certification. An officer serving under a probationary certification is not eligible for consideration.

(2) The Sheriff or deputy sheriff or detention officer shall be familiar with and subscribe to the Law Enforcement Code of Ethics. The telecommunicator should be familiar with and subscribe to the Telecommunicator Code of Ethics.

(3) Also, employees of a North Carolina Sheriff's Office who have previously held certification, but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the service award program. Eligibility for this exception requires continuous employment with a sheriff's office from the date of promotion or transfer from a certified position to the date of application for a service award as certified in writing by the Sheriff.

(b) Only experience as a certified member of a law enforcement or emergency services agency or experience as an elected or appointed sheriff shall be acceptable for consideration.

Authority G.S. 17E-4.

12 NCAC 10B .1103 INTERMEDIATE SERVICE AWARD

In addition to the qualifications set forth in Rule .1102 an applicant must have served a minimum of 15 years as an elected or appointed Sheriff or a certified deputy ~~sheriff sheriff, or~~ detention ~~officer officer, or~~ telecommunicator to receive an intermediate service award.

Authority G.S. 17E-4.

12 NCAC 10B .1104 ADVANCED SERVICE AWARD

In addition to the qualifications set forth in Rule .1102 an applicant must have served a minimum of 20 years as an elected or appointed Sheriff a certified deputy ~~sheriff or sheriff,~~ detention ~~officer officer, or~~ telecommunicator to receive an advanced service award.

Authority G.S. 17E-4.

SECTION .1300 - MINIMUM STANDARDS OF TRAINING FOR TELECOMMUNICATORS

12 NCAC 10B .1302 TELECOMMUNICATOR CERTIFICATION COURSE

(a) The Commission hereby accredits as its telecommunicator certification training program, the 47-hour Telecommunicator Certification Course developed by the North Carolina Justice Academy.

~~(b) Instructors for the Telecommunicator Certification Course shall be certified as General Instructors by the Criminal Justice Education and Training Standards Commission. The use of guest participants in a delivery of the Telecommunicator Certification Course is permissible. However, such guest participants are subject to the direct on-site supervision of the primary instructor and must be authorized by the school director. In addition, such guest participants may only be used to complement the primary certified instructor and shall in no way replace the primary instructor.~~

(b) Each Telecommunicator Certification Course shall include the following identified topic areas and approximate minimum instructional hours for each area:

<u>(1) Orientation</u>	<u>2 hours</u>
<u>(2) Introductory Topics for the Telecommunicator</u>	<u>2 hours</u>
<u>(3) Interpersonal Communication</u>	<u>4 hours</u>
<u>(4) Civil Liability for the Telecommunicator</u>	<u>4 hours</u>
<u>(5) Telecommunications Systems and Equipment</u>	<u>2 hours</u>
<u>(6) Overview of Emergency Services</u>	<u>9 hours</u>
<u>(7) Communications Resources</u>	<u>2 hours</u>
<u>(8) Call Reception, Prioritization, and Resource Allocation</u>	<u>6 hours</u>
<u>(9) Broadcasting Techniques, Rules, and Procedures</u>	<u>6 hours</u>
<u>(10) Telecommunicator Training Practicum</u>	<u>8 hours</u>
<u>(11) State Comprehensive Examination</u>	<u>2 hours</u>
<u>TOTAL HOURS</u>	<u>47 hours</u>

~~(e) Institutions wishing to deliver the Telecommunicator Certification Course must designate a school director for the Course.~~

(c) Consistent with the curriculum development policy of the Commission as published in the "Telecommunicator Certification Course Management Guide", the Commission shall designate the developer of the Telecommunicator Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Telecommunicator Certification Courses. Individuals who complete such a pilot Telecommunicator Certification Course offering shall be deemed to have complied with and satisfied the minimum training requirement.

(d) The "Telecommunicator Certification Training Manual" as published by the North Carolina Justice Academy shall be used and shall automatically include any later amendments and editions of the incorporated matter to apply as the basic curriculum for the Telecommunicator Certification Course. Copies of this manual may be obtained by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099.

(e) The "Telecommunicator Certification Course Management Guide" as published by the North Carolina Justice Academy shall be used and shall automatically include any later amendments, editions of the incorporated matter to be used by certified school directors in planning, implementing and delivering basic telecommunicator training. The standards and requirements established by the "Telecommunicator Certification Course Management Guide" must be adhered to by the certified school director. Each certified school director shall be issued a copy of the guide at the time of certification at no cost to the accredited school.

(f) Institutions may offer to deliver the Telecommunicator Certification Course after the Commission has approved the institution's pre-delivery report documenting who will be teaching the blocks of instruction for each course offering.

Authority G.S. 17E-4(a).

12 NCAC 10B .1305 TRAINEE ATTENDANCE

(a) Each trainee enrolled in an accredited "Telecommunicator Certification Course" shall attend all class sessions. The sheriff or agency head shall be responsible for the trainee's regular attendance at all sessions of the telecommunicator training course.

(b) The school director may recognize valid reasons for class absences and may excuse a trainee from attendance at specific class sessions. However, in no case may excused absences exceed ten percent of the total class hours for the course offering.

(c) If the school director grants an excused absence from a class session, he shall schedule appropriate make-up work and ensure the satisfactory completion of such work during the current course presentation or in a subsequent course delivery as is permissible under 12 NCAC 10B .1306.

(d) A trainee shall not be eligible for administration of the State Comprehensive Examination nor certification for successful course completion if the cumulative total of class absences, with

accepted make-up work, exceeds 10 percent of the total class hours of the accredited course offering and shall be expediently terminated from further course participation by the school director at the time of such occurrence.

(e) The school director may terminate a trainee from course participation or may deny certification of successful course completion where the trainee is habitually tardy to, or regularly departs early from, class meetings or field exercises.

(f) Where a trainee is enrolled in a program as required in 12 NCAC 10B .1301, attendance shall be 100 percent in order to receive a successful course completion.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .1306 COMPLETION OF TELECOMMUNICATOR CERTIFICATION COURSE

(a) Each delivery of a commission-approved "Telecommunicator Certification Course" is considered to be a unit as set forth in 12 NCAC 10B .1301. Each trainee shall attend and satisfactorily complete a full course during a scheduled delivery. The school director may develop supplemental rules as set forth in 12 NCAC 10B .0709(a)(7), but may not add substantive courses, or change or expand the substance of the courses set forth in 12 NCAC 10B .1301. This Rule does not prevent the instruction on local agency rules or standards but such instruction shall not be considered or endorsed by the Commission for purposes of certification. The Director may issue prior written authorization for a specified trainee's limited enrollment in a subsequent delivery of the same course where the school director provides evidence that:

- (1) The trainee attended and satisfactorily completed specified class hours and topics of the "Telecommunicator Certification Course" but through extended absence occasioned by illness, accident, or emergency was absent for more than 10 percent of the total class hours of the course offering; or
- (2) The trainee was granted excused absences by the school director that did not exceed ten percent of the total class hours for the course offering and the school director could not schedule appropriate make-up work during the current course offering as specified in 12 NCAC 10B .1305(c) due to valid reasons; or
- (3) The trainee participated in an offering of the "Telecommunicator Certification Course" but had an identified deficiency in essential knowledge or skill in either one or two, but no more than two, of the specified topic areas incorporated in the course content as prescribed under 12 NCAC 10B .1301(b).

(b) An authorization of limited enrollment in a subsequent course delivery may not be used by the Director unless in addition to the evidence required by Paragraph (a) of this Rule:

- (1) The trainee submits a written request to the Director, justifying the limited enrollment and certifying that the trainee's participation shall be accomplished pursuant to Paragraph (c) of this Rule; and
- (2) The school director of the previous school offering submits to the director a certification of the particular

topics and class hours attended and satisfactorily completed by the trainee during the original enrollment.

(c) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the "Telecommunicator Certification Course" commencing within 120 calendar days from the last date of trainee participation in prior course delivery, but only if the trainee's enrollment with active course participation can be accomplished within the period of the trainee's probationary certification:

- (1) The trainee need only attend and satisfactorily complete those portions of the course which were missed or identified by the school director as areas of trainee deficiency in the proper course participation.
- (2) Following proper enrollment in the subsequent course offering, scheduled class attendance and active participation with satisfactory achievement in the course, the trainee would be eligible for administration of the State Comprehensive Examination by the Commission and possible certification of successful course completion.
- (3) A trainee shall be enrolled as a limited enrollee in only one subsequent course offering within the 120 calendar days from the last date of trainee participation in prior course delivery. A trainee who fails to complete those limited portions of the course after one retest shall enroll in an entire delivery of the Telecommunicator Certification Course.

(d) A trainee who is deficient in three or more subject-matter or topical areas at the conclusion of the course delivery shall complete a subsequent program in its entirety.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .1307 COMPREHENSIVE WRITTEN EXAM - TELECOMMUNICATOR CERTIFICATION COURSE

(a) At the conclusion of a school's offering of the "Telecommunicator Certification Course", an authorized representative of the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the course work. A trainee cannot be administered the comprehensive written examination until such time as all course work is successfully completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas as described in 12 NCAC 10B .1301(b).

(c) The Commission's representative shall submit to the school director within ten days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 70 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of a commission-approved training course and has demonstrated satisfactory competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on the Commission's comprehensive written

examination may request the Director to authorize a re-examination of the trainee.

- (1) A trainee's Request for Re-examination shall be made in writing on the Commission's form within 30 days after the original examination and shall be received by the Division before the expiration of the trainee's probationary certification as a detention officer.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the trainee's "Telecommunicator Certification Course".
- (3) A trainee shall have only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety within 90 days after the original examination.
- (4) A trainee will be assigned in writing by the Division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score of 70 on the examination, the trainee may not be recommended for certification and must enroll and complete a subsequent course in its entirety before further examination may be permitted.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .1308 SATISFACTION OF MINIMUM TRAINING REQUIREMENTS

In order to satisfy the minimum training requirements for certification as a telecommunicator, a trainee shall:

- (1) achieve a score of 70 percent correct answers on the Commission-administered comprehensive written examination;
- (2) demonstrate successful completion of a commission-approved offering of the "Telecommunicator Certification Course" as shown by the certification of the school director; and
- (3) obtain the recommendation of the trainee's school director that the trainee possesses at least the minimum degree of general attributes, knowledge, and skill to function as an inexperienced telecommunicator.

Authority G.S. 17E-4; 17E-7.

SECTION .1400 – PROFESSIONAL CERTIFICATE FOR RESERVE DEPUTY SHERIFFS

12 NCAC 10B .1403 BASIC RESERVE DEPUTY SHERIFF PROFESSIONAL CERTIFICATE

In addition to the qualifications set forth in Rule .1402, an applicant for the Basic Reserve Deputy Sheriff Certificate shall:

- (1) have no less than one year of reserve service; and have either:
- (2) have either:
 - (A) have successfully completed a commission-accredited basic law enforcement training course; or
 - (B) any remedial training as required by the Commission for general certification.

- ~~(3)~~(2) have completed a minimum of 160 hours of training in the field of law enforcement.

Authority G.S. 17E-4.

SECTION .1500 - RESERVE JUSTICE OFFICERS' SERVICE AWARD PROGRAM

12 NCAC 10B .1501 PURPOSE

In order to recognize reserve justice officers' loyal and competent service to a particular Sheriff's office in North Carolina, the Commission establishes the Reserve Justice Officers' Service Award Program. This program is a method by which dedicated reserve justice officers may receive local, state-wide and nation-wide recognition for their law enforcement participation.

Authority G.S. 17E-4.

12 NCAC 10B .1502 GENERAL PROVISIONS

(a) In order to qualify for one or more of the service awards, a Reserve Justice Officer shall first meet the following preliminary qualifications:

- (1) Be an appointed reserve deputy sheriff, detention officer, or telecommunicator who holds a valid general or grandfather certification. A reserve officer serving under a probationary certification is not eligible for consideration.
- (2) Be familiar with and subscribe to the Law Enforcement Code of Ethics and/or Telecommunicator Code of Ethics as published by APCO and NENA as promulgated by the International Association of Chiefs of Police to include any subsequent editions or modifications thereto. A copy of either Code of Ethics may be obtained at no cost from the Sheriffs' Standards Division, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629.

(b) Service Awards are based on a formula which calculates reserve service by actual participation as a reserve deputy sheriff, detention officer, or telecommunicator in law enforcement, detention, or telecommunications functions respectively.

- (1) A minimum of 96 hours achieved over a one-year period of participation in law enforcement or detention functions by having been called into reserve duty by the appointing sheriff, shall equal one year of reserve service.
- (2) Service as a reserve deputy sheriff, detention officer, or telecommunicator shall be acceptable for consideration; or, an officer who is otherwise ineligible to receive an equivalent service award through the Sheriffs' and Justice Officers' Service Award Program as set out in 12 NCAC 10B .1100 may receive a service award under this program, in which one year of full-time service may be substituted for one year of reserve service, provided that the officer in question is currently employed by a sheriff's office in North Carolina in the capacity of a reserve officer.

Authority G.S. 17E-4.

12 NCAC 10B .1503 INTERMEDIATE RESERVE SERVICE AWARD

In addition to the qualifications set forth in Rule .1502 of this Section an applicant must have served a minimum of 15 years as a reserve deputy, detention officer, or telecommunicator to receive an Intermediate Reserve Service Award.

Authority G.S. 17E-4.

12 NCAC 10B .1504 ADVANCED RESERVE SERVICE AWARD

In addition to the qualifications set forth in Rule .1502 of this Section an applicant must have served a minimum of 20 years as a reserve deputy, detention officer, or telecommunicator to receive an Advanced Reserve Service Award.

Authority G.S. 17E-4.

12 NCAC 10B .1505 HOW TO APPLY

- (a) All applicants for an award of the intermediate and advanced service award shall complete an "Application: Reserve Professional Certificate/Service Award," F-6R.
- (b) Documentation of the applicant's length of service as a reserve deputy sheriff, detention officer, or telecommunicator as required in 12 NCAC 10B .1502(b)(1) shall be documented by providing certified letters, signed by the employing sheriff or his/her authorized designee.
- (c) The applicant shall submit the application to the agency head who shall attach his/her recommendation and forward the application to the Division. Certificates shall be issued to the agency head for award to the applicant.

Authority G.S. 17E-4.

SECTION .1600 - PROFESSIONAL CERTIFICATE PROGRAM FOR TELECOMMUNICATORS

12 NCAC 10B .1601 PURPOSE

In order to recognize the level of competence of telecommunicators serving the sheriffs' offices of North Carolina, to foster increased interest in college education and professional law enforcement training programs and to attract highly qualified individuals into a career as a telecommunicator, the North Carolina Sheriffs' Education and Training Standards Commission establishes the Telecommunicators' Professional Certificate Program. This program is a method by which dedicated telecommunicators may receive local, state-wide and nation-wide recognition for education, professional training and on-the-job experience.

Authority G.S. 17E-4.

12 NCAC 10B .1602 GENERAL PROVISIONS

PROPOSED RULES

(a) In order to be eligible for one or more of the telecommunicator professional awards, a telecommunicator shall first meet the following preliminary qualifications:

- (1) Be a full-time telecommunicator who holds valid general or grandfather certification under the North Carolina Sheriffs' Education and Training Standards Commission. A telecommunicator serving under a probationary certification is not eligible for consideration.
- (2) Be familiar with and subscribe to the Telecommunicator Code of Ethics as published by APCO and NENA to include any subsequent editions or modifications thereto. A copy of the Code of Ethics may be obtained at no cost from the Sheriffs' Standards Division, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629.
- (3) Employees of a North Carolina Sheriff's Office and /or Emergency Services Agency who have previously held general or grandfather telecommunicator certification under the North Carolina Sheriffs' Education and Training Standards Commission but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the Professional Certificate Program. Eligibility for this exception requires continuous employment with the sheriff's office or agency from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(b) Only training and experience gained in a telecommunicator's area of expertise will be eligible for application to this program.

(c) Certificates shall be awarded based upon a formula which combines formal education, training, and actual experience as a

telecommunicator. Points are computed in the following manner:

- (1) Each semester hour of college credit shall equal one point and each quarter hour shall equal two thirds of a point;
- (2) Twenty classroom hours of commission-approved training shall equal one point;
- (3) Only experience as a member of a law enforcement agency, emergency services agency, or equivalent experience shall be acceptable for consideration;
- (4) Applicants holding degrees shall not be awarded additional points for those degrees and must instead meet the training point requirements of this Section through completion of training in the field of telecommunications.

Authority G.S. 17E-4.

12 NCAC 10B .1603 BASIC TELECOMMUNICATOR CERTIFICATE

In addition to the qualifications set forth in Rule .1602, an applicant for the Basic Telecommunicator Certificate shall:

- (1) have no less than one year of service; and either
- (2) have successfully completed the commission-accredited Telecommunicator Certification Course and any remedial training as required by the Commission; or
- (3) have completed a minimum of 40 hours of training in the field of telecommunications.

Authority G.S. 17E-4.

12 NCAC 10B .1604 INTERMEDIATE TELECOMMUNICATOR CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1602 of this Section, applicants for the Intermediate Telecommunicator Certificate shall possess or be eligible to possess the Basic Telecommunicator Certificate and shall have acquired the following combination of educational points or degrees, telecommunicator training points and years of telecommunicator training experience:

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>Associate</u>	<u>Bachelor</u>
<u>Years of Telecommunicator Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>	<u>4</u>	<u>2</u>
<u>Minimum Telecommunicator Training Points</u>	<u>5</u>	<u>10</u>	<u>14</u>	<u>12</u>	<u>10</u>
<u>Minimum Total Education and Training Points</u>	<u>12</u>	<u>20</u>	<u>28</u>	<u>12</u>	<u>10</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the national accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

Authority G.S. 17E-4.

12 NCAC 10B .1605 ADVANCED TELECOMMUNICATOR CERTIFICATE

PROPOSED RULES

(a) In addition to the qualifications set forth in Rule .1602, applicants for the Advanced Telecommunicator Certificate shall possess or be eligible to possess the Intermediate Telecommunicator Certificate and shall have acquired the following combination of educational points or degrees, telecommunicator training points and years of telecommunicator experience:

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>Associate</u>	<u>Bachelor</u>	<u>Doctoral, Professional or Master</u>
<u>Years of Telecommunicator Experience</u>	<u>12</u>	<u>9</u>	<u>9</u>	<u>6</u>	<u>4</u>
<u>Minimum Telecommunicator Training Points</u>	<u>10</u>	<u>12</u>	<u>17</u>	<u>14</u>	<u>12</u>
<u>Minimum Total Education and Training Points</u>	<u>20</u>	<u>23</u>	<u>17</u>	<u>14</u>	<u>12</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

Authority G.S. 17E-4.

12 NCAC 10B .1606 HOW TO APPLY

(a) All applicants for an award of the basic, intermediate or advanced certificates shall complete an "Application: Professional Certificate/Service Award", (F-6).

(b) Documentation of education shall be provided by copies of transcripts, diplomas, or certified letters from the accredited institution.

(c) Documentation of training shall be provided by copies of training records signed by the agency's training officer or department head, or by providing certificates of completion. No out-of-state training shall be accepted, unless the officer is employed in North Carolina during the time of training.

(d) Documentation of the applicant's length of service in North Carolina shall be based upon the Division's certification records, however, certified letters of verification of employment from present or former employers may be requested of the applicant. No out-of-state length of service shall be applicable to this certificate program.

(e) The applicant shall submit the "Application: Professional Certificate/Service Award", (F-6) to the agency head who shall attach his recommendation and forward the application to the Division. Certificates shall be issued to the agency head for award to the applicant.

Authority G.S. 17E-4.

13 NCAC 07A .0302. Notice of Rule-making Proceedings was published in the Register on April 17, 2000.

Proposed Effective Date: March 15, 2001

Public Hearing:

Date: September 18, 2000

Time: 2:00 p.m.

Location: Department of Labor 2nd Floor Conference Room, 4 W. Edenton St., Raleigh, NC 27601

Reason for Proposed Action: This Rule resolves the issue of the location within Chapter 13 of the NC Administrative Code of the publication of cost and location information for materials incorporated by reference in the blasting standard amendments.

Comment Procedures: Written comments must be submitted to Angela S. Waldorf, NC Department of Labor, 4 W. Edenton St, Raleigh, NC 27601. Comments will be accepted through October 2, 2000.

Fiscal Impact

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

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to amend the rule cited as

CHAPTER 7 – OSHA

SUBCHAPTER 7A – GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0300 – PROCEDURES

PROPOSED RULES

13 NCAC 07A .0302 COPIES AVAILABLE

Copies of the applicable Code of Federal Regulations (CFR) Parts or sections and industry standards referred to in this Chapter are available for public inspection by contacting the

North Carolina Department of Labor (NCDOL), Division of Occupational Safety and Health or the NCDOL Library. The following table provides acquisition locations and the costs of the applicable materials on the date this Rule was adopted:

Referenced Materials	Available for Purchase From	Cost
29 CFR 1903; 29 CFR 1904; 29 CFR 1905; 29 CFR 1908; 29 CFR 1913.10	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$1/page requested
29 CFR 1910	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$15.90 each
29 CFR 1915; 29 CFR 1917	Division of Occupational Safety & Health http://www.dol.state.nc.us/	Single copy: Free
29 CFR 1926	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$12.72 each
29 CFR 1928	Division of Occupational Safety & Health http://www.dol.state.nc.us/	Single copy: Free
The above CFR Parts and other CFR Parts	U.S. Government Printing Office Washington, D.C. 20402 (202) 512-1800 http://www.gpo.gov/	\$34.00/Part
ANSI/NFPA 101-1991	National Fire Protection Association 1 Batterymarch Park Quincy, Massachusetts 02269 (617) 770-3000 http://www.nfpa.org/	\$44.50 each
ANSI standards	American National Standards Institute 11 West 42 nd Street New York, New York 10036 (212) 642-4900 http://www.ansi.org/	B30.9: \$100 Z9.2: \$ 55 Z41.1: \$ 40 Z87.1: \$ 35 Z88.2: \$ 50 Z89.2: \$ 35 Z229.1: \$ 45
Federal Specification QQ-P-416	Federal Supply Services Specification Section 470 East L=Enfant Plaza SW, Suite 8100 Washington, DC 20407 (202) 619-8925 http://www.gsa.gov/fssintro.htm	\$ 7.00 each
Schedule 30 Bureau of Mines	24 FR 245 pages 10210-10204, December 17, 1959 or Division of Occupational Safety & Health http://www.msha.gov/	\$1.00/page requested
<u>Institute of Makers of Explosives</u> <u>(IME) Publications</u>	<u>1120 Nineteenth St. NW, Suite 310</u> <u>Washington, DC 20036</u> <u>(202) 429-9280</u> <u>http://www.ime.org</u>	<u>No. 17 \$9.00</u> <u>No. 20 \$4.50</u> <u>No. 22 \$6.00</u>

Authority G.S. 95-133; 150B-21.6.

TITLE 14A – DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Crime Control and Public Safety Division of Highway Patrol intends to adopt the rules cited as 14A NCAC 9H .0308-.0324 and repeal the rules cited as 14A NCAC 9H .0304-.0307. Notice of Rule-making Proceedings was published in the Register on June 6, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: September 18, 2000

Time: 10:30 a.m.

Location: 512 N. Salisbury St, Archdale Building, Ground Floor Conference Room, Raleigh, NC 27604

Reason for Proposed Action: Administrative Law Judge Robert R. Reilly determined that the administrative rules as they currently exist are inadequate and has threatened that unless the Department submits new rules within 60 days he will issue an order declaring the wrecker rotation rules of NCSHP unenforceable.

Comment Procedures: Any interested person(s) may present comments relevant to the action proposed at the public hearing either in writing or oral from. Written statements to be presented at the public hearing may be directed prior to the hearing to Josie Macklin, Administrative Procedures Coordinator, 4701 Mail Service Center, Raleigh, NC 27699-4701.

Fiscal Impact

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

CHAPTER 9 – STATE HIGHWAY PATROL

SUBCHAPTER 9H – ENFORCEMENT REGULATIONS

SECTION .0300 – WRECKER SERVICE

14A NCAC 09H .0304 IMPARTIAL USE OF SERVICES

~~In order to perform its traffic safety functions, the Highway Patrol is required to use wrecker services to tow disabled, seized, wrecked, and abandoned vehicles. Members of the Highway Patrol shall assure the impartial use of wrecker services. Wrecker service includes any motor vehicle towing service which uses wreckers, rollbacks, cranes, or other such equipment.~~

Authority G.S. 20-184; 20-187; 20-188; 143B-10.

14A NCAC 09H .0305 ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM

~~(a) The Troop Commander shall arrange for the telecommunications center to maintain an impartial system within each district of the Troop which may include the following:~~

- ~~(1) A computerized rotation wrecker log for the entire district whereby wrecker services are called in the order they appear on a log;~~
- ~~(2) A zone system within the district with a rotation wrecker log being maintained in each zone;~~
- ~~(3) A zone or contract system operated in conjunction with one or more local agencies;~~
- ~~(4) A rotation wrecker log, zone, or contract system for wreckers based upon size and capacity of the equipment or availability of repair services; or~~
- ~~(5) A combination of any such system.~~

~~(b) It is the policy of the Highway Patrol to use the wrecker service requested by the vehicle owner or person in apparent control of the motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services, but may answer questions and provide factual information. If no such request is made, the Patrol system in place in the district will be used, absent an emergency or if the Patrol system is inoperable.~~

~~(c) The Troop Commander may deviate from any of these Rules if there are insufficient wrecker services of the type needed within a district to meet the needs of the Patrol.~~

~~(d) When exigent circumstances require, a telecommunicator may deviate from the Patrol system or the wrecker service requested by the motorist.~~

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0306 WRECKER SERVICE REGULATIONS

~~(a) In order to assure that the needs of the Patrol are met, the Troop Commander shall include on the Patrol wrecker system only those wrecker services which agree to comply with the following requirements:~~

- ~~(1) Have a safe storage area for all vehicles towed. This storage area may be a locked building or a secured, fenced area where the stored vehicles and other property are not accessible to the public.~~
- ~~(2) Equip each wrecker with legally required lighting and other safety equipment to protect the motoring public and maintain such equipment in good working order.~~
- ~~(3) Equip each wrecker with brooms, shovels, etc. to remove debris from the highway and agree to clear the highway prior to leaving the scene of any collision.~~
- ~~(4) Be available to the Patrol and the general public on a 24-hour basis and be willing to accept collect calls from the Patrol.~~
- ~~(5) Consistently respond, under normal conditions, in a timely manner.~~
- ~~(6) For Patrol involved incidents, respond only upon request from proper Patrol authority and not use scanners or other police radio monitoring equipment to respond to a disabled vehicle or wrecker.~~

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- ~~(7) Impose reasonable charges for work performed and present one bill to owner or operator of towed vehicle. Wrecker services may secure assistance from another wrecker when necessary, but only one bill is to be presented to the owner or operator of the vehicle for the work performed.~~
- ~~(8) Allow only wrecker operators who have valid drivers licenses for the type of vehicle driven and require each operator to conduct himself or herself in a proper manner at all collision scenes and when dealing with the public.~~
- ~~(9) Adhere to all statutes regarding solicitation of business from the highway.~~
- ~~(10) Employ only wrecker operators who demonstrate an ability to perform required services in a safe, timely, and efficient manner.~~
- ~~(11) Adhere to all applicable laws relating to wrecker services, including licensing, taxes, and insurance.~~
- ~~(12) Notify the Patrol without delay whenever the wrecker service is unable to respond to a call.~~
- ~~(13) Mark each wrecker service vehicle with the name and telephone number of the business.~~
- ~~(14) Secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed. A wrecker service is not to be held responsible for personal items which do not come into the possession of the service.~~
- ~~(15) Make all complaints to the Patrol regarding any incident involving the Patrol within 30 days of the alleged incident.~~
- ~~(16) The owner shall ensure that the owner, each wrecker driver, or other employee or agent involved in the wrecker service has not been convicted at any time of a felony arising out of the operation or use of a vehicle, or a felony involving force, violence, theft, embezzlement, forgery, fraud, false statement, sexual conduct, or the manufacture, sale, transportation, or possession of a controlled substance or alcoholic beverage, or convicted within the past five years of any other felony or a misdemeanor involving fraud, forgery, embezzlement, theft, force, or violence, controlled substances or sexual misconduct. Within 10 days of the employment of any person or upon the request of a member of the Patrol, the owner of the wrecker service agrees to supply the Patrol with the full name, current address, date of birth, social security number, and drivers license number and state of issuance for the owner, wrecker driver, or other employee or agent involved in the wrecker service.~~
- ~~(17) Upon request or demand, return personal property stored in or with a vehicle, whether the towing, repair, or storage fee on the vehicle has been or will be paid.~~
- ~~(18) Tow disabled vehicles to any destination requested by the vehicle owner or other person with apparent authority.~~
- ~~(19) Agree that being called by the Patrol to tow a vehicle does not create a contract with or obligation on the part of the Patrol personnel to pay any fee or towing charge~~

~~except when towing a vehicle owned by the Patrol, a vehicle is later forfeited to the Patrol, or when a court determines that the Patrol wrongfully authorized the tow and orders the release of the vehicle without payment of transportation and storage fees.~~

- ~~(20) Agree that being placed on the Patrol system does not guarantee a particular number of calls or the same number of calls as any other service, or compensation when not called in accordance with the system or removed from the system.~~

- ~~(21) Agree that the failure to respond to a call by the Patrol will result in being placed at the bottom of any rotation wrecker log, and consistent failures to respond will result in removal from the system.~~

~~(b) The District First Sergeant shall perform a background investigation on each wrecker service desiring to be placed on the Patrol wrecker system and determine if the wrecker service meets the requirements set forth in this Rule. The District First Sergeant shall be responsible for monitoring complaints and for conducting random checks of compliance with all requirements.~~

~~(c) The Troop Commander shall provide that a wrecker service will only be included once on each log. In order to be listed on a log within a district or zone, a wrecker service must have a full-time office, manned and open for business at least five days per week, and a secured lot within the district or zone. A wrecker service may not, through contract or agreement to provide wrecker service for service stations, garages, or other business, be listed through another company. Exceptions to this requirement may be made for specialized or large capacity wreckers when none are available in a zone or district.~~

~~(d) The Troop Commander may place wrecker services on the Patrol system which do not meet all the requirements contained in this Rule if the Troop Commander determines there are an insufficient number on the system in that area to meet the needs of the Patrol.~~

~~(e) If the Troop Commander chooses to use a contract, zone, or other system administered by a local agency, the local agency rules govern the system.~~

~~(f) A wrecker service which is denied inclusion on the Patrol wrecker service system may appeal this decision to the appropriate Zone Director at Patrol Headquarters in Raleigh, NC.~~

~~(g) A wrecker service denied inclusion on the Patrol wrecker system may reapply at any time that the wrecker service meets the requirements for inclusion. The Troop Commander may order an additional investigation. The wrecker service shall be included on the Patrol system when the wrecker service shows the Troop Commander that it meets all requirements for inclusion.~~

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0307 REMOVAL OF WRECKER SERVICE

~~(a) Once a wrecker service is placed on the wrecker service system, the District First Sergeant may remove a wrecker service which does not comply with the rules and policies of the Patrol. Unless public safety or welfare requires other action, at least~~

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seven days prior to removal, a District First Sergeant shall notify a wrecker service in writing of the reason for the removal.

(b) ~~A wrecker service which has received notice of removal from the Patrol wrecker service system by the District First sergeant may appeal to the appropriate Troop Commander or his designee. If the appeal is received at least five days prior to removal, the hearing shall be held prior to removal. Otherwise, the hearings shall be held within 10 days of receipt of the appeal. The Troop Commander may uphold the decision of the First Sergeant or he may order the wrecker firm to be placed back on the rotation system. No wrecker service which is removed is entitled to additional calls, priority listing, or other compensation if placed back on the Patrol system.~~

(c) ~~A wrecker service removed from the list may reapply at any time it can demonstrate it will comply with all rules. The Troop Commander may order additional investigation. The Troop Commander shall place the wrecker service back on the list when the Troop Commander has been presented evidence by the wrecker service that it now complies and will comply with all rules in the future.~~

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0308 DEFINITIONS

The following definitions shall apply to the words and phrases found in this Chapter.

- (1) Applicant. A person or corporation owning a wrecker service and applying for inclusion on the Patrol Rotation Wrecker List.
- (2) Wrecker Service. A person or corporation engaged in the business of, or offering the services of, and owning a wrecker service or towing service whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle manufactured and designed for the primary purpose of removing and towing disabled motor vehicles.
- (3) Car Carrier or "Rollback". A vehicle transport designed to tow or carry vehicles damage-free. The truck chassis shall have a minimum gross vehicle weight rating (GVWR) of 14,500 pounds. Two lift cylinders, minimum two and one-half inch bore; Individual power winch pulling capacity of not less than 8,000 pounds; 50 feet of 5/16 inch cable on winch drum; and four tie down hook safety chains. The carrier bed shall be a minimum of 16 feet in length and a minimum of 84 inches in width inside side rails. A cab protector, constructed of aluminum or steel, must extend a minimum of 10 inches above the height of the bed. A "rollback" is not considered a small or large wrecker.
- (4) Computerized Rotation Wrecker List. The names of those Wrecker Services that have been approved by the District First Sergeant to be included on the Patrol Rotation Log and entered in the Computer Assisted Dispatch (CAD) System. There shall be separate rotation wrecker lists for large and small wreckers for each Rotation Wrecker Zone.

- (5) Large Wrecker. A truck chassis having a minimum gross vehicle weight (GVWR) of 30,000 pounds and a boom assembly having a minimum lifting capacity of 50,000 pounds as rated by the manufacturer; tandem axles or cab to axle length of no less than 102 inches; 150 feet or more of 5/8 inch or larger cable on each drum; airbrake so constructed as to lock wheels automatically upon failure; and additional safety equipment as specified by these regulations.
- (6) Manual Rotation Wrecker List. A list of names of those wreckers that have been approved by the District First Sergeant to be included on the Patrol Rotation Wrecker List and entered into a Manual list that is to be used only when the CAD System is down. There shall be separate manual lists for large and small wreckers for each Rotation Wrecker Zone. These lists shall be maintained by the Troop Communications Center.
- (7) Minor Violations. Violations of these regulations which do not require removal for a definitive time, may be readily corrected, and do not involve a criminal act or pose a threat to the safety and well being of the public.
- (8) Major Violations. All violations of the regulations not determined to be minor.
- (9) Rotation Wrecker List. A list of wrecker services that have met the rules and regulations of the Patrol and whose vehicles are properly registered with the Division of Motor Vehicles.
- (10) Removal. Being taken off the Patrol Rotation Wrecker List for a determinate or indeterminate period of time.
- (11) Storage Facility. A sufficiently lighted off street storage facility secured by a minimum 6 foot high chain link fence, or a fence of similar strength, or other barrier sufficient to deter trespassing or vandalism; and where all entrances and exits are secure from public access. Storage facilities located on the property of another business must be separated by a minimum six-foot chain link fence, or a fence of similar strength, or other barrier sufficient to deter trespassing or vandalism; have separate entrances and exits; and be utilized solely for the business. The lot shall be of sufficient size to accommodate all vehicles towed by the wrecker service for the Patrol. Storage facilities shared by two or more wrecker services may not be used to satisfy the facility requirement in Section :0321(a)(2).
- (12) Small Wrecker means a truck chassis having a minimum gross vehicle weight (GVWR) rating of 10,000 pounds; a boom assembly having a minimum lifting power of 8,000 pounds as rated by the manufacturer; an 8,000 pound rated winch with at least 100 feet of 3/8 inch cable; a belt-type tow plate or tow sling assembly; a wheel-lift with a retracted lifting capacity of no less than 3,500 pounds; dual rear wheels; and additional safety equipment as specified by the Regulations.
- (13) Rotation Wrecker Zone means a geographic area which may encompass all or part of a District of a Troop.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0309 VEHICLE REMOVAL PROCEDURES

(a) Vehicles on the paved or main-traveled portion of the highway:

- (1) A member who encounters a vehicle parked, disabled from a collision or otherwise left standing on the paved or main-traveled portion of the highway shall:
 - (A) remove the vehicle to a position off the roadway;
 - or
 - (B) with consent from the owner, operator, or legal possessor, transport and store the vehicle.
 - (C) without consent from the owner, operator, or legal possessor, transport and store the vehicle if the vehicle presents a hazard, a potential hazard or otherwise as authorized by state law.

- (2) A member shall permit an objecting owner, operator, or legal possessor to remove a vehicle to a safe position off the roadway, if the driver is competent and licensed to drive the vehicle. A member may transport and store a vehicle which cannot be safely parked off the roadway as authorized in this Directive.

(b) Vehicles off the Paved or Main-Traveled Portion of the Highway

- (1) A member investigating an accident or collision in which a disabled vehicle is located off the paved or main-traveled portion of the highway may transport and store the vehicle. If the owner, operator, or legal possessor objects, a member shall not transport and store a vehicle unless, as standing, the vehicle creates a hazard.
- (2) A member who observes a vehicle unlawfully parked or disabled on the right-of-way, but not on the main-traveled portion of the highway may remove and store the vehicle only if the vehicle interferes with the regular flow of traffic or otherwise constitutes a hazard.
- (3) A member shall not transport and store a vehicle unlawfully parked on the highway right-of-way which does not interfere with the regular flow of traffic or otherwise constitutes a hazard until the vehicle remains on the highway right-of-way for a period of 48 hours or more, has been vandalized, or is otherwise abandoned.

(c) Vehicles subject to seizure - Vehicles which are authorized by law to be seized or which may be evidence in a criminal proceeding may be towed and stored.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0310 SECURING VEHICLES WHEN OPERATOR IS ARRESTED

Upon arresting or placing a vehicle operator in custody a member shall:

- (1) With consent of owner, operator, or legal possessor, allow another licensed, competent individual to drive or move the vehicle to a position off the roadway; or

(2) If no licensed, competent operator is present, or if the owner, operator, or legal possessor will not consent to such removal;

- (a) Move the vehicle, if necessary, to a position off the roadway, lock the vehicle and return the key to the owner, operator, or legal possessor; or
- (b) With or without consent of the owner, operator, or legal possessor, transport and store vehicle in accordance with Rule 9H. 0311 below.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0311 VEHICLES TRANSPORTED AND STORED OVER OBJECTION OF OWNER

A member may transport and store a vehicle over the objection or without consent of the owner, operator, or legal possessor when:

- (1) The vehicle cannot be lawfully parked off the roadway; or
- (2) The vehicle is lawfully parked off the roadway but creates a hazard; or
- (3) The owner, operator, or legal possessor refuses or is unable to remove the vehicle from the roadway; or
- (4) The vehicle is subject to seizure pursuant to G.S. 20-28.3 or other lawful authority.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0312 PARKING VEHICLES OFF THE ROADWAY

(a) A member who removes or allows a vehicle to be removed to a position off the roadway shall:

- (1) Lawfully park the vehicle in an apparently safe and secure location off the main-traveled portion of the highway; or
- (2) Place the vehicle in a position that creates no apparent hazard or other interference with the regular flow of traffic.

(b) A member shall take reasonable precautions to secure the vehicle and its contents against theft, vandalism, and other damage by locking the vehicle (if possible) and returning the keys to the owner, operator, or legal possessor. In any case where the operator of the vehicle is arrested for DWI, a member shall either turn the keys over to the magistrate/jailer or, when appropriate, to a sober, responsible person.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0313 TRANSPORTING AND STORING VEHICLES

(a) A member shall arrange transportation and safe storage of a vehicle pursuant to this wrecker service Directive.

(b) A member who authorizes the transportation and storage of a vehicle shall, in every case, immediately notify the appropriate Communications Center via radio and furnish information necessary to complete a Signal 4 (Report of Vehicle Stored or Recovered).

(c) A member shall notify the Communications Center whenever he transports or stores a vehicle. If the vehicle is towed, stored, or removed to the shoulder of the road and left at the scene at the request of or with the consent of the owner, operator, or legal possessor, the member shall mark the applicable entries on the HP-305 and obtain the signature of the person making the request or giving the consent. Refusal to sign the HP-305 shall be deemed a withdrawal of the consent or request to tow. In such a situation, members shall be governed by 9H.0311 of these Rules.

(d) A member shall, when notified by a magistrate of a hearing regarding payment of towing or storage fees, appear in person at the hearing or file HP-305.1 "Affidavit" with the magistrate prior to the hearing.

(e) Where necessary for accident reconstruction or a criminal investigation that multiple vehicles involved in an incident be stored at the same location, a member may designate the location at which all vehicles are stored. The storage facility shall be the first wrecker service dispatched unless otherwise designated by a supervisor.

(f) Where necessary for an accident reconstruction or a criminal investigation, a member may designate at which indoor or other appropriate storage facility a vehicle shall be stored to ensure preservation of the evidence. The storage facility shall be the first wrecker service dispatched unless otherwise designated by a supervisor.

(g) DWI seized vehicles shall be towed and stored in accordance with instructions from the County School Board or state or regional contractor.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0314 NOTIFICATION

(a) Unless exempted by vehicle seizure law, a registered owner must be notified of the vehicle being towed and stored. In order to accomplish this, the authorizing member shall immediately notify the Communications Center of the following:

- (1) a description of the vehicle;
- (2) the place where the vehicle is stored;
- (3) the procedure the owner must follow to have the vehicle returned to him; and
- (4) the procedure the owner must follow to request a probable cause hearing on the towing.

(b) A member who authorized the towing and/or storage of a vehicle in the absence of the registered owner, shall, as soon as practicable, attempt to notify the owner of such towing and/or storage. The member shall attempt to contact the owner by telephone or request a Telecommunicator to attempt to contact the owner by telephone and provide the owner with the location of the vehicle. At least three attempts must be made for vehicles registered in North Carolina and one attempt for vehicles registered out-of-state. A member must record the person contacted or the attempts made.

(c) Whether or not the owner is reached by telephone, a copy of the HPC-305.2 (Vehicle Towing/Notification, which is computer-generated at the Communications Center) shall be mailed to the last registered owner by the Troop Communications Center. In the absence of an HP-305 signed by

the registered owner, Form HPC-305.2 shall be mailed to the owner within 24 hours. A duplicate copy of the HPC-305.2 is also computer-generated and will print automatically in the District office of the member.

(d) Whenever a vehicle with neither a valid registration plate nor registration is towed, in the absence of an HP-305 signed by the registered owner, the authorizing member shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in subsection (a) above.

(e) If a vehicle is seized pursuant to G.S. 20-28.3, the appropriate DMV notification form shall be completed and forwarded to DMV and to the statewide contractor within 72 hours.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0315 RELEASE OF VEHICLES

Unless the vehicle is seized, a member shall immediately authorize the release of a stored vehicle to the owner upon proof of ownership if no other justification to hold the vehicle exists.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0316 VEHICLE INVENTORY

(a) A member who authorizes the transportation and storage of a vehicle in the absence of Form HP-305 signed by the owner, operator, or legal possessor shall take precautions to protect all property in and on the vehicle.

(b) An HP-305 signed by the owner, operator, or legal possessor is documentation that the vehicle was not removed from the possession of such person; therefore, the completion of a vehicle inventory is not required.

(c) The storage and security of the vehicle and its contents become the responsibility of the towing company when the vehicle is towed from the scene and stored at the wrecker service storage facility. If the vehicle is to be seized for subsequent forfeiture or stored at a Patrol facility, the arresting member may conduct an inventory, itemizing all property contained in the vehicle and the estimated value.

(d) All vehicles which are inventoried under the above guidelines shall be inventoried at the time of storage unless an emergency situation dictates otherwise:

- (1) The inventory must be thorough and complete, listing all items that are toxic, explosive, flammable, or of monetary value.
- (2) Unless locked or security wrapped, all containers in the vehicle, whether open or closed, shall be opened to determine contents unless evidence is discovered to indicate that opening the container may subject the member to exposure of toxic, flammable, or explosive substances. Locked or securely wrapped luggage, packages, and containers shall not be opened except as otherwise authorized by law or by owner consent, but shall be indicated on the inventory list as locked or securely wrapped items.

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(3) Contraband or other evidence of a crime discovered during a vehicle inventory may be seized and used as evidence when an inventory is conducted at the time of storage:

(A) Any evidence found in plain view is admissible.

Closed containers (luggage, attache cases, etc.) are considered as units of inventory and cannot be searched without obtaining consent or a search warrant unless there is evident danger to the member or public.

(B) The member should consider obtaining a search warrant when there is probable cause for a thorough search of the vehicle and/or its contents when time and conditions permit.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0317 REIMBURSEMENT OF WRECKER OPERATORS

(a) A member shall promptly obtain a statement of transportation and storage fees from the wrecker operator involved when the court orders the release of any vehicle without payment of transportation and storage costs. The member shall promptly transmit to the appropriate Zone Director, through the chain-of-command, the statement and a copy of the HP-305.1 in addition to any other relevant information.

(b) The Zone Director shall, in consultation with the Patrol Commander, determine whether to appeal the action of the magistrate.

(c) The Patrol shall compensate the wrecker operator for reasonable transportation and storage fees in cases where no appeal is taken. When an appeal is taken, the Patrol shall not compensate wrecker operators until all appeals are exhausted.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0318 FINANCIAL INTEREST

No member of the Patrol or any of its civilian employees shall hold any financial interest or any form of ownership interest in any wrecker service. No member may be employed by a wrecker service, nor shall any member be assigned to a county where any relative of the member has any financial interest in or is employed by a wrecker service.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0319 IMPARTIAL USE OF SERVICES

In order to perform its traffic safety functions, the Patrol is required to use wrecker services to tow disabled, seized, wrecked and abandoned vehicles. Members of the Patrol shall assure the impartial use of wrecker services through strict compliance with these rules. In no event shall any Patrol member recommend any wrecker service to the owner or driver of a wrecked or disabled vehicle nor shall any member recommend the services of a particular wrecker service in the performance of his duties. Members shall, whenever possible

and practicable, dispatch the wrecker service requested by the motorist requiring such services.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0320 ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM

(a) The Troop Commander shall arrange for the Telecommunications Center to maintain a rotation wrecker system within each District of the Troop which shall include the following:

(1) Separate computerized large and small rotation wrecker lists and manual rotation lists for the entire District whereby wrecker services are called in the order they appear on a list;

(2) A zone system within the District with a rotation wrecker list being maintained in each Rotation Wrecker Zone;

(3) A zone, contract or other system operated in conjunction with one or more local agencies; and

(4) A combination of any such system.

(b) It is the policy of the Patrol to use the wrecker service requested by the vehicle owner or person in apparent control of the motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services, but may answer questions and provide factual information. If no such request is made, the Patrol system in place in the Rotation Wrecker Zone will be used, absent an emergency or other legitimate reason.

(c) The Troop Commander, in his discretion, may deviate from any of these rules in emergency situations if there are insufficient wrecker services of the type needed within a District to meet the needs of the Patrol.

(d) The Telecommunicator shall enter in the computerized log the name of the wrecker service contacted and the response by the service to the request. The date and time of the call is automatically recorded in the computerized log as well as the identification number of the Telecommunicator making the entry.

(e) In the event the computerized rotation wrecker list is not in service (CAD down), the member requesting wrecker service shall be notified and a wrecker from the manual rotation wrecker list will be utilized. The Telecommunicator shall refer to the manual list that is maintained by the Telecommunicator Center Supervisor at each Communication Center. The wrecker service name shall be entered on the slip log, the slip log will indicate CAD DOWN.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0321 ROTATION WRECKER SERVICE REGULATIONS

(a) In order to assure that the needs of the Patrol are met, the Troop Commander shall include on the Patrol Rotation Wrecker List only those wrecker services which agree in writing to adhere to the following conditions:

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- (1) Upon application for inclusion to the Patrol Rotation Wrecker List the owner of the wrecker service must complete a wrecker application form;
 - (2) In order to be listed on a rotation wrecker list within a zone, a wrecker service must have a full-time office within that Rotation Wrecker Zone that is manned and open for business at least eight hours per day, five days per week, and a storage facility. To be listed on the large rotation wrecker list, a wrecker service must have in operation at least one large wrecker. To be listed on the small rotation wrecker list, a wrecker service must have in operation at least one small wrecker;
 - (3) Each wrecker must be equipped with legally required lighting and other safety equipment to protect the public and such equipment must be in good working order;
 - (4) Each wrecker on the Patrol Rotation Wrecker List must be equipped with the equipment required on the application list and such equipment must, at all times, be operating properly;
 - (5) The wrecker service operator must remove all debris, other than hazardous materials, from the highway and the right-of-way prior to leaving the incident/collision scene;
 - (6) The wrecker service must be available to the Patrol for rotation service on a 24 hour per day basis and accept collect calls (if applicable) from the Patrol. Calls for service must not go unanswered for any reason; failure to respond to calls for service may result in removal from the rotation wrecker list;
 - (7) Consistently respond, under normal conditions, in a timely manner. Failure to respond in a timely manner may result in a second rotation wrecker being requested. If the second wrecker is requested before the arrival of the first rotation wrecker, the initial requested wrecker will forfeit the call and will immediately leave the collision/incident scene;
 - (8) For Patrol-involved incidents, respond only upon request from proper Patrol authority;
 - (9) Impose reasonable charges for work performed and present one bill to the owner or operator of any towed vehicle. Towing, storage and related fees charged may not be greater than fees charged for the same service for non-rotation calls. Wrecker services may secure assistance from another rotation wrecker service when necessary, but only one bill is to be presented to the owner or operator of the vehicle for the work performed. A price list for recovery, towing and storage shall be established and kept on file at the place of business. A price list is to be furnished, in writing, to the District First Sergeant and made available to customers upon request. The wrecker service shall notify the District First Sergeant in writing prior to any price change;
 - (10) Ensure that all wrecker operators have a valid drivers license for the type of vehicles driven;
 - (11) Wrecker owners/operators/employees shall not be abusive, disrespectful, or use profane language when dealing with the public or any member of the Patrol.
- He shall cooperate at all times with members of the Patrol;
- (12) Adhere to all Federal and State laws and local ordinances and regulations related to registration and operation of wrecker service vehicles and have insurance as required by G.S. 20-309(a);
 - (13) Employ only wrecker operators who demonstrate an ability and desire to perform required services in a safe, timely, efficient and courteous manner;
 - (14) The wrecker service must immediately notify the District First Sergeant of any insurance lapse or change;
 - (15) Notify the Patrol without delay whenever the wrecker service is unable to respond to calls;
 - (16) Notification of rotation wrecker calls will be made to the owner/operator or employee of the wrecker service. Notification will not be made to any answering service, pager or answering machine;
 - (17) Mark each wrecker service vehicle, by painting the name and location on each side of the vehicle with letters not less than three inches in height. No magnetic or stick-on signs shall be used. The wrecker service operator shall provide a business card to the investigating officer or person in apparent control of the vehicle before leaving the scene;
 - (18) Each wrecker service vehicle must be registered with the Division of Motor Vehicles in the name of the wrecker service and insured by the wrecker service;
 - (19) Secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed;
 - (20) Upon application to the Patrol Rotation Wrecker List, the owner shall ensure that the owner and each wrecker driver has not been convicted of, pled guilty to, or received a prayer for judgment continued (PJC). Within the last five years of:
 - (A) A first offense under G.S. 20-138.1, 20-138.2, 20-138.2A or 20-138.2B;
 - (B) Any misdemeanor involving a breach of the peace, larceny or fraud;
 - (C) Misdemeanor Speeding to Elude Arrest; and
 - (D) A violation of G.S. 14-223, Resist, Obstruct, Delay.Within the last ten years of:
 - (A) Two or more offenses in violation of 28-138.1, 20-138.2, 20-138.2A or 20-138.2B;
 - (B) Felony speeding to elude arrest; and
 - (C) Any Class E, G, H or I felony involving sexual assault, breach of the peace, fraud, larceny, misappropriation of property or embezzlement.At any time of:
 - (A) Class A, B1, B2, C, D, or E felonies;
 - (B) Any violation of G.S. 14-34.2, Assault with deadly weapon on a government officer or employee, 14-34.5, Assault with firearm on a law enforcement officer; or 14-34.7, Assault on law enforcement officer inflicting injury; and
 - (C) Any violation of G.S. 20-138.5, Habitual DWI.

- (21) Immediately upon employment or upon the request of the District First Sergeant, the owner of the wrecker service agrees to supply the Patrol with the full name, current address, date of birth, social security number, and driver's license number and state of issuance for the owner and wrecker driver(s). This obligation is a continuing obligation. If the owner or a driver is convicted of, enters a plea of guilty or no contest to, or receives a prayer for judgment continued (PJC) for any of the above crimes after a wrecker service is placed on the rotation, it is the responsibility of the wrecker service to inform the Patrol immediately;
- (22) Upon request or demand, the rotation wrecker shall return personal property stored in or with a vehicle, whether or not the towing, repair, and/or storage fee on the vehicle has been or will be paid;
- (23) Tow disabled vehicles to any destination requested by the vehicle owner or other person with apparent authority, after financial obligations have been finalized;
- (24) Being called by the Patrol, to tow a vehicle, does not create a contract with or obligation on the part of Patrol personnel to pay any fee or towing charge except when towing a vehicle owned by the Patrol, a vehicle that is later forfeited to the Patrol, or if a court determines that the Patrol wrongfully authorized the tow and orders the Patrol to pay transportation and storage fees;
- (25) Being placed on the Patrol Rotation Wrecker List does not guarantee a particular number or quantity of calls, does not guarantee an equivalent number of calls to every wrecker service on the rotation wrecker list, and agree that they will not receive compensation when not called in accordance with the list or when removed from the rotation wrecker list;
- (26) The failure to respond to a call by the Patrol will result in being placed at the bottom of any rotation wrecker list. A wrecker service must respond to at least 75 percent of the Patrol rotation wrecker calls within the previous 12-month period;
- (27) Rotation wreckers and facilities are subject to inspection by the District First Sergeant or his designee at any time;
- (28) A rotation wrecker service, upon accepting a call for service from the Patrol, must use their wrecker. Wrecker companies cannot refer a call to another wrecker company or substitute for each other;
- (29) If a rotation wrecker service moves its business location or has a change of address, the owner of the wrecker service must notify the District First Sergeant of the new address or location. Notification shall be made by mail no later than ten days prior to the projected move;
- (30) A wrecker service may not send a car carrier "rollback" in response to a Patrol rotation call unless a car carrier "rollback" is specifically authorized by the Patrol; and
- (31) A rotation wrecker driver or employee shall not respond to a Patrol related incident with the odor of alcohol on his/her breath or while under the influence of alcohol, drugs or any impairing substance.

(b) The District First Sergeant shall conduct an investigation of each wrecker service desiring to be placed on the Patrol Rotation Wrecker List and determine if the wrecker service meets the requirements set forth herein. If the District First Sergeant determines that a wrecker service fails to satisfy one or more of the requirements set forth herein, the First Sergeant shall notify the wrecker service owner of the reason(s) for refusing to place it on the rotation wrecker list. Once placed on the rotation wrecker list, a wrecker service that fails to comply with the requirements of these rules shall be removed from the rotation wrecker list.

(c) The Troop Commander shall ensure that a wrecker service will only be included once on each rotation wrecker list. Exceptions to this requirement may be made for specialized or large capacity wreckers when none are available for a County or zone.

(d) If the Troop Commander chooses to use a contract, zone, or other system administered by a local agency, the local agency rules govern the system.

(e) If a wrecker service responds to a call it shall be placed at the bottom of the rotation wrecker list unless the wrecker service is not used or receives no compensation for the call. In that event, it will be placed back at the top of the rotation list.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0322 RECORDING WRECKER REQUESTS/INCIDENTS

(a) Members investigating collisions shall enter on the Collision Report Form the authorization for removal of vehicles from the scene.

(b) Troop Commanders shall require members to submit written verification of wrecker requests on Patrol Form HP-305.

(c) Members observing any violations of the rotation wrecker rules and regulations shall notify the District First Sergeant.

(d) Complaints concerning any wrecker service on the rotation wrecker list, whether instituted by the public or by a member, shall be investigated by the District First Sergeant.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0323 SANCTIONS FOR VIOLATIONS

(a) If a District First Sergeant determines that a violation of these rules has occurred, the First Sergeant may:

(1) Issue a written warning and request for compliance;

(2) Remove the wrecker service from the rotation wrecker list until proper corrective measures have been taken to bring the wrecker service into compliance with these rules and verification of such compliance has been demonstrated; or

(3) If the violation is major, or in the case of repeat violations, remove the wrecker service from the rotation wrecker list for a specific period of time.

(b) The severity of the sanction imposed shall be commensurate with the nature of the violation and prior record of the wrecker service.

(c) If a wrecker service owner commits, is convicted of, pleads guilty to or receives a prayer for judgment continued for any of

PROPOSED RULES

the offenses specified in 9 NCAC 9H .0321(20), the wrecker service shall be removed from the rotation wrecker list for the designated period of time as set out in that section.

(d) A wrecker service shall not employ or continue to employ, as a driver, any person who commits, is convicted of, pleads guilty to or receives a prayer for judgment continued for any of the offenses specified in 9 NCAC 9H .0321(20). This prohibition is for the designated period of time as set out in that section. A wrecker service that willfully violates this provision shall be removed from the rotation wrecker list.

(e) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her breath shall immediately be removed from the rotation wrecker list for one year. This period of removal is in addition to any removal that may result from any violation of 9 NCAC 9H .0321(20).

(f) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her breath, and who refuses to submit to any requested chemical analysis, shall immediately be removed from the rotation wrecker list for a period of five years. This period of removal is in addition to any removal that may result from any violation of 9 NCAC 9H .0321(20).

(g) A willful misrepresentation of any material fact shall be considered to be a serious violation of these rules and may result in removal from the rotation wrecker list.

(h) For any violation of these rules for which no specific period of removal or disqualification is established, a wrecker service shall be suspended, at a minimum, until the violation is corrected.

(i) A wrecker service that is removed from the rotation wrecker list does not become eligible for reinstatement merely because ownership has been transferred to a family member.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0324 HEARING PROCEDURES

(a) If the District First Sergeant refuses to include a wrecker service on the rotation wrecker list, the wrecker service may appeal the First Sergeant's decision, in writing, to the Troop Commander within 20 days of receipt of the decision. The Troop Commander may, in his discretion, conduct a hearing or review the record. In either event, he shall render a decision, in writing, within 10 days of receipt of the appeal. The Troop Commander's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH) pursuant to the provisions of G.S. 150-5.

(b) If a District First Sergeant issues a written warning to a wrecker service for a violation of any of these rules, the wrecker service may, within 20 days of receipt of the warning, submit a written response to the First Sergeant in mitigation, explanation or rebuttal. Written warnings may not be appealed.

(c) If a District First Sergeant determines that a violation of these rules has occurred, and determines that removal from the rotation wrecker list may be warranted, he shall notify the affected wrecker service, in writing, of this determination and afford the wrecker service an opportunity to be heard. The hearing shall take place within 10 days of actual notice or, if notice is by first class mail, within 13 days of the date the notice

is placed in the mail. The hearing shall take place within 10 days of the request for hearing and not less than three days written notice. If a District First Sergeant removes a wrecker service from the rotation wrecker list, the wrecker service may appeal the removal to the Troop Commander (or his designee), in writing, within 20 days of receipt of the notice. The Troop Commander, in his discretion, may conduct a hearing or review the record. If the Troop Commander decides to conduct a hearing, he will give the wrecker service not less than 10 days notice. He shall render a decision, in writing, within 10 days of receipt of the appeal or date of the hearing, whichever occurs last. The Troop Commander's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH) pursuant to the provisions of G.S. 150-B.

(d) Hearings conducted by District First Sergeants and/or Troop Commanders shall be informal and no party shall be represented by legal counsel.

(e) A wrecker service that is removed from the rotation wrecker list and subsequently placed back on the list, for any reason, shall not be entitled to additional calls, priority listing or any other form of compensation.

(f) Ordinarily, a wrecker service shall remain on the rotation wrecker list pending a final decision of the Troop Commander. A District First Sergeant, with the concurrence of the Troop Commander, may, however, summarily remove a wrecker service from the rotation wrecker list in those cases where there exists reasonable grounds to believe a violation enumerated in 9 NCAC 9H .0321(12), (20), or (31) or any violation relating to the safe and proper operation of the business or which may jeopardize the public health, safety or welfare.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

TITLE 15A – ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend rules cited as 15A NCAC 2C .0102-.0103, .0105, .0107-.0108, .0110-.0114, .0117-.0118. Notice of Rule-making Proceedings was published in the Register on November 15, 1999.

Proposed Effective Date: April 1, 2001

Public Hearing:

WILLIAMSTON
Monday, September 18, 2000
7:00 PM
Martin Community College
US 64 and Kehukee Park Road
Building # 2, Teaching Auditorium

RALEIGH
Wednesday, September 20, 2000
7:00 PM
Archdale Building

PROPOSED RULES

512 North Salisbury Street
Ground Floor Hearing Room

MORGANTON

Thursday, September 21, 2000

7:00 PM

Western Piedmont Community College
1001 Burkemont Avenue
Moore Hall Auditorium

Reason for Proposed Action: The Well Construction Standards in 15A NCAC 2C .0100 were last amended on December 1, 1992. The Groundwater Section, on behalf of the Environmental Management Commission, has found that it is necessary to clarify specifications for some wells, strengthen other requirements, and remove unnecessary requirements. From mid-1997 through August 1999 the Groundwater Section developed rule changes and met with stakeholders on changes to these rules. The stakeholders consisted of well construction contractors, county employees, state regulators, consumers and other interested parties. The result of this effort is that amendments to 15A NCAC 2C .0100 are now ready for formal presentation to the public. Changes to the Well Construction Standards in 15A NCAC 2C .0100 must be done through rulemaking pursuant to G.S. 150B.

The major proposed changes to the 15A NCAC 2C .0100 Well Construction Standards are as follows:

1. Specifies new definitions and changes others definitions in Rule .0101;
2. Repeals the registration requirements for well contractors effective January 1, 2000. Registration is to be replaced by well contractor certification requirements. Paragraph 15A NCAC 2C .0103(a)(6) specifies that well contractor registration requirements "shall be repealed effective January 1, 2000" pursuant to the requirements contained in House Bill 251. Economic impacts of removing the registration requirements and replacing them with well contractor certification were considered under permanent Well Contractors Certification Rules in 15A NCAC 27 (DENR Rulemaking Number E-2722);
3. 15A NCAC 02C .0107 clarifies minimum horizontal separation requirements, casing requirements, well grouting requirements, requirements for gravel-and-sand packed wells, well development requirements, and applicable identification plate requirements.
4. 15A NCAC 02C .0108 clarifies standards for wells used for purposes other than water supply and removes unnecessary requirements;
5. 15A NCAC 02C .0113 specifies changes to abandonment procedures for permanently abandoned wells, temporary wells, monitoring wells, and wells that are bored or hand dug into unconsolidated material. The proposed changes allow for the use of various grouts, dry clay or material excavated during drilling as abandonment fill material for well abandonment at temporary wells, monitoring wells, or wells that are bored or hand dug. The rule also specifies that disinfection of abandoned wells be performed using a 70% hypochlorite solution and in accordance with the requirements of 15A NCAC 2C .0111. The

use of commercial household bleach will no longer be allowed because these products have been deemed as inadequate to properly disinfect wells. A number of changes to the rules are proposed to protect groundwater quality from degradation as a result of well construction activities. Changes found in 15A NCAC 2C .0107, 15A NCAC 2C .0108, and 15A NCAC 2C .0113 will alter the materials and methods such that water wells and other types of wells are constructed and abandoned in a manner that is more cost effective than present construction methods contained therein. Expanding the use of alternative grouts and other materials provides the regulated community with cost-effective alternatives to cement grout while maintaining a sufficient level of public health protection. It is anticipated that rule changes to the grouting requirements, minimum horizontal separation requirements, chlorination requirements, well abandonment requirements will provide this greater level of protection during well construction activities. Disinfection requirements are clarified for wells abandoned under 15A NCAC 2C .0108 such that a more effective type of disinfectant is required. This rule specifies the use of solid hypochlorite disinfectants (i.e., swimming pool disinfectants such as "HTH" or "Sock-it" brands). It is important to note that 15A NCAC 2C .0105(b)(7) shows another permit will be required when a monitoring well is installed in accordance with a permit issued pursuant to G.S. 143-215.1. Comments received during the Notice of Rulemaking Proceedings for this rule have questioned the necessity for an additional permit. When a permit to discharge wastewater to groundwater is issued, monitoring wells are constructed at this site pursuant to conditions contained in that permit. Groundwater Section staff have examined this issue and have concluded that a separate permit for a well will be unnecessary. The discussion of this proposed requirement will be provided at the public hearings. A number of possible changes have been recently identified since publication of the Notice of Rulemaking Proceedings for these rules in Volume 14, Issue 10 of the North Carolina Register and will be discussed at the public hearing. These are shown as follows:

- A. Adding a Subparagraph (3) to 15A NCAC 2C .0107(c) to specify that drilling fluids and additives contain water from a potable water supply. Non-potable water used in the well construction process may result in the contamination of water supplies above the Groundwater Quality Standards in 15A NCAC 2L .0202. Placing this provision in the rule may prevent degradation of water supplies as a result of well construction.
- B. Delete the word "casing" from 15A NCAC 2C .0107(d)(8) so that the rule specifies the entire well will be free of obstacles. The present reading of the permits obstacles in the well upon completion as long as they do not come in contact with the casing.
- C. Make minor grammatical changes to 15A NCAC 2C .0105(a) and 15A NCAC 2C .0107(e)(4)(C) to change the word "insure" to the correct word "ensure".

These changes were suggested after the Environmental Management Commission gave approval to proceed public notice and hearing on the proposed rules. These recommended changes have been deemed important enough by Groundwater Section staff to discuss at the public hearings.

Comment Procedures: Interested persons may contact David Hance at (919) 715-6189 for more information. Oral comments may be made during the hearings. All written comments must be submitted by October 2, 2000. Written copies of oral statements exceeding three minutes are requested. Oral statements may be limited at the discretion of the hearing officers. Mail comments to: David Hance, ENR-DWQ-Groundwater Section; 1636 Mail Service Center; Raleigh, North Carolina, 27699-1636; Phone: (919) 715-6189; Fax: (919) 715-0588; E-Mail Address: David.Hance@ncmail.net.

Fiscal Impact

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

CHAPTER 2 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2C – WELL CONSTRUCTION STANDARDS

SECTION .0100 – CRITERIA AND STANDARDS APPLICABLE TO WATER-SUPPLY AND CERTAIN OTHER TYPE WELLS

15A NCAC 2C .0102 DEFINITIONS

As used herein, unless the context otherwise requires:

- (1) "Abandon" means to discontinue the use of and to seal the well according to the requirements of Rule 15A NCAC 2C .0113 of this Section.
- (2) "Access port" means an opening in the well casing or well head installed for the primary purpose of determining the position of the water level in the well.
- (3) "Agent" means any person who by mutual and legal agreement with a well owner has authority to act in his behalf in executing applications for permits. The agent may be either general agent or a limited agent authorized to do one particular act.
- (4) "ASTM" means the American Society for Testing and Materials.
- (5) "Casing" means pipe or tubing constructed of specified materials and having specified dimensions and weights, that is installed in a borehole, during or after completion of the borehole, to support the side of the hole and thereby prevent caving, to allow completion of a well, to prevent formation material from entering the well, to prevent the loss of drilling fluids into permeable formations, and to prevent entry of undesirable water, contamination.
- (6) "Clay" means a substance comprised of natural, inorganic, finely ground crystalline mineral fragments which, when mixed with water, forms a pasty, moldable mass that preserves its shape when air dried.
- (7) "Commission" means the North Carolina Environmental Management Commission or its successor, unless otherwise indicated.

- (8) "Consolidated rock" means rock that is firm and coherent, solidified or cemented, such as granite, gneiss, limestone, slate or sandstone, that has not been decomposed by weathering.
- (9) "Contamination" means the introduction of foreign materials of such nature, quality, and quantity into the groundwaters as to cause degradation of the quality of the water exceed the groundwater quality standards specified in 15A NCAC 2L (Classifications and Water Quality Standards Applicable to the Groundwaters of North Carolina).
- (10) "Department" means the Department of Environment, Health, Environment and Natural Resources.
- (11) "Designed capacity" shall mean that capacity that is equal to the rate of discharge or yield that is specified prior to construction of the well.
- (12) "Director" means the Director of the Division of Environmental Management. Water Quality.
- (13) "Division" means the Division of Environmental Management. Water Quality.
- (14) "Domestic use" means water used for drinking, bathing, or other household purposes, livestock, or gardens.
- (15) "Formation Material" means naturally occurring material generated during the drilling process that is composed of sands, silts, clays or fragments of rock and which is not in a dissolved state".
- (16) "GPM" and "GPD" mean gallons per minute and gallons per day, respectively.
- (17) "Grout" shall mean and include the following:
 - (a) "Neat cement grout" means a mixture of not more than six gallons of clear, potable water to one 94 pound bag of portland cement. Up to five percent, by weight, of bentonite clay may be used to improve flow and reduce shrinkage.
 - (b) "Sand cement grout" means a mixture of not more than two parts sand and one part cement and not more than six gallons of clear, potable water per 94 pound bag of portland cement.
 - (c) "Concrete grout" means a mixture of not more than two parts gravel to one part cement and not more than six gallons of clear, potable water per 94 pound bag of portland cement. One hundred percent of the gravel must pass through a one-half inch mesh screen.
 - (d) "Gravel cement grout, sand cement grout or rock cutting cement grout" means a mixture of not more than two parts gravel and sand or rock cuttings to one part cement and not more than six gallons of clear, potable water per 94 pound bag of portland cement.
 - (e) "Bentonite grout" means the mixture of no less than one and one-half pounds of commercial granulated bentonite with sufficient clear, potable water to produce a grout weighing no less than 9.4 pounds per gallon of mixture. Non-organic, non-toxic substances may be added to improve particle

distribution and pumpability. Bentonite grout may only be used in those instances where specifically approved in this Section.

- (f) "Specialty grout" means a mixture of non-organic, non-toxic materials with characteristics of expansion, chemical-resistance, rate or heat of hydration, viscosity, density or temperature-sensitivity applicable to specific grouting requirements. ~~Specialty~~ Specialty grouts may not be used without prior approval by the Director.

~~(16)~~(18) "Liner pipe" means pipe that is installed inside a completed and cased well for the purpose of ~~sealing off undesirable water preventing the entrance of contamination into the well~~ or for repairing ruptured or punctured casing or screens.

~~(17)~~(19) "Monitoring well" means any well constructed for the primary purpose of obtaining samples of groundwater or other liquids for examination or testing, or for the observation or measurement of groundwater levels. This definition excludes lysimeters, tensiometers, and other devices used to investigate the characteristics of the unsaturated ~~zone~~. ~~zone~~ but includes piezometers, a type of monitor well constructed solely for the purpose of determining groundwater levels.

~~(18)~~(20) "Owner" means any person who holds the fee or other property rights in the well being constructed. A well is real property and its construction on land rests ownership in the land owner in the absence of contrary agreement in writing.

~~(19)~~(21) "Pitless adapters" or "pitless units" are devices specifically manufactured to the standards specified under ~~Rule 15A NCAC 2C .0107(i)(5)~~ of this Section for the purpose of allowing a subsurface lateral connection between a well and plumbing appurtenances.

~~(20)~~(22) "Public water system" means a water system as defined in 15A NCAC 18C (Rules Governing Public Water Supplies).

~~(21)~~(23) "Recovery well" means any well constructed for the purpose of removing contaminated groundwater or other liquids from the subsurface.

~~(22)~~(24) "Settleable solids" means the volume of solid particles in a well-mixed one liter sample which will settle out of suspension, in the bottom of an Imhoff Cone, after one hour.

~~(23)~~(25) "Site" means the land or water area where any facility, activity or situation is physically located, including adjacent or nearby land used in connection with the facility, activity or situation.

~~(24)~~(26) "Specific capacity" means the yield of the well expressed in gallons per minute per foot of draw-down of the water level ~~(gpm/ft.-dd)~~ (gpm/ft.-dd) per unit of time.

~~(25)~~(27) "Static water level" means the level at which the water stands in the well when the well is not being pumped and is expressed as the distance from a fixed reference point to the water level in the well.

~~(26)~~(28) "Suspended solids" means the weight of those solid particles in a sample which are retained by a standard glass microfiber filter, with pore openings of one and one-half microns, when dried at a temperature of 103 to 105 degrees Fahrenheit.

~~(27)~~(29) "Temporary well" means a ~~monitor~~ well, other than a water supply well, or a well that is constructed to determine aquifer characteristics, and which will be properly abandoned or converted to a permanent ~~monitoring~~ well within five days (120 hours) of the completion of drilling of the borehole.

~~(28)~~(30) "Turbidity" means the cloudiness in water, due to the presence of suspended particles such as clay and silt, that may create esthetic problems or analytical difficulties for determining contamination. ~~Turbidity~~ Turbidity, measured in Nephelometric Turbidity Units ~~(NTU)~~ (NTU), is based on a comparison of the cloudiness in the water with that in a specially prepared standard.

~~(31)~~ "Vent" means an opening in the well casing or well head, installed for the purpose of allowing changes in the water level in a well due to natural atmospheric changes or to pumping. A vent can also serve as an access port.

~~(29)~~(32) "Well" means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single family dwelling, and intended for domestic use (including household purposes, farm livestock or gardens).~~

~~(30)~~(33) "Well capacity" shall mean the maximum quantity of water that a well will yield ~~continuously~~, continuously for one hour at the time of well completion.

~~(31)~~(34) "Well head" means the upper terminal of the well including adapters, ports, valves, seals, and other attachments.

~~(32)~~(35) "Well system" means two or more ~~wells serving the same facility~~ cross-connected wells.

~~(36)~~ "Yield" means the amount of water or other fluid that can be extracted from a well under a given set of conditions.

Authority G.S. 87-85; 87-87; 143-214.2; 143-215.3.

15A NCAC 2C .0103 REGISTRATION

(a) Well Driller Registration:

- (1) Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in the state shall register annually with the ~~department~~ Department.

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- (2) Registration shall be accomplished, during the period from January 1 to January 31 of each year, by completing and submitting to the department a registration application form provided by the department for this purpose.
- (3) A non-refundable processing fee, in the form of a check or money order made payable to N.C. Department of ~~Environment, Health, Environment~~ and Natural Resources, shall be submitted with each registration application form. Fees, for the year in which the registration will be valid, are as follows:
- (A) For renewal of registration by any person, firm or corporation having registered at any time during the five calendar years prior to the date of application:
- fifty dollars (\$50.00) for applications postmarked prior to February 1; and
 - sixty dollars (\$60.00) for application postmarked after January 31.
- (B) For registration by any person, firm or corporation that did not register at any time during the five calendar years prior to the date of application:
- fifty dollars (\$50.00) for applications postmarked prior to February 1; or
 - for each succeeding calendar month after January, the fee shall be reduced by three dollars (\$3.00) from that due in the proceeding month. As examples, the fee for applications postmarked February 1 through 29 would be forty-seven dollars (\$47.00), while the fee for applications postmarked November 1 through 30 would be twenty dollars (\$20.00).
- (4) An application is incomplete until the required processing fee has been received. Incorrect or incomplete applications may be returned to the applicant.
- (5) Upon receipt of a properly completed application form, the applicant shall be issued a certificate of registration.
- (6) Registration required under this Paragraph or this Rule shall be repealed effective January 1, 2000.
- (b) Pump Installer Registration:
- All persons, firms, or corporations engaged in the business of installing or repairing pumps or other equipment in wells shall register bi-annually with the ~~department.~~ Department.
 - Registration shall be accomplished, during the period from April 1 to April 30 of every odd-numbered year, by completing and submitting to the department a registration form provided by the department for this purpose.
 - Upon receipt of a properly completed application form, the applicant will be issued a certificate of registration.
- (a) It is the finding of the Commission that the entire geographical area of the state is vulnerable to groundwater pollution from improperly located, constructed, operated, altered, or abandoned non-water supply wells and water supply wells not constructed in accordance with the standards set forth in Rule 15A NCAC 2C.0107 of this Section. Therefore, in order to insure reasonable protection of the groundwater resources, prior permission from the Division must be obtained for the construction of the types of wells enumerated in Paragraph (b) of this Rule.
- (b) No person shall locate or construct any of the following wells until a permit has been issued by the Director:
- any water-well or well system with a design capacity of 100,000 gallons per day (gpd) or greater;
 - any well added to an existing system where the total design capacity of such existing well system and added well will equal or exceed 100,000 gpd;
 - any monitoring well, constructed to assess the impact of an activity not permitted by the state, when installed on property other than that on which the unpermitted activity took place;
 - any recovery well;
 - ~~(5) any well intended for the recovery of minerals or ores;~~
 - ~~(6) any oil or gas exploration or recovery well;~~
 - ~~(7)(5)~~ any well for recharge or injection purposes;
 - ~~(8)(6)~~ any well with a design deviation from the standards specified under the rules of this ~~Subchapter.~~ Subchapter; and
 - (7) any monitor well installed in accordance with a permit issued pursuant to G.S. 143-215.1.
- (c) The Director may delegate, through a Memorandum of Agreement, to another governmental agency, the authority to permit wells that are an integral part of a facility requiring a permit from the agency. Provided, however, that the permittee comply with all provisions of this Subchapter, including construction standards and the reporting requirements as specified in Rule 15A NCAC 2C .0114. In the absence of such agreement, all wells specified in Paragraph (b) of this Rule require a well construction permit in addition to any other permits.
- (d) An application for a permit shall be submitted by the owner or his agent. In the event that the permit applicant is not the owner of the property on which the well or well system is to be constructed, the permit application must contain written approval from the property owner and a statement that the applicant assumes total responsibility for ensuring that the well(s) will be located, constructed, maintained and abandoned in accordance with the requirements of this Subchapter.
- (e) The application shall be submitted ~~in duplicate~~ to the Division, on forms furnished by the Division, and shall include the following:
- For all wells:
 - the owner's name (facility name);
 - the owner's mailing address (facility address);
 - description of the well type and activity requiring a permit;
 - facility location (map);

Authority G.S. 87-87; 143-215.3(a)(1a); 143-355(e).

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- (E) a map of the facility and general site area, to scale, showing the locations of:
- all property boundaries, at least one of which is referenced to a minimum of two landmarks such as identified roads, intersections, streams or lakes within 500 feet of proposed well or well system;
 - all existing wells, identified by type of use, within 500 feet of proposed well or well system;
 - the proposed well or well system;
 - any test borings within 500 feet of proposed well or well system; and
 - all sources of known or potential groundwater contamination (such as septic tank systems; pesticide, chemical or fuel storage areas; animal feedlots; landfills or other waste disposal areas) within 500 feet of the proposed well site;
- (F) the well drilling contractor's name and state registration or certification number, if known;
- (G) construction diagram of the proposed well(s) including specifications describing all materials to be used, methods of construction and means for assuring the integrity and quality of the finished well(s).
- (2) For water supply wells or well systems with a designed capacity of 100,000 gpd or greater the application shall include, in addition to the information required in Subparagraph (e)(1) of this Rule:
- the number, yield and location of existing wells in the system;
 - the design capacity of the proposed well(s); and
 - any other information that the Division may reasonably deem necessary.
- (3) For those monitoring wells with a design deviation from the specifications of Rule 15A NCAC 2C .0108 of this Section, in addition to the information required in Subparagraph (e)(1) of this Rule:
- a description of the subsurface conditions sufficient to evaluate the site. Data from test borings, wells pumping tests, etc., may be required as necessary;
 - a description of the quantity, character and origin of the contamination;
 - justification for the necessity of the design deviation; and
 - any other information that the Division may reasonably deem necessary.
- (4) For those recovery wells with a design deviation from the specifications in Rule 15A NCAC 2C .0108 of this Section, in addition to the information required in Subparagraph (e)(1) and Parts (e)(3)(A), (B) and (C) of this Rule, the application shall describe the disposition of any fluids recovered if the disposal of those fluids will have an impact on any existing wells other than those installed for the express purpose of measuring the effectiveness of the recovery well(s).
- (f) In the event of an emergency, monitoring wells or recovery wells may be constructed after verbal approval is provided by the Director or his delegate. After-the-fact applications shall be submitted by the driller or owner within ten days after construction begins. The application shall include construction details of the monitoring well(s) or recovery ~~well(s)~~ well(s) and include the name of the person who gave verbal approval and the time and date that approval was given.
- (g) It shall be the responsibility of the well owner or his agent to see that a permit is secured prior to the beginning of construction of any well for which a permit is required under the rules of this Subchapter.

Authority G.S. 87-87; 143-215.1.

15A NCAC 2C .0107 STANDARDS OF CONSTRUCTION: WATER-SUPPLY WELLS

(a) Location.

- The well shall not be located in an area generally subject to flooding. Areas which have a propensity for flooding include those with concave slope, alluvial or colluvial soils, gullies, depressions, and drainage ways.
- The minimum horizontal separation between a well, intended for a single-family residence or other non-public water system, and potential sources of groundwater ~~contamination~~ contamination, which exists at the time the well is constructed, shall be as follows unless otherwise specified:

(A) Septic tank and drainfield	100 ft.
(B) Other subsurface ground absorption waste disposal system	100 ft.
(C) Industrial or municipal sludge-spreading or wastewater-irrigation sites	100 ft.
(D) Water-tight sewage or liquid-waste collection or transfer facility	.50 ft.
(E) Other sewage and liquid-waste collection or transfer facility	100 ft.
(F) Cesspools and privies	100 ft.
(G) Animal feedlots or manure piles	100 ft.
(H) Fertilizer, pesticide, herbicide or other chemical storage areas	100 ft.
(I) Non-hazardous waste storage, treatment or disposal lagoons	100 ft.
(J) Sanitary landfills	500 ft.
(K) Other non-hazardous solid waste landfills <u>landfills, such as Land Clearing and Inert Debris (LCID) landfills</u>	100 ft.
(L) Animal barns	100 ft.

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- (M) ~~Building foundations~~ foundations, excluding the foundation of a structure housing the well head .50 ft. ~~25 ft.~~
- (N) Surface water bodies which act as sources of groundwater recharge, such as ponds, lakes and reservoirs 50 ft.
- (O) All other surface water bodies, such as brooks, creeks, streams, rivers, sounds, bays and tidal estuaries 25 ft.
- ~~(P)~~(P) Chemical or petroleum fuel underground storage tanks regulated under 15A NCAC 2N:
 (i) with secondary containment 50 ft.
 (ii) without secondary containment 100 ft.
- (Q) Above ground or underground storage tanks of eleven-hundred (1,100) gallons or less which contain petroleum fuels used for heating equipment, boilers or furnaces 50 ft.
- ~~(R)~~(R) All other potential sources of groundwater contamination 100 ft. ~~50 ft.~~
- (3) For a well serving a single-family dwelling where lot size or other fixed conditions preclude the separation distances specified in Subparagraph (a)(2) of this Rule, the required separation distances shall be the maximum possible but shall in no case be less than the following:
- (A) Septic tank and drainfield 50 ft.
- (B) Water-tight sewage or liquid-waste collection or transfer facility 25 ft.
- ~~(C) Building foundations~~ 25 ft.
- ~~(C)~~ Animal barns 50 ft.
- ~~(C)(D)~~ Cesspool or privies 50 ft.
- (4) A well or well system, serving more than one single-family dwelling but with a designed capacity of less than 100,000 gpd, must meet the separation requirements specified in Subparagraph (a) (2) of this Rule;
- (5) A well or well system with a designed capacity of 100,000 gpd or greater must be located a sufficient distance from known or anticipated sources of groundwater contamination so as to prevent a violation of applicable groundwater quality standards, resulting from the movement of contaminants, in response to the operation of the well or well system at the proposed rate and schedule of pumping;
- (6) Actual separation distances must conform with the most stringent of applicable federal, state or local requirements; and
- (7) Wells drilled for public water supply systems regulated by the Division of Environmental Health shall meet the siting and all other requirements of that Division.
- (b) Source of water.
- (1) The source of water for any well intended for domestic use shall not be from a water bearing zone or aquifer that is known to be contaminated;
- (2) In designated areas described in ~~Rule 15A NCAC 2C~~ .0117 of this Section, the source shall be greater than 35 feet;
- (3) In designated areas described in ~~Rule 15A NCAC 2C~~ .0116 of this Section, the source may be less than 20 feet, but in no case less than 10 feet; and
- (4) In all other areas the source shall be at least 20 feet below land surface.
- (c) Drilling Fluids and Additives. Drilling Fluids and Additives shall not contain organic or toxic substances or include water obtained from surface water bodies and may be comprised only of:
- (1) the formational material encountered during drilling; or
- (2) materials manufactured specifically for the purpose of borehole conditioning or water well construction.
- (d) Casing.
- (1) If steel casing is used, then:
- (A) The casing shall be new, seamless or electric -resistance welded galvanized or black steel pipe. Galvanizing shall be done in accordance with requirements of ASTM A -120.
- (B) The casing, threads and couplings shall meet or exceed the specifications of ASTM A-53, A-120 or A589.
- (C) The minimum wall thickness for a given diameter shall equal or exceed that specified in Table 1.

TABLE 1: MINIMUM WALL THICKNESS FOR STEEL CASING:

Nominal Diameter (in.)	Wall Thickness (in.)
For 3-1/2" or smaller pipe, schedule 40 is required	
4	0.142
5	0.156

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5-1/2	0.164
6	0.185
8	0.250
10	0.279
12	0.330
14 and larger	0.375

- (D) Stainless steel casing, threads, and couplings shall conform in specifications to the general requirements in ASTM A-530 and also shall conform to the specific requirements in the ASTM standard that best describes the chemical makeup of the stainless steel casing that is intended for use in the construction of the well;
- (E) Stainless steel casing shall have a minimum wall thickness that is equivalent to standard schedule number 10S;
- (F) Steel casing shall be equipped with a drive shoe if the casing is driven in a consolidated rock ~~formation, formation and for any other wells if the casing is driven in a consolidated rock formation.~~ The drive shoe shall be made of forged, high carbon, tempered seamless steel and shall have a beveled, hardened cutting edge. A drive shoe will not be required for wells in which ~~the a cement or concrete~~ grout surrounds and extends the entire length of the casing.
- (2) If Thermoplastic Casing is used, then:
- (A) the casing shall be new;
- (B) the casing and joints shall meet or exceed all the specifications of ASTM F-480-81, except that the outside diameters will not be restricted to those listed in F-480;
- (C) the maximum depth of installation for a given SDR or Schedule number shall not exceed that listed in ~~Table 2;~~ Table 2 unless the well drilling contractor can provide the Division, upon request, with written documentation from the manufacturer of the casing stating that the casing may safely be used at the depth at which it is to be installed.

TABLE 2: Maximum allowable depths (in feet) of Installation of Thermoplastic Water Well Casing

Nominal Diameter (in inches)												
Schedule Number	2	2.5	3	3.5	4	5	6	8	10	12	14	16
Schedule 40-	485	635	415	315	253	180	130	85	65	65	50	50
Schedule 80-	1460	1685	1170	920	755	550	495	340	290	270	265	255
SDR Number	All Diameters (in inches)											
SDR 41	20											
SDR 32.5	50											
SDR 27.5	100											
SDR 26	95											
SDR 21	185											
SDR 17	355											
SDR 13.5	735											

- (D) The top of the casing shall be terminated by the drilling contractor at least twelve inches above land surface.
- (E) For wells in which the casing will extend into consolidated rock, ~~it is recommended that thermoplastic casing shall be equipped with a section of steel casing at least three feet in length, or other device approved by the Director, a coupling, or other device approved by the manufacturer of the casing, that is sufficient to protect the physical integrity of the thermoplastic casing during the processes of seating and grouting the casing and subsequent drilling operations.~~
- (F) Thermoplastic casing shall not be driven into consolidated rock.
- (3) In constructing any well, all water-bearing zones that are known to contain polluted, saline, or other non-potable water shall be adequately cased and cemented off so that pollution of the overlying and underlying groundwater zones will not occur.
- (4) Every well shall be cased so that the bottom of the casing extends to a minimum depth as follows:
- (A) Wells located within the area described in ~~Rule 15A NCAC 2C .0117~~ of this Section shall be cased from land surface to a depth of at least 35 feet.
- (B) Wells located within the area described in ~~Rule 15A NCAC 2C .0116~~ of this Section shall be cased from land surface to a depth of at least 10 feet.
- (C) Wells located in any other area shall be cased from land surface to a depth of at least 20 feet.
- (5) The top of the casing shall be terminated by the drilling contractor at least 12 inches above land surface.
- (6) The casing in wells constructed to obtain water from a consolidated rock formation shall be:
- (A) adequate to prevent any formational material from entering the well in excess of the levels specified in Paragraph (h) of this Rule; and
- (B) ~~Firmly~~ firmly seated at least ~~one foot five feet~~ into the rock.
- (7) The casing in wells constructed to obtain water from an unconsolidated rock formation (such as gravel, sand or shells) shall extend at least one foot into the top of the water-bearing formation.
- (8) Upon completion of the well, the well casing shall be sufficiently free of obstacles including formation material as necessary to allow for the installation and proper operation of pumps and associated equipment.
- (e) Grouting.
- (1) Casing shall be grouted to a minimum depth of twenty feet below land surface except that:
- (A) In those areas designated by the Director to meet the criteria of ~~Rule 15A NCAC 2C .0116~~ of this Section, grout shall extend to a depth of two feet above the screen or, for open end wells, to the bottom of the casing, but in no case less than 10 feet.
- (B) In those areas designated in ~~Rule 15A NCAC 2C .0117~~ of this Section, grout shall extend to a minimum of 35 feet below land surface.
- (C) The casing shall be grouted as necessary to seal off ~~off, from the producing zone(s), all aquifers or zones with water of a poorer quality containing organic or other contaminants of such type and quantity as to render water from those aquifers or zones unsafe or harmful or unsuitable for human consumption and general use, and quantity than that of the producing zone(s).~~
- (2) For large diameter ~~wells, wells, commonly referred to as "bored" wells,~~ cased with concrete pipe or ceramic tile, the following shall apply:
- (A) The diameter of the bore hole shall be at least six inches larger than the outside diameter of the casing;
- (B) The annular space around the casing shall be filled with a cement-type grout to a depth of at least 20 feet, excepting those designated areas specified in ~~Rules 15A NCAC 2C .0116 and 15A NCAC 2C .0117~~ of this Section. The grout shall be placed in accordance with the requirements of this Paragraph.
- (3) Bentonite grout may be only used in that portion of the borehole that is ~~below the water table throughout the year at least three feet below land surface. That portion of the borehole above the bentonite grout, up to land surface, shall be filled with a concrete or cement-type grout.~~
- (4) Grout shall be placed around the casing by one of the following methods:
- (A) Pressure. Grout shall be pumped or forced under pressure through the bottom of the casing until it fills the annular area around the casing and overflows at the surface.
- (B) Pumping. Grout shall be pumped into place through a hose or pipe extended to the bottom of the annular space which can be raised as the grout is applied. The grout hose or pipe should remain submerged in grout during the entire application.
- (C) Other. Grout may be emplaced in the annular space by gravity flow in such a way to insure complete filling of the space to a maximum depth of 20 feet below land surface.
- (5) If an outer casing is installed, it shall be grouted by either the pumping or pressure method.
- (6) The liquid and solid components of All all grout mixtures shall be thoroughly blended prepared prior to ~~emplacement, emplacement below land surface,~~
- (7) The well shall be grouted within five working days after the casing is set.

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- (8) No additives which will accelerate the process of hydration shall be used in grout for thermoplastic well casing.
- (9) Where grouting is required by the provisions of this Section, the grout shall extend outward from the casing wall to a minimum thickness equal to either one-third of the diameter of the outside dimension of the casing or two inches, whichever is greater; excepting, however, that large diameter bored wells shall meet the requirements of Subparagraph (e)(2) of this Rule.
- (f) Well Screens.
- (1) The well, if constructed to obtain water from an unconsolidated rock formation, shall be equipped with a screen that will adequately prevent the entrance of formation material into the well after the well has been developed and completed by the well contractor.
- (2) The well screen be of a design to permit the optimum development of the aquifer with minimum head loss consistent with the intended use of the well. The openings shall be designed to prevent clogging and shall be free of rough edges, irregularities or other defects that may accelerate or contribute to corrosion or clogging.
- (3) Multi-screen wells shall not connect aquifers or zones which have differences in water quality which would result in contamination of any aquifer or zone.
- (g) Gravel-and Sand-Packed Wells.
- (1) In constructing a gravel-or sand-packed well:
- (A) The packing material shall be composed of quartz, granite, or similar mineral or rock material and shall be clean, of uniform size, water-washed and free from clay, silt, or other deleterious material.
- (B) The size of the packing material shall be determined from a grain size analysis of the formation material and shall be of a size sufficient to prohibit the entrance of formation material into the well in concentrations above those permitted by Paragraph (h) of this Rule.
- (C) The packing material shall be placed in the annular space around the screens and casing by a fluid circulation method, preferably through a conductor pipe to insure accurate placement and avoid bridging.
- (D) The packing material shall be adequately disinfected.
- ~~(E) For gravel-or sand-packed wells in which an outer casing, that is grouted its entire length, does not extend to the top of the producing zone, a grout neat cement plug of at least 10 feet in vertical thickness shall be placed in the annular area between the inner casing and formation opposite the first natural clay formation above the top screen. The remaining space shall be filled with grout or clay except the upper 20 feet, which shall be filled with grout.~~
- ~~(F)(E)~~ Centering guides must be installed within five feet of the top packing material to ensure even distribution of the packing material in the borehole.
- (2) The packing material shall not connect aquifers or zones which have differences in water quality that would result in deterioration of the water quality in any aquifer or zone.
- (h) Well Development.
- (1) All water supply wells shall be properly developed by the well driller;
- (2) Development shall include removal of formation materials, mud, drilling fluids and additives such that the water contains no more than:
- (A) five milliliters per liter of settleable solids; and
- (B) ten NTUs of turbidity as suspended solids.
- (3) Development shall not require efforts to reduce or eliminate the presence of dissolved constituent which are indigenous to the ground water quality in that area. Typical dissolved constituents include, but are not limited to, aluminum, calcium, chloride, iron, magnesium, manganese, sodium and sulphate.
- (i) Well Head Completion.
- (1) Access Port. Every water supply well and such other wells as may be specified by the Commission shall be equipped with a usable access port or air line. The access port shall be at least one half inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.
- (2) Well Contractor Identification Plate.
- (A) An identification plate, showing the drilling contractor and registration number and the information specified in Part (i)(2)(E) of this Rule, shall be installed on the well within 72 hours after completion of the drilling.
- (B) The identification plate shall be constructed of a durable weatherproof, rustproof metal, or equivalent material approved by the Director.
- (C) The identification plate shall be permanently securely attached to either the aboveground portion of the well casing, surface grout pad well casing or enclosure floor around the casing where it is readily visible.
- (D) The identification plate shall not be removed from the well casing or enclosure floor by any person.
- (E) The identification plate shall be stamped or otherwise imprinted with a permanent marking permanent, legible markings to show the:
- (i) total depth of well;
- (ii) casing depth (ft.) and inside diameter (in.);
- (iii) screened intervals of screened wells;
- (iv) packing interval of gravel-or sand-packed wells;
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- (v) yield, in gallons per minute (gpm), or specific capacity in gallons per minute per foot of drawdown (gpm/ft.-dd);
- (vi) static water level and date measured; and
- (vii) date well completed.
- (3) Pump Installer Identification Plate.
 - (A) An identification plate, ~~displaying~~ showing the name and registration number of the pump installation contractor, and the information specified in Part (i)(3)(D) of this Rule, shall be ~~permanently~~ securely attached to either the aboveground portion of the well casing, surface grout pad or the enclosure floor if present, within 72 hours after completion of the pump installation;
 - (B) The identification plate shall be constructed of a durable waterproof, rustproof metal, or equivalent material approved by the Director;
 - (C) The identification plate shall not be removed ~~from the well casing or enclosure floor~~ by any person; and
 - (D) The identification plate shall be stamped or otherwise imprinted with ~~a permanent marking~~ permanent, legible, markings to show the:
 - (i) date the pump was installed;
 - (ii) the depth of the pump intake; and
 - (iii) the horsepower rating of the pump.
- (4) Valved flow. Every artesian well that flows under natural artesian pressure shall be equipped with a valve so that the flow can be completely stopped. Well owners shall be responsible for the installation, operation and maintenance of the valve.
- (5) Pitless adapters or pitless units shall be allowed as a method of well head completion under the following conditions:
 - (A) The pitless device shall be manufactured specifically for the purpose of water well construction;
 - (B) Design, installation and performance standards shall be those specified in PAS-1 (Pitless Adapter Standard No. 1) as adopted by the Water System Council's Pitless Adapter Division;
 - (C) The pitless device will be compatible with the well casing;
 - (D) The top of the pitless device shall extend at least 8 eight inches above land surface;
 - (E) The pitless device shall have an access port.
- (6) All openings for piping, wiring, and vents shall enter into the well at least ~~eight~~ 12 inches above land surface, except where pitless adapters or pitless units are used, and shall be adequately sealed to preclude the entrance of contaminants into the well.

SUPPLY

- (a) No well shall be located, constructed, operated, or repaired in any manner that may adversely impact the quality of groundwater. ~~Any test hole or boring shall be permanently abandoned by the driller in accordance with Rule .0113 of this Section within two days after drilling or two days after testing is complete, whichever is less restrictive; except in the case that a test well is being converted to a production well, in which case conversion shall be completed within 30 days.~~
- (b) Injection wells shall conform to the standards set forth in Section .0200 of this Subchapter.
- (c) Monitoring wells and recovery wells shall be located, designed, constructed, operated and abandoned with materials and by methods which are compatible with the chemical and physical properties of the contaminants involved, specific site conditions and specific subsurface conditions. Specific construction standards will be itemized in the construction permit, if such a permit is required, but the following general requirements will apply:
 - ~~(1) For wells from which samples of groundwater or other liquids will be obtained for the purpose of examination for testing, or for the recovery of polluted groundwater:~~
 - ~~(A)(1)~~ The borehole shall not penetrate to a depth greater than the depth to be monitored or the depth from which contaminants are to be recovered.
 - ~~(B)(2)~~ The well shall not hydraulically ~~connect~~; connect:
 - (A) separate ~~aquifers~~ aquifers; or
 - (B) those portions of a single aquifer where known or suspected contamination would occur in separate and definable layers within the aquifer.
 - ~~(C)(3)~~ The well construction materials shall be compatible with the depth of the well and the contaminants to be monitored or recovered.
 - ~~(D)(4)~~ The well shall be constructed in such a manner that water or contaminants from the land surface cannot migrate along the borehole annulus into ~~the~~ any packing material or well screen area.
 - ~~(E)(5)~~ Packing material placed around the screen shall extend ~~to a depth~~ at least one foot above the top of the screen. Unless the depth of the screen necessitates a thinner seal; a ~~A~~ one foot thick seal, comprised of bentonitic clay or other material approved by the Director, shall be emplaced directly above and in contact with the packing material.
 - ~~(F)(6)~~ Grout shall be placed in the annular space between the outermost casing and the borehole wall from the land surface to the top of the bentonite clay seal above any well screen or to the bottom of the casing for open end wells. To provide stability for the well casing, the uppermost three feet of grout below land surface must be a concrete or cement-type grout.
 - ~~(G)(7)~~ All wells shall be ~~secured~~ secured, with a locking well cap, to reasonably insure against unauthorized access and use.
 - ~~(H)(8)~~ All wells shall be afforded reasonable protection against damage during construction and use.

Authority G.S. 87-87; 87-88.

15A NCAC 2C .0108 STANDARDS OF CONSTRUCTION: WELLS OTHER THAN WATER

~~(D)(9)~~ Any wells ~~which that are would~~ flowing flow under natural artesian wells conditions shall be valved so that the flow can be regulated.

~~(D)(10)~~ The well casing shall be terminated no less than 12 inches above land surface datum unless both of the following conditions are met:

- ~~(i)(A)~~ site-specific conditions directly related to business activities, such as vehicle traffic, would endanger the physical integrity of the well; and
- ~~(ii)(B)~~ the well head is completed in such a manner so as to preclude surficial contaminants from entering the well.

~~(K)(11)~~ Each well shall have permanently securely affixed an identification plate constructed of a durable material and shall contain the following information:

- ~~(i)(A)~~ drilling ~~contractor~~ contractor, or pump installation contractor, name and registration number;
- ~~(ii)(B)~~ date well completed;
- ~~(iii)(C)~~ total depth of well;
- ~~(iv)(D)~~ a warning that the well is not for water supply and that the groundwater may contain hazardous materials; and
- ~~(v)(E)~~ depth(s) to the top(s) and bottom(s) of the screen(s).

~~(L)(12)~~ Each well shall be developed such that the level of turbidity or settleable solids does not preclude accurate chemical analyses of any fluid samples collected.

~~(2)~~ For any permanent well which will only be used to measure groundwater levels, the following general requirements will apply:

- ~~(A)~~ The well shall not hydraulically connect separate aquifers;
- ~~(B)~~ The well shall be constructed in such a manner that water or contaminants from the land surface cannot migrate along the borehole channel into the any packing material or well screen areas.;
- ~~(C)~~ Grout shall be placed in the annular space between the casing and the borehole from land surface to the clay seal above the packing material or to the bottom of the casing for open end wells;
- ~~(D)~~ Unless the wells will not be left unattended, such as during a well capacity or aquifer capacity test, all wells shall be secured to reasonably insure against unauthorized access and use;
- ~~(E)~~ All wells shall be afforded reasonable protection against damage during construction and use;
- ~~(F)~~ Any well which is a flowing artesian well shall be valved such that flow can be regulated;
- ~~(G)~~ The well casing shall be terminated no less than 12 inches above land surface datum unless both of the following conditions are met:
 - ~~(i)~~ site specific conditions related to business activities, such as vehicle

~~traffic, would endanger the physical integrity of the well; and~~

- ~~(ii) the well head is completed in such a manner so as to preclude surficial contaminants from entering the well.~~

~~(H)~~ an identification plate constructed of a rustproof, durable material shall be permanently affixed to the well and shall contain the following information:

- ~~(i) drilling contractor name and registration number;~~
- ~~(ii) date well completed;~~
- ~~(iii) total depth of well; and~~
- ~~(iv) a warning that the well is not a water supply well and that the groundwater may contain contamination.~~

(d) Wells constructed for the purpose of monitoring or testing for the presence of liquids associated with tanks regulated under 15A NCAC 2N (Criteria and Standards Applicable to Underground Storage Tanks) shall be constructed in accordance with 15A NCAC 2N .0504.

(e) Wells constructed for the purpose of monitoring for the presence of vapors associated with tanks regulated under 15A NCAC 2N shall:

- (1) be constructed in such a manner as to prevent the entrance of surficial contaminants or water into or alongside the well casing; and
- (2) be provided with a lockable cap in order to reasonably insure against unauthorized access and use.

(f) Temporary wells and all other non-water supply wells shall be constructed in such a manner as to preclude the vertical migration of contaminants within and along the borehole channel.

(g) For monitoring, sand-or gravel packed wells, centering guides must be evenly distributed in the borehole.

Authority G.S. 87-87; 87-88.

15A NCAC 2C .0110 WELL TESTS FOR YIELD

(a) Every water supply well shall be tested for capacity by a method and for a period of time ~~acceptable to the department.~~ as specified in this Rule.

(b) The permittee may be required as a permit condition to test any well for capacity by a method stipulated in the permit.

(c) Standard methods for testing domestic well capacities include:

- (1) Pump Method
 - (A) select a permanent measuring point, such as the top of the casing;
 - (B) measure and record the static water level below or above the measuring point prior to starting the pump;
 - (C) measure and record the discharge rate at intervals of 10 minutes or less;
 - (D) measure and record water levels using a steel or electric tape at intervals of 10 minutes or less;

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- (E) continue the test for a period of at least one hour; and
 - (F) make measurements within an accuracy of plus or minus ~~0.25 of an~~ one inch.
- (2) Bailer Method
- (A) select a permanent measuring point, such as the top of the casing;
 - (B) measure and record the static water level below or above the measuring point prior to starting the bailing procedure;
 - (C) bail the water out of the well as rapidly as possible for a period of at least one hour; determine and record the bailing rate in gallons per minute at the end of the bailing period; and
 - (D) measure and record the water level immediately after stopping bailing process.
- (3) Air Rotary Drill Method
- (A) measure and record the amount of water being injected into the well during drilling operations;
 - (B) measure and record the discharge rate in gallons per minute at intervals of one hour or less during drilling operations;
 - (C) after completion of the drilling, continue to blow the water out of the well for at least 30 minutes and measure and record the discharge rate in gallons per minute at intervals of 10 minutes or less during the period; and
 - (D) measure and record the water level immediately after discharge ceases.
- (4) Air Lift Method
- (A) Measurements shall be made through a pipe placed in the well;
 - (B) The pipe shall have a minimum inside diameter of at least five-tenths of an inch and shall extend from top of the well head to a point inside the well that is below the bottom of the air line;
 - (C) Measure and record the static water level prior to starting the air compressor;
 - (D) Measure and record the discharge rate at intervals of 10 minutes or less;
 - (E) Measure and record the pumping level using a steel or electric tape at intervals of 10 minutes or less; and
 - (F) Continue the test for a period of at least one hour.
- (d) Public, Industrial and Irrigation Wells. Every public, industrial and irrigation well upon completion, shall be tested for capacity by the drilling contractor (except when the owner specifies another agent) by the following or equivalent method:
- (1) The water level in the well to be pumped and any observation wells shall be measured and recorded prior to starting the test.
 - (2) The well shall be tested by a pump of sufficient size and lift capacity to satisfactorily test the yield of the well, consistent with the well diameter and purpose.
 - (3) The pump shall be equipped with sufficient throttling devices to reduce the discharge rate to approximately 25 percent of the maximum capacity of the pump.
 - (4) The test shall be conducted for a period of at least 24 hours without interruption and shall be continued for a period of at least four hours after the pumping water level stabilizes (ceases to decline). When the total water requirements for wells other than public, community or municipal supply wells are less than 100,000 gpd, the well shall be tested for a period and in a manner to satisfactorily show the capacity of the well, or that the capacity of the well is sufficient to meet the intended purpose.
 - (5) The pump discharge shall be set at a constant rate or rates that can be maintained throughout the testing period. If the well is tested at two or more pumping rates (a step-drawdown test), the pumping water level shall be stabilized for a period of at least four hours for each pumping rate.
 - (6) The pump discharge rate shall be measured by an orifice meter, flowmeter, weir, or equivalent metering device. The metering device shall have an accuracy within plus or minus five percent.
 - (7) The discharge rate of the pump and time shall be measured and recorded at intervals of 10 minutes or less during the first two hours of the pumping period for each pumping rate. If the pumping rate is relatively constant after the first two hours of pumping, discharge measurements and recording may be made at longer time intervals but not to exceed one hour.
 - (8) The water level in each well and time shall be measured and recorded at intervals of five minutes or less during the first hour of pumping and at intervals of 10 minutes or less during the second hour of pumping. After the second hour of pumping, the water level in each well shall be measured at such intervals that the lowering of the pumping water level does not exceed ~~0.25 of an inch~~ three inches between measurements.
 - (9) A reference point for water level measurements (preferably the top of the casing) shall be selected and recorded for the pumping well and each observation well to be measured during the test. All water level measurements shall be made from the selected reference points.
 - (10) All water level measurements shall be made with a steel or electric tape or equivalent measuring device.
 - (11) All water level measurements shall be made within an accuracy of plus or minus ~~0.25 of a foot (three inches)~~ one inch.
 - (12) After the completion of the pumping period, measurements of the water level recovery rate, in the pumped well, shall be made for a period of at least two hours in the same manner as the drawdown.

Authority G.S. 87-87; 87-88.

**15A NCAC 2C .0111 DISINFECTION OF WATER
SUPPLY WELLS**

All water supply wells shall be disinfected upon completion of construction, maintenance, repairs, pump installation and testing as follows:

- (1) Chlorination.
 - (a) Chlorine shall be placed in the well in sufficient quantities to produce a chlorine residual of at least 100 parts per million (ppm) in the well. A chlorine solution may be prepared by dissolving high test calcium hypochlorite (trade names include HTH, Chlor-Tabs, etc.) in water. About 0.12 ~~lbs. pounds or two ounces~~ (two ounces) of hypochlorite containing 70 percent available chlorine is needed per 100 gallons of water for 100 ppm chlorine residual. As an example, a well having a diameter of six inches, has a volume of about one and five-tenths gallons per foot. If the well has 200 feet of water, the minimum amount of hypochlorite required would be 0.36 lbs. (1.5 x 200 feet = 300 gallons, 0.12 lbs. per 100 gallons, 0.12 x 3 = 0.36 lbs.)
 - (b) The chlorine shall be placed in the well by one of the following or equivalent methods:
 - (i) Chlorine tablets may be dropped in the top of the well and allowed to settle to the bottom.
 - (ii) Chlorine solutions shall be placed in the bottom of the well by using a bailer or by pouring the solution through the drill rod, hose, or pipe placed in the bottom of the well. The solution shall be flushed out of the drill rod, hose, or pipe by using water or air.
 - (c) Agitate the water in the well to insure thorough dispersion of the chlorine.
 - (d) The well casing, pump column and any other equipment above the water level in the well shall be thoroughly rinsed with the chlorine solution as a part of the disinfecting process.
 - (e) The chlorine solution shall stand in the well for a period of at least 24 hours.
 - (f) The well shall be pumped until the system is clear of the chlorine before the system is placed in use.
- (2) Other materials and methods of disinfection, at least as effective as those in Item (1) of this Rule, may be used upon prior approval by the Director.

Authority G.S. 87-87; 87-88.

**15A NCAC 2C .0112 WELL MAINTENANCE:
REPAIR: GROUNDWATER RESOURCES**

- (a) Every well shall be maintained by the owner in a condition whereby it will conserve and protect the groundwater resources, and whereby it will not be a source or channel of contamination or pollution to the water supply or any aquifer.

- (b) All materials used in the maintenance, replacement, or repair of any well shall meet the requirements for new installation.
- (c) Broken, punctured or otherwise defective or unserviceable casing, screens, fixtures, seals, or any part of the well head shall be repaired or replaced, or the well shall be properly abandoned.
- (d) National Science Foundation (NSF) approved PVC pipe rated at 160 PSI may be used for liner casing. The annular space around the liner casing shall be at least five-eighths inches and shall be completely filled with neat-cement grout.

Authority G.S. 87-87; 87-88.

15A NCAC 2C .0113 ABANDONMENT OF WELLS

- (a) Any well which has been ~~abandoned temporarily~~ abandoned, ~~either temporarily or permanently~~, shall be abandoned in accordance with one of the following procedures:

~~(1) Procedures for temporary abandonment of wells:~~

- ~~(A)(1)~~ Upon temporary removal from service or prior to being put into service, the well shall be sealed with a water-tight cap or seal compatible with casing and installed so that it cannot be removed easily by hand.

- ~~(B)(2)~~ The well shall be maintained whereby it is not a source or channel or contamination during temporary abandonment.

- ~~(C)(3)~~ Every temporarily abandoned well shall be protected with a casing.

- (b) Any well which has been abandoned permanently shall be abandoned in accordance with the following procedures:

~~(2)(1)~~ Procedures for permanent abandonment of wells: wells, other than bored and hand dug wells:

- (A) All casing and screen materials may be removed prior to initiation of abandonment procedures if such removal will not cause or contribute to contamination of the groundwaters. Any casing not grouted in accordance with ~~Rule .0107~~ Paragraph (d) 15A NCAC 2C. 0107(d) of this Section shall be removed or properly grouted.

- (B) The entire depth of the well shall be sounded before it is sealed to ensure freedom from obstructions that may interfere with sealing operations.

- ~~(C) The well shall be thoroughly disinfected prior to sealing. Using a 70 % hypochlorite solution (such as HTH), disinfect the well in accordance with 15A NCAC 2C .0111. Do not use a common commercial household liquid bleach, as this is too weak a solution to ensure proper disinfection.~~

- (D) In the case of gravel-packed wells in which the casing and screens have not been removed, neat-cement, or bentonite grout shall be injected into the well completely filling it from the bottom of the casing to the top.

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~~(F)~~(E) Wells, other than "bored" wells, constructed in unconsolidated formations shall be completely filled with cement grout, or bentonite grout by introducing it through a pipe extending to the bottom of the well which can be raised as the well is filled.

~~(G)~~(F) Wells constructed in consolidated rock formations or that penetrate zones of consolidated rock may be filled with cement grout, bentonite grout, sand, gravel or drill cuttings opposite the zones of consolidated rock. The top of the cement grout, bentonite grout, sand, gravel or cutting fill shall ~~be terminate~~ at least ~~five~~ 10 feet below the top of the consolidated rock or five feet below the bottom of casing. Cement grout or bentonite grout shall be placed beginning 10 feet below the top of the consolidated rock or five feet below the bottom of casing and extend five feet above the top of consolidated rock. The remainder of the well, above the upper zone of consolidated rock, shall be filled with cement grout or bentonite grout up to land surface, only. For any well in which the depth of casing or the depth of the bedrock is not known or cannot be confirmed, then the entire length of the well shall be filled with cement grout or bentonite grout up to land surface.

~~(H)~~(G) ~~Test~~ Temporary wells or monitor wells:

(i) less than 20 feet in depth which do not penetrate the water table shall be abandoned by filling the entire well up to land surface with cement grout, dry clay, bentonite grout, or material excavated during drilling of the well and then compacted in place, in such manner as to prevent the well from being a channel allowing the vertical movement of water or a source of contamination to the groundwater supply.

(ii) ~~Test wells or borings~~ that penetrate the water table shall be abandoned by completely filling with a bentonite or cement-cement-type grout.

(2) For bored wells or hand dug wells, constructed into unconsolidated material.

(A) For wells that do not have standing water in then at any time during the year:

(i) Remove all plumbing or piping entering the well, along with any obstructions in the well;

(ii) Remove as much of the well casing as possible and then fill the entire well up to land surface with cement grout, concrete grout, bentonite grout, dry clay, or material excavated during drilling of the well and then compacted in place.

(B) For wells that do have standing water in them during all or part of the year:

(i) Remove all plumbing or piping into the well, along with any obstructions inside the well;

(ii) Remove as much of the well tile casing as possible, but no less than to a depth of three feet below land surface;

(iii) Remove all soil or other subsurface material present down to the top of the remaining well casing, and extending to a width of at least 12 inches outside of the well casing on all sides;

(iv) Using a 70 % hypochlorite solution (such as HTH), disinfect the well in accordance with 15A NCAC 2C .0111 of this Subchapter. Do not use a common commercial household liquid bleach, as this is too weak a solution to ensure proper disinfection;

(v) Fill the well up to the top of the remaining casing with cement grout, concrete grout, bentonite grout, dry clay, or material excavated during drilling of the well and then compacted in place;

(vi) Pour a one foot thick concrete grout or cement grout plug that fills the entire excavated area above the top of the casing, including the area extending on all sides of the casing out to a width of at least 12 inches on all sides; and

(vii) Complete the abandonment process by filling the remainder of the well above the concrete or cement plug with additional concrete grout, cement grout, or soil.

~~(b)~~(c) Any well which acts as a source or channel of contamination shall be repaired or permanently abandoned within 30 days of receipt of notice from the department.

~~(c)~~(d) The drilling contractor shall permanently abandon any well in which the casing has not been installed or from which the casing has been removed, prior to removing his equipment from the site.

~~(4)~~(e) The owner shall be responsible for permanent abandonment of a well ~~except; except that:~~

(1) ~~As otherwise specified in these Rules; or~~

~~(2)~~(1) The well driller is responsible for If well abandonment if abandonment is required because the driller improperly locates, constructs, repairs or completes the well; well; or

(2) The person who installs, repairs or removes the well pump is responsible for well abandonment if that abandonment is required because of improper well pump installation, repair or removal.

Authority G.S. 87-87; 87-88.

**15A NCAC 2C .0114 DATA AND RECORDS
REQUIRED**

(a) Well Cuttings.

- (1) Samples of formation cuttings shall be collected and furnished to the Division from ~~all wells, any well~~ when such samples are requested by the ~~Division~~. Division prior to completion of the drilling or boring activities.
- (2) Samples or representatives cuttings shall be obtained for depth intervals of 10 feet or less beginning at the land surface. Representative cuttings shall also be collected at depths of each significant change in formation.
- (3) Samples of cuttings shall be placed in containers furnished by the Division and such containers shall be filled, sealed and properly labeled with indelible-type markers, showing the well owner, well number if applicable, and depth interval the sample represents.
- (4) Each set of samples shall be placed in a suitable container(s) showing the location, owner, well number if applicable, driller, depth interval, and date.
- (5) Samples shall be retained by the driller until delivery instructions are received from the Division or for a period of at least 60 days after the well record form (GW-1), indicating said samples are available, has been received by the Division.
- (6) The furnishing of samples to any person or agency other than the Division shall not constitute compliance with the department's request and shall not relieve the driller of his obligation to the department.

(b) Reports.

- (1) Any person completing or abandoning any well shall submit to the Division a record of the construction or abandonment. For public water supply wells, a copy of each completion or abandonment record shall also be submitted to the Health Department responsible for the county in which the well is located. The record shall be on forms provided by the Division and shall include certification that construction or abandonment was completed as required by these Rules, the owner's name and address, well location, diameter, depth, yield, and any other information the Division may reasonably require.
- (2) The certified record of completion or abandonment shall be submitted within a period of thirty days after completion or abandonment.
- (3) The furnishing of records to any person or agency other than the Division shall not constitute compliance with the reporting requirement and shall not relieve the driller of his obligation to the Department.

(a) Wells drilled in areas underlain by metavolcanic rocks identified on the ~~1958~~ 1985 State Geologic Map as bedded argillites of the Carolina Slate Belt shall be cased to a minimum depth of 35 feet. These areas are generally described as follows:

- (1) Anson County generally west of a line beginning at the intersection of the runs of the Pee Dee River and Buffalo Creek, thence generally northeast to SR 1627, thence generally south along SR 1627 to the intersection with SR 1632, thence generally west along SR 1632 to the intersection with US 52, thence generally south along US 52 to the intersection with SR 1418, thence generally southwest along SR 1418 to the intersection of US 74, thence generally west along US 74 to the intersection of SR 1251, thence generally southwest along SR 1251 to the intersection with SR 1240, thence generally southeast along SR 1240 to the intersection with SR 1252, thence generally south along SR 1252 to the intersection with SR 1003, thence generally ~~southeast west~~ along SR 1003 to the ~~intersection with SR 1228, thence generally southwest along SR 1228 to the~~ Union County line;
- (2) Cabarrus County generally ~~west east~~ of a line beginning at the intersection of ~~SR 1121 and the Mecklenburg County line, thence generally northeast along SR 1121 to the intersection with SR 1123, thence generally northeast along SR 1123 to the intersection with SR 1145, thence generally northeast along SR 1145 to the intersection with SR 1143, thence generally east along SR 1143 to the intersection with US 601, thence generally southeast along US 601 to the intersection of SR 1006, thence generally northeast along SR 1006 to the intersection with NC 49, thence generally northeast along NC 49~~ SR 1113 and the Union County line, thence generally northeast along SR 1113 to the intersection with SR 1114, thence generally east along SR 1114 to the Stanly County line, thence generally northeast along the county line to the intersection with SR 1100, thence generally northeast along SR 1100 to the intersection of with SR 2622, thence generally southeast along SR 2622 to the intersection with SR 2617, thence generally northeast along SR 2617 to the intersection with SR 2611, thence generally north along SR 2611 to the intersection with NC 73, thence generally east along NC 73 to the intersection with SR 2453, thence generally northeast along SR 2453 to the intersection with SR 2444, thence generally northeast along SR 2444 to the Rowan County line;
- (3) Davidson County generally east of a line starting at the intersection of the runs of Abbotts Creek and the Yadkin River in High Rock Lake, thence generally north along Abbotts Creek to ~~SR 2294 NC 8 bridge, thence generally northeast along SR 2294 to the intersection of SR 2380, thence generally north along SR 2380 to the intersection of SR 2248, thence generally north along SR 2248 to the intersection of~~

Authority G.S. 87-87; 87-88.

**15A NCAC 2C .0117 DESIGNATED AREAS: WELLS
CASED TO MINIMUM DEPTH OF 35 FEET**

~~SR 2256, thence generally east along SR 2256 to the intersection of SR 2205, thence generally east along SR 2205 north along NC 8 to the intersection with Interstate 85, thence generally northeast along Interstate 85 to the intersection with US 64, thence generally southeast along US 64 to the Randolph County line;~~

- (4) Montgomery County generally west of a line beginning at the intersection of SR 1134 with the Randolph County line, thence generally south along SR 1134 to the intersection with SR 1303, thence generally south along SR 1303 to the intersection with NC 109, thence generally southeast along NC 109 to the intersection with SR 1150, thence generally south along SR 1150 to the intersection with NC 24 and NC 27 NC 73, thence generally east along NC 24 and NC 27 to the intersection with SR 1134, thence generally southeast along SR 1134 to the intersection with NC 109, thence generally south along NC 109 to the intersection with SR 1546, thence generally southeast along SR 1546 to the intersection with SR 1118, thence generally south along SR 1118 thence generally southeast along NC 73 to the intersection with SR 1112, thence generally east along SR 1112 to the intersection with SR 1130, thence generally northeast along SR 1130 to the intersection with SR 1132, thence generally southeast along SR 1132 to the intersection with SR 1174, thence generally east along SR 1174 to the intersection with NC 109, thence generally north along NC 109 to the intersection with SR 1546, generally southeast along SR 1546 to the intersection of SR 1543, thence generally south along SR 1543 to the intersection with NC 73, thence generally west along NC 73 to the intersection with SR 1118, thence generally southwest along SR 1118 to the intersection with SR 1116, thence generally west along SR 1116 to the intersection with NC 109, thence generally south along NC 109 to the intersection with the Richmond County line;
- (5) Randolph County generally west of a line beginning at the intersection of ~~SR 1344~~ US 64 with the Davidson County line, thence generally ~~northeast east~~ east along ~~SR 1344~~ US 64 to the intersection of ~~US 64,~~ thence generally southeast along US 64 to the intersection with SR 1318, thence generally south along SR 1318 to the intersection with 1193, thence generally east along SR 1193 with NC 49, thence generally southwest along NC 49 to the intersection with SR 1107, thence generally south along SR 1107 to the intersection with SR 1105, thence southeast along SR 1105 to the intersection with the Montgomery County line;
- (6) Rowan County generally east of a line beginning at the intersection of SR ~~2352~~ 2142 with the Cabarrus County line, thence north along SR ~~2352~~ 2142 to the intersection with SR ~~2350~~ 2162, thence generally ~~northwest along SR 2350 to the intersection with SR~~

~~2351, thence generally north along SR 2351 to the intersection with US 52, thence generally northwest along US 52 to the intersection with SR 2140, thence generally north along SR 2140 to the intersection with Reedy Creek, thence generally northeast along Reedy Creek SR 2162 to the intersection with the run of the Yadkin River in High Rock Lake;~~

- (7) Union County generally east of a line beginning at the intersection of ~~NC 16~~ SR 1117 with the South Carolina-North Carolina State line, thence generally north along ~~NC 16~~ SR 1117 to the intersection with SR 1315, ~~thence generally east along SR 1315 to the intersection with SR 1341, thence generally north along SR 1341 to the intersection with SR 1347, thence generally north along SR 1347 to the intersection with SR 1338, thence north along SR 1338 to the intersection with SR 1344, thence generally north along SR 1344 to the intersection with the Mecklenburg SR 1008, thence generally northeast along SR 1008 to the intersection with SR 1514, thence generally north along SR 1514 to the intersection with SR 1520, thence generally northeast along SR 1520 to the intersection with NC 218, thence generally east along NC 218 to the intersection with US 601, thence generally north along US 601 to the intersection with SR 1600, thence generally northeast along SR 1600 to the intersection with the Cabarrus County line;~~
- (8) Stanly County -- all.

(b) The roads describing the boundaries of the designated areas do not necessarily coincide with the rock unit boundaries. Therefore, any well drilled within 400 feet of a road described as a boundary of a designated area shall be cased to the same minimum depth as those within the described area.

Authority G.S. 87-87.

15A NCAC 2C .0118 VARIANCE

(a) The Director may grant a variance from any construction standard under the rules of this Section. Any variance will be in writing, and may be granted upon oral or written application to the Director, by the person responsible for the construction of the well for which the variance is sought, if the Director finds facts to support the following conclusions:

- (1) that the use of the well will not endanger human health and welfare or the groundwater;
- (2) that construction in accordance with the standards was not technically feasible in such a manner as to afford a reasonable water supply at a reasonable cost.

(b) The Director may require the variance applicant to submit such information as he deems necessary to make a decision to grant or deny the variance. The Director may impose such conditions on a variance or the use of a well for which a variance is granted as he deems necessary to protect human health and welfare and the groundwater resources. The findings of fact supporting any variance under this Rule shall be in writing and made part of the variance.

PROPOSED RULES

(c) The director shall respond in writing to a request for a variance within 30 days from the receipt of the variance request.

~~(c)~~(d) A variance applicant who is dissatisfied with the decision of the Director may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after receipt of the decision.

Authority G.S. 87-87; 87-88; 150B-23.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to adopt the rule cited as 15A NCAC 03J .0111; 03L .0207 and amend the rules cited as 15A NCAC 03I .0101; 03J .0107, .0402; 03L .0301; 03M .0501, .0510; 03O .0503. Notice of Rule-making Proceedings was published in the Register on November 1, 1999 for 15A NCAC 03J .0402; on May 1, 2000 for 15A NCAC 03M .0501; and July 3, 2000 for 15A NCAC 03I .0101; 03J .0107, .0111; 03L .0207, .0301; 03M .0501, .0510; 03O .0503.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: September 18, 2000

Time: 7:00 p.m.

Location: Dept. of Environment & Natural Resources
127 Cardinal Drive Ext, Wilmington, NC

Date: October 4, 2000

Time: 7:00 p.m.

Location: Royal Pavillion
Salter Path Road, Atlantic Beach, NC

Reason for Proposed Action:

15A NCAC 3J .0111; 3I .0101; 3J .0107; 3O .0503 – The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) requires a complete review of the Marine Fisheries laws. G.S. 113-169.1, as adopted, authorizes the Marine Fisheries Commission to adopt permits and establish fees.

15A NCAC 3J .0402 – Marc S. and Rebecca D. Kaplan, owners of Sunset Beach Fishing Pier, filed a petition for rulemaking with the Marine Fisheries Commission dated June 15, 1999. The proposed rule would restrict gill nets and seines in areas adjacent to the Sunset Beach Fishing Pier.

15A NCAC 3L .0207 – G.S. 143B-289.52(e) authorizes the adoption of temporary rules within six months of adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan. Addendum 1 to the fishery management plan for horseshoe crabs was approved in February of 2000. North Carolina requested and was granted *de minimis* status on April 4, 2000. The amendment to this rule is necessary to maintain compliance with that plan and to retain *de minimis* status.

15A NCAC 3L .0301 – G.S. 143B-289.52(e) authorizes the adoption of temporary rules within six months of adoption or

amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan. Amendment 3 to the fishery management plan for American lobster was approved in August of 1999. North Carolina requested *de minimis* status on October 11, 1999, and such status was granted on January 18, 2000. The amendment in this rule is necessary to maintain compliance with that plan and to retain *de minimis* status.

15A NCAC 3M .0501 – The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) requires a complete review and in most cases, a rewrite, of the Marine Fisheries Laws. Included were requirements for Fishery Management Plans. This amendment is a necessary temporary management measure for the protection of existing red drum spawning stock. Recent temporary management measures have been found to be less than adequate in limiting fishermen to 100 pounds per day of red drum. This management measure was reviewed by the regional advisory committees prior to adoption as required by G.S. 113-182.1 (cl).

15A NCAC 3M .0510 - G.S. 143B-289.52(e) authorizes the adoption of temporary rules with six months of adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan. The Atlantic States Marine Fisheries Commission adopted the Fishery Management Plan for American Eel on November 4, 1999. The amendment to this rule is necessary to maintain compliance with that plan.

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557. Oral comments may be presented at two public hearings. Oral presentation lengths may be limited, depending on the number of people that wish to speak at the public hearings. The public comment period will end on October 4, 2000. The Marine Fisheries Commission will consider these Rules and the public comments at a business session scheduled for October 5-6, 2000, at the Royal Pavillion, Atlantic Beach, NC.

Fiscal Impact

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

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3I - GENERAL RULES

SECTION .0100 - GENERAL RULES

15A NCAC 03I.0101 DEFINITIONS

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

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- (1) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
 - (A) Seines less than 30 feet in length;
 - (B) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
 - (C) Spears, Hawaiian slings or similar devices which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar means;
 - (D) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
 - (E) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
 - (F) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line; and
 - (G) Cast Nets;
 - (H) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; and
 - (I) Up to two minnow traps.
 - (2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
 - (3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
 - (4) Possess. Any actual or constructive holding whether under claim of ownership or not.
 - (5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
 - (6) Use. Employ, set, operate, or permit to be operated or employed.
 - (7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
 - (8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
 - (9) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
 - (10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
 - (11) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.
 - (12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
 - (13) Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
 - (14) Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
 - (15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
 - (16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper.
 - (17) Length of finfish.
 - (A) Total length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
 - (B) Fork length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin.
 - (C) Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
 - (18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
 - (19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing proven technology not found in the natural environment.
 - (20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of economically important seafood species, as well as forage species important in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early
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growth and development of important seafood species.

(A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.

(B) Shellfish producing habitats are those areas in which economically important shellfish, such as, but not limited to clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.

(C) Anadromous fish spawning areas are defined as those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.

(D) Anadromous fish nursery areas are defined as those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.

(21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.

(22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.

(23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.

(24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to:

(A) Animals:

- (i) Sponges (Phylum Porifera);
- (ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):
 - (I) Fire corals (Class Hydrozoa);
 - (II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);
- (iii) Bryozoans (Phylum Bryozoa);
- (iv) Tube Worms (Phylum Annelida):
 - (I) Fan worms (Sabellidae);
 - (II) Feather duster and Christmas tree worms (Serpulidae);
 - (III) Sand castle worms (Sabellaridae).
- (v) Mussel banks (Phylum Mollusca: Gastropoda);
- (vi) Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.).

(B) Plants:

- (i) Coralline algae (Division Rhodophyta);
- (ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);
- (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).

(25) Coral:

- (A) Fire corals and hydrocorals (Class Hydrozoa);
- (B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
- (C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
 - (i) Sea fans (*Gorgonia* sp.);
 - (ii) Sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.);
 - (iii) Sea pansies (*Renilla* sp.).

(26) Shellfish production on leases and franchises:

- (A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
- (B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.

(27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

(28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.

(29) Pound Net Set, ~~Net~~. A fish trap consisting of a holding pen, one or more enclosures, ~~and~~ a lead or leaders, and stakes or anchors used to support such trap. ~~leaders.~~ The lead(s), enclosures, and holding

- pen are not conical, nor are they supported by hoops or frames.
- (30) Educational Institution. A college, university or community college accredited by a regional accrediting institution.
- (31) Long Haul Operations. A seine towed between two boats.
- (32) Swipe Net Operations. A seine towed by one boat.
- (33) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
- (34) Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable laws and regulations.
- (35) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (36) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (37) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
- (38) Recreational Purpose. A fishing activity has a recreational purpose if it is not a commercial fishing operation as defined in G.S. 113-168.
- (39) Recreational Possession Limit. Includes, but is not limited to, restrictions on size, quantity, seas on, time period, area, means, and methods where take or possession is for a recreational purpose.
- (40) Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (41) Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.
- (42) Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.
- (43) Office of the Division. Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses are not considered Offices of the Division.
- (44) Land:

- (A) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
- (B) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
- (C) For recreational fishing operations, when fish are retained in possession by the fisherman.
- (45) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
- (46) Regular Closed Oyster Season. The regular closed oyster season occurs from May 15 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (47) Assignment. Temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.
- (48) Transfer. Permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.
- (49) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (50) Blue Crab Shedding. Shedding is defined as the process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following: predator protection, food, water circulation, salinity or temperature controls utilizing proven technology not found in the natural environment. A shedding operation does not include transporting peeler crabs to a permitted shedding operation.

Authority G.S. 113-134; 143B-289.52.

SUBCHAPTER 3J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - GENERAL RULES

15A NCAC 03J .0107 POUND NET SETS

- (a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits in 15A NCAC 30 .0500. The procedures, requirements, and fees for obtaining permits are also found in 15A NCAC 30 .0500.
- (b) It is unlawful to use pound ~~or fyke nets~~ net sets in ~~internal~~ coastal fishing waters without the permittee's ~~owner's~~

identification being clearly printed on a sign no less than six inches square, securely attached to the outermost ~~on an outside corner~~ stake of each end of each set. ~~such net.~~ For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set must be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be clearly printed on the buoy. Such identification on signs or buoys must include one of the following:

- (1) For pound nets, the pound net set permit number and the permittee's owner's last name and initials.
- (2) For fyke nets, the owner's N.C. motorboat registration number or the owner's last name and initials.

Any pound or fyke net or any part thereof found set in internal coastal fishing waters without proper identification will be in violation and may be removed, and be disposed of in accordance with G.S. 113-137.

(c) ~~(b)~~ It is unlawful to use set pound net sets, nets, or any part thereof ~~thereof~~, except for one location identification stake stakes or identification buoy for pound nets used in the Atlantic Ocean at each end of proposed new locations, ~~locations~~ without first obtaining a Pound Net Set Permit from the Fisheries Director. The applicant must indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location. The applicant must specify the type(s) of pound net set(s) requested and possess proper valid licenses and permits necessary to fish those type(s) of net. A pound net set will be deemed a flounder pound net set when the catch consists of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted seatrout, spot, for example) and other finfish, except flounder and herring or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:

- (1) Flounder pound net set;
- (2) Herring/shad pound net set;
- (3) Bait pound net set;
- (4) Shrimp pound net set;
- (5) Blue crab pound net set; and
- (6) Other finfish pound net set.

~~(d)~~(1) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comments for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. The Fisheries Director shall approve or deny the permit within 60 days of application. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application shall be deemed denied. The For new locations, transfers and renewals, the Fisheries Director may deny the permit application if it is determined that granting the permit will be inconsistent with one or more of the following permitting criteria, as determined by the Fisheries Director criteria:

- (1) ~~(A)~~ The application ~~is~~ must be in the name of an individual and cannot be granted to a corporation, partnership, organization or other entity;
- (2) ~~(B)~~ The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with public navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 3J.0101 and .0102;
- (3) ~~(C)~~ The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with existing, traditional uses of the area other than navigation, as determined by the Fisheries Director.
- ~~(D)~~ The proposed pound net set will not unduly interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- ~~(4)~~(E) The proposed pound net set will not, by its proximate location, unduly interfere with existing pound net sets in the area;
- ~~(5)~~ ~~(F)~~ The applicant has in the past complied with fisheries rules and laws related to pound nets and does not currently have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in ten years shall be grounds for denial of a pound net set permit;
- ~~(6)~~ ~~(G)~~ The proposed pound net set is in the public interest;
- ~~(7)~~ ~~(H)~~ The applicant has in the past complied with all permit conditions, rules and laws related to pound nets; and
- ~~(8)~~ ~~(I)~~ The proposed pound net set is consistent with appropriate fishery management plans.

Approval may shall be conditional based upon the applicant's continuing compliance with specific conditions contained in on the Pound Net Set Permit and the conditions that would ensure that the operation of the pound net is consistent with the criteria for permit denial set out in Subparagraphs (1)(A) through (8) (G) of this Paragraph. Subparagraph. The Fisheries Director's final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such action final decision to the applicant, with the Office of Administrative Hearings.

~~(e)~~(2) An application for renewal of an existing Pound Net Set Permit shall be filed not less than 40 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the prior permittee. When a written objection to a renewal has been received during the term of the existing permit, the The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, and may decline to renew the permit accordingly. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

(f)(3) A Pound Net Set Permit, whether a new or renewal permit, shall expire 365 days one year from the date of issuance. The expiration date shall be stated on the permit.

(e) ~~It is unlawful to abandon an existing pound net set without completely removing from the public bottom or coastal waters all stakes and associated structures, gear and equipment within 10 days, or to fail within 10 days to completely remove from the public bottom or coastal waters all stakes and other structures, gear and equipment associated with any pound net set for which a permit is revoked or denied. Pound nets shall be subject to inspection at all times. Pound nets shall be fully operational and subject to a fishing season inspection during the peak of their respective fishing seasons. Consideration shall be given for unusually severe weather conditions which prevent the nets from being fully operational during the fishing season inspection period. For the fishing season inspections, herring pounds may be inspected two weeks prior to or after April 1, sciaenid pounds two weeks prior to or after July 15, flounder pounds two weeks prior to or after October 15, bait pounds two weeks prior to or after April 15, and shrimp pounds two weeks prior to or after June 15. A violation under this Paragraph shall be grounds for the Fisheries Director to revoke any other Pound Net Permits held by the violator and for denial of any future pound net set proposed by the offender.~~

(g) Pound net sets, except herring/shad pound net sets in the Chowan River, shall be operational for a minimum period of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone within 72 hours after the pound net set is operational. Notification shall include name of permittee, pound net set permit number, county where located, a specific location site, and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke this and any other pound net set permits held by the permittee and for denial of any future pound net set permits.

(h)(d) ~~It is unlawful to transfer ownership of a pound net set permit without notification a completed application for transfer being submitted to the Division of Marine Fisheries within not less than 30 45 days of before the date of the transfer. Such notification application shall be made by the proposed new permittee owner in writing and shall be accompanied by a copy of the current previous permittee's owner's permit and an application for a pound net set permit in the new permittee's owner's name. Failure to do so shall result in revocation of the pound net permit. The Fisheries Director may hold a public meeting and may conduct such~~

investigations necessary to determine if the permit should be transferred. No transfer is effective until approved and processed by the Division. The transferred permit shall expire on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification under G.S. 28A. The Administrator/Executor must provide a copy of the deceased permittee's death certificate, a copy of the certificate of administration and a list of eligible immediate family members to the Morehead City Office of the Division of Marine Fisheries. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible family members of the deceased permittee.

(i)(e) Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every Every pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. ~~directions by a vessel approaching the pound net set. In addition, every pound net in internal coastal fishing waters shall have yellow light reflective tape or devices on each pound. The light reflective tape or devices shall be affixed to a stake of at least three inches in diameter on the offshore end of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions by a vessel approaching the pound net set.~~ If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 45 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(j)(f) ~~In Core Sound, it is unlawful to use pound net sets nets in the following areas except that only those persons holding a valid pound net set permits valid permit within the specified area as of March 1, 1994, may be renewed or transferred renew their permits subject to the requirements of this Rule:~~

- (1) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 124° (M) to Green Flasher #13; thence 026° (M) to Green Flasher #11; thence 294°(M) to a point on shore north of Great Ditch 34° 58' 54" N - 76° 15' 06" W; thence following the shoreline to Hog Island Point 34° 58' 27" N - 76° 15' 49" W; thence 231° (M) back to Green Day Marker #3.
- (2) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 218° (M) to Cedar Island Point 34° 57' 33" N - 76° 16' 34" W;

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thence 156° (M) to Red Flasher #18; thence 011° (M) to Red Flasher #2; thence 302° (M) back to Green Marker #3.

- (3) That area bounded by a line beginning on Long Point 34° 56' 52" N - 76° 16' 42" W; thence running 105° (M) to Red Marker #18; thence running 220° (M) to Green Marker #19; thence following the six foot contour past the Wreck Beacon to a point at 34° 53' 45" N - 76° 18' 11" W; thence 227° (M) to Red Marker #26; thence 229° (M) to Green Marker #27; thence 271° (M) to Red Flasher #28; thence 225° (M) to Green Flasher #29; thence 256° (M) to Green Flasher #31; thence 221° (M) to Green Flasher #35; thence 216° (M) to Green Flasher #37; thence 291° (M) to Bells Point 34° 43' 42" N - 76° 29' 59" W; thence north following the shoreline of Core Sound across the mouth of Jarrett Bay, Oyster Creek, Fulcher Creek, Willis Creek, Nelson Bay, Styron Bay, East Thorofare Bay and Rumley Bay, back to Long Point.

~~(g) In Pamlico Sound and the Atlantic Ocean, it is unlawful to set a pound net set, pound net stakes, or any other related equipment without radar reflective metallic material and yellow light reflective tape or devices on each end of the pound net set. The radar reflective material and the light reflective tape or devices must be affixed to a stake of at least three inches in diameter, must cover a vertical distance of not less than 12 inches, and must be detectable by radar and light from a vessel when approached from all directions. Light reflective tape or devices may be affixed to the radar reflective material.~~

~~(k)(h)~~ Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets ~~nets~~ and may impose any or all of the following requirements or restrictions on the use of escape panels:
- (A) Specify size, number, and location.
 - (B) Specify mesh length, but not more than six inches.
 - (C) Specify time or season.
 - (D) Specify areas.
- (2) It is unlawful to use flounder pound net sets ~~nets~~ without four unobstructed escape panels in each pound south and east of a line beginning at a point on Long Shoal Point at 35° 57' 23.7" N-76° 00' 49"W; thence running 116.5° (T) 2,764 yards to Green Marker No. 5 east of the Intracoastal Waterway in the Alligator River at 35° 56' 43.9" N-75° 59' 18"W; thence following Route #1 of the Intracoastal Waterway in Albemarle Sound to Green Marker No. 171 at 36° 09' 18.2" N-75° 53' 29.5" W; thence running 299° (T) 2,160 yards to a point on Camden Point at 36° 09' 52.5" N - 75° 54' 39.9" W. The escape panels must be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels must be a minimum mesh size of five and one-half inches,

hung on the diamond, and must be at least six meshes high and eight meshes long.

- (l) Pound net sets are subject to inspection at all times.
(m) Daily reporting may be a condition of the permit for pound net sets for fisheries under a quota.
(n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing pound net set permit has been revoked or denied.
(o) It is unlawful to abandon an existing pound net set without completely removing from the coastal waters all stakes and associated gear within 30 days.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; 150B-23.

15A NCAC 03J .0111 FYKE OR HOOP NETS

It is unlawful to use fyke or hoop nets in coastal fishing waters without the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net. Such identification must include the gear owner's current motorboat registration number or the gear owner's last name and initials.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SECTION .0400 - FISHING GEAR

15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS

(a) It is unlawful to use commercial fishing gear in the following areas during dates and times specified for the identified areas:

- (1) Atlantic Ocean - Dare County:

(A) Nags Head:

- (i) Seines and gill nets may not be used from the North Town Limit of Nags Head at Eight Street southward to Gulf Street:

(I) From Wednesday through Saturday of the week of the Nags Head Surf Fishing Tournament held during October of each year the week prior to Columbus Day.

(II) From November 1 through December 15.

- (ii) Commercial fishing gear may not be used within 750 feet of licensed fishing piers when open to the public.

(B) Oregon Inlet. Seines and gill nets may not be used from the Friday before Easter through December 31:

- (i) Within one-quarter mile of the beach from the National Park Service Ramp #4 (35° 48' 15" N - 75° 32' 42" W) on Bodie Island to the northern terminus of the Bonner Bridge (35° 46' 30" N - 75°

-
- 32' 22" W) on Hwy. 12 over Oregon Inlet.
- (ii) Within the area known locally as "The Pond", a body of water generally located to the northeast of the northern terminus of the Bonner Bridge.
- (C) Cape Hatteras (Cape Point). Seines and gill nets may not be used within one-half mile of Cape Point from the Friday before Easter through December 31. The closed area is defined by a circle with a one-half mile radius having the center at Cape Point (35° 12' 54" N - 75° 31' 43" W). The closed area begins one-half mile north of Cape Point at a point on the beach (35° 13' 26" N - 75° 31' 39" W) and extends in a clockwise direction, one-half mile from Cape Point, to a point on the beach (35° 13' 23" N - 75° 31' 59" W) northwest of Cape Point.
- (2) Atlantic Ocean - Onslow and Pender Counties. Commercial fishing gear may not be used during the time specified for the following areas:
- (A) Topsail Beach. From January 1 through December 31, that area around Jolly Rodger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier and on the northeast and southwest by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary.
- (B) Surf City:
- (i) From January 1 to June 30, those areas around the Surf City and Barnacle Bill's Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers, on the southwest by a line beginning at a point on the beach one-quarter mile from the piers and on the northeast by a line beginning at a point on the beach 750 feet from the piers extending seaward to intersect the offshore boundaries.
- (ii) From July 1 to December 31, those areas around the piers bordered on the offshore side by a line 750 feet from the ends of the piers, on the southwest by a line beginning at a point on the beach 750 feet from the piers and on the northeast by a line beginning at a point on the beach one-quarter mile from the piers extending seaward to intersect the offshore boundaries.
- (3) Atlantic Ocean - New Hanover County. Carolina Beach Inlet through Kure Beach. Commercial fishing gear may not be used during the times specified for the following areas:
- (A) From the Friday before Easter to November 30, within the zones adjacent to the Carolina Beach, Center and Kure Beach Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers and on the north and south by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary, except the southern boundary for Kure Beach Pier is a line beginning on the beach one mile south of the pier to the offshore boundary for the pier.
- (B) From May 1 to November 30, within 900 feet of the beach, from Carolina Beach Inlet to the southern end of Kure Beach with the following exceptions:
- (i) From one-quarter mile north of Carolina Beach Fishing pier to Carolina Beach Inlet from October 1 to November 30:
- (I) Strike nets may be used within 900 feet of the beach;
- (II) Attended nets may be used between 900 feet and one-quarter mile of the beach.
- (ii) Strike nets and attended gill nets may be used within 900 feet of the beach from October 1 to November 30 in other areas except those described in Part (a)(3)(A) and Subpart (a)(3)(B)(i) of this Rule.
- (iii) It is unlawful to use commercial fishing gear within 900 feet of the beach from Carolina Beach Inlet to New Inlet from October 15 through October 17.
- (b) It is unlawful to use gill nets or seines in the following areas during dates and times specified for the identified areas:
- (1) Neuse River and South River, Carteret County. No more than 1,200 feet of gill net(s) having a stretched mesh of five inches or larger may be used:
- (A) Within one-half mile of the shore from Winthrop Point at Adams Creek to Channel Marker "2" at the mouth of Turnagain Bay.
- (B) Within South River.
- (2) Cape Lookout, Carteret County:
- (A) Gill nets or seines may not be used in the Atlantic Ocean within 300 feet of the Rock Jetty (at Cape Lookout between Power Squadron Spit and Cape Point).
- (B) Seines may not be used within one-half mile of the shore from Power Squadron Spit south to Cape Point and northward to Cape Lookout Lighthouse including the area inside the "hook" south of a line from the COLREGS Demarcation Line across Bardens Inlet to the eastern end of Shackleford Banks and then to the northern tip of Power Squadron Spit from 12:01 a.m. Saturdays until 12:01 a.m. Mondays from May 1 through November 30.
- (3) State Parks/Recreation Areas:
- (A) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Fort Macon State Park, Carteret County.
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PROPOSED RULES

- (B) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Hammocks Beach State Park, Onslow County, from May 1 through October 1, except strike nets and attended gill nets may be used beginning August 15.
- (C) Gill nets or seines may not be used within the boat basin and marked entrance channel at Carolina Beach State Park, New Hanover County.
- (4) Mooring Facilities/Marinas. Gill nets or seines may not be used from May 1 through November 30 within:
 - (A) One-quarter mile of the shore from the east boundary fence to the west boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
 - (B) Canals within Pine Knoll Shores, Carteret County;
 - (C) Spooners Creek entrance channel and marina on Bogue Sound, Carteret County; and
 - (D) Harbor Village Marina on Topsail Sound, Pender County.
- (5) Masonboro Inlet. Gill nets and seines may not be used:
 - (A) Within 300 feet of either rock jetty; and
 - (B) Within the area beginning 300 feet from the offshore end of the jetties to the Intracoastal Waterway including all the waters of the inlet proper and all the waters of Shinn Creek.
- (6) Atlantic Ocean Fishing Piers. At a minimum, gill nets and seines may not be used within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been delineated by the placement of buoys or beach markers as authorized by G.S. 113-185(a), it is unlawful to fish from vessels or with nets within the larger marked zone.
- (7) Topsail Beach, Pender County. It is unlawful to use gill nets and seines from 4:00 p.m. Friday until 6:00 a.m. the following Monday in the three finger canals on the south end of Topsail Beach..
- (8) Mad Inlet to Tubbs Inlet - Atlantic Ocean, Brunswick County. It is unlawful to use gill nets and seines from September 1 through November 15, except that a maximum of four commercial gill nets per vessel not to exceed 200 yards in length individually or 800 yards in combination may be used. Gill nets used from 750 feet to 1500 feet east of the Sunset Beach Fishing Pier must be attended as defined in 15A NCAC 3I .0101 when the 750 foot boundary is marked with buoys or range poles as required by 15A NCAC 3I .0108.

Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.4.

SECTION .0200 - CRABS

15A NCAC 03L .0207 HORSESHOE CRABS

- (a) It is unlawful to possess more than 50 horseshoe crabs per vessel per trip.
- (b) Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are exempt from this Rule.
- (c) The annual (January through December) commercial quota for North Carolina for horseshoe crabs shall be established by the Atlantic States Marine Fisheries Commission Horseshoe Crab Management Plan. Once the quota is projected to be taken, the Fisheries Director shall, by proclamation, close the season for the landing of horseshoe crabs.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SECTION .0300 - LOBSTER

15A NCAC 03L .0301 AMERICAN LOBSTER (NORTHERN LOBSTER)

- (a) ~~It is unlawful to possess;~~ possess American lobster:
 - (1) with a carapace less than 3 1/4 inches;
 - (2) which has eggs or from which eggs have been artificially removed by any method;
 - (3) meats, detached meats, detached tails or claws or any other part of a lobster that has been separated from the lobster;
 - (4) which has an outer shell which has been speared;
 - (5) that is a V-notched female lobster as described in Amendment 3 to the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Lobster, copies of which are available through the Division of Marine Fisheries; or
 - (6) in quantities greater than 100 per day or 500 per trip for trips five days or longer taken by gear or methods other than traps.
- (b) American lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel that meets the following specifications:
 - (1) the opening to be covered by the ghost panel shall be not less than 3 3/4 inches (9.53 cm) by 3 3/4 inches (9.53 cm);
 - (2) the panel must be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter;
 - (3) the door of the trap may serve as the ghost panel, if fastened with a material specified in this Section; and
 - (4) the ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.
- (4) ~~American lobster with a carapace less than 3 1/4 inches; or~~

SUBCHAPTER 3L - SHRIMP, CRABS, AND LOBSTER

- ~~(2) egg bearing American lobster or American lobster from which eggs have been stripped, scrubbed or removed.~~

~~(b) American lobster traps must have escape vents and panels as described in 50 CFR 649.21(d) with the opening no smaller than the entrance funnel.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 3M - FINFISH

SECTION .0500 - OTHER FINFISH

15A NCAC 03M .0501 RED DRUM

(a) The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of red drum:

- (1) Specify areas.
- (2) Specify seasons.
- (3) Specify quantity for fish taken by commercial gear.
- (4) Specify means/methods.
- (5) Specify size for fish taken by commercial gear.

~~(b) It is unlawful to possess red drum greater than 27 inches total length.~~

~~(c)(b)~~ It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.

~~(d)(c)~~ It is unlawful to possess red drum less than 18 inches total length. length or greater than 27 inches total length.

~~(e)(d)~~ It is unlawful to possess more than one red drum per person per day taken by hook-and-line or for recreational purposes of which no more than one may be larger than 27 inches total length.

~~(f)(e)~~ It is unlawful to possess more than 100 pounds of red drum per vessel per day taken in a commercial fishing operation, regardless of the number of individuals or vessels involved, by commercial fishing equipment.

~~(g)(f)~~ The annual commercial harvest limit ~~quota~~ (January through December) for red drum is 250,000 pounds. If the harvest limit ~~quota~~ is projected to be taken, the Fisheries Director shall, by proclamation, prohibit possession of red drum taken in a commercial fishing operation, equipment.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03M .0510 AMERICAN EEL

It is unlawful to:

- (1) Possess, sell or take eels less than six inches in length; and
- (2) Possess more than 50 eels per person per day for recreational purposes.

~~It is unlawful to possess, sell or take eels less than six (6) inches in length.~~

~~Tolerance of not more than 20 eels per person per day shall be allowed.~~

Authority G.S. 113-134; 113-182; 143B-289.52.

SUBCHAPTER 30 - LICENSES, LEASES, AND FRANCHISES

SECTION .0500 – PERMITS

15A NCAC 30 .0503 PERMIT CONDITIONS; SPECIFIC

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first securing a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year unless otherwise specified on the permit. Such reports will be filed on forms provided by the Division and will include but not be limited to a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries ? Morehead City Office.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:
 - (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays may be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee may call in the previous day's landings to the dealer contact designated on the permit but must maintain a log furnished by the Division;
 - (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
 - (C) Maintain faxes and other related documentation in accordance with 15A NCAC 3I .0114;
 - (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;

- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
 - (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area for Striped Bass which is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 34° 55' 09" N - 75° 39' 34" W; running 336° M to Rhodoms Point 36° 00' 10" N - 75° 43' 42" W and east of a line from Eagleton Point 36° 01' 18" N - 75° 43' 42" W; running 352° to Long Point 36° 02' 30" N - 75° 44' 18" W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W; running 122° M across to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W;
 - (iii) Central Area which is defined as all internal coastal waters of Carteret, Craven, Beaufort, and Pamlico counties; Pamlico and Pungo rivers; and Pamlico Sound south of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W (southern boundary of the Albemarle Sound Management Area for Striped Bass) to the county boundaries;
 - (iv) Southern Area which is defined as all internal coastal waters of Pender, Onslow, New Hanover, and Brunswick counties.
 - (B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 34° 55' 09" N - 75° 39' 34" W; running 336° M to Rhodoms Point 36° 00' 10" N - 75° 43' 42" W and east of a line from Eagleton Point 36° 01' 18" N - 75° 43' 42" W; running 352° to Long Point 36° 02' 30" N - 75° 44' 18" W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W; running 122° M across to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W.
- (4) Atlantic Ocean Flounder Dealer Permit:
 - (A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first securing a Atlantic Ocean Flounder Dealer Permit. The licensed location must be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit will be allowed.
 - (B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of

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flounder from a single transaction from the Atlantic Ocean without first securing an Atlantic Ocean Flounder Dealer Permit.

- (5) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining an Atlantic Ocean American Shad Dealer Permit.

(c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 17.6" N latitude) to Rich's Inlet (34° 35.7" N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
- (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
- (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
- (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
- (5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 3J .0107.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to adopt the rules cited as 15A NCAC 7H .2501-.2505. Notice of Rule-making Proceedings was published in the Register on July 3, 2000.

Proposed Effective Date: August 1, 2001

Public Hearing:

Date: September 28, 2000

Time: 4:30 p.m.

Location: Sheraton New Bern, 100 Middle St, New Bern, NC

Reason for Proposed Action: *This rule will provide relief to hurricane victims by deferring permit fees and expediting permit processes for rebuilding hurricane damaged structures.*

Comment Procedures: *Comments may be submitted to Doug Huggett, 1638 Mail Service Center, Raleigh, NC 27699-1638. Comments will be accepted through October 2, 2000.*

Fiscal Impact

- ☒ **State** 15A NCAC 07H .2501-.2505
- ☐ **Local**
- ☐ **Substantive** (≥\$5,000,000)
- ☐ **None**

CHAPTER 7 – COASTAL MANAGEMENT

SUBCHAPTER 7H – STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .2500 – EMERGENCY GENERAL PERMIT, TO BE INITIATED AT THE DISCRETION OF THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR REPLACEMENT STRUCTURES, THE RECONSTRUCTION OF PRIMARY OR FRONTAL DUNE SYSTEMS, AND THE MAINTENANCE EXCAVATION OF EXISTING CANALS, BASINS, CHANNELS, OR DITCHES, DAMAGED, DESTROYED, OR FILLED IN BY HURRICANES OR TROPICAL STORMS, PROVIDED ALL REPLACEMENT, RECONSTRUCTION AND MAINTENANCE EXCAVATION ACTIVITIES CONFORM TO ALL CURRENT STANDARDS

15A NCAC 07H .2501 PURPOSE

Following damage to coastal North Carolina due to hurricanes or tropical storms, the Secretary may, based upon an examination of the extent and severity of the damage, implement any or all provisions of this Section. Factors the Secretary may consider in making this decision include, but are not limited to, severity and scale of property damage, designation of counties as disaster areas, reconnaissance of the impacted areas, or discussions with staff, state and/or federal emergency response agencies. This permit shall allow for:

- (1) the replacement of structures that were located within the estuarine system and/or public trust Areas of Environmental Concern and that were destroyed or damaged beyond 50 percent of the structure's value as a result of any hurricane or tropical storm,
- (2) a one time per property fee deferment for the reconstruction or repair by beach bulldozing of hurricane or tropical storm damaged frontal or primary dune systems, and

- (3) a one time per property fee deferment for maintenance dredging activities within existing basins, canals, channels, and ditches. Structure replacement, dune reconstruction, and maintenance excavation activities authorized by this permit shall conform with all current use standards and regulations. The structural replacement component of this general permit shall only be applicable where the structure was in place and serving its intended function at the time of the impacting hurricane or storm, and shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodeable Area.

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2502 APPROVAL PROCEDURES

- (a) The applicant must contact the Division of Coastal Management and request approval for structural replacement, dune reconstruction, or maintenance excavation. The applicant shall provide information on site location, dimensions of the project area, and his or her name and address.
- (b) The applicant must provide:
- (1) Description of the extent of repair, replacement, reconstruction, or maintenance excavation needed, including dimensions and shoreline length;
 - (2) In the case of structural replacements, any additional documentation confirming the existence of the structure prior to the hurricane or tropical storm, such as surveys, previous permits, photographs or videos.
- (c) For projects involving the excavation or filling of any area of estuarine water, the applicant must provide confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by this General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant shall be notified that he or she must submit an application for a major development permit.
- (d) No work shall begin until a meeting is held with the applicant and appropriate Division of Coastal Management representative. Written authorization to proceed with the proposed development may be issued during this meeting.
- (e) Replacement, reconstruction or maintenance excavation activities must be completed within one year of each activation by the Secretary of this general permit.

- (f) Authorizations under this General Permit shall not be issued more than one year following each activation by the Secretary of this general permit.

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2503 PERMIT FEE

The standard permit fee of one hundred dollars (\$100.00) has been deferred for this General Permit.

Authority G.S. 113A-107; 113A-118.1

15A NCAC 07H .2504 GENERAL CONDITIONS

- (a) This permit shall only become available following a written statement by the Secretary that, based upon hurricane or tropical storm related damage, implementation of the provisions of this Section are warranted.
- (b) Based upon an examination of the specific circumstances following a specific hurricane or tropical storm, the Secretary may choose to activate any or all of the components of this Section. The Secretary may also limit the geographic service area of this permit.
- (c) This permit authorizes only the replacement of damaged or destroyed structures, the reconstruction of frontal or primary dunes, and maintenance excavation activities conforming to the standards described in this section.
- (d) This permit does not authorize the replacement of any structure within any Ocean Hazard Area of Environmental Concern, with the exception of those portions of shoreline within the Ocean Hazard AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodeable Area.
- (e) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in this Section.
- (f) This general permit shall not be applicable to proposed construction when the Department determines after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation, or recreational values.
- (g) This general permit shall not be applicable to proposed construction where the Department determines that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties. In those cases, it shall be necessary to review the proposed project under the established CAMA Major or Minor Development Permit review procedures.
- (h) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
- (i) This permit does not preclude an individual from applying for other authorizations for structure replacement that may be available under the Coastal Area Management Act and the Rules of the Coastal Resources Commission. However,

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application fees for any such authorization shall not be waived or deferred.

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2505 SPECIFIC CONDITIONS

(a) The replacement of a damaged or destroyed structure shall take place within the footprint and dimensions that existed immediately prior to the damaging hurricane or tropical storm. No structural enlargement or additions shall be allowed.

(b) Structure replacement, dune reconstruction, and maintenance excavation authorized by this permit shall conform to the existing use standards and regulations for exemptions, minor development permits and major development permits, including general permits. These use standards include, but are not limited to:

- (1) 15A NCAC 7H.0208(b)(6) for the replacement of docks and piers;
- (2) 15A NCAC 7H.0208(b)(7) for the replacement of bulkheads and shoreline stabilization measures;
- (3) 15A NCAC 7H.0208(b)(9) for the replacement of wooden and riprap groins;
- (4) 15A NCAC 7H.1500 for maintenance excavation activities; and
- (5) 15A NCAC 7H.1800 for beach bulldozing landward of the mean high water mark.

(c) The replacement of an existing dock or pier facility, including associated structures, marsh enhancement breakwaters or groins shall be set back 15 feet from the adjoining property lines and the riparian access dividing line. The line of division of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 7H .1205(q), illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment can not be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable. The setback may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before replacement of the structure begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the structure.

Authority G.S. 113A-107; 113A-118.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Licensing Board for General Contractors intends to amend rules cited as 21 NCAC 12 .0202, .0901 and repeal the rule cited as 21 NCAC 12 .0306. Notice of Rule-making Proceedings was published in the Register on May 15, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: October 11, 2000

Time: 10:00 a.m.

Location: 3739 National Drive, Suite 225, Cumberland Building, Glenwood Place, Raleigh, NC.

Reason for Proposed Action: *To amend licensure classifications to include the installation of septic systems; to repeal the current rule on examination filing deadlines; and to amend the definition of "owner or former owner" under the Homeowners Recovery Fund Rules.*

Comment Procedures: *Written comments may be submitted to Mark D. Selph at the Board's office. The Board's address is PO Box 17187, Raleigh, NC 27619. Any person may file written submission of comments or arguments at any time up to the close of the hearing on October 11, 2000.*

Fiscal Impact

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

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~~ curbs, gutters, and septic systems 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~~ driveways, sidewalks, and septic systems ancillary to

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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). If the contractor limits his activity to grading and does no other work described herein, upon proper qualification the classification of H(Grading and Excavating) may be granted.
- (4) Public Utilities Contractor. This classification includes those whose operations are the performance of construction work on septic systems and 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 contractor qualifies. 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 septic systems, 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; and
 - (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

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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, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified".

Authority G.S. 87-1; 87-10.

SECTION .0300 – APPLICATION PROCEDURE

21 NCAC 12 .0306 FILING DEADLINE

~~The applicant who wishes to be admitted to a particular examination must file a completed application no later than 45 days preceding the scheduled date of the desired examination in order to be assured of being admitted to that examination. Examinations are given in March, June, September and December of each year.~~

Authority G.S. 87-1; 87-10.

SECTION .0900 – HOMEOWNERS RECOVERY FUND

21 NCAC 12 .0901 DEFINITIONS

The following definitions shall apply to the Board's administration of the Homeowners Recovery Fund established pursuant to Article 1A, Chapter 87 of the General Statutes:

- (1) "Constructing or altering" includes contracting for the construction or alteration of a single-family residential dwelling unit.
- (2) "Dishonest conduct" shall not include a mere breach of a contract.
- (3) "Incompetent conduct" is conduct which demonstrates a lack of ability or fitness to discharge a duty associated with undertaking to construct or alter a single-family residential dwelling or the supervision of such construction or alteration.
- (4) "Owner or former owner" includes ~~the owner or former owner of real property~~ a person who contracted with a general contractor for the construction or purchase of a single-family residential dwelling unit. "Owner or former owner" shall not include a person who is a spouse, child, parent, grandparent, sibling, partner, associate, or employee of a general contractor whose conduct caused a reimbursable loss. In addition, the term shall not include general contractors or any financial or lending institution, or any owner or former owner of a single-family residential dwelling unit which has been the subject of an award from the Homeowners Recovery Fund resulting from the same dishonest or incompetent conduct. "Owner or former owner" shall

not include the owner of real property who constructed or contracted for construction of a single-family residential dwelling unit without intending to occupy the single-family residential dwelling unit.

- (5) "Substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof whereupon the owner can use the same for its intended use.
- (6) "Separately owned residence" means a building whose construction is governed by Volume VII of the North Carolina State Building Code.

Authority G.S. 87-15.6.

CHAPTER 14 – COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14G .0103; 14J .0107; 14K .0102-.0103, .0107; 14P .0104. Notice of Rule-making Proceedings was published in the Register on June 15, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: October 3, 2000

Time: 9:00 a.m.

Location: NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609

Reason for Proposed Action: To update the school curriculum and clarify a civil penalty.

Comment Procedures: Written comments concerning this rule-making action must be submitted by October 2, 2000 to Dee Williams, Rule-making Coordinator, NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609.

Fiscal Impact

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

SUBCHAPTER 14G – REQUIREMENTS FOR THE ESTABLISHMENT OF COSMETIC ART SCHOOLS

SECTION .0100 – PERMANENT FILES

21 NCAC 14G .0103 SPACE REQUIREMENTS

(a) The Cosmetic Art Board shall issue letters of approval only to cosmetology schools that have at least 2800 square feet of inside floor space for 20 stations or 4200 square feet of inside floor space for 30 stations located within the same building. An additional 140 square feet of floor space shall be

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required for each station above 20 stations, up to and including a total of 30 stations. Thereafter, an additional 40 square feet shall be required for each station in excess of 30 stations. For purpose of this Rule, the day and night classes shall be counted as separate enrollments. A school may have a recitation room located in an adjacent building or another building within 500 feet of the main cosmetology building.

(b) Each cosmetology school must have no less than 20 hairdressing stations, arranged to accommodate not less than 20 students and arranged so that the course of study and training cosmetology, as prescribed in 21 NCAC 14J .0306, may be given. All stations must be numbered numerically.

(c) Cosmetology schools must have a beginner department containing sufficient space to comfortably accommodate at least ten students and having at least 40 inches between mannequins.

(d) The Board shall issue a letter of approval only to manicurist schools that have at least 1,000 square feet of inside floor space located within the same building.

(e) Manicurist schools with 1,000 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, ~~50~~ 40 square feet of inside floor space must be provided.

(f) Manicurist schools must have ten manicurist tables and chairs a minimum of two feet apart, side to side, arranged to comfortably accommodate ten students.

(g) The Board shall issue a letter of approval only to esthetician schools that have at least 1,500 square feet of inside floor space located within the same building.

(h) Esthetician schools with 1,500 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, 50 square feet of inside floor space must be provided.

Authority G.S. 88B-4.

SUBCHAPTER 14J – COSMETOLOGY CURRICULUM

SECTION .0100 – BEGINNERS' DEPARTMENT

21 NCAC 14J .0107 APPROVED FIELD TRIPS

Cosmetology Educational Field Trips include the following activities:

- (1) Beauty Shops,
- (2) Cosmetology Conventions,
- (3) Competition Training,
- (4) Other Schools,
- (5) State Board Office and Archives Museum,
- (6) Supply Houses,
- (7) College or Career Day at School,
- (8) Fashion Shows,
- (9) Rest Homes/Nursing Homes,
- (10) Hospitals,
- (11) Funeral Homes.

An instructor must be present during these educational field trips, for credit to be given to student, with a ratio of one instructor per 20 students present. The maximum number of ~~credit~~ credit hours per student may not exceed 40 credit hours for

cosmetology students, 20 credit hours for esthetician students and 10 credit hours for manicurist students.

Authority G.S. 88B-4.

SUBCHAPTER 14K – MANICURIST CURRICULUM

SECTION .0100 – MANICURIST CURRICULUM

21 NCAC 14K .0102 COURSE OF STUDY

(a) The 300 hours in classes required for licensure as a manicurist must include at least 260 hours of "classroom work" as described in Paragraph (b) and at least 40 hours of supervised "live model performances" as set forth in 21 NCAC 14K .0107(a).

(b) The following amount of classroom work is required by the Board before taking the manicurist examination:

- (1) ~~30 hours in~~ Manicuring, including trimming, filing, shaping, decorating, and arm and hand massage;
- (2) ~~140 hours in~~ Sculptured and other artificial nails;
- (3) ~~40 hours in~~ Pedicuring;
- (4) ~~20 hours in~~ Theory and salesmanship as it relates to manicuring;
- (5) ~~30 hours in~~ The procedures and methods of sanitation, including the study of the Federal Environmental Protection Agency's disinfectant guidelines and the recommendations on the Material Safety Data Sheets prepared by the manufactures on all products used by the school's students in the live model performance set forth in 21 NCAC 14 K.0107(a).
- (6) ~~30 hours in~~ The study of bacteriology including communicable diseases and the requirements of The Pure Food and Drug Law for creams and lotions.

(c) Classroom work shall ~~includes~~ include lectures on the subject as well as demonstrations, questions and answers on textbooks, written examinations, and in-class practice of procedures and methods but not live model performances as described by 21 NCAC 14K .0107(b).

Authority G.S. 88B-4; 88B-10.

21 NCAC 14K .0103 EQUIPMENT AND INSTRUMENTS

(a) A manicurist school shall be equipped with the following minimum equipment:

- (1) two handwashing sinks, separate from restrooms, located in or adjacent to the clinic area,
- (2) adequate chairs for patrons in the clinic area,
- (3) ten work tables with adequate light in the clinic area for every 20 students,
- (4) pedicure chair and basin,
- (5) one wet and one dry sterilizer for each work table,
- (6) a covered waste container located in the clinic area, and
- (7) a covered container for soiled or disposable towels located in the clinic area, and

(b) Each student shall be supplied with:

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- (1) a manicurist bowl,
- (2) nail brushes
- (3) a tray for manicuring supplies;
- (4) one mannequin hand,
- (5) a manicuring kit containing proper implements for manicuring and pedicuring, and
- (6) implements for artificial nails, nail wraps and tipping.

(c) The minimum requirement for a school of manicuring desiring to include a department of esthetics in its training program shall be at least one of each item specified in 21 NCAC 14O .0103(a).

Authority G.S. 88B-4.

21 NCAC 14K .0107 LIVE MODEL PERFORMANCES

(a) In completing the 40 hours of live model performances required by 21 NCAC 14K .0102(b), all manicurist students shall complete the following minimum number of live model performances during the manicurist course under the supervision of a licensed cosmetic art teacher before taking the manicurist examination:

- (1) 15 manicures, including trimming, filing, and shaping; decorating; and arm and hand massage;
- (2) 100 applications or repair of sculptured or other artificial nails; and
- (3) 4 pedicures.

(b) No manicurist student may perform any live model performances until he or she has completed 16 hours of classroom work, ~~work as defined in 21 NCAC 14K.0102(d), including at least four hours of bacteriology and four hours of the procedures and methods of sanitation.~~

(c) Live model performances are the rendering of the required service on a live person other than himself or herself. They do not include performing the service on a mannequin.

Authority G.S.88B-4; 88B-10.

SUBCHAPTER 14P – CIVIL PENALTIES

SECTION .0100 – CIVIL PENALTIES

21 NCAC 14P .0104 LICENSING OF COSMETIC ART SHOPS

(a) The presumptive civil penalty for operating a cosmetic art shop without first filing an application for a cosmetic art shop license:

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

(b) The presumptive civil penalty for moving or changing location or ownership of an existing cosmetic art shop without first submitting the appropriate form and fee to the Board is:

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

Authority G.S. 88B-4.

CHAPTER 32 – BOARD OF MEDICAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Board intends to adopt the rule cited as 21 NCAC 32T .0101. Notice of Rule-making Proceedings was published in the Register on July 3, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: September 19, 2000

Time: 3:00 p.m.

Location: North Carolina Medical Board, 1201 Front St., Raleigh, NC 27609

Reason for Proposed Action: *To set out rules governing the performance of clinical pharmacist practitioners practicing drug therapy management.*

Comment Procedures: *Persons wishing to present oral data, views or arguments on a proposed rule or rule change may file a notice with this 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 NC Medical Board's address is PO Box 20007, Raleigh, NC 27619-0007. Written submission of comments will be accepted at any time up to the close of business on October 2, 2000.*

Fiscal Impact

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

SUBCHAPTER 32T – CLINICAL PHARMACIST PRACTITIONER

SECTION .0100 – CLINICAL PHARMACIST PRACTITIONER

21 NCAC 32T .0101 CLINICAL PHARMACIST PRACTITIONER

(a) Definitions:

- (1) 'Medical Board' means the North Carolina Medical Board.
- (2) 'Pharmacy Board' means the North Carolina Board of Pharmacy.
- (3) 'Joint Subcommittee' means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.

- (4) 'Clinical Pharmacist Practitioner or CPP' means a licensed pharmacist in good standing who is approved to provide drug therapy management under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify oneself as a CPP.
- (5) 'Supervising Physician' means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written agreement. Only a physician approved by the Medical Board may legally identify himself or herself as a supervising physician.
- (6) 'Approval' means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.
- (7) 'Drug therapy management' means the implementation of a predetermined drug therapy which shall include:
- (A) diagnosis and product selection by the patient's physician;
 - (B) allowances for modification of prescribed drug dosages, dosage forms, dosage schedules, and tests which may be ordered; and
 - (C) shall be pursuant to an agreement on a standard form approved by the Boards that is physician, pharmacist, patient and disease specific.
- (8) Continuing Education or CE is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.
- (b) CPP application for approval.
- (1) The requirements for application for CPP approval include that the pharmacist:
 - (A) has an unrestricted and current license to practice as a pharmacist in North Carolina;
 - (B) meets one of the following qualifications:
 - (i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Practitioner, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards;
 - (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement;
 - (iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement.
 - (C) submits the required application, a written endorsement from the Pharmacy Board and the fee to the Medical Board;
 - (D) submits any information deemed necessary by the Medical Board in order to evaluate the application; and
 - (E) has a signed supervising physician agreement.
- If for any reason a CPP discontinues working in the approved physician arrangement, both Boards shall be notified in writing within ten days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.
- (2) all certificate programs referred to in paragraph (2)(a)(ii) of the rule must contain a core curriculum including at a minimum the following components:
 - (A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
 - (B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
 - (C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;
 - (D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and /or laboratory tests in accordance with established standards of practice;
 - (E) referring patients to other health professionals as appropriate;
 - (F) administering medications;
 - (G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics of their medication and related therapy;
 - (H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
 - (I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;

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- (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;
 - (K) devices, and durable medical equipment;
 - (L) providing emergency first care;
 - (M) retrieving, evaluating, utilizing, and managing data and professional resources;
 - (N) using clinical data to optimize therapeutic drug regimens;
 - (O) collaborating with other health professionals;
 - (P) documenting interventions and evaluating pharmaceutical care outcomes;
 - (Q) integrating pharmacy practice within healthcare environments;
 - (R) integrating national standards for the quality of healthcare; and
 - (S) conducting outcomes and other research.
 - (3) The completed application for approval to practice as a CPP will be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.
 - (A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
 - (B) the application shall be denied; or
 - (C) the application shall be approved with restrictions.
 - (c) Annual Renewal.
 - (1) Each CPP will register annually on the anniversary of his or her birth date by:
 - (A) verifying a current Pharmacist license;
 - (B) submitting the renewal fee as specified in (10)(b) of this Subchapter;
 - (C) completing the Medical Board's renewal form; and
 - (D) reporting continuing education credits as specified by the Medical Board.
 - (2) If the CPP has not renewed within 30 days of the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.
 - (d) Continuing Education.
 - (1) Each CPP shall earn 35 hours of approved practice relevant CE each year approved by the Pharmacy Board.
 - (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.
 - (e) The supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP; and will review and countersign each order written by the CPP within seven days.
 - (f) The written CPP agreement shall:
 - (1) be approved and signed by both the supervising physician and the CPP and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
 - (2) be specific in regards to the physician, the pharmacist, the patient and the disease;
 - (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
 - (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
 - (5) include a pre-determined plan for emergency services;
 - (6) include a plan and schedule for weekly quality control, review and countersignature of all orders written by the CPP in a face-to-face conference between the physician and CPP;
 - (7) require that the patient be notified of the collaborative relationship; and
 - (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.
 - (g) The supervising physician of the CPP shall:
 - (1) be fully licensed, engaged in clinical practice, and in good standing with the Medical Board;
 - (2) not be serving in a postgraduate medical training program;
 - (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
 - (4) supervise no more than three pharmacists.
 - (h) The CPP shall wear an appropriate nametag spelling out the words 'Clinical Pharmacist Practitioner'.
 - (i) The approval of a CPP may be restricted, denied or terminated by the Medical Board and the pharmacist's license may be restricted, denied, or terminated by the Pharmacy Board, in accordance with provisions of N.C.G.S. 150B if the appropriate Board finds one or more of the following:
 - (1) the CPP has held himself or herself out or permitted another to represent the CPP as a licensed physician;
 - (2) the CPP has engaged or attempted to engage in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
 - (3) the CPP has performed or attempted to provide medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
 - (4) the CPP is adjudicated mentally incompetent;
 - (5) the CPP's mental or physical condition renders the CPP unable to safely function as a CPP; or
 - (6) the CPP has failed to comply with any of the provisions of this Rule.
 - Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.
 - (j) Fees:
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- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
- (2) The fee for annual renewal of approval, due on the CPP's anniversary of birth date is fifty dollars (\$50.00).
- (3) No portion of any fee in this Rule is refundable.

Authority G.S. 90-6(c).

CHAPTER 46 - NORTH CAROLINA BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to adopt the rule cited as 21 NCAC 46 .3101. Notice of Rule-making Proceedings was published in the Register on July 3, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: September 19, 2000

Time: 3:00 p.m.

Location: North Carolina Medical Board, 1201 Front Street, Suite 100, Raleigh, NC 27609.

Reason for Proposed Action: *To set out rules governing the performance of clinical pharmacist practitioners practicing drug therapy management.*

Comment Procedures: *Persons wishing to present oral data, views or arguments on a proposed rule or rule change, may file a notice with either Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to ten minutes. The Board of Pharmacy's address is P.O. Box 459, Carrboro, North Carolina 27510-0459. The Medical Board's address is P.O. Box 20007, Raleigh, North Carolina 27609. Written submission of comments or argument will be accepted at any time up to and including October 2, 2000.*

Fiscal Impact

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

SECTION .3100 – CLINICAL PHARMACIST PRACTITIONER

21 NCAC 46 .3101 CLINICAL PHARMACIST PRACTITIONER

(a) Definitions:

- (1) 'Medical Board' means the North Carolina Medical Board.

- (2) 'Pharmacy Board' means the North Carolina Board of Pharmacy.
 - (3) 'Joint Subcommittee' means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.
 - (4) 'Clinical Pharmacist Practitioner or CPP' means a licensed pharmacist in good standing who is approved to provide drug therapy management under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by Pharmacy Board and the Medical Board may legally identify oneself as a CPP.
 - (5) 'Supervising Physician' means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written agreement. Only a physician approved by the Medical Board may legally identify himself or herself as a supervising physician.
 - (6) 'Approval' means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.
 - (7) 'Drug therapy management' means the implementation of a predetermined drug therapy which shall include:
 - (A) diagnosis and product selection by the patient's physician;
 - (B) allowances for modification of prescribed drug dosages, dosage forms, dosage schedules, and tests which may be ordered; and
 - (C) shall be pursuant to an agreement on a standard form approved by the Boards that is physician, pharmacist, patient and disease specific.
 - (8) Continuing Education or CE is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.
- (b) CPP application for approval.
- (1) The requirements for application for CPP approval include that the pharmacist:
 - (A) has an unrestricted and current license to practice as a pharmacist in North Carolina;
 - (B) meets one of the following qualifications:
 - (i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Practitioner or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which

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- includes two years of clinical experience approved by the Boards;
- (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement; or
 - (iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement;
- (C) submits the required application, a written endorsement from the Pharmacy Board and the fee to the Medical Board;
 - (D) submits any information deemed necessary by the Medical Board in order to evaluate the application; and
 - (E) has a signed supervising physician agreement.
If for any reason a CPP discontinues working in the approved physician arrangement, both Boards shall be notified in writing within ten days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.
- (2) all certificate programs referred to in paragraph (2)(a)(ii) of the rule must contain a core curriculum including at a minimum the following components:
- (A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
 - (B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
 - (C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;
 - (D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and/or laboratory tests in accordance with established standards of practice;
 - (E) referring patients to other health professionals as appropriate;
 - (F) administering medications;
 - (G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics of their medication and related therapy;
 - (H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
 - (I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;
 - (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;
 - (K) devices, and durable medical equipment;
 - (L) providing emergency first care;
 - (M) retrieving, evaluating, utilizing, and managing data and professional resources;
 - (N) using clinical data to optimize therapeutic drug regimens;
 - (O) collaborating with other health professionals;
 - (P) documenting interventions and evaluating pharmaceutical care outcomes;
 - (Q) integrating pharmacy practice within healthcare environments;
 - (R) integrating national standards for the quality of healthcare; and
 - (S) conducting outcomes and other research.
- (3) The completed application for approval to practice as a CPP will be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.
- (A) the application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
 - (B) the application shall be denied; or
 - (C) the application shall be approved with restrictions.
- (c) Annual Renewal.
- (1) Each CPP will register annually on the anniversary of his or her birth date by:
 - (A) verifying a current Pharmacist license;
 - (B) submitting the renewal fee as specified in (10)(b) of this Subchapter;
 - (C) completing the Medical Board's renewal form; and
 - (D) reporting continuing education credits as specified by the Medical Board.
 - (2) If the CPP has not renewed within 30 days of the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.
- (d) Continuing Education.
- (1) Each CPP shall earn 35 hours of approved practice relevant CE each year approved by the Pharmacy Board.
 - (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.
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PROPOSED RULES

(e) The supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP; and will review and countersign each order written by the CPP within seven days.

(f) The written CPP agreement shall:

- (1) be approved and signed by both the supervising physician and the CPP and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
- (2) be specific in regards to the physician, the pharmacist, the patient and the disease;
- (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
- (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
- (5) include a pre-determined plan for emergency services;
- (6) include a plan and schedule for weekly quality control, review and countersignature of all orders written by the CPP in a face-to-face conference between the physician and CPP;
- (7) require that the patient be notified of the collaborative relationship; and
- (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.

(g) The supervising physician of the CPP shall:

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

(h) The CPP shall wear an appropriate nametag spelling out the words 'Clinical Pharmacist Practitioner'.

(i) The approval of a CPP may be restricted, denied or terminated by the Medical Board and the pharmacist's license may be restricted, denied, or terminated by the Pharmacy Board, in accordance with provisions of G.S. 150B if the appropriate Board finds one or more of the following:

- (1) the CPP has held himself or herself out or permitted another to represent the CPP as a licensed physician;
- (2) the CPP has engaged or attempted to engage in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
- (3) the CPP has performed or attempted to provide medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
- (4) the CPP is adjudicated mentally incompetent;

(5) the CPP's mental or physical condition renders the CPP unable to safely function as a CPP; or

(6) the CPP has failed to comply with any of the provisions of this Rule.

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

(j) Fees:

(1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.

(2) The fee for annual renewal of approval, due on the CPP's anniversary of birth date is fifty dollars (\$50.00).

(3) No portion of any fee in this Rule is refundable.

Authority 90-6; 90-18; 90-18.4; 90-85.3; 90-85.26A.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Community Colleges intends to amend the rule cited as 23 NCAC 2E .0205. Notice of Rule-making Proceedings was published in the Register on January 4, 2000.

Proposed Effective Date: *August 1, 2001*

Public Hearing:

Date: *September 20, 2000*

Time: *10:00 a.m.*

Location: *State Board Room, Caswell Building, 200 W. Jones St., Raleigh, NC 27603*

Reason for Proposed Action: *This rule is proposed to be amended due to the enactment and subsequent amendment by the 1999 General Assembly of G.S. 115D-31.3, "Performance Budgeting," which requires the State Board to create new performance measures and standards for performance budgeting purposes in the community college system.*

Comment Procedures: *All persons interested in this action may submit comments in writing from the date of this notice until October 2, 2000, delivered to Clay T. Hines at 200 W. Jones St., Raleigh, NC or mailed to Clay T. Hines, NC Community College System Office, 5004 Mail Service Center, Raleigh, NC 27699-5004. Any interested person may present written or oral comments relevant to the action proposed at the public hearing.*

Fiscal Impact

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

CHAPTER 2 – COMMUNITY COLLEGES

SUBCHAPTER 2E – EDUCATIONAL PROGRAMS

SECTION .0200 – CURRICULUM PROGRAMS

23 NCAC 02E .0205 PROGRAM REVIEW

(a) Each college shall monitor the quality and viability of all its programs and services. Each curriculum program, each program area within continuing education, including Basic Skills, occupational extension, and community service, and each service area shall be reviewed at least every five years to determine program strengths and weaknesses and to identify areas for program improvement. The program review process shall be consistent with the requirements of the regional accrediting agency, and occupational extension program shall be reviewed annually. Colleges shall provide information to the Department of Community Colleges on program enrollment; cost; student progress, achievement and outcomes; and employer satisfaction.

(b) ~~Each college shall submit data to the System Office. The System Office shall collect data on the outcomes of the following performance measures: measures related to the following outcomes: progress of Basic Skills students; performance of college transfer students; passing rates on licensure and certification examinations; success of developmental studies students; curriculum student success; and employer satisfaction.~~

- (1) Progress of basic skills students;
- (2) Passing rate for licensure and certification examinations;
- (3) Goal completion of program completers and noncompleters;
- (4) Employment status of graduates;
- (5) Performance of students who transfer to the university system;
- (6) Passing rates in development courses;
- (7) Success rates of developmental students in subsequent college-level courses;
- (8) The level of satisfaction of students who complete programs and those who do not complete programs;
- (9) Curriculum student retention and graduation;
- (10) Employer satisfaction with graduates;
- (11) Client satisfaction with customized training; and
- (12) Program enrollment.

Each college shall publish its data on all performance measures annually in its electronic catalog or on the internet and in its printed catalog each time the catalog is reprinted. ~~in its catalog, beginning with catalogs published after April 2001. Associate in Applied Science, diploma and certificate programs shall meet the following standards for performance:~~

- (1) ~~the standard required by an outside licensure or accrediting agency for passing rates on licensure or certification examinations, where applicable; and~~
- (2) ~~a satisfactory level on at least five of the following eight required elements:~~

- (A) ~~a three year annual average enrollment of at least 10 students, unduplicated headcount;~~
- (B) ~~student goal accomplishment for program completion;~~
- (C) ~~student goal accomplishment for other student goals;~~
- (D) ~~program completer satisfaction with program;~~
- (E) ~~early leaver satisfaction with program;~~
- (F) ~~program completer employment rate;~~
- (G) ~~early leaver employment rate;~~
- (H) ~~employer satisfaction.~~

~~The performance level on Parts (b)(2)(B) through (b)(2)(H) of this Rule shall be no more than 15 percent below the system average and shall be determined by an annual survey conducted by each college based on a standard set of questions developed by the Department of Community Colleges.~~

(c) ~~The System Office shall report annually to the State Board of Community Colleges on each college's outcomes on these performance measures. The Associate in Arts, Associate in Science, and Associate in Fine Arts degree programs' performance level shall be no more than 15 percent below the system average grade point average earned after two semesters in a four-year institution for students who completed 60 or more semester credit hours at the community college.~~

(d) The System Office shall monitor the colleges' performance on all measures to ensure that all measures are being used for the purpose of program improvement. Programs which do not meet these standards shall be subject to further review to document temporary or permanent conditions which shall be taken into account to justify offering the program. If further review fails to provide a justification for the program or to lead to improvement so that the program meets the standards, the program shall be terminated.

Note: Substance of former 23 NCAC 2C .0604 was incorporated into this Rule.

Authority G.S. 115D-5; G.S. 115D-31.3; S.L. 1999, c. 237, s. 9.2; S.L. 1995, c. 625; S.L. 1993, c. 321, s. 109.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 1E .0705-.0708. Notice of Rule-making Proceedings was published in the Register on July 3, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: September 21, 2000

Time: 10:00 a.m.

Location: Administration Building, 3rd Floor Conference Room, 116 W. Jones St., Raleigh, NC 27603

Reason for Proposed Action: *These amendments are proposed in order to reflect the affect third party*

PROPOSED RULES

administration will have on program administration. It also clarifies leave time allowances for employees who have not missed work, or have not missed enough work to meet the statutory waiting period before benefits can begin, but still must miss work periodically for medical or therapy treatment.

Comment Procedures: Written comments may be submitted to Ms. Lou Kost, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. Oral comments will be received at the public hearing. Written comments must be received no later than October 2, 2000.

Fiscal Impact

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

CHAPTER 1 – OFFICE OF STATE PERSONNEL

SUBCHAPTER 1E – EMPLOYEE BENEFITS

SECTION .0700 – WORKER'S COMPENSATION LEAVE

25 NCAC 01E .0705 ADMINISTRATION

~~(a) Each state agency shall accept employer liability for the state and pay claims. To assure the employee of the benefits provided by the Workers' Compensation Act and to effectively control the cost related to on-the-job injuries, each agency shall designate a Workers' Compensation Administrator to be responsible for the effectiveness of processing and monitoring the workers' compensation claims.~~

~~(b) The agency shall, on those cases that involve possible litigation issues, contact the Attorney General's Office.~~

~~(c) The agency shall submit all reportable claims and valid medical and compensation payments to the Industrial Commission for approval.~~

~~(d) The Office of State Personnel through its Employee Risk Control Services Division shall provide assistance to agency personnel in managing their workers' compensation programs and insure that all agencies provide consistent application of coverage and compensation to injured employees. This office also shall provide the agencies with the State Government Workers' Compensation Program Manual which is an operational manual used as a guide in processing workers' compensation claims.~~

~~(e) The Employee Risk Control Services Division shall measure and evaluate the effectiveness of the workers' compensation program at each agency and recommend changes to achieve optimum results. It shall maintain a statistical data base summarizing a statewide analysis of total expenditures and injuries, and develop training and educational materials for use in training programs for the agencies.~~

(a) Each State agency shall administer an effective and efficient workers' compensation program, which may include third party administration of claims. The agency shall ensure

the employee of the benefits provided by the Workers' Compensation Act and to effectively control costs related to on-the-job injuries and illnesses.

(b) The agency shall designate a Workers' Compensation Administrator to be responsible for ensuring effective processing and monitoring of workers' compensation claims.

(c) The agency shall fund medical treatment and compensation for loss of wages.

(d) The agency shall effectively communicate Workers' Compensation policy and procedures to all employees.

(e) The agency shall participate in compromise settlement agreements and North Carolina Industrial Commission Hearings or Mediations, where appropriate.

(f) The Office of State Personnel shall measure and evaluate the effectiveness of the workers' compensation program at each agency and recommend changes to achieve optimum results and ensure consistent application of coverage and compensation. It shall maintain contract oversight, monitoring and evaluation of the effectiveness of third party administration of claims, and act as intermediary between the third party administrator and the State. It shall maintain a statistical database summarizing a statewide analysis of total expenditures and injuries, and develop training and educational materials for use in training programs for the agencies.

Authority G.S. 126-4.

25 NCAC 01E .0706 RESPONSIBILITY OF EMPLOYEE AND EMPLOYER

(a) In accordance with G.S. 97-22 notice of an accident must be given to the employer by the employee or his/her representative as soon as possible.

(b) ~~The agency~~ agency, or its designated representative, is required by law to report the injury to the North Carolina Industrial Commission using the Form 19 within five days from knowledge of any claim that results in more than one day's absence from work or if medical expenses exceed ~~two~~ thousand dollars (\$2,000) the reportable amount which is established by the Industrial Commission.

(c) Responsibility for claiming compensation is on the injured employee. A claim must be filed by the employee through the agency/university with the North Carolina Industrial Commission within two years from the date of injury or knowledge thereof. Otherwise, the claim is barred by law.

Authority G.S. 97-22; 126-4.

25 NCAC 01E .0707 USE OF LEAVE

(a) When an employee is injured, he must go on workers' compensation leave and receive the workers' compensation weekly benefit after the required waiting period required by G.S. 97-28. One of the following options may be chosen:

- (1) Option 1: Elect to take sick or vacation leave during the required waiting period and then go on workers' compensation leave and begin drawing workers' compensation weekly benefits.

- (2) Option 2: Elect to go on workers' compensation leave with no pay for the required waiting period and then begin drawing workers' compensation weekly benefits.

If the injury results in disability of more than a specified number of days, as indicated in G.S. 97-28, the workers' compensation weekly benefit shall be allowed from the date of disability. If this occurs in the case of an employee who elected to use leave during the waiting period, no adjustment shall be made in the leave used for these workdays.

(b) Under options 1 and 2 in Paragraph (a) of this Rule, after the employee has gone on workers' compensation leave, the weekly benefit may be supplemented by the use of partial sick or vacation leave, earned prior to the injury, in accordance with a schedule published by the Office of State Personnel each year. Since the employee must receive the weekly benefit, this schedule shall provide an income approximately equal to the past practice of using 100 percent of sick or vacation leave.

(c) Compensatory time may be substituted for sick or vacation leave if applied within the time frames provided under the Hours of Work and Overtime Compensation Policy. (reference: 25 NCAC 1D, Section .1900, Rule . 1928).

(d) If the employee has earned leave or compensatory time and chooses to use it while drawing the weekly benefit, it shall be paid on a temporary pay roll at the employee's hourly rate of pay. It shall be subject to State and Federal withholding taxes and Social Security, but not subject to retirement, just the same as other temporary pay.

Note: Once an election is made under Paragraphs (a) through (c), it may not be rescinded for the duration of the claim.

(e) Unused leave may be retained for future use.

(f) ~~Employees injured on the job in a compensable accident who have returned to work, but continue to require medical or therapy visits to reach maximum medical improvement, shall not be charged leave for time lost from work for required medical or therapy treatment~~ accident, in order to reach maximum medical improvement, require medical or therapy visits during regularly scheduled working hours shall not be charged leave for time lost from work for required treatment.

(g) Employee Refusal of Coverage: Under certain circumstances involving third party liability an employee may elect to refuse workers' compensation benefits. If an employee refuses workers' compensation benefits for injuries resulting from an on the job injury a release statement, provided by the agency, must be signed by the employee who loses time from work as a result of an on the job injury must be placed under the workers' compensation leave policy.

Authority G.S. 97-28; 126-4.

25 NCAC 01E .0708 CONTINUATION OF BENEFITS

While on workers' compensation leave an employee is eligible for continuation of the following benefits:

- (1) Performance Increase: Upon reinstatement, an employee's salary shall be computed based on the last

salary plus any legislative increase to which he is entitled. Any performance increase which would have been given had the employee been at work may also be included in the reinstatement salary, or it may be given on any payment date following reinstatement.

- (2) Vacation and Sick Leave: While on workers' compensation leave, the employee shall continue to accumulate vacation and sick leave to be credited to ~~his~~ his/her account for use upon his/her return. If the employee does not return from workers' compensation leave, vacation and sick leave accumulated only during the first 12 months of workers compensation leave shall be paid in will be exhausted by a lump sum payment along with other unused vacation leave which was on hand at the time of the injury.

- (3) Since the employee is on workers' compensation leave and is not able to schedule vacation time off, the accumulation may in some cases exceed the 240 hours and shall be handled as follows:

- (a) The 240-hour maximum to be carried forward to the next calendar year may be exceeded by the amount of vacation accumulated during workers' compensation leave. The excess may be used after returning to work or carried on the leave account until the end of the calendar year at which time any excess vacation shall be converted to sick leave.

Note: This provision also applies to employees covered under salary continuation provisions of G.S. 143-166 and 115C-337,

- (b) If the employee separates during the period that excess vacation is allowed, the excess leave to be paid in a lump sum may not exceed the amount accumulated during the first 12 months of workers' compensation leave.

- (4) Hospitalization Insurance: While on workers' compensation, an employee is in pay status and shall continue to be covered under the state's health insurance ~~program program~~, in compliance with State Health Plan guidelines. Monthly premiums for the employee shall be paid by the state. Premiums for any dependent coverage must be paid directly by the employee.

- (5) Retirement Service Credit: While on workers' compensation leave an employee does not receive retirement credit. As a member of the Retirement System, the employee may purchase credits for the period of time on an approved leave of absence. Upon request by the employee, the Retirement System provides a statement of the cost and a date by which purchase must be made. If purchase is not made by that date, the cost shall have to be recomputed.

- (6) Longevity: While on workers' compensation leave an employee is in pay status and shall continue to

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receive longevity credit. Employees who are eligible for longevity pay shall receive their annual payments.

Authority G.S. 126-4.

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 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: DHHS – Division of Medical Assistance

Rule Citation: 10 NCAC 26B .0102

Effective Date: September 1, 2000

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 108A-25(b); 108A-54; 42 CFR 440.20

Reason for Proposed Action: This change will provide a preventive health piece to children who may not have a defined problem, but need brief interventions to deal with issues.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Drive, 2504 Mail Service Center, Raleigh, NC 27699-2504.

CHAPTER 26 – MEDICAL ASSISTANCE

SUBCHAPTER 26B – MEDICAL ASSISTANCE PROVIDED

SECTION .0100 – GENERAL

10 NCAC 26B .0102 HOSPITAL OUTPATIENT

- (a) Psychiatric Hospital. Prior approval shall be required for each psychiatric hospital outpatient visit after the first two ~~evaluative visits~~ visits for recipients 21 years and over. Prior approval shall be required for each psychiatric hospital outpatient visit after the 26th visit for recipients under age 21.
- (b) Physicals. Routine physical examinations shall not be covered as a hospital outpatient service.

History Note: Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.20;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. January 1, 1984;
Temporary Amendment Eff. September 1, 2000.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 58-2-205 and G.S. 150B-21.1(a3) that the NC Department of Insurance intends

to adopt temporary rules for the purpose to incorporate provisions from the NAIC Model Regulation into the NC Administrative Code as provided by G.S. 58-2-205.

Rule Citation: 11 NCAC 11A .0514-.0515

Proposed Effective Date: October 1, 2000

Authority for the rule-making: G.S. 58-2-205; 150B-21.1(a3)

Reason for Proposed Action: The purpose of these rules are to incorporate provisions from the NAIC Model Regulation into the NC Administrative Code, as provided by G.S. 58-2-205.

Comment Procedures: Written comments may be sent to the attention of Raymond Martinez, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611.

CHAPTER 11 – FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11A – GENERAL PROVISIONS

SECTION .0500 – CPA AUDITS

11 NCAC 11A .0514 SEASONING REQUIREMENTS.

No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following that period of service the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner shall consider the following factors in determining if the relief should be granted:

- (1) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
- (2) Premium volume of the insurer; or
- (3) Number of jurisdictions in which the insurer transacts business.

Authority G.S. 58-2-40; 58-2-205.

11 NCAC 11A .0515 NOTES TO FINANCIAL STATEMENTS

The notes to financial statements required 11 NCAC 11A .0504(b)(6)(A) shall be those required by the appropriate NAIC Annual Statement Instructions and NAIC Accounting Practices and Procedures Manual, including subsequent amendments and editions. These publications are available for inspection in the Financial Evaluation Division of the Department and may be purchased from the National Association of Insurance

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Commissioners for a cost of two hundred fifteen dollars (\$215.00) and two hundred twenty-five dollars (\$225.00) respectively. The address and telephone number of the NAIC are: NAIC Executive Headquarters, 2301 McGee, Suite 800, Kansas City, MO 64108-2604, (816) 842-3600.

Authority G.S. 58-2-40; 58-2-205.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: North Carolina Marine Fisheries Commission

Rule Citation: 15A NCAC 03I .0106, .0111; 03J .0107, .0301; 03K .0206, .0303; 03O .0501, .0503, .0505

Effective Date: September 1, 2000

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 113-134; 113-169.1; 113-169.3; 113-173; 113-182; 113-221; 113-261; 143B-289.52; 150B-23

Reason for Proposed Action: The Fisheries Reform Act of 1997 (House Bill 1097) and the 1998 amendments to the Fisheries Reform Act (House Bill 1448) require a complete review of Marine Fisheries laws. G.S. 113-169.1, as adopted, authorizes the Marine Fisheries Commission to adopt permits. Section 6.10 of House Bill 1097 and Section 5.1 of House Bill 1448 state: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1." House Bill 1218 deleted authorization for fees for permits.

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3I - GENERAL RULES

SECTION .0100 - GENERAL RULES

15A NCAC 03I .0106 SCIENTIFIC, EDUCATIONAL, OR OFFICIAL COLLECTING PERMIT

(a) ~~It is unlawful to take any marine or estuarine species for scientific purposes which is out of season or otherwise protected without first securing a scientific collecting permit from the Secretary. If the Secretary determines that the request is for a valid scientific purpose and will not result in a significant adverse effect on fisheries management, the permit may be issued. Such permit will be subject to any restrictions concerning areas, times, and sampling methods as the Secretary deems appropriate.~~

~~(b) It is unlawful for persons who have been issued an educational, scientific, or official collecting permit to fail to keep records according to the conditions of the permit. This information shall be submitted to the Division of Marine Fisheries on an annual basis unless otherwise specified on the permit.~~

History Note: Authority G.S. 113-134; 113-169.3; 113-182; 113-261; 143B-289.52;
Eff. January 1, 1991;
Recodified from 15A NCAC 3I .0006 Eff. December 17, 1996;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Repeal Eff. September 1, 2000.

15A NCAC 03I .0111 PERMITS FOR AQUACULTURE OPERATIONS

~~(a) It is unlawful to conduct aquaculture operations without first obtaining a permit. Such permit will be issued on a calendar-year basis. All aquaculture operations not required to be permitted by the Wildlife Resources Commission must be permitted by the Fisheries Director.~~

~~(b) It is unlawful:~~

~~(1) To take fisheries resources from coastal waters for aquaculture purposes during closed seasons without first obtaining a permit from the Fisheries Director. The Fisheries Director may impose any or all of the following restrictions on the taking of fisheries resources for aquaculture purposes:~~

- ~~(A) Specify species,~~
- ~~(B) Specify quantity and/or size,~~
- ~~(C) Specify time period,~~
- ~~(D) Specify location,~~
- ~~(E) Specify gear and/or vendors,~~
- ~~(F) Specify harvest conditions.~~

~~(2) To sell, or use for any purpose not related to North Carolina aquacultural operations, fisheries resources taken under a permit issued in accordance with Subparagraph (b)(1) of this Rule.~~

~~(3) To fail to submit to the Fisheries Director an annual report specifying the amount and disposition of fisheries resources collected under authority of this permit.~~

~~(4) To refuse to allow agents of the Fisheries Director to inspect proposed or permitted aquaculture operations for compliance with Marine Fisheries rules and permits.~~

~~(c) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 3K .0103 and .0104 are exempt from requirements of this Rule.~~

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 1992; September 1, 1991;
Recodified from 15A NCAC 3I .0011 Eff. December 17, 1996;
Temporary Repeal Eff. September 1, 2000.

**SUBCHAPTER 3J - NETS, POTS, DREDGES, AND
OTHER FISHING DEVICES**

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0107 POUND NET SETS

(a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits in 15A NCAC 30 .0500. ~~The procedures and requirements procedures, requirements, and fees~~ for obtaining permits are also found in 15A NCAC 30 .0500.

(b) It is unlawful to use pound net sets in coastal fishing waters without the permittee's identification being clearly printed on a sign no less than six inches square, securely attached to the outermost stake of each end of each set. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set must be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be clearly printed on the buoy. Such identification on signs or buoys must include the pound net set permit number and the permittee's last name and initials.

(c) It is unlawful to use pound net sets, or any part thereof, except for one location identification stake or identification buoy for pound nets used in the Atlantic Ocean at each end of proposed new locations, without first obtaining a Pound Net Set Permit from the Fisheries Director. The applicant must indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location. The applicant must specify the type(s) of pound net set(s) requested and possess proper valid licenses and permits necessary to fish those type(s) of net. A pound net set will be deemed a flounder pound net set when the catch consists of 50% or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted seatrout, spot, for example) and other finfish, except flounder and herring or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:

- (1) Flounder pound net set;
- (2) Herring/shad pound net set;
- (3) Bait pound net set;
- (4) Shrimp pound net set;
- (5) Blue crab pound net set; and
- (6) Other finfish pound net set.

(d) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comments for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application shall be deemed denied. For new locations, transfers and renewals, the Fisheries Director may deny the permit application if it is determined that granting the permit will be inconsistent with one

or more of the following permitting criteria, as determined by the Fisheries Director:

- (1) The application must be in the name of an individual and cannot be granted to a corporation, partnership, organization or other entity;
- (2) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with public navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 3J.0101 and .0102;
- (3) The proposed pound net set will not unduly interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- (4) The proposed pound net set will not, by its proximate location, unduly interfere with existing pound net sets in the area;
- (5) The applicant has in the past complied with fisheries rules and laws and does not currently have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in ten years shall be grounds for denial of a pound net set permit;
- (6) The proposed pound net set is in the public interest;
- (7) The applicant has in the past complied with all permit conditions, rules and laws related to pound nets; and
- (8) The proposed pound net set is consistent with appropriate fishery management plans.

Approval shall be conditional based upon the applicant's continuing compliance with specific conditions contained on the Pound Net Set Permit and the conditions set out in Parts (1) through (8) of this Paragraph. The final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings.

(e) An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, and may decline to renew the permit accordingly. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

(f) A Pound Net Set Permit, whether a new or renewal permit, shall expire one year from the date of issuance. The expiration date shall be stated on the permit.

(g) Pound net sets, except herring/shad pound net sets in the Chowan River, shall be operational for a minimum period of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees

of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone within 72 hours after the pound net set is operational. Notification shall include name of permittee, pound net set permit number, county where located, a specific location site, and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke this and any other pound net set permits held by the permittee and for denial of any future pound net set permits.

(h) It is unlawful to transfer a pound net set permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. Such application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a pound net set permit in the new permittee's name. The Fisheries Director may hold a public meeting and may conduct such investigations necessary to determine if the permit should be transferred. No transfer is effective until approved and processed by the Division. The transferred permit shall expire on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification under Chapter 28A of the General Statutes. The Administrator/Executor must provide a copy of the deceased permittee's death certificate, a copy of the certificate of administration and a list of eligible immediate family members to the Morehead City Office of the Division of Marine Fisheries. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible family members of the deceased permittee.

(i) Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(j) In Core Sound, it is unlawful to use pound net sets in the following areas except that only those pound net set permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule:

- (1) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 124° (M) to Green Flasher #13; thence 026° (M) to Green Flasher #11; thence 294° (M) to a point on shore north of Great Ditch 34° 58' 54" N - 76° 15' 06" W; thence following the shoreline to Hog Island Point 34° 58' 27" N - 76° 15' 49" W; thence 231° (M) back to Green Day Marker #3.
- (2) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 218° (M) to Cedar Island Point 34° 57' 33" N - 76° 16' 34" W; thence 156° (M) to Red Flasher #18; thence 011° (M) to Red Flasher #2; thence 302° (M) back to Green Marker #3.
- (3) That area bounded by a line beginning on Long Point 34° 56' 52" N - 76° 16' 42" W; thence running 105° (M) to Red Marker #18; thence running 220° (M) to Green Marker #19; thence following the six foot contour past the Wreck Beacon to a point at 34° 53' 45" N - 76° 18' 11" W; thence 227° (M) to Red Marker #26; thence 229° (M) to Green Marker #27; thence 271° (M) to Red Flasher #28; thence 225° (M) to Green Flasher #29; thence 256° (M) to Green Flasher #31; thence 221° (M) to Green Flasher #35; thence 216° (M) to Green Flasher #37; thence 291° (M) to Bells Point 34° 43' 42" N - 76° 29' 59" W; thence north following the shoreline of Core Sound across the mouth of Jarrett Bay, Oyster Creek, Fulcher Creek, Willis Creek, Nelson Bay, Styron Bay, East Thorofare Bay and Rumley Bay, back to Long Point.

(k) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any or all of the following requirements or restrictions on the use of escape panels:
 - (A) Specify size, number, and location;
 - (B) Specify mesh length, but not more than six inches;
 - (C) Specify time or season; and
 - (D) Specify areas.
- (2) It is unlawful to use flounder pound net sets without four unobstructed escape panels in each pound south and east of a line beginning at a point on Long Shoal Point at 35° 57' 23.7" N-76° 00' 49"W; thence running 116.5° (T) 2,764 yards to Green Marker No. 5 east of the Intracoastal Waterway in the Alligator River at 35° 56' 43.9" N-75° 59' 18"W; thence following Route #1 of the Intracoastal Waterway in Albemarle Sound to Green Marker No. 171 at 36° 09' 18.2" N-75° 53' 29.5" W; thence running 299° (T) 2,160 yards to a point on Camden Point at 36° 09' 52.5" N - 75° 54' 39.9" W. The escape panels must be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels must be a minimum mesh size of five and one-half inches, hung on the diamond, and must be at least six meshes high and eight meshes long.

- (l) Pound net sets are subject to inspection at all times.
- (m) Daily reporting may be a condition of the permit for pound net sets for fisheries under a quota.
- (n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing pound net set permit has been revoked or denied.
- (o) It is unlawful to abandon an existing pound net set without completely removing from the coastal waters all stakes and associated gear within 30 days.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; 150B-23; Eff. January 1, 1991; Amended Eff. April 1, 1999; March 1, 1996; March 1, 1994; September 1, 1991; January 1, 1991; Temporary Amendment Eff. September 1, 2000; August 1, 2000.

SECTION .0300 - POTS, DREDGES, AND OTHER FISHING DEVICES

15A NCAC 03J .0301 POTS

(a) It is unlawful to use pots except during time periods and in areas specified herein:

- (1) From November 1 through April 30, except that all pots shall be removed from internal waters from January 24 through February 7. Fish pots upstream of U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 24 through February 7 removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 28 if it is determined that such waters are free of pots.
 - (2) From May 1 through October 31, north and east of the Highway 58 Bridge at Emerald Isle:
 - (A) In areas described in 15A NCAC 3R .0107(a);
 - (B) To allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for or designate the areas described in 15A NCAC 3R .0107(b); or any part thereof, for the use of pots.
 - (3) From May 1 through October 31 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.
- (b) It is unlawful to use pots:
- (1) in any navigation channel marked by State or Federal agencies; or
 - (2) in any turning basin maintained and marked by the North Carolina Ferry Division.
- (c) It is unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow or hot pink. The owner shall always be identified on the attached buoy by

using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) gear owner's current motorboat registration number; or
 - (2) owner's U.S. vessel documentation name; or
 - (3) owner's last name and initials.
- (d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.
- (e) It is unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths inch bar.
- (f) It is unlawful to use eel pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of 1 inch x 1/2 inches located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait.
- (g) It is unlawful to use crab pots in coastal waters unless each pot contains no less than two unobstructed escape rings that are at least 2 5/16 inches inside diameter and located in the opposite outside panels of the upper chamber of the pot. Peeler pots with a mesh size less than 1 1/2 inches shall be exempt from the escape ring requirement. The Fisheries Director may, by proclamation, exempt the escape ring requirement in order to allow the harvest of peeler crabs or mature female crabs and may impose any or all of the following restrictions:
- (1) Specify areas, and
 - (2) Specify time.
- (h) It is unlawful to use more than 150 pots per vessel in Newport River.
- (i) It is unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.
- (j) User Conflicts:
- (1) The Fisheries Director may, with the prior consent of the Marine Fisheries Commission, by proclamation close any area to the use of pots in order to resolve user conflict. The Fisheries Director shall hold a public meeting in the affected area before issuance of such proclamation.
 - (2) Any person(s) desiring to close any area to the use of pots may make such request in writing addressed to the Director of the Division of Marine Fisheries. Such requests shall contain the following information:
 - (A) A map of the proposed closed area including an inset vicinity map showing the location of the proposed closed area with detail sufficient to permit on-site identification and location;
 - (B) Identification of the user conflicts causing a need for closing the area to the use of pots;
 - (C) Recommended method for resolving user conflicts; and
 - (D) Name and address of the person(s) requesting the closed area.
 - (3) Person(s) making the requests to close an area shall present their request at the public meeting.

- (4) The Fisheries Director shall deny the request or submit a proposed proclamation granting the request to the Marine Fisheries Commission for their approval.
- (5) Proclamations issued closing or opening areas to the use of pots under Paragraph (j) of this Rule shall suspend appropriate rules or portions of rules under 15A NCAC 3R .0107 as specified in the proclamation. The provisions of 15A NCAC 3I .0102 terminating suspension of a rule as of the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under Paragraph (j) of this Rule.
- (k) It is unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52;
 Eff. January 1, 1991;
 Amended Eff. August 1, 1998; May 1, 1997; March 1, 1996;
 March 1, 1994; October 1, 1992; September 1, 1991;
 Temporary Amendment Eff. July 1, 1999;
 Amended Eff. August 1, 2000;
 Temporary Amendment Eff. September 1, 2000.

SUBCHAPTER 3K - OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0200 - OYSTERS

15A NCAC 03K .0206 PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES

(a) Permits to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 3O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 3O .0500.

(b)-(a) It is unlawful to harvest oysters by the use of mechanical methods from shellfish leases or franchises public or private bottom without first obtaining a Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises. Permits are valid only in the areas, at times, and under conditions specified by the Fisheries Director based on concerns for other fisheries resources in the vicinity of the areas within which such activity is permitted. Such permit may impose conditions and requirements reasonably necessary for management and enforcement purposes.

(b) ~~The permit will be revoked or suspended under the following conditions:~~

- (1) ~~If any permit holder refuses to provide oyster harvest information upon contact by Division staff, either by telephone or in person, his permit shall be suspended. Permits may be reinstated 10 days after requested information is provided.~~
- (2) ~~Upon conviction of violation of marine fisheries law, rule, or proclamation involving the use of mechanical methods, the owner's permit will be suspended for no~~

~~less than the following time periods: first conviction—10 days; second conviction within three years—30 days; third conviction within three years—60 days; and upon the fourth conviction within a three year period, the permit will be permanently revoked.~~

- (3) ~~Upon conviction of violation of 15A NCAC 3K .0101 or conviction of taking oysters with the use of mechanical methods from coastal waters that are closed by proclamation because of pollution, the owner's permit will be suspended for 30 days for the first conviction, and upon the second conviction within a three year period, the permit will be permanently revoked.~~

- (4) ~~In the event the person makes application for a new permit during the period of suspension, no new permit will be issued during the time specified in this Rule. In cases of permanent revocation, the minimum waiting period before application for a new permit will be considered will be six months; then only after a hearing before the Fisheries Director or his agent and a finding that issuance of the permit will be in the best interest of fisheries management may a new permit be issued.~~

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
 Eff. October 1, 1992;
 Temporary Amendment Eff. September 1, 2000.

SECTION .0300 - HARD CLAMS (MERCENARIA)

15A NCAC 03K .0303 PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES REQUIREMENT

(a) Permits to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 3O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 3O .0500.

(b)-(a) It is unlawful to harvest hard clams by the use of mechanical methods from shellfish leases or franchises public or private bottom without first obtaining a Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises. Permits are valid only in the areas, at times, and under conditions specified by the Fisheries Director based on concerns for other fisheries resources in the vicinity of the areas within which such activity is permitted. Such permit may impose conditions and requirements reasonably necessary for management and enforcement purposes.

(b) ~~The permit will be revoked or suspended under the following conditions:~~

- (1) ~~If any permit holder refuses to provide oyster harvest information upon contact by Division staff, either by telephone or in person, his permit shall be suspended. Permits may be reinstated 10 days after requested information is provided.~~
- (2) ~~Upon conviction of violation of marine fisheries law, rule, or proclamation involving the use of mechanical~~

~~methods, the owner's permit will be suspended for no less than the following time periods: first conviction—10 days; second conviction within three years—30 days; third conviction within three years—60 days; and upon the fourth conviction within a three year period, the permit will be permanently revoked.~~

- ~~(3) Upon conviction of violation of 15A NCAC 3K .0101 or conviction of taking oysters with the use of mechanical methods from coastal waters that are closed by proclamation because of pollution, the owner's permit will be suspended for 30 days for the first conviction, and upon the second conviction within a three year period, the permit will be permanently revoked.~~
- ~~(4) In the event the person makes application for a new permit during the period of suspension, no new permit will be issued during the time specified in this Rule. In cases of permanent revocation, the minimum waiting period before application for a new permit will be considered will be six months; then only after a hearing before the Fisheries Director or his agent and a finding that issuance of the permit will be in the best interest of fisheries management may a new permit be issued.~~

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. September 1, 1991;

Temporary Amendment Eff. September 1, 2000.

SUBCHAPTER 30 - LICENSES, LEASES, AND FRANCHISES

SECTION .0500 - PERMITS

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the permittee, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the permittee on the application. If the permittee is not appearing before a license agent or the designated Division contact, the permittee's signature on the application must be notarized;
- (2) Current picture identification of permittee, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the permittee who will be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the permittee and their designees do not have four or more marine or estuarine resource convictions during the previous three years;

(5) For permit applications from business entities, the following documentation is required:

- (A) Business Name;
- (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
- (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
- (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
- (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
- (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.

(6) Additional information may also be required by the Division for specific permits.

(b) A permittee must hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:

- (1) Pound Net Permit;
- (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean.

(c) A permittee and their designees must hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:

- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
- (2) Permit to Transplant Oysters from Seed Management Areas;
- (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas.

(d) A permittee must hold a valid Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category.

(e) Aquaculture Operations/Collection Permits:

- (1) A permittee must hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees must hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

(f) Applications submitted without complete and required information shall be considered incomplete and shall not be processed until all required information has been submitted. Incomplete applications will be returned to the applicant with deficiency in the application so noted.

(g) A permit will be issued only after the application has been deemed complete by the Division of Marine Fisheries and the permittee certifies to fully abide by the permit general and specific conditions established under 15A NCAC 3J .0107, 3K .0103, 3K .0104, 3K .0107, 3K .0206, 3K .0303, 3K .0401, 3O .0502, and 3O .0503 as applicable to the requested permit.

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(h) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
- (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.

(i) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

(j) Permits are valid from the date of issuance through the expiration date printed on the permit. This time frame may be based on calendar year, fiscal year, or other as deemed appropriate by the Division.

(k) To renew a permit, the permittee shall file a certification that the information in the original application is still currently correct, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.

(l) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in 15A NCAC 3.

(m) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.

(n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

(o) Permit applications shall be available at all Division Offices.

(p) Any permit which is valid at time of adoption of this Rule will be valid until the expiration date stated on the permit.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52; Temporary Adoption Eff. September 1, 2000; May 1, 2000.

15A NCAC 030.0503 PERMIT CONDITIONS; SPECIFIC

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first securing a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year unless otherwise specified on the permit. Such reports will be filed on forms provided by the Division and will include but not be limited to a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.

(3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries, Morehead City Office.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

(1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:

- (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays may be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee may call in the previous day's landings to the dealer contact designated on the permit but must maintain a log furnished by the Division.
- (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) Maintain faxes and other related documentation in accordance with 15A NCAC 3I .0114;
- (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Striped Bass Dealer Permit:

- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area for Striped Bass which is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 34° 55' 09" N - 75° 39' 34" W; running 336° M to Rhodoms Point 36° 00' 10" N - 75° 43'

42" W and east of a line from Eagleton Point 36° 01' 18" N - 75° 43' 42" W; running 352° to Long Point 36° 02' 30" N - 75° 44' 18" W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W; running 122° M across to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W;

(iii) Central Area which is defined as all internal coastal waters of Carteret, Craven, Beaufort, and Pamlico counties; Pamlico and Pungo rivers; and Pamlico Sound south of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W (southern boundary of the Albemarle Sound Management Area for Striped Bass) to the county boundaries;

(iv) Southern Area which is defined as all internal coastal waters of Pender, Onslow, New Hanover, and Brunswick counties.

(B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.

(3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds

and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 34° 55' 09" N - 75° 39' 34" W; running 336° M to Rhodoms Point 36° 00' 10" N - 75° 43' 42" W and east of a line from Eagleton Point 36° 01' 18" N - 75° 43' 42" W; running 352° to Long Point 36° 02' 30" N - 75° 44' 18" W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W; running 122° M across to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W.

(4) Atlantic Ocean Flounder Dealer Permit:

(A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first securing a Atlantic Ocean Flounder Dealer Permit. The licensed location must be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit will be allowed;

(B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first securing an Atlantic Ocean Flounder Dealer Permit.

(5) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining an Atlantic Ocean American Shad Dealer Permit.

(c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

(1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 17.6" N latitude) to Rich's Inlet (34° 35.7" N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.

(2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.

(3) It is unlawful to fail to empty the contents of each net at the end of each tow.

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- (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
- (5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28557.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 3J .0107.

(f) Aquaculture Operations/Collection Permits:

- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It is unlawful:
 - (A) To take marine and estuarine resources from coastal waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
 - (B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
 - (C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.
- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 3K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
- (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
- (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who will be acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Collection Permit:

- (1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.
- (2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. Such reports will be filed on forms provided by the Division. Scientific or

Educational Collection Permits shall be issued on a calendar year basis.

- (3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
 - (A) without the required license(s) for such sale;
 - (B) to anyone other than a licensed North Carolina fish dealer; and
 - (C) without authorization stated on the permit for such sale.
- (4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who will be acting under Scientific or Educational Collection Permits at the time of application.
- (5) The permittee or designees utilizing the permit must call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52;

Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000.

15A NCAC 030 .0505 FEES

(a) The following fees will be charged for the initial issuance of permits listed below. These fees will not be prorated for a partial term of the permit:

- (1) ~~Horseshoe Crab Biomedical Use Permit B ten dollars (\$10.00);~~
- (2) ~~Dealers Permits for Monitoring Fisheries under a Quota/Allocation:~~
 - (A) ~~Striped Bass Dealer Permits B fifty dollars (\$50.00);~~
 - (B) ~~Atlantic Ocean Flounder Dealer Permit B fifteen dollars (\$15.00);~~
 - (C) ~~Albemarle Sound Management Area for River Herring Dealer Permit B five dollars (\$5.00);~~
 - (D) ~~Atlantic Ocean American Shad Dealer Permit B five dollars (\$5.00);~~
- (3) ~~Pound Net Set Permit:~~
 - (A) ~~Initial Issuance fifty dollars (\$50.00);~~
 - (B) ~~Transfer five dollars (\$5.00);~~
- (4) ~~Blue Crab Shedding Operation ten dollars (\$10.00);~~
- (5) ~~Atlantic Ocean TED Waiver Permit fifteen dollars (\$15.00).~~

(b) The following fees will be charged for renewal of permits as listed below:

- (1) ~~Horseshoe Crab Biomedical Use Permit B five dollars (\$5.00);~~
- (2) ~~Dealers Permits for Monitoring Fisheries under a Quota/Allocation:~~
 - (A) ~~Striped Bass Dealer Permits B fifty dollars (\$50.00);~~
 - (B) ~~Atlantic Ocean Flounder Dealer Permit B five dollars (\$5.00);~~
 - (C) ~~Albemarle Sound Management Area for River Herring Dealer Permit B five dollars (\$5.00);~~

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- ~~(D) Atlantic Ocean American Shad Dealer Permit B five dollars (\$5.00);~~
~~(3) Pound Net Set Permit Renewal five dollars (\$5.00);~~
~~(4) Blue Crab Shedding Operation five dollars (\$5.00);~~
~~(5) Atlantic Ocean TED Waiver Permit ten dollars (\$10.00).~~

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52;
Temporary Adoption Eff. August 1, 2000; May 1, 2000;
Temporary Repeal Eff. September 1, 2000.

* * * * *

Rule-making Agency: NC Marine Fisheries Commission

Rule Citation: 15A NCAC 3M .0301; 3O .0302

Effective Date:

15A NCAC 3M .0301 - August 2, 2000

15A NCAC 3O .0302 – August 1, 2000

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 113-134; 113-173

Reason for Proposed Action:

15A NCAC 3M .0301 - Changes to the bag limit for Spanish mackerel by the National Marine Fisheries Service, in accordance with recent amendments to the fishery management plan for Coastal Migratory Pelagic Resources, increases the bag limit from 10 to 15 fish per person per day. If the limit for North Carolina does not mirror the limit for the EEZ, North Carolina fishermen would not be able to land more than 10 fish while fishermen landing in other states, could take 15 fish.

15A NCAC 3O .0302 - House Bill 1562 amended the amount of gill net authorized for use under a Recreational Commercial Gear License. The amended rule allows for that increase in gill net.

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.

CHAPTER 3 – MARINE FISHERIES

SUBCHAPTER 3M – FINFISH

SECTION .0300 – SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of Spanish or king mackerel:

- (1) Specify areas.
- (2) Specify seasons.
- (3) Specify commercial quantity.

- (4) Specify means/methods.
 - (5) Specify size for fish taken by commercial fishing operations.
- (b) King mackerel and Spanish mackerel taken for recreational purposes or by hook and line:
- (1) It is unlawful to possess king mackerel less than 24 inches fork length.
 - (2) It is unlawful to possess more than three king mackerel per person per day.
 - (3) It is unlawful to possess Spanish mackerel less than 12 inches fork length.
 - (4) It is unlawful to possess more than 15 40 Spanish mackerel per person per day.
- (c) King mackerel and Spanish mackerel taken by commercial fishing operations, exclusive of hook and line:
- (1) It is unlawful to possess king mackerel less than 20 inches fork length.
 - (2) It is unlawful to possess Spanish mackerel less than 12 inches fork length.
- (d) Persons in possession of a valid National Marine Fisheries Service Coastal Migratory Pelagic (Mackerel) Permit to fish on the commercial mackerel quotas are exempt from the mackerel creel restrictions established in Paragraph (b) of this Rule.
- (e) Persons in possession of a valid National Marine Fisheries Service Federal Coastal Migratory Pelagic (Mackerel) Permit must comply with the mackerel creel restrictions established in Paragraph (b) of this Rule when fishing with more than three persons (including the captain and mate) on board.
- (f) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. August 2, 2000; January 1, 2000; July 1, 1999.

SUBCHAPTER 3O – LICENSES, LEASES AND FRANCHISES

SECTION .0300 – LICENSE APPEAL PROCEDURES

15A NCAC 03O .0302 AUTHORIZED GEAR

(a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:

- (1) One seine 30 feet or over in length but not greater than 100 feet with a mesh length less than 2 ½ inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may only be used to transport the seine;
- (2) One shrimp trawl with a headrope not exceeding 26 feet in length per vessel. Mechanical methods for retrieving the trawl are not authorized for recreational purposes,

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including but not limited to, hand winches and block and tackle;

- (3) With or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;
- (4) One multiple hook or multiple bait trotline up to 100 feet in length;
- (5) Gill Nets:
 - (A) Not more than 100 yards of gill nets with a mesh length equal to or greater than 2 ½ ~~inches~~ inches except as provided in Part (5)(C) of this Rule. Attendance is required at all times;
 - (B) Not more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ ~~inches~~ inches except as provided in Part (5)(C) of this Rule. Attendance is required when used from one hour after sunrise through one hour before sunset; and
 - (C) Not more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on board, a maximum of 200 yards may be used from a vessel; time;
 - (D) It is unlawful to possess aboard a vessel more than 100 yards of gill nets with a mesh length less than 5 ½ inches and more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on board. It is unlawful to possess aboard a vessel more than 200 yards of gill nets with a mesh length less than 5 ½ inches and more than 200 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on board. equipment; and
- (6) A hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 3J .0304.

(b) It is unlawful to use more than the quantity of authorized gear specified in Subparagraphs (a)(1) - (a)(6) of this Rule, regardless of the number of individuals aboard a vessel possessing a valid Recreational Commercial Gear License.

(c) It is unlawful for a person to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.

(d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

History Note: Filed as a Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority G.S. 113-134; 113-173;

Eff. February 1, 1995;

Temporary Amendment Eff. August 1, 1999; July 1, 1999;

Amended Eff. August 1, 2000;

Temporary Amendment Eff. August 1, 2000.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Rule-making Agency: NC Department of Transportation – Division of Highways

Rule Citation: 19A NCAC 2D .0601-.0602, .0607, .0612, .0633

Effective Date: October 1, 2000

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 20-118(f); 20-119; 136-18(5)

Reason for Proposed Action: G.S. 20-119 authorizes NCDOT to set rules and issue permits for the movement of oversize/overweight loads. The Board of Transportation promulgates rules which define the moves that can be made on the state highway system. For a year, the BOT has reviewed policies governing these movements. The BOT directed that a work group comprised of engineers, safety researchers, and industry representatives review the existing rules with emphasis placed on the movement of mobile homes. The proposed rules require additional escorts and increased DMV inspections for mobile home shipments. The rules require mobile home manufacturers and dealers to maintain copies of all permitted moves to verify that permits were obtained prior to shipment. DMV will perform random audits of records to ensure compliance. HB 1854 created civil penalties for non-compliance with permit requirements. The proposed temporary rules complement the provisions of HB 1854 and implement the BOT's comprehensive package of regulatory changes.

Comment Procedures: Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by December 15, 2000.

CHAPTER 2 – DIVISION OF HIGHWAYS

SUBCHAPTER 2D – HIGHWAY OPERATIONS

SECTION .0600 – OVERSIZE-OVERWEIGHT PERMITS

19A NCAC 02D .0601 PERMITS-AUTHORITY, APPLICATION AND ENFORCEMENT

(a) The State Highway Administrator or his designee shall issue oversize/overweight permits for qualifying vehicles. Irrespective of the route shown on the permit, a permitted vehicle shall travel an alternate route:

- (1) if directed by a ~~peace~~ law enforcement officer;

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- (2) if directed by an official traffic control device to follow a route to a weighing device.
- (3) ~~If if the specified route on the permit is officially detoured, detoured by an officially erected highway sign, traffic control devices, or law enforcement officer, the driver of the permitted vehicle shall contact the issuing Central Permit Office permit office or the issuing field office for house move permits as soon as reasonably possible for clearance of route or for a revision of the permit.~~
- (b) Prior to application for an oversize and/or overweight permit, the vehicle/vehicle combination and/or the commodity in transport is required to be reduced or loaded to the least practical dimensions and/or weight. Application for permits with the exception of house move permits shall be made to the Central Permit Office in writing on forms approved by the Department of Transportation or by via telephone, telephone, wire service or written request. Written applications are required for over heights in excess of 14'. Application for permits requiring a bridge engineering study or other special conditions or considerations shall be submitted at least 10 working days prior to the date of the anticipated move for consideration of approval by the Department of Transportation designee. A surety bond to cover potential damage to highways and bridge structures may be required for permits issued in excess of 122,000 lbs. gross vehicle weight. Applications for permits shall be submitted in writing to the Central Permit Office for consideration of approval for moves exceeding:
- (1) a gross weight of 132,000 pounds with the fee specified in G.S. 20-119(b) at least ten working days prior to the anticipated date of movement; or
 - (2) a width of 15' with documentation for variances at least ten working days prior to the anticipated date of movement with the exception of a mobile/modular unit with maximum measurements of 13'6" high, 16' wide unit and a 3" gutter edge; a width of 16' 11" with the exception of house moves is required to be submitted with the fee specified in G.S. 20-119(b) with documentation for variances at least ten working days prior to the anticipated date of movement; or
 - (3) a height of 14 feet at least two working days prior to the anticipated date of movement.

A surety bond to cover potential damage to highways and bridge structures may be required for overweight permits, permits issued in excess of 122,000 lbs gross vehicle weight.

(c) The North Carolina licensed mobile/modular home retail dealer shall maintain records of all mobile/modular units moved by authority of an annual permit for a minimum of four years from the date of movement. The records shall be readily available for inspection and audit by officers of the Division of Motor Vehicles. Monthly reports shall be submitted by the dealer to the Central Permit Office on a form designed and furnished by the Department of Transportation. Failure to comply with any requirement may be grounds for denying, suspending, or revoking Manufacturer's and/or Dealer's License issued by the Division of Motor Vehicles as specified in Chapter 20 of the Motor Vehicle Law, Title 19A NCAC 03D .0219, or North Carolina Oversize/Overweight permit privileges.

(d) Officers of the Division of Motor Vehicles may perform on-site inspections of mobile/modular homes ready for shipment at the point of manufacture or at the dealer lot for compliance with G.S. 20, dealer and manufacturer regulations, permit regulations, and policy. Notification of violations shall be submitted by enforcement personnel to the Central Permit Office.

(e) The penalties provided in this Section are in addition to the penalties provided for in G.S. 20.

(e)(f) Permits may be declared void by the State Highway Administrator or his designee upon determination that such overdimension/overweight permit was being used in violation of the General Statutes of North Carolina, Permit Rules or restrictions stated on the permit.

(d)(g) Permits may also be denied, revoked or declared invalid as stated in Rule .0633 of this Section.

History Note: Authority G.S. 20-118(f); 20-119; 136-18(5); Eff. July 1, 1978;

Amended Eff. November 1, 1993; October 1, 1991;

Temporary Amendment Eff. October 1, 2000.

19A NCAC 02D .0602 PERMITS-ISSUANCE AND FEES

(a) Permits may be issued for movements of loads which cannot be reasonably divided, dismantled or disassembled, or so loaded to meet legal requirements. Permits are issued on authorized forms with appropriate designation for qualifying moves on the most direct route of travel to the destination after consideration of vertical clearances, work zones, and other factors to ensure safe movement. To be valid, a permit must be signed by the permittee and carried in the towing unit while permitted load is in transit. A permit issued by the Department is not valid for travel over municipal streets (~~Defined defined~~ as streets or highways not maintained by the State of North Carolina). ~~Permitted vehicles shall not travel in convoy.~~

Single trip permits may include a return trip to origin if requested at the time of original issuance and the return trip can be made within the validation of such permit. No single trip permit request shall be issued for a time period to exceed 30 days. Annual permits (blanket) are valid 12 months from the effective date of the permit, issuance.

~~City Passenger Buses which exceed the weight limits in G.S. 20-118(f) may be issued permits for operation on the highways of the state in the vicinity of the municipality and to qualify the vehicle for license.~~

(b) The Department of Transportation shall collect a fee as specified in GS 20-119(b). Only cash, certified check, money order or order, company check check, or credit card will be accepted. No personal checks will be accepted. The Department shall bill permittees with established credit accounts monthly for permits issued for the previous month.

History Note: Authority G.S. 20-119; 136-18(5); Eff. July 1, 1978;

Amended Eff. December 29, 1993; October 1, 1991;

April 1, 1984; April 11, 1980;

Temporary Amendment Eff. October 1, 2000.

19A NCAC 02D .0607 PERMITS-WEIGHT,

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DIMENSIONS AND LIMITATIONS

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. ~~Authorization for a permit may be given by the Central Permit Office or head of the Maintenance Unit for movement of loads in excess of 15 feet for buildings, structures, electrical equipment or machinery. After review of documentation of variances, the Central Permit Office or the State Maintenance and Equipment Engineer may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D.0600 et seq.~~ Exception: A mobile/modular unit with maximum measurements of 13'6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than ~~42~~ 14 ' across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed to reduce the width or height may be hauled with the equipment without being considered a divisible load, ~~load except as provided in .0607.~~ A 14' wide mobile/modular home unit with a roof overhang not to exceed a total of 12" may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12 " of roof overhang or the total width of overhang on the appropriate side of the home. Reflective extenders of a design and color approved by the Department of Transportation equal to the width of the roof overhang or protrusion shall be attached to the front and rear of the home to clearly identify the total width of the unit while moving on North Carolina highways. A 16' wide mobile/modular home unit shall not be allowed any protrusions beyond the maximum 3" gutter edge. Permission ~~Authorization~~ to move ~~vehicles commodities~~ wider than ~~42~~ 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width. ~~Loads must be so placed on vehicle/vehicle combination so as to present least over dimension to traffic.~~ A single trip permit ~~shall~~ may be issued vehicle specific not to exceed a width of 15 feet for all movements unless authorized by

- (1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

Steer Axle	12,000 lbs.
Single axle	25,000 lbs.
2 axle tandem	50,000 lbs.
3 or more axle group	60,000 lbs.
3 axle single vehicle	60,000 lbs. to 70,000 lbs. determined by extreme wheelbase measurement
4 axle single vehicle	75,000 lbs. to 90,000 lbs. determined by extreme wheelbase measurement
5 axle single vehicle	86,000 94,500 lbs.
5 axle vehicle combination	minimum 51' extreme wheelbase 112,000 lbs.
6 axle single vehicle	100,000 lbs. to 108,000 lbs. determined by extreme wheelbase measurement
6 axle vehicle combination	108,000 120,000 lbs. minimum 51' extreme wheelbase'
7 or more axle single vehicle	105,000 to 122,000 lbs. minimum 35' extreme wheelbase
7 axle vehicle combination	122,000 to 132,000 lbs. minimum 40' extreme wheelbase
7 axle vehicle combination with a gross wt. exceeding 132,000 lbs.	requires a Department of Transportation Engineering Study.

- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

(A) ~~Self propelled scrapers with low pressure tires:~~

the Central Permit Office or ~~Head of Maintenance, the State Maintenance and Equipment Engineer.~~ Exception: A mobile/modular unit with maximum measurements of 13' 6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. Permits for house moves ~~shall~~ may be issued as specified in G.S. 20-356 through G.S. 20-372.

An annual permit shall be issued vehicle specific not to exceed a maximum width of 12' and a maximum height of 13' 6" for movement authorizing travel on all highways in North Carolina. Mobile/modular homes with a maximum height of 13' 6" being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a ~~44-foot~~ 14' unit with an allowable roof overhang not to exceed a total of 12". 42 inches. These ~~mobile~~ mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement. An annual permit may be co-issued to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14' unit with a total roof overhang not to exceed 12" and a height of 13' 6". The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

(b) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

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Single axle	37,000 lbs.	
Tandem axle	50,000 lbs.	
2 axle single vehicle	65,000 to 70,000 lbs. determined by extreme wheelbase measurement	
3 axle single vehicle	75,000 to 80,000 lbs. determined by extreme wheelbase measurement	
4 axle single vehicle	80,000 to 90,000 lbs. determined by extreme wheelbase measurement	
2 AXLE VEHICLE		
extreme wheelbase less than 10'		65,000 lbs.
10' or greater		70,000 lbs.
3 AXLE VEHICLE		
single/tandem axle configuration		
extreme wheelbase less than 16'		75,000 lbs.
16' or greater		80,000 lbs.
single/single/single axle		
configuration gross weight determined		
after review of schematics		
4 AXLE VEHICLE		
extreme wheelbase 28' or greater		90,000 lbs.
single axle		37,000 lbs.
(B) Self-propelled truck cranes with counterweights and boom removed (if practical):		
2 AXLE VEHICLE		
single/single axle configuration		
more than 8'		50,000 lbs.
single axle		25,000 lbs.
3 AXLE VEHICLE		
single/tandem axle configuration		
extreme wheelbase greater than 15'		70,000 lbs.
single axle		25,000 lbs.
tandem axle		50,000 lbs.
4 AXLE VEHICLE		
quad grouping (less than 8' between		
any two consecutive axles)		
extreme wheelbase greater than 18'		78,000 lbs.
single axle		20,000 lbs.
tandem/tandem		
extreme wheelbase greater than 16' but		78,000 lbs.
less than 22'		
tandem axle		50,000 lbs.
extreme wheelbase 22' or greater		90,000 lbs.
tandem axle		50,000 lbs.
5 AXLE VEHICLE		
tandem/tri axle configuration		
extreme wheelbase greater than 24'		86,000 lbs.
but less than 28'		
tandem axle		37,500 lbs.
tri axle		60,000 lbs.
extreme wheelbase 28' or greater		94,500 lbs.
tandem axle		37,500 lbs.
tri axle		60,000 lbs.
tandem/tandem/single axle configuration		
extreme wheelbase 31' or greater		94,500 lbs.
single axle		15,000 lbs.
tandem axle		50,000 lbs.
6 AXLE VEHICLE		
tri/tri axle configuration		
extreme wheelbase greater than 29'		100,000 lbs.
but less than 34'		
tri axle		60,000 lbs.
extreme wheelbase 34' or greater		108,000 lbs.

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tri-axle	60,000 lbs.
tandem/tandem/tandem axle configuration	
extreme wheelbase greater than 37'	100,000 lbs.
but less than 39'	
tandem axle	50,000 lbs.
(no two consecutive set of tandems to exceed 90,000 lbs.)	
extreme wheelbase 39' or greater	108,000 lbs.
tandem axle	50,000 lbs.
(no two consecutive set of tandems to exceed 90,000 lbs.)	
7 AXLE VEHICLE gross weight determined after review of schematics	

~~ALL VARIATIONS OF AXLE CONFIGURATIONS OTHER THAN THOSE LISTED WILL REQUIRE SCHEMATICS OF THE VEHICLE TO BE FURNISHED FOR REVIEW BY THE DEPARTMENT OF TRANSPORTATION.~~

- (3) ~~Vehicles~~ A vehicle combination consisting of a power unit and trailer hauling a sealed ship containers container may qualify for an a specific route overweight permit not to exceed 94,500 lbs. provided the vehicle:
- ~~vehicles:~~
- (A) ~~Are Is~~ going to or from a designated seaport (to include in state and out of state) and ~~have has~~ been or will be transported by marine shipment;
- (B) ~~Are Is~~ licensed for the maximum allowable weight for a 51' extreme wheelbase measurement specified allowed in G.S. 20-118;
- (C) Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;
- ~~(C)(D) Is Are vehicle/vehicle a vehicle combinations combination~~ with at least five axles;
- ~~(D)(E) Has Have~~ proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.
- (c) Overlength permits will be limited as follows:
- (1) Single trip permits are limited to 85 105 feet to include inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 85 105 feet after review of route of travel. ~~Mobile/modular homes may be issued permits not to exceed 100 home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.~~
- (2) Annual (blanket) permits will not be issued for lengths to exceed 65 75 feet. ~~Front overhang may not exceed 3 feet unless if transported otherwise would create a safety hazard. Mobile/modular home permits may be issued for a length not to exceed 400 105 feet.~~
- (3) Front overhang may not exceed the length of 3' specified in Chapter 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3', an overlength permit may be issued.
- (d) ~~There are no set limits for permitted height as it is controlled by clearances on designated route. An Overheight Permit Application for heights in excess of 14' must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. A 16' wide mobile/modular unit with a maximum 3" gutter edge shall not exceed a height of 13' 6" while traveling on North Carolina~~
- ~~highways. The permit shall indicate "Check Height on Structures". The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.~~
- (e) The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. ~~Mobile/modular homes up to a width of a 14 foot unit with an allowable roof overhang not to exceed a total of 12 inches are restricted to travel between sunrise and sunset Monday through 12 noon on Saturday. Exception: A 16' wide mobile/modular home unit with a maximum three inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Thursday. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday day preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday day following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of 94,500 112,000 lbs. provided the permitted vehicle: vehicle~~
- ~~(4) has no other over legal dimension of width, height or length is included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with properly marked overhang (front and/or rear) not to exceed a total of 10 feet. feet, and Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.~~
- ~~(2) is licensed for the maximum allowable weight determined by extreme axle measurements.~~
- (f) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. Mobile/modular homes 14 feet wide are an exception and are restricted to a speed

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~~not to exceed 10 miles per hour below the posted limit. The driver of the permitted vehicle shall will maintain a safe speed consistent with the traveling public and avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs. Seven axle self-propelled truck cranes with extreme wheel base of 44 feet shall not exceed a maximum speed of 45 miles per hour.~~

(g) Additional safety measures are as follows:

(1) A yellow ~~or orange~~ banner measuring a total length of 7' x 18" high bearing the legend "Oversize Load" in 10" black letters 1.5 inches wide shall be displayed ~~on the front bumper of the towing unit for all loads in excess of 10 feet wide; in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10' or greater. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize ---ft. Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers;~~

(2) Red flags measuring ~~18 inches~~ 18" square shall be displayed on all sides at the widest point of load for all loads in excess of ~~40 8' 6" feet~~ wide but the flags shall be so mounted as to not increase the overall width of the load;

(3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes, Motor Carrier and Housing and Urban Development (HUD) regulations.

~~(3)(4)~~ Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;

~~(4)(5)~~ Flashing amber lights shall be used as determined by the issuing permit office.

(h) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.

(i) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular ~~44 foot unit with an allowable roof overhang not to exceed 12 inches unit exceeding a width of 10'~~ shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

(j) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is

obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer ~~district engineer~~ having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

(k) ~~DOT~~ The Department of Transportation may require escort vehicles accompany oversize or overweight loads. The Department of Transportation shall coordinate with the proper agencies to establish an escort driver training and certification program. Once the program is established, the driver of the escort vehicle is required to be certified according to State regulations. North Carolina may reciprocate with other states that have an accredited escort certification program. Certification credentials are required to be carried in the vehicle readily available for enforcement inspection. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel will be considered to determine escort requirements.

History Note: Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978;

Eff. July 1, 1978;

Amended Eff. October 1, 1994; December 29, 1993; October 1, 1991; October 1, 1990;

Temporary Amendment Eff. October 1, 2000.

19A NCAC 02D .0612 PERMITS - HOUSE MOVES

(a) Application for a permit will be made by a ~~A~~ licensed housemover for ~~moves movement of buildings or structures~~ in excess of 15' in width to the appropriate Division of Highways district or division office in which the house is to be moved or in conjunction with other Division of Highways districts or divisions included in the proposed move.

(b) It is not necessary for an individual to acquire a housemover license prior to applying for a permit if the power unit and building is owned by the permittee and such move is to or from property owned individually by the permittee.

(c) ~~Conditions~~ Conditions, restrictions, and limitations on ~~building house~~ move permits shall be determined by the Division of Highways division or district engineers and/or the Central Permit Office.

History Note: Authority G.S. 20-119; 20-360; 136-18(5);

Eff. July 1, 1978;

Amended Eff. November 1, 1993; October 1, 1991; April 1, 1984; January 1, 1979;

Temporary Amendment Eff. October 1, 2000.

19A NCAC 02D .0633 DENIAL: REVOCATION: REFUSAL TO RENEW: APPEAL: INVALIDATION

~~(a) An oversize/overweight permit may be denied for a period of up to six months upon written finding that the applicant violated, while in possession of a previously issued permit, any of the rules contained in this Section, or state and local laws and~~

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~~ordinances regulating the operation of overweight or oversized vehicles.~~

~~(b) An oversize/overweight permit may be revoked upon written findings that the permittee violated the terms and conditions of the permit, which shall incorporate by reference these Rules, as well as state and local laws and ordinances regulating the operation of overweight or oversized vehicles. Repeated violations may result in a permanent denial of the right to use the N.C. State Highway System of roads for transportation of overweight and/or overdimension vehicle/vehicle combinations or vehicle/vehicle combination and load. A permit may also be revoked for misrepresentation of the information on the application, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit.~~

~~(c) No permit shall be denied or revoked, or renewal refused, until a written notice of the denial or violation of the issued permit has been furnished to the applicant. The permittee may appeal in writing to the State Highway Administrator or his designee within 10 days of receipt of written notification of denial or revocation. The State Highway Administrator or his designee must give at least 10 days written notice of the time and place of the hearing to the applicant by personal service or certified mail, return receipt requested. A written decision by the State Highway Administrator or his designee must be within 10 days from the date of the hearing to the applicant. Upon revocation of the permit, it must be surrendered without consideration for refund of fees. Upon restoration of permit privileges a new oversize/overweight permit must be obtained prior to movement on North Carolina highways.~~

~~(d) Permits will be invalid if the vehicle or vehicle combination is found by a law enforcement officer to be operating in violation of permit conditions regarding route, time of movement, licensing, number of axles or any other special condition of the permit. The penalties under G.S. 20-118 and G.S. 20-119 apply in such situations. When the driver of a permitted vehicle is faced with a bona fide, verifiable emergency requiring that the vehicle be operated temporarily off route or off route due to verifiable and unintentional error of the driver, the permit will not be valid. The owner of the vehicle must either obtain a corrected permit from point of inspection to destination or the vehicles may be escorted back to the permitted route.~~

(a) An oversize or overweight permit may be revoked and considered void by the State Highway Administrator or his designee upon inspection and written documentation that the permittee violated the terms and conditions of the permit, or state and local laws and ordinances regulating the operation of oversized and overweight vehicles. A permit may also be revoked or considered void if information on the permit application is misrepresented, if the permit is obtained fraudulently, if the permit is altered, or if the permit is used in an unauthorized manner.

Permits may be revoked or considered void by the State Highway Administrator or his designee if the vehicle or vehicle combination is found by a law enforcement officer to be operating in violation of the authorized route of travel, time of movement, escort requirements, axle weights, number of axles, or any other special conditions of the permit that may damage North Carolina highway infrastructure or create unsafe travel

conditions for the motoring public. A permit that is determined by the State Highway Administrator or his designee to be revoked or void must be surrendered without consideration for refund of fees to the law enforcement officer for delivery to the State Highway Administrator or his designee.

(b) No permit application shall be denied or renewal refused or an issued permit revoked or considered void until a verbal or written notice of the denial of permit request or revocation of the issued permit has been furnished to the permittee. The permittee has the right to appeal in writing to the State Highway Administrator or his designee within 10 days of receipt of a verbal or written notice of such denial or revocation. The State Highway Administrator or his designee is required to send a written notice by certified mail, return receipt requested, not less than 10 days prior to the date of the informal hearing. The State Highway Administrator or his designee is required to provide a written decision to the permittee within 10 days from the date of the informal hearing.

(c) An oversize and/or overweight permit application may be denied for a period of up to six months upon written documentation that the applicant operated in violation of any of the rules contained in this Section, or any state and local law or any rule or ordinance regulating the operation of oversize or overweight vehicles. Repeated violations may result in a permanent denial of the right to use the N.C. State Highway System of roads for transportation of oversize or overweight loads or vehicles.

History Note: Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346; 143B-350(f); Eff. July 1, 1978; Amended Eff. November 1, 1993; October 1, 1991; April 1, 1984; April 11, 1980; Temporary Amendment Eff. October 1, 2000.

Rule-making Agency: NC Department of Transportation – Division of Motor Vehicles

Rule Citation: 19A NCAC 3D .0219

Effective Date: October 1, 2000

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 20-1; 20-52; 20-71.4; 20-75; 20-79(a),(b); 20-82; 20-286(6),(15); 20-297; 20-302-303; 20-347

Reason for Proposed Action: The rule is amended to complement changes in permit rules in 19A NCAC 02D .0600. These changes, a result of statutory changes in the 2000 Session of the General Assembly, are filed as temporary rules this same date.

Comment Procedures: Any interested person may submit written comments by mailing the comments to Emily Lee,

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NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by December 15, 2000.

CHAPTER 3 – DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3D – ENFORCEMENT SECTION

SECTION .0200 - MOTOR VEHICLE DEALER, SALES, DISTRIBUTOR AND FACTORY REPRESENTATIVE LICENSE

19A NCAC 03D.0219 BUSINESS RECORDS

(a) All motor vehicle dealers, manufacturers, factory branches, distributors, distributor branches and wholesalers shall keep a record for at least four years of all vehicles manufactured, received, sold, traded or junked. In addition a copy of any disclosure required by G.S. 20-71.4 received or given by the dealer must be retained for four years. An odometer disclosure form shall be retained for a period of five years as required by G.S. 20-347.1.

(b) All motor vehicle dealers, manufacturers, factory branches, distributor branches and wholesalers shall keep for a period of four years the following additional records for each vehicle and mobile/modular home manufactured, received, sold, traded or junked:

- (1) Make, body style, vehicle identification number, and year model.
- (2) Name of person, firm or corporation from whom acquired.
- (3) Date vehicle purchased or manufactured.
- (4) Name of person, firm or corporation to whom sold or traded. If vehicle junked, date, name and address of person, firm or corporation to whom frame, motor and body sold.
- (5) Date vehicle sold or traded.
- (6) Copy of bill of sale (written statement).
- (7) The North Carolina oversize single trip or annual permit number authorizing movement of the mobile/modular unit, serial number or vehicle identification number of the mobile/modular unit, the date of move, transporter, and name and address of purchaser.

(c) All records required to be maintained in Paragraphs (a) and (b) shall be kept and maintained for every vehicle purchased or sold and shall be kept so as to be readily available for inspection upon demand from an authorized agent of the North Carolina Division of Motor Vehicles in order that the ownership of any vehicle purchased or sold can be traced.

(d) Manufacturer's Certificates of Origin and title for all vehicles owned by a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch or wholesaler must be immediately available to assign to the purchaser.

(e) Retail installment sales must be made in accordance with G.S. 20-303. Cash sales may be made by proper endorsement and delivery of the title to the purchaser and any other receipt that the purchaser and seller agree upon.

(f) Pursuant to 16 CFR 455.2 a dealer shall not willfully remove the "Monroney Label" or sticker from a new automobile that is

displayed for sale. The "Monroney Label" must be affixed to the new automobile at the time of sale to the ultimate purchaser.

"Ultimate Purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a new automobile for purposes other than a resale.

(g) Pursuant to 15 USC Sec. 1231 every dealer offering used cars for sale shall post buyers guides with warranty information as required by the Federal Trade Commission and same shall be displayed at the time of sale.

History Note: Authority G.S. 20-1; 20-52; 20-71.4; 20-75; 20-79(a) and (b); 20-82; 20-286(6) and (15); 20-297; 20-302; 20-303; 20-347;

Eff. June 1, 1988;

Amended Eff. January 1, 1994; October 1, 1991;

October 1, 1989;

Temporary Amendment Eff. October 1, 2000.

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of May 18, 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 2001 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	52B	.0402-.0405	14:13 NCR
2	NCAC	52B	.0408	14:13 NCR
10	NCAC	42A	.0801-.0804*	14:13 NCR
10	NCAC	42A	.0805	14:13 NCR
10	NCAC	42A	.0806*	14:13 NCR
10	NCAC	42A	.0808-.0810*	14:13 NCR
15A	NCAC	9C	.1102*	14:18 NCR
15A	NCAC	9C	.1103-.1104	14:18 NCR
18	NCAC	10	.0101*	14:12 NCR
18	NCAC	10	.0301-.0302*	14:12 NCR
18	NCAC	10	.0308-.0309*	14:12 NCR
19A	NCAC	3D	.0801*	14:11 NCR
21	NCAC	63	.0101	14:14 NCR
21	NCAC	63	.0104-.0105*	14:14 NCR
21	NCAC	63	.0204*	14:14 NCR
21	NCAC	63	.0210*	14:14 NCR
21	NCAC	63	.0301*	14:14 NCR
21	NCAC	63	.0401*	14:14 NCR
21	NCAC	63	.0503*	14:14 NCR
21	NCAC	63	.0508*	14:14 NCR
21	NCAC	63	.0601*	14:14 NCR
21	NCAC	63	.0702*	14:14 NCR

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42A - ADULT PLACEMENT SERVICES

SECTION .0800 - RESIDENT EVALUATION SERVICES FOR ADULTS

10 NCAC 42A .0801 DEFINITIONS

As used in this Section, the following terms have the meaning specified:

- (1) "Adult Care Home" is defined in G.S. 131D-2.
- (2) "Facility" means an adult care home licensed under G.S. 131D-2, or a combination home licensed under G.S. 131E, Article 6, Part A, or an entity licensed under G.S. 122C, Article 2.

(3) "Qualified professional" means an individual legally competent to perform the duties or tasks associated with the purposes for which an applicant or recipient is being referred.

(4) "Special Assistance" means the financial assistance program which helps eligible individuals pay for the cost of care in adult care homes licensed under G.S. 131D-2, combination homes licensed under G.S. 131E, Article 6, Part A, and entities licensed under G.S. 122C, Article 2. The Special Assistance payment rate is set by the General Assembly. The categories of Special Assistance are:

- (a) Special Assistance for the Aged (SAA) is for eligible individuals 65 years of age and older;
- (b) Special Assistance for the Disabled (SAD) is for eligible individuals 18 to 64 years of age who are disabled according to Social Security or state disability standards; and

- (c) Special Assistance for the Blind (SAB) is for eligible individuals who are legally blind.

History Note: Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.

10 NCAC 42A .0802 AVAILABILITY OF THE SERVICE

County departments of social services shall assure the availability of Medicaid funded Resident Evaluation Services for Adults to Special Assistance applicants and recipients.

History Note: Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.

10 NCAC 42A .0803 DEFINITION OF THE SERVICE

Resident Evaluation Services for Adults is a group of interrelated activities conducted by a resident evaluator which includes:

- (1) Conducting an initial evaluation, using the Resident Assessment Instrument for Adult Care Homes, of individuals applying for and receiving Special Assistance to determine the level of care needed;
- (2) Using the initial evaluation to identify those Special Assistance applicants and recipients who require further evaluation regarding the need for treatment of mental illness or habilitation services or referral to other community based services or both;
- (3) Referring Special Assistance applicants and recipients to community based services; and coordinating referrals to community based services for Special Assistance recipients with the facility staff;
- (4) Referring Special Assistance applicants and recipients identified through the initial evaluation or a subsequent re-evaluation to the area mental health, developmental disabilities, substance abuse services authority or another qualified professional for a comprehensive evaluation of, and if indicated, the provision of treatment for mental illness or habilitation services;
- (5) Conducting annual re-evaluations of Special Assistance recipients to determine the ongoing level of care needed;
- (6) Working with the facility to identify Special Assistance recipients who pose a serious threat to other residents and immediately arranging for an initial evaluation of the individual's condition and need for treatment of mental illness or habilitation services;
- (7) Working with Special Assistance applicants and recipients, applicants' and recipients' families or responsible parties or any combination of these individuals, and facility staff to recognize and accept the need for referral the area mental health, developmental disabilities, substance abuse services authority or another qualified professional; and treatment or habilitation, if indicated, by the area mental health, developmental disabilities, substance abuse services authority or another qualified professional;
- (8) Notifying the facility of the mental health or developmental disabilities findings from the initial

evaluation and their responsibility to work with the area mental health, developmental disabilities, substance abuse services authority or another qualified professional to meet the mental health treatment or habilitation needs of Special Assistance applicants and recipients;

- (9) Securing or reviewing other information or both to assist in the determination of level of care and the need for referral to the area mental health, developmental disabilities, substance abuse services authority or another qualified professional;
- (10) Determining that evaluations are conducted, and if indicated, treatment or habilitation plans are developed by the area mental health, developmental disabilities, substance abuse services authority or another qualified professional for Special Assistance applicants and recipients referred for evaluation of the need for treatment or habilitation services;
- (11) Determining that the facility's plan of care for the Special Assistance applicant or recipient is consistent with the results of the mental health or developmental disabilities evaluation and treatment or habilitation plan; and
- (12) Providing technical assistance to facilities on conducting functional assessments and developing care plans to meet Special Assistance applicant and recipient needs.

History Note: Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.

10 NCAC 42A .0804 TARGET POPULATION

All Special Assistance applicants and recipients shall have an evaluation to determine the level of care needed, which shall be conducted by a resident evaluator as set forth in 10 NCAC 42A .0809, using the Resident Assessment Instrument for Adult Care Homes.

History Note: Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.

10 NCAC 42A .0806 EVALUATION AND REFERRAL

(a) Resident evaluators shall complete the Resident Assessment Instrument for Adult Care Homes prior to admission for all Special Assistance applicants, except when emergency placement in a facility is necessary for a disabled adult in need of protective services as specified in G.S. 108A-101(e).

(b) In order to complete the Resident Assessment Instrument for Adult Care Homes, the resident evaluator shall observe the Special Assistance applicant or recipient to determine the level of care needed and obtain information from one or more of the following:

- (1) the applicant or recipient;
- (2) the applicant's or recipient's family or legally responsible party;
- (3) facility staff; or
- (4) others knowledgeable about the applicant's or recipient's condition or diagnosis.

(c) Using the Resident Assessment Instrument for Adult Care Homes, along with any other pertinent information about a Special Assistance applicant or recipient's condition or diagnosis, the resident evaluator shall make a determination to refer the individual for evaluation of, and if indicated, the provision of treatment for mental illness or habilitation services by the area mental health, developmental disabilities, substance abuse services authority or another qualified professional.

(d) Referral to the area mental health, developmental disabilities, substance abuse services authority or another qualified professional shall be made within 24 hours of completing the Resident Assessment Instrument for Adult Care Homes when there is substantial danger of harm to the Special Assistance applicant or recipient or to other residents in the facility and within 72 hours of completing the Resident Assessment Instrument for Adult Care Homes for all other Special Assistance applicants or recipients.

(e) The resident evaluator shall refer the Special Assistance applicant or recipient to the area authority responsible for providing mental health, developmental disabilities, and substance abuse services in the county where the facility is located or to another qualified professional.

(f) The facility shall be notified about the referral to the area mental health, developmental disabilities, substance abuse services authority or another qualified professional. Mental health findings from the initial evaluation or any subsequent re-evaluation shall be made available to the facility so that these findings can be incorporated into the resident's plan of care.

(g) The resident evaluator shall re-evaluate Special Assistance recipients at least every 12 months using the Resident Assessment Instrument for Adult Care Homes.

History Note: Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.

10 NCAC 42A .0808 TRAINING REQUIREMENTS FOR RESIDENT EVALUATORS

Resident evaluators hired directly by county departments of social services or through a contract with another agency or with an individual shall complete training on the Resident Assessment Instrument for Adult Care Homes prior to conducting any evaluations of Special Assistance applicants or recipients.

History Note: Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.

10 NCAC 42A .0809 METHODS OF SERVICE PROVISION

(a) One or more of the methods of service provision enumerated in this Paragraph shall be used to provide Resident Evaluation Services for Adults.

(1) **Direct Provision**

County departments of social services may employ resident evaluators to provide Resident Evaluation Services for Adults. The resident evaluators shall:

(A) Have training in assessment and care planning for long-term-care services in residential and community care settings and training in the use of

computer software to operate the Resident Assessment Instrument for Adult Care Homes;

(B) Perform all duties and activities in accordance with the rules contained in this Section; and

(C) Have no agreement, financial or otherwise, with a licensed facility or any relationship with a facility that could give rise to a conflict of interest.

(2) **Contract with Another Agency**

County departments of social services may establish a written contract with another agency to provide Resident Evaluation Services for Adults. Resident evaluators employed through a written contract shall:

(A) Have training in assessment and care planning for long-term-care services in residential and community care settings and training in the use of computer software to operate the Resident Assessment Instrument for Adult Care Homes;

(B) Perform all duties and activities in accordance with the rules contained in this Section; and

(C) Have no agreement, financial or otherwise, with a licensed facility or any relationship with a facility that could give rise to a conflict of interest.

(3) **Contract with an Individual**

County departments of social services may establish a written contract with an individual to provide Resident Evaluation Services for Adults. Individuals under contract with a county department of social services to provide this service shall:

(A) Have training in assessment and care planning for long-term-care services in residential or community care settings and training in the use of computer software to operate the Resident Assessment Instrument for Adult Care Homes;

(B) Perform all duties and activities in accordance with the rules contained in this Section; and

(C) Have no agreement, financial or otherwise, with a licensed facility or any relationship with a facility that could give rise to a conflict of interest.

(b) A written contract with another agency or with an individual shall be established in accordance with rules set forth in 10 NCAC 36. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule.

History Note: Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.

10 NCAC 42A .0810 CASE RECORD

A record shall be kept in the county department of social services of jurisdiction for each client receiving Resident Evaluation Services for Adults and must include:

(1) Documentation of request or authorization for services;

(2) Documentation of client eligibility;

(3) Documentation of consent for release and sharing of information;

(4) A copy of the completed initial evaluation using the Resident Assessment Instrument for Adult Care Homes

documenting the need for the level of care provided in a facility as set forth in Rule .0801(2) of this Subchapter;

- (5) Copies of all re-evaluations using the Resident Assessment Instrument for Adult Care Homes;
- (6) Documentation of any and all referrals, including those to the area mental health, developmental disabilities, substance abuse services authority or another qualified professional;
- (7) Documentation of any additional information used to verify the need for referral to the area mental health, developmental disabilities, substance abuse services authority or another qualified professional;
- (8) Documentation that an evaluation is conducted, and if indicated, a treatment or habilitation plan is developed when the client is referred to the area mental health, developmental disabilities, substance abuse services authority or another qualified professional;
- (9) Documentation that the facility's plan of care for the client is consistent with the results of the evaluation and treatment or habilitation plan when the client is referred to the area mental health, developmental disabilities, substance abuse services authority or another qualified professional; and
- (10) Documentation notifying the client of service reduction, denial or termination.

History Note: Authority G.S. 143B-153; S.L. 1999-237; Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 9 - DIVISION OF FOREST RESOURCES

SUBCHAPTER 9C - DIVISION PROGRAMS

SECTION .1100 - N.C. PRESCRIBED BURNING ACT

15A NCAC 9C .1102 BURNER CERTIFICATION

The N. C. Division of Forest Resources, hereafter referred to as DFR, shall conduct a burner Certification program composed of the following:

- (1) Each candidate shall attend and successfully complete a prescribed burn school consisting of instruction on: The N. C. Prescribed Burning Act, weather, fuels, smoke management, firing techniques and planning, executing and mopping up the burn; a field trip to examine burn sites before and after burning; and a written test. DFR shall offer a minimum of one of these schools annually at a charge of twenty-five dollars (\$25.00) per participant.
- (2) An alternative abbreviated school may be provided candidates who have successfully completed an approved prescribed burn school other than the DFR school. Other prescribed burn schools shall be approved by DFR if all topics contained in the N. C. Prescribed Burn School were included. Candidates shall provide documentation of topics covered and

successful completion to DFR. This abbreviated school shall include the N. C. Prescribed Burn Act and the N.C. Smoke Management System. A minimum of one of these schools shall be offered annually if there are requests.

- (3) In order to be certified, each candidate whether they train under Paragraph (a) or (b) of this Rule shall successfully conduct a prescribed burn under the observation of a certified burner. The candidate must submit to DFR a completed DFR Certified Burner checkoff sheet, signed by a certified burner.
- (4) Successful candidates shall receive both a numbered certificate and pocket card.

History Note: Authority G.S. 113-8; 113-60.21 through 113-60.31; 143B-10; Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.

TITLE 18 - SECRETARY OF STATE

CHAPTER 10 - ELECTRONIC COMMERCE SECTION

SECTION .0100 - GENERAL ADMINISTRATION

18 NCAC 10 .0101 HOW TO CONTACT THE ELECTRONIC COMMERCE SECTION

(a) The Electronic Commerce Section may be contacted by the following means: Regular mail may be sent to the Electronic Commerce Section at the following address: Electronic Commerce Section, Department of the Secretary of State, PO Box 29622, 2 South Salisbury Street, Raleigh, NC 27626-0622.

(b) Up-to-date contact information regarding the Electronic Commerce Section is contained on the Department of the Secretary of State's Internet site at <http://www.state.nc.us/secstate>.

History Note: Authority G.S. 66-58.10; Temporary Adoption Eff. February 23, 1999; Codifier determined on November 23, 1999, agency findings did not meet criteria for temporary rule; Temporary Adoption Eff. December 3, 1999; Eff. March 26, 2001.

SECTION .0300 - PUBLIC KEY TECHNOLOGY

18 NCAC 10 .0301 PUBLIC KEY TECHNOLOGY LICENSING, FEES, RENEWAL

(a) To be considered for licensure under this subsection, a Certification Authority shall utilize certificate-based public key cryptography.

(b) Any applicant seeking licensure must demonstrate compliance with the North Carolina Electronic Commerce Act, N.C.G.S. Chapter 66, Article 11A, and the Rules in this Chapter.

(c) To request licensure, a Certification Authority shall provide the Electronic Commerce Section with a copy of its current Certification Practice Statement and most recent reports of compliance audit(s) as required by 18 NCAC 10.0303 (k).

(d) A Certification Authority shall adhere to its Certification Practice Statement. If a Certification Authority modifies its

Certification Practice Statement, it shall provide an updated copy of the Certification Practice Statement to the Electronic Commerce Section as soon as is practicable, and no later than the date the updated Certification Practice Statement is put into operation. As a condition of continued licensure, the Electronic Commerce Section may require the Certification Authority to undergo an audit to document compliance with its updated Certification Practice Statement and the Rules in this Chapter.

(e) An initial licensing fee of two thousand dollars (\$2,000 US) shall accompany an initial application.

(f) A renewal fee of two thousand dollars (\$2,000 US) shall accompany an application for renewal by a licensed Certification Authority.

(g) A license issued by the Electronic Commerce Section pursuant to this section shall expire one year after its effective date, unless timely renewed.

(h) Financial Responsibility.

(1) As a precondition of licensure a Certification Authority shall obtain a bond issued by a surety company authorized to do business in North Carolina. A copy of the bond shall be filed with the Electronic Commerce Section prior to licensure. The amount of the bond shall not be less than twenty-five thousand dollars (\$25,000 US). The bond shall be in favor of the State of North Carolina. The bond shall be payable for any penalties assessed by the Electronic Commerce Section pursuant to the Rules in this Chapter and for any losses the State encounters resulting from a Certification Authority's conduct of activities subject to the Electronic Commerce Act or arising out of a violation of the Electronic Commerce Act or any Rule promulgated thereunder;

(2) As precondition of licensure a Certification Authority shall obtain indemnity insurance coverage (e.g. "errors and omissions" or "cyber coverage" or similar coverage) to protect subscribers, relying parties and the State for any losses resulting from the Certification Authority's conduct of activities subject to the Electronic Commerce Act or arising out of a violation of the Electronic Commerce Act or any Rule promulgated thereunder. Indemnity coverage shall be obtained and maintained in the amount of not less than one hundred thousand dollars (\$100,000 US) per occurrence and not less than one million dollars (\$1,000,000 US) for all occurrences;

(3) The failure of a Certification Authority to continuously maintain this surety bond and indemnity insurance coverage may be the basis for revocation or suspension of its license.

History Note: Authority G.S. 66-58.3; 66-58.10(a)(2); Temporary Adoption Eff. February 23, 1999; Codifier determined on November 23, 1999, agency findings did not meet criteria for temporary rule; Temporary Adoption Eff. December 3, 1999; Eff. March 26, 2001.

18 NCAC 10 .0302 PUBLIC KEY TECHNOLOGY. CERTIFICATION AUTHORITY: CERTIFICATE ISSUANCE AND MANAGEMENT - OVERVIEW.

(a) Overview. The Rules in this Section specify minimum requirements for issuance and management of certificates that may be used in verifying digital signatures. The digital signatures may be used on categories of electronic communications specified as suitable applications in 18 NCAC 10.0302(b)(5). Each item in the Rules in this Section must be specifically addressed by the Certification Authority in the Certification Authority's Certification Practice Statement filed with the North Carolina Department of the Secretary of State at the time the Certification Authority submits an application for licensure or renewal.

(b) Community and Applicability.

(1) Certification Authorities. The Rules in this Chapter are binding on each licensed Certification Authority issuing certificates identifying them, and govern Certification Authority performance with respect to all certificates it issues referencing the Rules. Specific Certification Authority Practice Statements and procedures implementing the requirements of the Rules in this Chapter shall be set forth in the Certification Authority Certification Practice Statement;

(2) Certification Authorities Authorized to Issue Certificates Under the Rules in this Chapter. Any Certification Authority may issue certificates identifying the Rules in this Chapter if licensed in the State of North Carolina and the Certification Authority agrees to be bound by and comply with the undertakings and representations of the Rules in this Chapter with respect to such certificates. Issuance of a certificate referencing this Item shall constitute issuing the agreement of the Certification Authority to be bound by terms of the Rules for all certificates referencing them;

(3) Subscribers. A Certification Authority may issue certificates that reference the Rules in this Chapter to the following classes of subscribers:

(A) individuals (unaffiliated);

(B) individuals associated with a sponsor recognized by the Certification Authority ("affiliated individuals"), provided the sponsor is the subscriber of a valid certificate issued by the Certification Authority in accordance with the Rules in this Chapter;

(C) public agencies, as defined in G.S. 66-58.2; and

(D) organizations and businesses qualified as legal entities.

(4) Relying Parties. The Rules in this Chapter benefit the following persons, who may rely on certificates issued to others referencing them ("Qualified Relying Parties"):

(A) individuals intending to engage in a transaction with a public agency;

(B) public agencies, as defined in G.S. 66-58.2;

(C) organizations and businesses, qualified as legal entities, engaged in a transaction with a public agency; and

(D) other parties to a transaction with the entity and a public agency.

(5) Suitable Applications. Certificates referencing this Item are intended to provide a level of identity binding

assurance and the protection of document encryption, and are typically suitable for:

(A) System Access / Systems Security

- (i) Verifying the identity of electronic mail correspondents for non-critical communications;
- (ii) Obtaining access to databases, applications and systems;
- (iii) Message / document encryption for protection of contents/identities.

(B) Digital Signature Activity

- (i) Commerce involving various goods or services with various values;
- (ii) Obtaining personal data relating to the subscriber.

(C) Message / Document Encryption: Documents encrypted to protect contents (e.g. privacy of subscriber);

(6) Some sample applications of the Rules in this Chapter are:

- (A) Computing applications providing access to the certificate holder's own personal information;
- (B) Request and distribution of text information or other types of copyrighted content for which fees are charged or subscriptions are required;
- (C) Verifying the identity of communicating parties;
- (D) Verifying signatures on contracts, government benefits statements, and other documentation;
- (E) Signing of electronic messages; e.g. official reports, employee leave and travel reporting, tax withholding; and
- (F) Secure transport of individual, patient specific medical / other privileged information over public networks.

*History Note: Authority G.S. 66-58.10;
Codifier determined on November 23, 1999, agency findings did not meet criteria for temporary rule;
Temporary Adoption Eff. December 3, 1999;
Eff. March 26, 2001.*

18 NCAC 10 .0308 PUBLIC KEY TECHNOLOGY: CERTIFICATE AND CERTIFICATE REVOCATION LIST PROFILES

(a) Certificate Profile:

- (1) Certificates referencing the Rules in this Chapter shall contain public keys used for authenticating the sender of an electronic message and verifying the integrity of such messages, i.e. public keys used for digital signature verification;
- (2) All certificates referencing the Rules in this Chapter shall be issued in the X.509 version 3 format and shall include a reference to the Object Identifier for the Rules in this Chapter, when assigned, within the appropriate field. The Certification Practice Statement shall identify the certificate extensions supported, and the level of support for those extensions.

(b) Certificate Revocation List Profile. If utilized, Certificate Revocation Lists shall be issued in the X.509 version 2 format. The Certificate Practice Statement shall identify the Certificate

Revocation List extensions supported and the level of support for these extensions.

*History Note: Authority G.S. 66-58.10;
Codifier determined on November 23, 1999, agency findings did not meet criteria for temporary rule;
Temporary Adoption Eff. December 3, 1999;
Eff. March 26, 2001.*

18 NCAC 10 .0309 PUBLIC KEY TECHNOLOGY: RULE ADMINISTRATION

(a) List of Items. Notice of all proposed changes to the Rules in this Chapter under consideration by the Department of the Secretary of State, that may affect users of the Rules (other than editorial or typographical corrections, or changes to the contact details) shall be provided to licensed Certification Authorities. Notice shall be posted on the World Wide Web site of the North Carolina Department of the Secretary of State. Authorized Certification Authorities shall post notice of such proposed changes in their repositories and shall advise their subscribers, in writing or by e-mail, of such proposed changes;

(b) Publication and Notification Procedures:

- (1) A copy of the Rules in this Chapter is available in electronic form on the Internet at www.secretary.state.nc.us/ecommm/;
- (2) Authorized Certification Authorities shall post copies of the Rules in this Chapter in their repositories.

*History Note: Authority G.S. 66-58.10;
Codifier determined on November 23, 1999, agency findings did not meet criteria for temporary rule;
Temporary Adoption Eff. December 3, 1999;
Eff. March 26, 2001.*

**TITLE 19A - DEPARTMENT OF STATE
TRANSPORTATION**

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3D - ENFORCEMENT SECTION

SECTION .0800 - SAFETY RULES AND REGULATIONS

19A NCAC 03D .0801 SAFETY OF OPERATION AND EQUIPMENT

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carrier vehicles, and all private motor carriers, while engaged in interstate commerce over the highways of the State of North Carolina.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carrier vehicles, and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 26,000 pounds; are designed to transport 16 or more passengers, including the driver; or transport hazardous materials required to be placarded pursuant to 49 CFR 170-185.

Provided, the following exceptions shall also apply to all intrastate motor carriers:

- (1) An intrastate motor carrier driver may not drive more than 12 hours following eight consecutive hours off duty; or for any period after having been on duty 16 hours following eight consecutive hours off duty; or after having been on duty 70 hours in seven consecutive days; or more than 80 hours in eight consecutive days. An intrastate driver shall be determined by his previous seven days of operation.
- (2) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina shall be exempt from the provisions of Part 391.11(b)(1) and may be exempt from provisions of Part 391.41(b)(1) through (11) where applicable and therefore shall be authorized for intrastate operation if approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles. These drivers shall continue to be exempt upon completion of a biennial medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer.
- (c) The rules and regulations adopted by the U. S. Department of Transportation relating to inspection, repair and maintenance of motor vehicles (49 CFR Part 396.17 through 396.23 and including Appendix G, and amendments thereto) shall apply to all for-hire motor carrier vehicles, and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 10,000 pounds. Provided, any farm vehicle shall be exempt from the requirements of this Paragraph if:
 - (1) It is being operated by a farmer (or a person under the direct control of the farmer) as a private motor carrier of property;
 - (2) It is being used to transport either:
 - (A) agricultural products, or
 - (B) farm machinery, farm supplies, or both, to and from a farm;
 - (3) It is being operated solely within this State and within 150 air-miles of the farmer's farm;
 - (4) It is not being used in the operation of a for-hire motor carrier; and
 - (5) It is not carrying hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with 49 CFR 177.823.
- (d) Every motor vehicle registered or required to be registered in North Carolina and subject to the inspection requirements of the Federal Motor Carrier Safety Regulations (49 CFR Part 396) which does not display a current approved State inspection certificate as provided in N.C. Gen. Stat. 20-183.2 must display a current approved federal inspection certificate when operated on the streets and highways of this State. On self-propelled vehicles the federal inspection certificate shall be displayed on the outside of the vehicle in a readily visible location on, or in the immediate vicinity of, the driver's door exclusive of the window or rear view mirror. On trailers and semitrailers, the federal inspection certificate shall be located on the left side as near as possible to the outside lower front of the vehicle. The inspection certificate shall contain at least the following legible information:

- (1) The date of inspection;
- (2) Name and address of the motor carrier or other entity where the inspection report required by 49 CFR 396.21(a) is maintained;
- (3) Information uniquely identifying the vehicle inspected; and
- (4) A certification that the vehicle has passed an inspection in accordance with 49 CFR 396.17.
- (e) All Code of Federal Regulations (CFR) Parts cited in this Section are incorporated herein by reference including any subsequent amendments. A copy of the CFR is available from the Office of Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at a cost set by that office.
- (f) The Commissioner may adopt fines for out-of-service criteria. Such fines, as allowed by G.S. 20-17.7, may not exceed the fines adopted by the Commercial Motor Vehicle Safety Alliance that are in effect on the date of the violations. The commercial motor vehicle out-of-service maximum civil fine schedule shall be maintained in the Office of the Commissioner of the Division of Motor Vehicles, be available for public inspection, and be updated annually on the first day of April. The out-of-service maximum civil fine schedule shall not apply to educational contacts or North American Standard Level-V inspections approved by the Director of the DMV Enforcement Section and the Commissioner of Motor Vehicles. An educational contact for the purpose of this code shall mean a pre-planned, public safety inspection activity, focusing on commercial motor vehicle safety awareness and compliance.
- (g) Any fines assessed for violation of an out-of-service criteria shall be assessed against the motor carrier of the commercial motor vehicle.
- (h) Any vehicle being operated under the authority of a motor carrier which has been assessed a fine or fines for violation of an out-of-service criteria shall not be released for operation until the violation is corrected or the out-of-service condition is satisfied and all fines assessed for violation of the out-of-service criteria are paid. Where a motor carrier is assessed fines for a driver out-of-service condition, the commercial motor vehicle shall not be released for operation until such fines assessed to the motor carrier for violation of the out-of-service criteria by the driver are paid.
- (i) Whenever a motor carrier of a commercial motor vehicle shall have a valid defense to the enforcement of the collection of fines for violation of out-of-service criteria, such motor carrier shall pay such fine to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Motor Vehicles. If the fines shall not be refunded within 90 days thereafter, he may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the motor carrier has a principal place of business in North Carolina.

History Note: Filed as a Temporary Amendment Eff. March 30, 1992 for a Period of 180 Days to Expire on September 26, 1992;

Filed as a Temporary Amendment Eff. February 1, 1992 for a Period of 180 Days to Expire on July 30, 1992;

Authority G.S. 20-17.7; 20-21; 20-37.22; 20-183.2(a); 20-381;
 Eff. December 1, 1983;
 Amended Eff. August 3, 1992; July 1, 1992; November 1, 1991;
 October 1, 1991;
 Temporary Amendment Eff. December 1, 1999;
 Amended Eff. April 1, 2001.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 63 - CERTIFICATION BOARD FOR SOCIAL WORK

SECTION .0100 - GENERAL

21 NCAC 63 .0104 ORGANIZATION OF THE BOARD

21 NCAC 63 .0105 MEETINGS

History Note: Authority G.S. 90B-5; 90B-6;
 Eff. August 1, 1987;
 Temporary Amendment Eff. October 1, 1999;
 Repealed Eff. April 1, 2001.

SECTION .0200 - CERTIFICATION

21 NCAC 63 .0204 REFERENCES

(a) Applicants for the LCSW and CSWM classifications shall have a minimum of three references related to the applicant=s experience, as required by G.S. 90B-7(d) and (e). Relatives of applicants or subordinates of applicants may not submit references for applicants. A current Board member shall not submit a reference for an applicant unless he/she is the applicant=s current or only social work supervisor. In such a case the Board member may submit a reference, but he/she shall excuse himself/herself from review of that particular applicant.
 (b) All references must come from individuals who have been closely associated with the applicant in the practice of social work.
 (c) One reference must be from one who has been or is currently a supervisor in a social work setting.

History Note: Authority G.S. 90B-6; 90B-7;
 Eff. August 1, 1987;
 Temporary Amendment Eff. October 1, 1999;
 Amended Eff. April 1, 2001.

21 NCAC 63 .0210 PROVISIONAL LICENSES

(a) The Board shall issue a provisional license to any person meeting the requirements in G.S. 90B-7(f).
 (b) Applications and forms are to be obtained from and returned to the Board Office.
 (c) An application fee of one hundred dollars (\$100.00) will be assessed for processing each application.
 (d) All applicants for provisional licenses who have not met the requirement of two years of supervised clinical social work experience shall receive on-going appropriate supervision, as defined in Rule .0211(a)(2) of this Section, until this requirement is satisfied.
 (e) Prior to engaging in the practice of clinical social work, applicants must demonstrate in writing to the satisfaction of the

Board that they have immediate access to a licensed mental health professional(s) who has (have) agreed to provide to them clinical consultation or supervision when such is needed to assure that standards of clinical social work practice are maintained. Provisionally licensed clinical social workers shall immediately notify the Board in writing of any change in such access.

(f) All provisional licensees shall submit reports of their clinical social work experience and supervision on the appropriate Board form(s) every six months for review and evaluation by the Board.

(g) To prevent a lapse in licensure, provisional licensees who desire to become Licensed Clinical Social Workers shall complete the application process for the Licensed Clinical Social Worker classification and submit the application fee of one hundred dollars (\$100.00) early enough to allow 30 days for administrative processing and Board action prior to expiration of the provisional license.

History Note: Authority G.S. 90B-6; 90B-7;
 Eff. August 1, 1993;
 Temporary Amendment Eff. October 1, 1999;
 Amended Eff. April 1, 2001.

SECTION .0300-EXAMINATIONS

21 NCAC 63 .0301 QUALIFYING EXAMINATIONS

Any national examination selected by the Board, or any examination developed by the Board, shall serve to evaluate the qualifications of each applicant for certification or licensure. Any such examination shall be administered at least once a year. Applicants for certification or licensure must pass the appropriate qualifying examination within two years of the initial application; failure to do so will necessitate that the applicant reapply to the Board for certification or licensure.

History Note: Authority G.S. 90B-6; 90B-7; 90B-8;
 Eff. August 1, 1987;
 Amended Eff. August 1, 1990;
 Temporary Amendment Eff. October 1, 1999;
 Amended Eff. April 1, 2001.

SECTION .0400 - RENEWAL OF CERTIFICATION

21 NCAC 63 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Continuing education for certification or licensure renewal is required to maintain professional knowledge and technical competency. Renewal of certification or licensure requires 40 hours of continuing education credits approved by the Board within each two year renewal cycle. However, if a certification or licensure is for less than a full two-year period, then 30 hours of continuing education credits are required. One unit of credit is equal to one contact hour. One academic course semester-hour of credit is equal to 15 clock hours. Credit for auditing an academic course shall be for actual clock hours attended during which instruction was given and shall not exceed the academic credit allowed. Continuing education activities may include:

- (1) academic social work courses taken for credit or audit;
- (2) formal agency-based staff development, seminars, institutes, workshops, mini courses or conferences

oriented to social work practice, values, skills and knowledge;

- (3) cross-disciplinary offerings from medicine, law and the behavioral/social sciences or other disciplines, if such offerings are clearly related to social work practice, values, skills and knowledge;
- (4) self-directed learning projects with prior approval of the Board. Approval shall be based on the applicability of the learning project to the social worker's field of specialization and shall have clearly stated learning objectives. The maximal continuing education credit granted for such projects is 20 clock hours per renewal period. Credit shall not be granted for:
 - (A) identical programs completed within the same renewal period;
 - (B) job orientation; or
 - (C) on the job training.

(b) During each renewal period all certified and licensed social workers shall engage in a minimum of two hours of continuing education focused on ethics.

History Note: Authority G.S. 90B-6; 90B-9;
 Eff. August 1, 1987;
 Amended Eff. September 1, 1993;
 Temporary Amendment Eff. October 1, 1999;
 Amended Eff. April 1, 2001.

SECTION .0500 - ETHICAL GUIDELINES

21 NCAC 63 .0503 GENERAL PROFESSIONAL RESPONSIBILITIES

- (a) Social workers shall practice only within their sphere of competence. They shall accurately represent their abilities, education, training, credentials, and experience. They shall engage in continuing professional education to maintain and enhance their competence.
- (b) As employees of institutions or agencies, social workers are responsible for remaining alert to and attempting to moderate institutional pressures or policies that conflict with the standards of their profession. If such conflict arises, social workers' responsibility shall be to uphold the ethical standards of their profession.
- (c) Social workers shall not practice, facilitate or collaborate with any form of discrimination on the basis of race, sex, sexual orientation, age, religion, socioeconomic status, or national origin.
- (d) Social workers shall practice their profession in compliance with legal standards.
- (e) Social workers shall not engage in settlement agreements that preclude reporting of ethical misconduct to the Board.

History Note: Authority G.S. 90B-6; 90B-11;
 Eff. March 1, 1994;
 Temporary Amendment Eff. October 1, 1999;
 Amended Eff. April 1, 2001.

21 NCAC 63 .0508 PURSUIT OF RESEARCH AND SCHOLARLY ACTIVITIES

In planning, conducting and reporting a study, the investigator shall make a careful evaluation of its ethical acceptability, taking into account the following additional principles for research with

human subjects. To the extent that this appraisal, weighing scientific and humane values, suggests a compromise of ethical principles, the investigator shall protect the rights of the research participants.

- (1) Social workers shall obtain authorization from administrative superiors and clients who agree to be subjects in the study. Social workers shall also acknowledge accurately any other persons who contribute in a scholarly manner to their research in any reports concerning their research, whether published or unpublished.
- (2) An agreement shall be established between the investigator and the research participant clarifying their roles and responsibilities.
- (3) The rights of an individual to decline to participate in or withdraw from the research shall be respected and the participant shall not be penalized for such action.
- (4) The investigator shall inform the participant of all the features of the research that would affect his/her participation in the study.
- (5) Information obtained about the participant during the course of the study shall be confidential unless informed consent for release of information is obtained in advance.
- (6) Research findings shall be presented accurately. Social workers shall not distort or misrepresent research.

History Note: Authority G.S. 90B-6; 90B-11;
 Eff. March 1, 1994;
 Temporary Amendment Eff. October 1, 1999;
 Amended Eff. April 1, 2001.

SECTION .0600 - DISCIPLINARY PROCEDURES

21 NCAC 63 .0601 GROUNDS FOR DISCIPLINARY PROCEDURES

In addition to the conduct set forth in G.S. 90B-11, the Board may take disciplinary action upon the following grounds:

- (1) offering a check to the Board in payment of required fees which is returned unpaid;
- (2) obtaining or attempting to obtain compensation by fraud or deceit;
- (3) violation of any order of the Board.

History Note: Authority G.S. 90B-2; 90B-6; 90B-11;
 Eff. August 1, 1987;
 Temporary Amendment Eff. October 1, 1999;
 Amended Eff. April 1, 2001.

SECTION .0700 - ADOPTION OF RULES

21 NCAC 63 .0702 PROCEDURE FOR ADOPTION OF RULES

History Note: Authority G.S. 90B-6; 150B-21.2;
 Eff. September 1, 1989;
 Temporary Amendment Eff. October 1, 1999;
 Repealed Eff. April 1, 2001.

CONTESTED CASE DECISIONS

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, September 21, 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, September 15, 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

September 21, 2000
October 19, 2000

LOG OF FILINGS

RULES SUBMITTED: *July 20, 2000 through August 20, 2000*

AGENCY/DIVISION	RULE NAME	RULE CITATION	ACTION
DEPARTMENT OF LABOR			
Name: Address:Hours		13 NCAC 1A .0101	Repeal
Purpose		13 NCAC 1A .0102	Repeal
Commissioner		13 NCAC 1A .0103	Repeal
Deputy Commissioner		13 NCAC 1A .0104	Repeal
Divisions		13 NCAC 1A .0201	Repeal
Petition for Rulemaking Hearings		13 NCAC 1B .0101	Amend
Contents of Petition		13 NCAC 1B .0102	Amend
Disposition of Petitions		13 NCAC 1B .0103	Amend
Notice Mailing List		13 NCAC 1B .0202	Repeal
Additional Information		13 NCAC 1B .0203	Repeal
Request to Participate		13 NCAC 1B .0301	Repeal
Contents of Request		13 NCAC 1B .0302	Repeal
Receipt of Request		13 NCAC 1B .0303	Repeal
Written Submissions		13 NCAC 1B .0304	Repeal
Presiding Officer		13 NCAC 1B .0305	Repeal
Statement of Reasons for Decision		13 NCAC 1B .0306	Repeal
Record of Proceedings		13 NCAC 1B .0307	Repeal
Subjects of Declaratory Rulings		13 NCAC 1B .0401	Repeal
Submission of Request for Ruling		13 NCAC 1B .0402	Repeal
Disposition of Requests		13 NCAC 1B .0403	Repeal
Record of Decision		13 NCAC 1B .0404	Repeal
Definition		13 NCAC 1B .0405	Repeal
Right to Hearing		13 NCAC 1B .0501	Repeal
Petition for Hearing		13 NCAC 1B .0502	Repeal
Simplification of Issues		13 NCAC 1B .0602	Repeal
Request for Department Records		13 NCAC 1B .0605	Repeal
Assistance of Counsel		13 NCAC 1B .0606	Repeal
Final Decisions in Administrative Hearings		13 NCAC 1B .0607	Repeal
Applicability		13 NCAC 1B .0608	Repeal
General Provisions		13 NCAC 1C .0101	Repeal

CONTESTED CASE DECISIONS

Assignment of Responsibility	13 NCAC 1C .0102	Repeal
Job Structuring	13 NCAC 1C .0103	Repeal
Discrimination Complaints	13 NCAC 1C .0106	Repeal
General Provisions	13 NCAC 1C .0201	Repeal
Application Procedure	13 NCAC 1C .0202	Repeal
Job Vacancy Announcements	13 NCAC 1C .0203	Repeal
Interview Procedures	13 NCAC 1C .0204	Repeal
Hiring Procedures	13 NCAC 1C .0205	Repeal
Carolina Star Program	13 NCAC 7A .0401	Repeal
Elevator Safety Code	13 NCAC 15 .0201	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Tar-Pamlico River Basin	15A NCAC 2B .0257	Adopt
Tar-Pamlico River Basin	15A NCAC 2B .0258	Adopt
DENR/MARINE FISHERIES COMMISSION		
Definitions	15A NCAC 3I .0101	Amend
Special Permit Required for Specific Manage Purp	15A NCAC 3I .0112	Repeal
Gill Nets, Seines, Identification, Restrictions	15A NCAC 3J .0103	Amend
Albemarle Sound/Chowan River	15A NCAC 3J .0209	Adopt
Crab Spawning Sanctuaries	15A NCAC 3L .0205	Amend
General	15A NCAC 3M .0201	Amend
Spanish and King Mackerel	15A NCAC 3M .0301	Amend
Flounder	15A NCAC 3M .0503	Amend
River Herring and Shad	15A NCAC 3M .0513	Amend
Dolphin	15A NCAC 3M .0515	Amend
Procedures and Requirements to Obtain Permits	15A NCAC 3O .0501	Adopt
Permit Conditions; General	15A NCAC 3O .0502	Adopt
Permit Conditions; Specific	15A NCAC 3O .0503	Adopt
Suspension/Revocation of Permits	15A NCAC 3O .0504	Adopt
Special Permit Required for Specific Mgmt Purpose	15A NCAC 3O .0506	Adopt
Special Rules, Joint Waters	15A NCAC 3Q .0107	Amend
SECRETARY OF STATE		
Location and Hours	18 NCAC 6 .1101	Amend
Recognized Manuals	18 NCAC 6 .1202	Amend
Limited Offering Exemption	18 NCAC 6 .1206	Amend
Securities Exchanges	18 NCAC 6 .1210	Amend
STATE BOARDS/N C AUCTIONEERS COMMISSION		
Definitions	21 NCAC 4B .0103	Amend
Application Forms	21 NCAC 4B .0201	Amend
Filing and Fees	21 NCAC 4B .0202	Amend
Re-Examination/Refund of Fees	21 NCAC 4B .0302	Amend
License Number: Display of License and Pocket Card	21 NCAC 4B .0401	Amend
License Renewal	21 NCAC 4B .0402	Amend
Apprentice Auctioneer License	21 NCAC 4B .0403	Amend
Grounds for License Denial or Discipline	21 NCAC 4B .0404	Amend
Involvement in Court Action	21 NCAC 4B .0405	Amend
Application for Course Approval	21 NCAC 4B .0501	Amend
Requirements for Approval/Minimum Standards	21 NCAC 4B .0502	Amend
Change of Address or Business Name	21 NCAC 4B .0601	Amend
Advertising	21 NCAC 4B .0602	Amend
Bidding	21 NCAC 4B .0605	Amend
Continuing Education Course	21 NCAC 4B .0801	Adopt
Application for Original Approval	21 NCAC 4B .0802	Adopt
Student Fee for Courses	21 NCAC 4B .0803	Adopt
Approval of Continuing Education Instructors	21 NCAC 4B .0804	Adopt
Sponsor Requirements	21 NCAC 4B .0805	Adopt
Course Completion Reporting	21 NCAC 4B .0806	Adopt
Change in Sponsor Ownership	21 NCAC 4B .0807	Adopt
Course Records	21 NCAC 4B .0808	Adopt
Renewal of Course and Sponsor Approval	21 NCAC 4B .0809	Adopt
Denial or Withdrawal of Approval	21 NCAC 4B .0810	Adopt
Minimum Class Size	21 NCAC 4B .0811	Adopt

CONTESTED CASE DECISIONS

Scheduling and Notice of Scheduled Courses	21 NCAC 4B .0812	Adopt
Advertising; Providing Course Information	21 NCAC 4B .0813	Adopt
Conduct of Classes	21 NCAC 4B .0814	Adopt
Instructor Conduct and Performance	21 NCAC 4B .0815	Adopt
Monitoring Attendance	21 NCAC 4B .0816	Adopt
Student Participation Standards	21 NCAC 4B .0817	Adopt
Additional Sponsor Requirements	21 NCAC 4B .0818	Adopt
Alternative Compliance	21 NCAC 4B .0819	Adopt
STATE BOARDS/DENTAL EXAMINERS, BOARD OF		
Continuing Education Required	21 NCAC 16I .0102	Amend
Approved Courses and Sponsors	21 NCAC 16I .0103	Amend
Reporting Continuing Education	21 NCAC 16I .0104	Amend
Penalty/Non-Compliance/Continuing Education	21 NCAC 16I .0105	Amend
Approved Courses and Sponsors	21 NCAC 16R .0102	Amend
Reporting of Continuing Education	21 NCAC 16R .0103	Amend
Exemption from and Credit for Continuing Education	21 NCAC 16R .0104	Amend
Penalty/Non-Compliance/Continuing Education	21 NCAC 16R .0105	Amend

RULES REVIEW COMMISSION

**August 17, 2000
MINUTES**

The Rules Review Commission met on August 17, 2000, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners in attendance were Vice Chairman Palmer Sugg, Jennie Hayman, Jim Funderburk, Paul Powell, Walter Futch, Robert Saunders, and George Robinson.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Celia Cox.

The following people attended:

Larry D. Michael	DENR
Al Eisele	DHHS
David Cobb	DENR/Wildlife Resources
Paul Glover	DHHS
Stephanie Montgomery	SECRETARY OF STATE
Jeff Manning	DENR-DWQ
John Dorney	DENR-DWQ
Jessica D. Gill	DENR-DCM
Bill Crowell	DENR-DCM
Dee Williams	Board of Cosmetic Art Examiners
Denise Rogers	DHHS/DMA
Portia Rochelle	DHHS/DMA
Dedra Alston	DENR
Ed Norman	DENR/DEH
Joan Troy	DENR/Wildlife Resources

APPROVAL OF MINUTES

The meeting was called to order at 10:05 a.m. with Vice Chairman Sugg presiding. Commissioner Saunders was sworn in by Bobby Bryan. The Vice Chairman asked for any discussion, comments, or corrections concerning the minutes of the July 20, 2000 meeting. The minutes were approved after changing the word "unnecessary" to "necessity."

FOLLOW-UP MATTERS

10 NCAC 42E .0704: Social Services Commission – No action was necessary.

10 NCAC 42Q .0116: Social Services Commission – No action was necessary.

10 NCAC 42S .0501: Social Services Commission – No action was necessary.

10 NCAC 50B .0305: Division of Medical Assistance – The rewritten rule submitted by the agency was approved by the Commission.

15A NCAC 7H .0209: Coastal Resources Commission – The Commission continued its objection to this rule due to ambiguity. In (e)(9), it is not clear what is meant by “temporary.” This objection applies to existing language in the rule.

15A NCAC 18A .2806 and .2812: Commission for Health Services – The rewritten rules submitted by the agency were approved by the Commission.

15A NCAC 26B .0104: Commission for Health Services – No action was necessary.

18 NCAC 7 .0102: Secretary of State – The repeal was approved by the Commission.

LOG OF FILINGS

Vice Chairman Sugg presided over the review of the log and all rules were unanimously approved with the following exceptions:

15A NCAC 2B .0230: Environmental Management Commission – Commissioners Hayman and Powell voted against the motion to approve this rule.

15A NCAC 19B .0301, .0302, .0304, .0309, and .0311: Commission for Health Services – These rules were withdrawn by the agency.

15 NCAC 19B .0313: Commission for Health Services – This rule was withdrawn by the agency prior to last month’s meeting and was inappropriately on the log.

15A NCAC 19B .0320: Commission for Health Services – The Commission objected to this rule due to ambiguity. In (4), it is not clear what information is appropriate. It is not clear when it is necessary to administer subsequent tests. This objection applies to existing language in the rule.

15A NCAC 19B .0321: Commission for Health Services – The Commission objected to this rule due to ambiguity. In (4), it is not clear what information is appropriate. This objection applies to existing language in the rule.

15A NCAC 19B .0502: Commission for Health Services – The Commission objected to this rule due to ambiguity. In (b)(3), it is not clear when it is “appropriate” to wait a period between tests nor what is a “reasonable” period. This objection applies to existing language in the rule.

21 NCAC 14I .0104: State Board of Cosmetic Art Examiners – The Commission objected to this rule due to lack of statutory authority and ambiguity. Paragraph (c), appears to prohibit students from withdrawing from a cosmetic art program more than five school days from the first date of attendance. If that is what the provision means, there is no authority to force a student to stay in a program. If that is not what it means, the meaning is unclear.

21 NCAC 14P .0105: State Board of Cosmetic Art Examiners – The Commission objected to this rule due to lack of statutory authority. There is no requirement cited that an individual must have a license to teach; therefore, there is no authority cited for accessing a civil penalty for teaching with an expired license as the rule does in (c). G.S. 88B-22 sets the occupations for which a license is required, and teaching is not mentioned.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca discussed that elections will need to take place. The Commission agreed to wait until all or most of the Commissioners were present. Mr. DeLuca notified the Commission that Judith Moore, who was hired to replace Sandy resigned as of August 14, 2000. He further explained that she had not been coming to work on a regular basis and a disciplinary conference was to be scheduled; however, she chose to resign instead. The lawsuits were discussed. A trial date for sometime in October has been set on the Pharmacy Board lawsuit, although we are still waiting for a decision on our motions to dismiss. A mutual agreement was reached to have a response due in the Labor suit in September. Mr. DeLuca reported that \$48,000 had been placed in our budget for attorney fees and \$200,000 had been placed in a special reserve for attorney fees. Mr. DeLuca asked if there would be any scheduling conflict with the December 21, 2000 meeting. The Commissioners present had none, but would wait to see if those not present had any problems with attending that meeting.

The next meeting will be on Thursday, September 21, 2000.

The meeting adjourned at 11:30 a.m.

Respectfully submitted,
Celia Scott Cox

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*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ALCOHOL BEVERAGE CONTROL COMMISSION				
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
CRIME CONTROL AND PUBLIC SAFETY				
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
HEALTH AND HUMAN SERVICES				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 ¹	Wade	06/30/00	
Child Support Enforcement Section				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
98 OSP 1302

MARSHE MORGAN,
Petitioner,

vs.

BLACK MOUNTAIN CENTER/ NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
Respondent.

RECOMMENDED DECISION

This matter came on for hearing before Beecher R. Gray, Administrative Law Judge, Office of Administrative Hearings, on November 8 and 9, 1999, in Asheville, North Carolina, on January 14, 2000, in Hendersonville, North Carolina, and on January 25, 2000, in Black Mountain, North Carolina.

APPEARANCES

For the Petitioner: Glen C. Shults, Esq.
For the Respondent: Sondra C. Panico, Esq.

STATEMENT OF CASE

Petitioner was denied a promotion to the position of Synbol Board Technician on August 28, 1998, by a letter from Respondent of the same date. The alleged reason for the decision was that another candidate, Cathy Grindstaff, was more qualified for the position. Petitioner alleges race and age discrimination in the decision.

FINDINGS OF FACT

1. Respondent operates Black Mountain Center (herein "BMC"), a state facility for care and treatment of developmentally disabled adults and residents with Alzheimer's disease.

2. Petitioner Marshe Morgan has been employed at BMC and other State facilities since January 1977. She originally began employment in the entry-level classification of Developmental Technician I (herein "DT-I"). In September 1981, Petitioner was promoted to the position of Educational Developmental Assistant (herein "EDA"), which she continuously has occupied since that date. As of the date of the contested promotion, Petitioner had worked as an EDA for approximately 17 years.

3. As an EDA, Petitioner is responsible for training developmentally disabled adults on the Gravely I unit at BMC. These individuals are within the mid-range of mental and physical ability of the developmentally disabled residents at BMC. The residents on the Raspberry I unit are the most profoundly disabled residents at the facility, while the residents on the Raspberry II unit have the most highly developed mental and physical abilities.

4. Petitioner's responsibilities as an EDA included, *inter alia*, working with clients on various education, vocation and communication programs which are developed by BMC's staff. The programming generally requires the client to work though a series of activities designed to improve the client's abilities in these areas. Petitioner and other EDAs utilize assistive technology equipment in their work with clients.

5. Over her career, Petitioner has taken a special interest in the area of assistive technology. Broadly defined, assistive technology refers to a variety of equipment, ranging from very simple devices such as specially adapted forks and spoons to more complex devices such as computers, which enables the clients to better partake in daily life activities, such as communicating with other individuals, learning and working. Toward that end, Petitioner implemented a number of assistive technology devices at BMC which she obtained from outside vendors, or had fabricated by BMC's staff. One of Petitioner's principal accomplishments was her involvement in the adaptation of computer technology to client training at BMC. The record contains examples of innovative adaptations of assistive technology for particular clients. BMC's managers have asked Petitioner to serve on various committees and groups over the years which are dedicated to the advancement of assistive technology. Petitioner also has participated in BMC's accreditation efforts relating to assistive technology. Petitioner has provided advice to other BMC staff on assistive technology issues.

Various managers, including Steve Martin, Bryan Green and Gail West, testified that Petitioner was highly regarded at BMC for her work with assistive technology and for adaptations of assistive technology for particular clients.

6. Cathy Grindstaff has been employed at BMC since March 1989. Cathy Grindstaff was initially hired as a DT-I, in which she performed basic care functions with clients on Gravelly I. In March 1992, Cathy Grindstaff was promoted to the position of Developmental Technician II (herein "DT-II"), in which she was primarily responsible for supervising approximately thirteen (13) DT-Is on Gravelly I. Cathy Grindstaff was promoted to the EDA position on Gravelly I in May 1996. After working in that position for several days, Cathy Grindstaff went on a three to four month maternity leave, not returning to work until early September 1996. As of the date of the contested promotion, Cathy Grindstaff had worked in the EDA position for approximately two (2) years.

7. During the time that she worked as a DT-I, Cathy Grindstaff performed the general duties of that position, which primarily involved basic care of clients. Such basic care activities included toileting and changing clients' diapers, feeding clients, bathing and grooming clients and assuring client safety. As a DT-I, Cathy Grindstaff never worked in an EDA's classroom performing the types of programming conducted there. At that time, BMC supplied the EDA's classrooms with more assistive technology equipment than on the units. Consequently, Cathy Grindstaff had limited experience in working with assistive technology equipment.

8. Over the years that Cathy Grindstaff worked as a DT-II on the Gravelly I unit, she was responsible for the supervision of 13 DT-Is and a variety of administrative functions, including interviewing job applicants and participating in hiring decisions, ordering dining room supplies, arranging client seating in dining areas, assisting in behavior intervention with clients on other units, and making rounds of the facility on weekends. The position primarily entailed supervision and administration, as opposed to direct interaction with, and the training of clients.

9. In 1997, BMC's staff began to consider the establishment of the Symbol Board Technician ("SBT") position. The purpose of the position was to promote assistive technology at BMC, to assist the speech pathologist, Kerry Nolen, and to engage in community and outreach programs in assistive technology.

10. The reasons for the creation of the SBT position were set forth in a formal document prepared by Genevieve Pugh, BMC's assistant director, and entitled "Justification For Position Reclassification - Symbol Board Technician/Assistive Technology Assistant."

11. After approval and funding for the SBT position were obtained, BMC posted a vacancy announcement for interested applicants in the summer of 1998. The posting stated the minimum experience for the position as follows:

FOUR YEAR DEGREE PREFERABLY IN HUMAN SERVICES AND ONE YEAR OF EXPERIENCE WORKING WITH SYMBOL BOARDS; TWO YEAR ASSOCIATE DEGREE IN HUMAN SERVICES FIELD INCLUDING A SIX MONTH INTERNSHIP IN A SIMILAR SETTING AND THREE YEARS OF EXPERIENCE IN HABILITATIVE PROGRAMMING WITH DEVELOPMENTALLY DISABLED OF WHICH 75% IS WORKING DIRECTLY WITH SYMBOL BOARDS; GRADUATION FROM HIGH SCHOOL OR EQUIVALENT AND FIVE YEARS OF EXPERIENCE IN HABILITATIVE PROGRAMMING WITH DEVELOPMENTALLY DISABLED OF WHICH 50% IS WORKING DIRECTLY WITH SYMBOL BOARDS.

12. By its terms, the vacancy announcement for the SBT position required that applicants with a high school degree have five (5) years of experience in habilitative programming with developmentally disabled individuals in which, during each of those years, the applicant spent 50 per cent of his/her time working with symbol boards.

13. Several employees at BMC applied for the SBT position, including Petitioner and Cathy Grindstaff. All of the applicants were high school graduates; none of the applicants had either a four-year college degree or a two-year associate degree.

14. Respondent does not dispute that Petitioner met the minimum qualifications for the SBT position.

15. In her application for the SBT position, Cathy Grindstaff claimed that (a) as a DT-I she spent 50 per cent of her time engaged in communication programming with clients; (b) as a DT-II, she spent 25 per cent of her time engaged in communication programming with clients; and (c) as an EDA, she had spent 50 - 75 per cent of her time engaged in communication programming with clients. According to her application, Cathy Grindstaff did not have five (5) years of experience in habilitative programming with developmentally disabled individuals in which she spent more than 50 per cent of her time during each year working directly with symbol boards.

16. Testimony from Steve Martin and cross-examination of Cathy Grindstaff also established that in her work as a DT-I and DT-II, Cathy Grindstaff overstated the amount of time that she spent in programming with clients, and in using assistive technology.

17. After determining which applicants met the minimum requirements for the SBT position, Respondent selected three (3) managers to serve on the interview committee, and to make a recommendation as to whom should be hired for the position. The managers were Kerry Nolen, Pam Lawing and Lisa Moon. Kerry Nolen had worked as a speech pathologist at BMC since 1991. In that position, Kerry Nolen had worked with Petitioner on an ongoing basis in connection with communication programs which Kerry Nolen prepared for Petitioner's clients. Pam Lawing had worked at BMC since January 1992. Pam Lawing was the unit manager for Gravely I from June 1996 to October 1997, and in that capacity, she indirectly supervised Petitioner. Lisa Moon had worked at BMC since October 1985, serving as the unit manager for Raspberry I for much of her career. Each member of the interview committee testified that they were aware of Petitioner's interest in assistive technology. Over the years, each of these managers had worked with Petitioner on one or more committees established by BMC for promoting assistive technology at the facility.

18. After the committee was established, Kerry Nolen drafted a series of interview questions, which Pam Lawing and Lisa Moon reviewed and recommended changes. Gail West, BMC's program director, also reviewed and gave final approval to the questions. None of the questions addressed certain areas for which the SBT was to be responsible, such as maintenance of assistive technology equipment, staff training, data tabulation, and client assessments.

19. The Department of Health and Human Services has implemented a Merit-Based Employment Plan which sets forth procedures to be followed in the hiring and promotion process. Under the plan, managers may identify objective criteria -- termed "selection tools" -- by which the relative knowledge, skill and abilities (KSAs) of the applicants are to be assessed. The selection tools are to be identified prior to the closing date for the submission of applications. About that procedure, the Merit-Based Employment Plan states as follows:

Prior to the vacancy closing date, the hiring manager will determine any selection tool(s) that will be used in the final evaluation process. Any selection tool(s) will be objective, based on job-related KSA's and consistently applied to all applicants in the final selection pool.

20. The interview committee identified the selection tools for the SBT position after its members had determined that Cathy Grindstaff should be selected for the position. This was contrary to the procedure set forth in the Merit-Based Employment Plan.

21. The selection committee identified three selection tools for the SBT position: the applicant's interview, PMSs, and raw data. The PMS is the formal written performance evaluation which is prepared annually on BMC employees. The term "raw data" is a reference to the collection of data on clients' responses to the specific various programs prepared for them by BMC's staff.

22. The selection committee interviewed each of the applicants for the SBT position. Kerry Nolen testified that Petitioner's performance during the interview "was fine," and that she answered 21 of the 26 interview questions in a fully satisfactory fashion. Pam Lawing testified that she found nothing deficient in Petitioner's answers to the interview questions.

23. The interviewers identified certain of the questions to which they thought Petitioner's answers were not as good as Cathy Grindstaff's answers. Each of the interviewers provided subjective appraisals to support this contention. For example, Pam Lawing testified that Cathy Grindstaff had answered the questions more "globally" than Petitioner, meaning that her answers allegedly addressed all of the units at BMC, rather than just Gravely I. The interview committee also faulted Petitioner for not providing it with more examples of self-initiative in her career, notwithstanding the fact that the interviewers knew of her interest and accomplishments in assistive technology, and had served with her on assistive technology committees.

24. The interview committee never reviewed the available documentation regarding the applicants' data collection. Such data on communication programs was available only for Petitioner, Cathy Grindstaff and another applicant named Tammy Meadows for approximately one year before the promotion decision was made. Data on education programs for Petitioner and Cathy Grindstaff's clients also was available for this same period.

25. The data collection records showed that Petitioner had significantly more data points (with each data point representing an instance in which data was collected) to collect on communications programs in 1997 - 98. The records also show that Petitioner had significantly more data points to collect on education programs than Cathy Grindstaff during this same period.

26. In 1998, Petitioner had approximately nine (9) clients in her classroom, while Cathy Grindstaff had six (6) to seven (7) clients.

27. Kerry Nolen testified that Petitioner had some of the most behaviorally challenging clients on the Gravely I unit in terms of the extent to which they engaged in disruptive behaviors.

28. During the one-year period prior to the promotion decision, Petitioner experienced certain impediments to her data collection. These included periods of time in which her classroom could not be used due to flooding damage, and a period when Petitioner was absent from work for wrist surgery and on restricted duty after she returned to work.

29. The interview committee never spoke with Petitioner's current or previous supervisors to determine whether her data collection was satisfactory.

30. The evidence presented at trial indicated that Petitioner historically had not experienced problems with data collection. Both Steve Martin and Bryan Green testified that Petitioner's data collection was satisfactory. Gail West, who previously served as Gravely I's unit manager, testified that she had only received one complaint from Kerry Nolen about Petitioner's data collection. Gail West testified that she told Kerry Nolen to speak directly with Petitioner, and saw no need to intervene personally. Gail West recalled that she received no further complaints from Kerry Nolen about the matter, and that from her perspective, Petitioner did not have problems with data collection.

31. The interview committee never reviewed the available PMSs for Petitioner and Cathy Grindstaff prior to making its decision. Pam Lawing was the only member who reviewed any of the applicants' PMSs, and her review was limited to the most recent PMSs prepared for Petitioner and Cathy Grindstaff. There were, in fact, PMSs available on Petitioner and Cathy Grindstaff dating back to approximately 1989.

32. The available PMSs for Petitioner show that she regularly received overall ratings of "Very Good" (which was the next-to-highest rating) from 1992 through 1998 with the exception of the 1992-93 evaluation, when she received a overall rating of "Good" because she incurred a safety infraction during that year. This safety infraction had no influence upon the committee's recommendation. The two available PMSs for the period of 1989 - 91 show that Petitioner scored 154 out of a possible 171 points on one evaluation, and 298 out of a possible 309 points in another evaluation.

33. The available PMSs for Cathy Grindstaff showed that she received overall ratings of "Very Good" for the years she worked as an EDA. Cathy Grindstaff did not receive a PMS for the year 1995-96. During the years that Cathy Grindstaff worked as a DT-II, she received an overall rating of "Very Good" for 1995-95, an overall rating of "Outstanding" for 1993-94, and an overall rating of "Very Good" for 1992-93. As a DT-I, Cathy Grindstaff received an "Outstanding" for 1991-92. The available PMSs for the period of 1989 - 91 show that Cathy Grindstaff scored 104 out of a possible 114 points in 1990 - 91, and that she scored 280 out of a possible 324 points in 1989 - 90, which according to her supervisor, Steve Martin, was an average evaluation.

34. The interview committee never spoke with Petitioner's current or previous supervisors to determine their evaluations of her work performance.

35. After completing the interviews, the committee members discussed the applicants, and then rank-ordered their preferences. With one minor exception, each member ranked the applicants in the same ordering.

36. Title 25, North Carolina Code of Administrative Rules, Section 1D.0301 defines the criteria for a promotion in the state's civil service. The rule states, "Selection shall be based upon demonstrated capacity, quality and length of service."

37. Petitioner had greater length of service than any of the other applicants for the SBT position. Each committee member acknowledged that she did not give Petitioner's greater length of service equal consideration to the other factors allegedly relied upon in their selection decision.

38. Respondent's personnel director, E.V. Gouge, testified that an applicant's experience weighed very heavily in the filling of job vacancies at BMC.

39. Petitioner introduced a summary of Applicant Selection Logs from July 1995 through December 1998 which showed that experience (or lack of experience) was frequently cited as a reason for the selection (or non-selection) of an applicant.

40. Respondent advised Petitioner by letter dated August 28, 1998 that she did not receive the promotion.

41. At about the same time, Kerry Nolen and Pam Lawing called Petitioner into a meeting to advise of her non-selection, and the reasons for the employment decision. Upon being advised of the committee's decision, and its selection of Cathy Grindstaff, Petitioner became indignant and demanded to know the reasons why she did not receive the promotion.

42. Petitioner testified that Kerry Nolen gave her the following reasons for her non-selection during the meeting:

- (a) The SBT position was a new position at BMC, which would require "a lot of running around."
- (b) Cathy Grindstaff had previous work experience at a factory which manufactured light switches. The purported benefit of this experience was that Cathy Grindstaff had obtained some experience in soldering wires.

(c) Cathy Grindstaff was more motivated than Petitioner, as manifested by her taking clients on off-campus outings.

(d) Petitioner did not talk about her accomplishments enough during the interview. In that regard, Kerry Nolen told Petitioner, "Maw, you should have blown your horn more." There was evidence that employees, including Kerry Nolen, sometimes referred to Petitioner as "Maw" in an endearing fashion. Kerry Nolen did not deny, however, that Petitioner was angry during this meeting over the fact that she did not receive the promotion.

(e) Petitioner's data collection was allegedly deficient during the fall of 1997. Petitioner pointed out during the meeting that she had been on leave for wrist surgery during that time. Kerry Nolen asked Petitioner why she did not advise her of that fact during the interview. Petitioner replied that none of the interviewers had asked her about that matter during the interview. Kerry Nolen testified that at the time of the interview, she was aware of the fact that Petitioner had been on medical leave during the fall of 1997.

43. Kerry Nolen professed to have little recollection of her conversation with Petitioner during the meeting, and she did not rebut Petitioner's testimony as to the reasons she provided for Petitioner's non-selection.

44. Following the meeting, Petitioner met with Gail West, BMC's program director, and told Gail West about Kerry Nolen's comments during their meeting, her disagreement with the decision, and her intention to file the instant petition. Gail West told Petitioner that she saw nothing wrong with the decision. Gail West did not undertake any effort to review the interview committee's decision.

45. E.V. Gouge testified that he typically reviews the paperwork generated for employment decisions at BMC prior to its being forwarded to the agency's offices in Raleigh, North Carolina. Upon reviewing the paperwork for the SBT promotion, E.V. Gouge became concerned of the potential for a discrimination claim by virtue of the fact that Petitioner, a senior employee who received high evaluations on her PMSs, had been passed over for a Caucasian woman with much less length of service. E.V. Gouge called a meeting with BMC's director, Sally Ludlum, to advise her of his concerns.

46. Within days after his meeting with Sally Ludlum, E.V. Gouge received a telephone call from Genevieve Pugh who advised him that the promotion decision had been reviewed, and that she was comfortable with the decision. At trial, Genevieve Pugh denied that she ever spoke with E.V. Gouge. Respondent presented no evidence that there was any review of the promotion decision following E.V. Gouge's meeting with Sally Ludlum.

47. Kerry Nolen testified that there were several aspects of Petitioner's work about which she was allegedly dissatisfied. This included her utilization of symbol boards, her programming with clients, her integration of data for communications purposes, her socializing and reading the newspaper during working hours. Kerry Nolen never advised Petitioner of these complaints prior to the promotion decision. In addition, Kerry Nolen never told Petitioner during their meeting that these were reasons for which she was not selected for the SBT position.

48. Other managers involved in the promotion decision, including Lisa Moon and Gail West, testified as to various complaints which they had with Petitioner's job performance. Petitioner testified that these complaints were never relayed to her. Lisa Moon testified that she regularly complimented Petitioner on her work performance on those occasions when she observed Petitioner's classroom. Gail West admitted that her criticisms of Petitioner's work performance arose from the fact that she had so many clients assigned to her classroom. Gail West also acknowledge the creative adaptations of assistive technology which Petitioner made for clients. None of the criticisms about which these managers testified at trial were identified to Petitioner as reasons for denying her the promotion.

49. No evidence was presented at trial that the SBT position required any significant amount of physical movement or dexterity. The evidence showed that the job duties of the SBT position primarily were clerical.

50. At trial, Respondent appeared to abandon any contention that Petitioner was denied the promotion because the position required significant physical exertion, or that Petitioner lacked the physical energy for the position.

51. Several of Respondent's witnesses testified at trial that one reason Petitioner was denied the promotion was because Cathy Grindstaff took clients on more off-campus outings. This testimony was in contrast to Pam Lawing's deposition testimony that this was not a factor in the interview committee's promotion. Pam Lawing changed her deposition testimony at trial, and claimed that this was a factor in the promotion decision.

52. The evidence showed that Petitioner took clients on off-campus outings, but focused her efforts on classroom instruction which was the primary responsibility of an EDA.

53. With respect to off-campus outings, the evidence at trial established that: (a) the selection tools never identified client outings as a factor in the promotion decision; (b) none of the interview questions addressed the extent to which the applicants took clients on off-campus outings; (c) the EDA job description does not identify client outings as one of the EDA's job duties; (d) the job descriptions for the Recreation Therapist, Rehabilitation Therapy Technician and DT-I all identify planning and taking clients on off-campus outings as an express job function; (e) Cathy Grindstaff was never evaluated on her off-campus outings in any PMS which she received as an EDA; and (f) the amount of time that Cathy Grindstaff spent in off-campus outings as an EDA in comparison to classroom instruction was minimal.

54. Respondent's witnesses also testified that Cathy Grindstaff's prior work experience at Southern Devices in Morganton, North Carolina, was a factor in the selection decision. The evidence showed that Cathy Grindstaff worked on an assembly line which manufactured microwave ovens. The only transferable skill which Cathy Grindstaff derived from this experience was that she learned how to solder wires.

55. Cathy Grindstaff testified that she used her skill at soldering on no more than three or four occasions while she was the SBT. Respondent's managers acknowledged that Petitioner was capable of learning how to solder. None of the interview questions addressed the applicants' ability to solder.

56. In a position statement which Respondent filed in response to a complaint of race and age discrimination filed with the EEOC, Respondent asserted that Cathy Grindstaff was selected over Petitioner because she had more formal education.

57. Pam Lawing testified that the applicants' relative levels of formal education was not a consideration in the selection decision.

58. Kerry Nolen acknowledged at trial that she had developed a close personal friendship with Cathy Grindstaff over the years, and that she had no such personal relationship with Petitioner.

59. The interview committee was aware that Cathy Grindstaff was enrolled in a nursing program at a nearby community college, and that she intended to leave employment at BMC once she became a registered nurse.

60. Steve Martin testified that during the time he was BMC's education director, he overheard Pam Lawing make statements on two separate occasions that blacks were lazy.

61. In February 1999, Petitioner was serving a client one morning in a dining room at BMC. A radio was turned to a station which was playing a song by an African-American singer. Kerry Nolen entered the dining room, and apparently thinking that no one was present other than developmentally disabled clients, stated "Let's turn off the jungle music." After making this remark and turning off the radio, Kerry Nolen saw Petitioner sitting in the dining room.

62. Shortly before the first scheduled trial date in this case, Petitioner approached a co-worker named Bonita Bartlett near the end of her shift and asked whether she would appear as a witness on her behalf. The following day, Petitioner was called into a meeting with BMC's director, Sally Ludlum, for the first time in her career. Sally Ludlum referenced her meeting with Bonita Bartlett, and told Petitioner that she should "stop playing attorney" because she already had hired one, and that she should let her attorney do her work on the case. Petitioner asked if this should be considered a warning, and Sally Ludlum said, "no, just advice."

CONCLUSIONS OF LAW

1. All parties properly are before the Office of Administrative Hearings (herein "OAH") and the OAH has jurisdiction of the parties and of the subject matter in this action.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder of parties.

3. In interpreting North Carolina Gen. Stat. § 126-36, the North Carolina courts look to federal case law addressing federal discrimination statutes for guidance. See North Carolina Department of Correction v. Gibson, 308 N.C. 131, 136, 301 S.E.2d 78, 82 (1983).

4. Under the three-part scheme of proof for disparate treatment cases developed by the United States Supreme Court, a plaintiff has the initial burden of establishing a *prima facie* case of discrimination. Once the plaintiff presents a *prima facie* case, the defendant has the burden of articulating a legitimate, non-discriminatory reason for the adverse employment action. At that point, the plaintiff has the burden of establishing that the reason asserted by the defendant is not the true reason for its decision, but a pretext for discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); North Carolina Department of Correction v. Hodge, 99 N.C.App. 602, 394 S.E.2d 285 (1990).

5. In the context of a promotion, the *prima facie* case requires the plaintiff to show: (a) membership in a protected group; (b) application and qualification for a job; (c) rejection despite the plaintiff's qualifications; and (d) continued solicitation for applicants, or the filling of the position with an applicant of a different group.

6. Petitioner has met her burden of establishing a *prima facie* case of race and age discrimination. Petitioner is an African-American female who was 47 years old when she was denied the promotion. Respondent awarded the promotion to Cathy Grindstaff, a 32-year-old Caucasian female. Respondent acknowledged the Petitioner was highly qualified for the position in the Applicant Selection Log prepared as a record of the promotion, and by the testimony of the managers which it presented at trial.

7. Respondent has articulated a non-discriminatory reason for its selection of Cathy Grindstaff, that she was more qualified for the SBT position.

8. Petitioner has met her burden of proving by a preponderance of the evidence that Respondent's asserted reason for promoting Cathy Grindstaff was pretextual, and designed to mask its true discriminatory reasons.

9. Petitioner has proven pretext by establishing that Respondent's conduct manifested certain recognized indicia of pretext, for which Respondent has offered no legitimate explanation. Initially, Petitioner has established that she was more qualified for the SBT position than Cathy Grindstaff in view of the state-mandated criteria for promotion -- demonstrated capacity, quality and length of service.

10. Based upon an analysis of the state-mandated criteria for the position, Petitioner was more qualified than Cathy Grindstaff for the SBT position, and Respondent's selection of a less qualified candidate is indicative of race and age discrimination. See Dorsey v. University of North Carolina-Wilmington, 122 N.C.App. 58, 468 S.E.2d 557, 660 (1996); North Carolina Department of Correction v. Hodge, *supra*, 99 N.C.App. at 613, 394 S.E.2d at 291; Lilly v. Harris-Teeter Supermarket, 842 F.2d 1496, 1507 (4th Cir. 1988).

11. Petitioner also adduced evidence that Respondent failed to follow state-mandated policies and procedures for promotions. An employer's failure to follow established procedures for hiring or promotion has traditionally been considered indicative of pretext. See North Carolina Department of Correction v. Hodge, *supra*, 99 N.C.App. at 614, 394 S.E.2d at 292; Alvarado v. Board of Trustees of Montgomery College, 928 F.2d 118, 121-22 (4th Cir. 1991). In that regard, the record shows that the interview committee and senior management who reviewed the decision failed to give Petitioner's greater length of service the consideration required under applicable state regulation. According to E.V. Gouge's testimony and the summary of Applicant Selection Logs presented by Petitioner, experience weighed heavily in hiring and promotion decisions at BMC. With respect to the selection tools which the interview committee identified, the committee members never reviewed the available PMSs for the candidates, or the data statistics available on Petitioner and Cathy Grindstaff prior to making the decision. Moreover, the interview committee did not identify the selection tools on which the promotion decision was purportedly based until after the selection had been made, which was contrary to the procedure outlined in the Merit-Based Employment Plan. Pierce v. Atchinson, Topeka and Santa Fe Railway Co., 65 F.3d 562, 572-73 (7th Cir. 1995); Hardin v. Hussman Corp., 45 F.3d 262, 256-66 (8th Cir. 1995).

12. With respect to the selection tools, the only one which Respondent actually considered was the interview. The interview questions drafted by the committee members failed to address certain, important functions to be performed by the SBT, including maintenance of assistive technology equipment, staff training, data tabulation and client assessment. For that reason, it appears that the interviews did not fully inquire into the competency of the applicants for the position and were, therefore, an inadequate tool to determine the most qualified candidate. The interview questions also did not inquire into two areas on which Respondent allegedly based its decision -- soldering experience and client outings. That in itself is evidence that Respondent's emphasis upon these two factors is pretextual. In any event, both Kerry Nolen and Pam Lawing testified that Petitioner performed well during the interview. Kerry Nolen testified that Petitioner answered virtually all of the questions in a satisfactory manner. Although the committee members criticized Petitioner's answers for not being as good as Cathy Grindstaff's answers, these evaluations were highly subjective, and not based upon any objective criteria. The evaluation of an interviewee's performance is inevitably subjective, and is easily swayed by discriminatory considerations. For that reason, their comparative appraisals are given little weight, and in any event, it is undisputed that Petitioner performed adequately during her interview.

13. Respondent also attempted to impeach the written evaluations of Petitioner's job performance through subjective testimony from various indirect supervisors. In this regard, witnesses such as Kerry Nolen, Lisa Moon, Gail West and Genevieve Pugh gave subjective criticisms of Petitioner's work which were contradicted by her PMSs and in some cases, the testimony of the managers themselves. For example, Gail West testified that Petitioner's performance was weak because her clients had too little to do during lunch periods, but she also acknowledged that this was a function of Petitioner being assigned a large number of clients, rather than any poor job performance on her part. Similarly, Lisa Moon criticized Petitioner's classroom activities, but also acknowledged that she regularly told Petitioner that she was doing a good job on those occasions when she observed Petitioner's classroom. These subjective criticisms, which were contrary to Petitioner's consistently high evaluations in her PMSs, and the inconsistencies within the managers' testimony, are also indicative of pretext. Lilly v. Harris-Teeter Supermarket, *supra*, at 1507-08.

14. The record establishes that Respondent gave shifting and inconsistent reasons for Petitioner's non-selection, which the courts also consider as evidence of pretext. Maschka v. Genuine Parts Company, 122 F.3d 566, 570-71 (8th Cir. 1997); Alvarado v. Board of Trustees, *supra*, at 122-23.

- Initially, at the meeting following Cathy Grindstaff's promotion, Kerry Nolen told Petitioner that the job required "a lot of running around." There is no evidence that the work involved anything more than clerical duties, and Kerry Nolen's comment carried ageist overtones. At trial, Respondent abandoned this as a reason for Petitioner's non-selection.

- During the meeting, Kerry Nolen also stated that Cathy Grindstaff's work experience at Southern Devices and Petitioner's poor data collection during the fall of 1997 were factors in the decision. These reasons were pretexts for discrimination. Cathy Grindstaff's prior factory experience was of no practical relevance to the SBT position since she only used her soldering skills on three or four occasions after obtaining the job. Petitioner specifically told Kerry Nolen that she had been absent from work for surgery during the fall of 1997. Although Kerry Nolen asked Petitioner why she did not mention this during the interview, Kerry Nolen admitted at trial that she was, in fact, aware of Petitioner's medical absence at the time of the promotion decision.

- Kerry Nolen also mentioned the meeting that Cathy Grindstaff was more motivated, as manifested by her taking clients on more outings. Pam Lawing testified during her pre-trial deposition that clients outings was not a factor in the promotion decision, although she later changed that testimony at trial. Moreover, Petitioner identified a number of reasons, *see* ¶ 53 *supra*, which compel the conclusion that this was a contrived rationalization for the selection of Cathy Grindstaff.

- In a position statement filed with the EEOC in response to Petitioner's complaint of race and age discrimination, Respondent stated that one reason for Cathy Grindstaff's selection was her greater level of formal education. Pam Lawing testified, however, that the applicants' relative levels of formal education were not factors in the decision.

- Kerry Nolen also testified at trial about various criticisms of Petitioner's work performance which made Cathy Grindstaff more qualified for the SBT position. However, during the meeting, Kerry Nolen never mentioned these alleged shortcomings as reasons for Petitioner's non-selection even though Petitioner specifically asked her why she did not receive the promotion.

15. Respondent's emphasis on the disparity in data collection statistics between Petitioner and Cathy Grindstaff is not credible. There was no evidence that Petitioner had problems with data collection during her career at BMC. The documentation on data collection for the year prior to the promotion decision shows that Petitioner had more clients in her classroom, and significantly more data to collect on communication and education programs than Cathy Grindstaff. Petitioner also had various impediments to her data collection, such as the flooding in her classroom and more behaviorally difficult clients, which Cathy Grindstaff did not confront.

16. There also is evidence of comments and conduct by Respondent's managers which indicate a possible bias against African-Americans, particularly the "jungle music" remarks by Kerry Nolen, and the "lazy black" remarks by Pam Lawing. It is also significant that Respondent's managers, specifically Sally Ludlum and Kerry Nolen, reacted with hostility to Petitioner exercising her state and federally protected right to file this petition and retain counsel in the case. Finally, Kerry Nolen's comment that Petitioner was denied the job because it required a "lot of running around," could be construed to be a comment on Petitioner's age, as Petitioner noted when she asked if the comment indicated that Kerry Nolen thought she was too old for the job. *See Sheehan v. Donlen Corporation*, 173 F.3d 1039, 1043-45 (7th Cir. 1999); *Sempier v. Johnson & Higgins*, 45 F.3d 724, 732 (3rd Cir.), *cert. denied*, 515 U.S. 1159 (1995).

17. Respondent's higher management also was completely indifferent to the concerns about the discrimination which affected the decision, as evidenced by Gail West's disregard of Petitioner's complaints made in a meeting following the decision, and the absence of any evidence that higher-level management investigated the decision following E.V. Gouge's meeting with Sally Ludlum.

18. Finally, in light of the other evidence of pretext in this case, the fact that Kerry Nolen, the manager to whom the SBT would directly report, and who would share an office with the SBT, had a close personal friendship with Cathy Grindstaff further militates in favor of a finding of discrimination. *See Morris v. Communications Satellite Corp.*, 773 F.Supp. 490, 494, n.6 (D.D.C. 1991); *Thornton v. Coffey*, 17 FEP Cases (BNA) 725, 726-27 (D. Okla. 1978), *aff'd in part, rev'd in part*, 618 F.2d 686 (10th Cir. 1980).

19. Based upon the entire record, the preponderance of the evidence establishes that Respondent's explanation is unworthy of credence. In a June 12, 2000 opinion regarding discrimination, the Supreme Court stated that:

[In] appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as

“affirmative evidence of guilt.” Reeves v. Sanderson Plumbing Products, Inc., No. 99-536 (U.S. June 12, 2000) (citations omitted).

The court held that a plaintiff’s prima facie case, combined with sufficient evidence to find that the employer’s asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated. *Id.* at 12.

Based upon the latitude accorded the trier of fact in discrimination cases, as stated in Reeves, it is concluded from the facts and circumstances of this case that Respondent unlawfully discriminated against Petitioner because of her race and age when it denied Petitioner’s application for promotion to the SBI position.

RECOMMENDED DECISION

The undersigned Administrative Law Judge recommends that the Petitioner be awarded the difference in salary and benefits between the EDA and SBT positions retroactive to the date of Cathy Grindstaff’s promotion, reasonable attorney’s fees and costs and such other relief to which she may be legally entitled.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with North Carolina General Statute 150B-36(b)

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision G.S. §150B-36(a).

The agency is required by G.S. §150B036(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties’ attorney on record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This is 11th day of July, 2000.

Beecher R. Gray
Administrative Law Judge

requested the cost to purchase her withdrawn service credits. Following that meeting, written statements of estimated retirement benefits and costs to purchase withdrawn service credits were sent to the Petitioner by mail. Petitioner was not informed of the cost for her to make the purchase after her retirement which would have been significantly greater.

5. In July, 1998, the Petitioner again requested the cost to purchase one year and the cost to purchase five years of withdrawn service credits. The Respondent provided the requested statements on July 7, 1998, stating the cost to purchase 1 year service credit, computed at the full actuarial cost, at \$7,311.00, and the cost to purchase 5 years at \$39,610.07. Both statements further stated that "IF YOU ELECT TO PURCHASE THE ADDITIONAL RETIREMENT CREDITS, FORWARD REMITTANCE ON OR BEFORE 10 01 1998. COST WILL HAVE TO BE RECOMPUTED AFTER THAT DATE." On at least one occasion prior to her retirement, Respondent's counselors were verbally informed by Petitioner of her intention to retire. On or prior to October 1, 1998, the Petitioner purchased 3 years of withdrawn service credits at the stated cost.

6. On or about March 2, 1999, Petitioner attempted to purchase an additional 1 year's service credit at the previously quoted cost. At that time, due to the fact that Petitioner had since retired, the full actuarial cost to purchase 1 year of service credit was computed to be \$21,708.50. Petitioner was not told that the full actuarial cost to purchase these service credits would increase following her retirement or that she should be entitled to purchase the remaining years of withdrawn service credits at the cost quoted to her in July, 1998.

Based upon the above Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Pursuant to N.C. Gen. Stat. § 135-4(m), a person such as the Petitioner who wishes to purchase previously withdrawn service credits may do so by paying "the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities"

2. The formula used to compute the full actuarial cost prior for purchases made prior to retirement is found at 20 N.C.A.C. 2B.1205. For purchases made prior to retirement, the formula utilizes figures based upon the member's "earliest retirement date" (with and without the purchase) and estimates of retirement benefits (with and without the purchase) in order to estimate the system's liabilities. The "earliest retirement date" is defined by 20 NCAC 2B.1204 as the first date at which the member could retire with an unreduced benefit. Pursuant to N.C. Gen. Stat. 135-5(b17)(2), that is age 65 for a member with at least 5 years of service, or age 60 for a member with at least 25 years of service, or at any age for a member with 30 years of service. In July, 1998, when the Petitioner last requested a statement on the cost to purchase, the Petitioner was 50 years old with 19 years of service credit. Her earliest retirement date would then have been July, 2008 without the purchase, and July, 2004 if she purchased all 5 years.

3. For a purchase made after retirement, the formula is set forth in 20 N.C.A.C. 2B.1207. Pursuant to that rule, the system's liabilities are calculated exactly using the member's actual retirement date and actual benefit, rather than estimates. Although the Petitioner's cost increased significantly after retirement, such would not be the case with every purchase. The cost after retirement may increase, or decrease, or remain about the same. Other than the general publication of both administrative rules and statutes, members of the retirement system are not otherwise generally or specifically informed in any of Respondent's publications of the change in methods of calculating purchases made after retirement as opposed to prior to retirement.

4. Although the Petitioner was not informed that her cost to purchase would increase after her retirement on October 1, 1998, she is nonetheless not entitled to make the purchase at the cost provided to her in July, 1998. Each cost statement provided to the Petitioner stated that the cost to purchase was based upon her status as an "active" employee, and that the purchase must be made before the prescribed date or the cost would have to be recomputed. Further, the method for computing the cost to purchase is set forth in the Respondent's rules cited and generally published above. There is no legal authority cited to the undersigned establishing a legal relationship between Petitioner and Respondent's counselors such as to require a full disclosure of information vital to Petitioner's interest under the facts of this case. Absent such a requirement, Respondent is under no legal duty to directly inform Petitioner of the consequences of not making the contemplated purchase prior to her retirement or even to inform her or those similarly situated by way of informational publications. Petitioner's only recourse is to secure an outside financial advisor or counselor to fully evaluate her maximum retirement cost and benefit options. Until there is legislation or a legal precedent establishing such a duty, Petitioner and others similarly situated have no recourse against Respondent under an asserted duty to disclose theory of recovery.

Based upon the above Findings and Conclusions, the undersigned makes the following:

RECOMMENDATION

It is recommended that the Petitioner's request to purchase withdrawn service credits following her retirement at the cost which was calculated several months prior to her retirement, and based upon her status as an active employee, be denied.

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 G.S. § 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. § 150B-36(a).

The agency is required by G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Board of Trustees of the Teachers' and State Employees' Retirement System.

This the 30th day of May, 2000.

Julian Mann, III
Chief Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF NASH

A.J. LANCASTER, JR.,
Petitioner,

V.

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES, DIVISION OF WASTE
MANAGEMENT,
Respondent.**

RECOMMENDED DECISION

APPEARANCES

JURISDICTION

The parties stipulated in the record to the following:

STIPULATIONS

1. On or before December 31, 1993, John Gaul reported a discharge from the underground storage tank (UST) systems at the A. J. Lancaster Store Site discovered by him during tank closure. (T.p.6).
2. The affidavit of Peggy Pridgen contains a typographical error in paragraph two in that her family operated the Lancaster Store Site since 1991, not 1981, and that the letter from Lars Simonsen to George Matthis dated October 6, 1998 contains the same typographical error.
3. George Matthis has delegated authority to render final agency decisions regarding Trust Fund eligibility and deductible determinations.

4. The issues as stated above under the heading, " Issues", are the issues to be determined, including but not limited to the stipulation that the petitioner has the burden of proof on the above-stated issues.
5. All exhibits to be introduced by either party are authentic without need for further authentication; however, both parties reserved the right to contest the admissibility of any exhibits on other grounds.
6. The Office of Administrative Hearings has jurisdiction over this contested case.

The parties stipulated that the issue of whether the Petitioner is a responsible party is an issue that would not be litigated or decided in this case. (T.pp.163-64)

The following were admitted into evidence at the hearing as:

EXHIBITS

Petitioner's Exhibits 1 through 7 inclusively and Petitioner's Exhibit 14.

Respondent's Exhibits 1 through 18 inclusively and Respondent's Exhibits 20, 21, 23, 24 and 26.

Based upon the foregoing stipulations and the greater weight of the admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. By stipulation, the parties agreed that the Petitioner was assigned the burden of proof but that the Respondent would present witnesses first.
2. Mr. John Gaul is the owner of Ecotect Environmental and is a licensed geologist. (T.p.28). Prior to forming Ecotect, Mr. Gaul was employed with Environmental Aspects. (T.p.29). Environmental Aspects performed closure of the USTs at the Lancaster Store Site, and Mr. Gaul was the project manager for the site initially. (T.p.29). Environmental Aspects performed the tank closure for Petitioner. (T.p.32). Environmental Aspects commenced removal of the USTs at the Lancaster Store Site on December 29 or 30, 1993. During the closure, Environmental Aspects discovered that several of the USTs had leaked and reported this discovery to the State, regional office, groundwater section. (T.p.37). Mr. Gaul was not aware that an on-site well sampled in 1989 and 1991 showed petroleum contamination. (T.p.43). Four USTs, the two 6,000-gallon USTs, the 4,000-gallon UST, and the 3,000-gallon UST leaked. (Petitioner's Exhibit 4) (T.p.43). Environmental Aspects tested Tank No. 3 for diesel range components by using methods 3550 and 5030 which are testing methods required by state law for diesel range components. (Petitioner's Exhibit 4) (T.p.44). One of the 6,000-gallon USTs contained diesel fuel. (Petitioner's Exhibit 4). (T.p.44).
3. Susanne Robbins is employed as a Hydrogeologist I in the Trust Fund Branch of the Underground Storage Tank Section of the Division of Waste Management of the Department of Environment and Natural Resources (DENR), and she has worked for DENR for two and one half years. (T.pp.46-47). One of her primary responsibilities as a Hydrogeologist I is to review the eligibility of Trust Fund applications and to determine the amount of the deductible that applies for the applicant sites. (T.p.47). There is a \$50,000 deductible under the Commercial Trust Fund applicable to releases discovered from June 30, 1988 through prior to January 1, 1992 and there is a \$20,000 deductible under the Commercial Trust Fund applicable to releases discovered from January 1, 1992 through prior to January 1, 1994. (T.p.47).
4. Ms. Robbins reviewed the Petitioner's trust fund eligibility application on or about October, 1997. (T.p.48). She identified this application along with its October 7, 1997 cover letter. (Respondent's Exhibit #1). (T.pp.48-49). The application showed that the Lancaster Store Site was located at Lancaster Store Road & Race Track Road, Route 1 Box 360, Castalia, North Carolina (T.p.49) and that Petitioner was listed as the current landowner. (T.p.49). The application showed that there was a 4,000-gallon gasoline UST, a 3,000 gasoline UST, a 6,000 UST a gallon gasoline, a 6,000 gallon diesel UST; and a 280 kerosene UST. The application states that the USTs were last used in 1993. (T.p.50). The application was signed by Petitioner. (T.p.50). There was a discrepancy in the application in that Figure 1 of the application indicates that both 6,000 gallon USTs contained gasoline whereas page 3 of the application listed one of the 6,000-gallon USTs as containing diesel. (T.pp.50-51).
5. Laboratory tests performed in September 1989 on water from a water supply well located on the Lancaster Store Site showed that this well was contaminated with benzene and with tert-Butyl Methyl Ether (MTBE). (Respondent's Exhibit 2) Laboratory tests performed in February 1991 on water sampled on January 31, 1991 from a water supply well located on the Lancaster Store Site showed that this well was contaminated with methyl terbutyl ether (MTBE). (Respondent's Exhibit

3) Mr. A.J. Lancaster, Sr., Petitioner's father and the UST owner at the time, was aware of the contamination found as a result of these tests. (Respondent's Exhibit 4 and Respondent's Exhibit 6).

6. In determining the amount of the deductible to apply to the Lancaster Store Site, Susanne Robbins reviewed the Raleigh Regional office file. (T.p.50). Ms. Robbins reviewed a September 14, 1989 report issued by Dr. Ken Rudo of the Epidemiology Branch of N.C. Department of Human Resources, Division of Health Services. (T.pp.51-52). She identified this report as Respondent's Exhibit 2. (T.pp.51-52). The on-site water supply well located at the Lancaster Store Site was highly contaminated; should not be used for drinking, cooking or bathing/showering; and contained benzene, a possible carcinogen. (T.pp.51-52). The report states specifically "[y]our water contains a chemical (benzene) that is known to cause cancer in humans." (T.p.52). The laboratory sample analysis revealed that the sample contained 2,644.1 parts per billion of benzene and 51.5 parts per billion tert-Butyl Methyl Ether (MTBE). (T.pp.52-53). The date of this laboratory analysis was September 6, 1989. (T.p.52).
7. Ms. Robbins identified Respondent's Exhibit 3 as a February 15, 1991 memorandum from Eric Motzno to Dr. Ken Rudo regarding the health risks associated with the contamination located at the Lancaster Store Site. (T.p.53). A sample was collected from the on-site water supply well located at the Lancaster Store Site on January 31, 1991 and analyzed. The analysis results showed that the water contained an MTBE concentration of 370 parts per billion. (T.p.54). The well is used by approximately ten people and that Mr. Lancaster was advised to provide bottled water to the large family sharing his well. (T.pp.53-54).
8. Ms. Robbins reviewed a letter from the Raleigh Regional Office to Mr. A. J. Lancaster, Sr. dated February 15, 1991. (T.p.54). She identified this letter as Respondent's Exhibit 4. (T.p.54). This letter confirmed a release at the Lancaster Store Site. (T.p.55). On February 14, 1991, the Raleigh Regional Office received the laboratory results taken from the on-site water supply well and that MTBE, a common gasoline additive, was found in the well. (T.p.55). A release had occurred from the USTs at the facility. (T.p.55). This letter informed Mr. Lancaster of the procedures required by 15A NCAC Subchapter 2N, Subsection .0603 in order to investigate and confirm whether the release occurred from that site and that it was a violation not to conduct the investigation. (T.pp.55-56).
9. As shown by Respondent's Exhibit 5, the Raleigh Regional Office also sent a February 15, 1991 letter to the Postmaster which requested the mailing addresses of the households indicated on the map attached to the letter so that the regional office could notify the surrounding properties that a well had been identified with gasoline contamination and that other wells in the area may be at risk. (T.p.56). This map, on the third page of Respondent's Exhibit No. 5, indicates that the Lancaster Store is located in a residential area and that one house shares the well located at the Lancaster Store Site. (T.p.57). She testified that the map shows the location of the four Lancaster Store USTs and that the map does not show signs of any other USTs in that location. (T.p.57). A hilltop exists approximately where the USTs and dispenser are located. (T.p.57). The groundwater flow typically follows the contours of the land. The land contours indicate that a release from the USTs could migrate down toward the water supply well. (T.p.57).
10. Ms. Robbins reviewed in the regional office file a memo dated April 29, 1991, which she identified as Respondent's Exhibit 6. (T.p.58). Based upon that memo, Mr. Lancaster had requested the regional office to sample his well. Greg Bright with the Nash County Health Department was called to sample the well and that he agreed to do the sampling. (T.p.58). This memo indicates that Mr. Lancaster was aware of contamination in his water supply well. (T.p.58).
11. The incident file was opened in the Raleigh Regional Office on February 15, 1991 (T.pp.58-59) after the discovered release in order to identify the location of the release, type of release, and date when it was reported. (T.p.59). The incident file is the tracking mechanism that the Regional Office uses to track a release. (T.p.59). Ms. Robbins identified Respondent's Exhibit 7 as the February 15, 1991 Pollution Incident/UST Leak Reporting Form for the Lancaster Store Site. (T.p.59). The Pollution Incident/UST Leak Reporting Form indicated that September 21, 1989 was the date that the leak was detected and was the discovery date. (T.p.60). September 21, 1989 was the date that the lab samples were received and the analysis had been completed by the health department for the first sample in 1989. (T.p. 60). The water supply well had been sampled on August 30, 1989 by the Nash County Health Department and found to contain high levels of benzene, 2,644 parts per billion benzene, and the well had also been sampled on January 31, 1991 by the Groundwater Section and was found to contain MTBE. (T.pp.59-60). The USTs involved are one 3000-gallon UST, one 4,000-gallon UST, and two 6,000-gallon USTs. (Respondent's Exhibit 7) (T.p.60). Respondent's Exhibit 7 shows a release discovery date of September 21, 1989 and that the release was gasoline from on-site underground storage tanks. (T.p.60). There was a second release date of January 31, 1991. (T.pp.60-61).
12. Ms. Robbins identified Respondent's Exhibit 8 as an UST Closure Report prepared by Environmental Aspects dated January 27, 1994. (T.p.61). This report indicates that the two 6,000-gallon USTs, the 4,000-gallon UST, and the 3,000 gallon UST located at the Lancaster Store Site released product into the environment but that the 280-gallon kerosene UST did not have a release. (T.p.61). Section 3.1 entitled Soil Sampling Data, demonstrates that Tank Number 2, the 3,000-

gallon gasoline UST, which had failed the tank tightness testing in 1991, had extremely high levels of contamination in 1993. (T.pp.61-63). There was diesel product in one of the 6000-gallon USTs. (Respondent's Exhibit 8) (T.p.63).

13. Respondent's Exhibit No. 9 is a memorandum containing comments from the Raleigh Regional Office concerning the trust fund eligibility application submitted for the Lancaster Store Site. (T.pp.63-64). This memorandum contains the Raleigh Regional Office's recommendation that the \$50,000 deductible applies to the Lancaster Store Site since the release was first discovered in September 1989. (T.p.64).

14. Respondent's Exhibit 10 is the March 3, 1998 Trust Fund eligibility determination letter sent by DENR to Petitioner. (T.p.65). Respondent's Exhibit 10 shows that the Lancaster Store Site was eligible for Trust Fund reimbursement upon submittal of claims for reasonable and necessary work involved with the cleanup and assessment from the leaking USTs after Petitioner had met the \$50,000.00 deductible. (T.p.65). The release discovery date for the Lancaster Store Site was in September, 1989 when the Nash County Health Department sampled the site water supply well. (T.pp.65-66). Respondent's Exhibit 10 identified the USTs associated with the site. (T.p.65).

15. The Petitioner responded to Respondent's Exhibit 10 with a letter written by Mr. Lars Simonsen dated March 17, 1998. (Respondent's Exhibit 11) (T.p.66). This letter requested that the State Trust Fund reconsider the amount of the deductible and to apply the \$20,000.00 deductible to the Lancaster Store Site instead of the \$50,000.00 deductible. (T.p.67). The Petitioner contended that the \$20,000 deductible was the appropriate deductible. (T.p.67). Enforcement actions taken or not taken by a regional office do not affect the deductible amount determination using the State Trust Fund statutes. (T.pp.67-68).

16. According to Ms. Robbins' interpretation, the definition of a discovered release under the 15 NCAC 2P rules does not require that the discovered release be a confirmed release. (T.p. 68). Respondent sent a May 5, 1998 letter, identified as Respondent's Exhibit 12, to Petitioner requesting the 1991 tank tightness testing results as well as any information that might indicate that the contamination discovered in the water supply well in 1989 was from a source other than the USTs at the Lancaster Store Site. (T.p.69).

17. Petitioner responded to Respondent's Exhibit 12 through correspondence prepared by Petitioner's attorney dated May 22, 1998, and identified as Respondent's Exhibit 13. (T.p.70). Enclosed with the Petitioner's letter were the results of two rounds of tank tightness test performed on USTs located at the Lancaster Store Site. (T.pp.70-71). The first round of tank tightness tests were performed on the two 6,000 gallon USTs (one Premium A and one Premium B UST), the 3,000-gallon No Lead Plus UST and the 4,000-gallon No Lead Plus UST and were reported in a letter from Applied Environmental Services, Inc. dated March 21, 1991. (T.p.72)

18. The two 6,000-gallon USTs and the 3,000-gallon UST failed the March 15, 1991 tank tightness tests. The 4,000-gallon UST passed the March 15, 1991 tank tightness test. (See Respondent's Exhibit 13, p.8).

19. The results of a second round of testing performed on April 10, 1991 are reported in a letter dated April 17, 1991. (T.p.73; Respondent's Exhibit 13, p.3). The second round of tank tightness testing was conducted only on one 6,000 gallon UST and the 4,000 gallon UST. (T.p.73).

20. As stated in Respondent's Exhibit 13, pp.1-2, the 6,000-gallon Premium B UST, which failed the March 15, 1991 tank tightness test, was never retested. The 6,000-gallon UST listed on the April 17, 1991 tank tightness testing results (Respondent's Exhibit 13, p. 3), is the 6,000-gallon Premium A UST, not the 6,000-gallon Premium B UST.

21. The significance of this second round (April 10, 1991) of tank tightness testing is that the 3,000 gallon gasoline UST and the 6,000 gallon Premium (B) UST, which both failed the first tank tightness tests, were never retested. (T.pp.74-75). Under the UST rules, failures of a tank in line tightness test performed on an UST should be reported to the Department's regional office as a release and steps taken to assess the release. (T.pp. 74-75).

22. In the Respondent's Exhibit 13, Petitioner for the first time, claimed that kerosene was in the 6,000 gallon UST. Petitioner previously indicated it contained diesel or gasoline. (T.pp. 75-76).

23. As shown on Respondent's Exhibit 21, the 3,000-gallon UST that failed the first (March 15, 1991) tank tightness test was not retested.

24. Respondent's Exhibit 21 is a compilation of documents produced by the Petitioner during discovery, which (T.p.81) contained another version of the April 17, 1991 letter from Brent Chambers to A.J. Lancaster giving the tank tightness test results. (T.p.81). The April 17, 1991 letter found in Respondent's Exhibit 21 shows that the 4,000-gallon UST,

not the 3,000-gallon UST, was the one retested in 1991. (T.p.81). The map shown on the second page of Respondent's Exhibit 21 was not marked as was the same map shown in Respondent's Exhibit 13. (T.pp. 81-82).

25. Respondent's Exhibit 20 is the computer printouts showing the tank tightness testing of the USTs on March 15, 1991 and on April 10, 1991. (T.p.82). The computer printouts shows that the 3,000-gallon UST and both 6,000-gallon USTs had both failed the March 15, 1991 tank tightness tests. (T.p.83). According to Ms. Robbins testimony, these tank tightness test computer printouts indicate that a 6,000 gallon UST failed the second set of tank tightness tests conducted on April 10, 1991, that the 4,000-gallon UST was tested on April 10, 1991, that some of the documents regarding the tank tightness testing of the 4,000 gallon UST were missing from the print-outs; (T.p.83) and that the UST lines were not tested. (T.p.83)
26. Respondent's Exhibit 14 is a June 29, 1998 letter that George Matthis wrote to Petitioner in response to the May 22, 1998 letter from the Petitioner's attorney. (T.p.84). Respondent's Exhibit 14 requests that the Petitioner provide some clarification regarding the Premium B 6,000 gallon UST (T.pp. 84-85) as to when the UST was last used; as to what were the UST contents; and as to why the UST was tested in 1991 when it had reportedly been taken out of use in 1984. (T.p. 85).
27. Respondent's Exhibit 15 is an October 6, 1998 letter from Petitioner's attorney with an attached affidavit of Peggy Pridgen. (T.p.86). Respondent's Exhibit 15 was the response the State Trust Fund received from Petitioner as to Respondent's Exhibit 14. (T.p.86). Respondent's Exhibit 15 with the attached affidavit did not clarify Respondent's Exhibit 14 in that these documents did not explain why the 6,000-gallon Premium B UST had been tested after it was purportedly taken out of use because a certain amount of product must be in the UST for it to be tested. (T.pp. 87-88). Respondent's Exhibit 15 with attached affidavit did not clarify the contents of the UST. (T.p.87). Ms. Peggy Pridgen did not take over operation of the store until 1991. Information she provided about the USTs prior to 1991 does not clarify what occurred in 1984 when Petitioner claims the UST was taken out of use. (T.p.87).
28. Petitioner did not provide the Trust Fund with any other sources for the contamination in the on-site water supply well in its Respondent Exhibit 13.
29. After a review of all of the documentation, Ms. Robbins concluded a \$50,000.00 deductible applied to the Lancaster Store Site (T.pp. 88-89) based upon the fact that the Lancaster Store Site had a discovered release in both 1989 and 1991 when the water supply well was sampled and that no evidence had been provided to indicate that there was any other source of contamination than the USTs located at the Lancaster Store Site, (T.pp.88-89), and she further concluded that two of the USTs had releases as shown by the 1991 tank tightness test results supplied by Petitioner. (T.p.89).
30. In Respondent's Exhibit 16, Petitioner's attorney requested a final agency determination regarding the deductible amount. (T.p.89). Ms. Robbins prepared Respondent's Exhibit 17, the final agency decision letter, in response to this request. She discussed this with George Matthis prior to preparing it. (T.p.90)
31. Respondent's Exhibit 17 stated that the \$50,000.00 deductible applied to the Lancaster Store Site because a release was discovered at the Lancaster Store Site in September 1989 when it became apparent that an on-site water supply well was contaminated; no information provided by Petitioner identified a source of contamination other than the USTs at the site; the tank tightness testing results showed that the 6,000-gallon Premium B UST had failed; no information had been provided as to why this UST was tested if it had been taken out of use in 1984; and that the tank tightness failures of the 3,000-gallon and 6,000-gallon USTs supported application of the \$50,000 deductible. (T.pp. 90-91). Documentation of the failed tank tightness test was conclusive evidence that a release had occurred at the Lancaster Store Site as of March 1991. (T.p.91). A release discovered in either September 1989 or March 1991 would trigger the application of the \$50,000 deductible. (T.p.91)
32. There is a difference between a discovered release that triggers the deductible amount and a confirmed release. (T.pp.93-94). A UST failure of a tank tightness test confirms a release from that UST, but just because a UST passes a tank tightness test does not confirm that the UST has not leaked. (T.p.97). Section H of the Pollution Incident / U.S.T. Leak Reporting Form admitted as Respondent's Exhibit 7, identifies "leak-underground" as the primary source of potential pollution. (T.pp. 103-104). Although a well can become contaminated by other means, the most common way a well becomes contaminated with gasoline is by a leaking underground storage tank. (T.p.105)
33. Respondent's Exhibit 7 identifies the primary source of pollution as a leak underground. (T.p.111). The second paragraph of Respondent's Exhibit 4, reads as follows: "This compound [methyl tertbutyl ether] which is a common gasoline additive indicates a release of a regulated substance has occurred from the underground storage tanks at your facility." (T.p.112). The lines shown on Respondent's Exhibit 8, Drawing Number 3, show the lines "dead ending at the tanks" and do not show "which tanks that the lines are going to." (T.p.112)
34. George Matthis has worked for the N.C. Department of Environment and Natural Resources (Department) for 20 years in various positions. (T.p.115). He has a Bachelor of Science degree in Marine Biology and a Master's of

Administration degree. (T.p.115). He is the Head of Respondent's Trust Fund Branch within the Underground Storage Tank, and he has held this position since July 1991. (T.pp. 115-116) He testified that his duties as Head of the Trust Fund Branch involve supervision of reimbursement from the State Trust Fund and supervision of state-led site cleanups. (T.p.116)

35. In 1988 the General Assembly enacted legislation creating Underground Leaking Storage Tank State Trust Fund. (T.p.116). This State Trust Fund program provides reimbursement to qualified owners, operators and landowners who have discovered and reported leaking USTs and have proceeded to cleanup a site. (T.pp.116-117). He and his staff operate under the authority of N.C. Gen. Stat. § 143-215.94 and the 15A NCAC 2P Rules promulgated hereunder to administer State Trust Fund reimbursement requests. (T.p.117). Mr. Matthis' group, the State Trust Fund Branch staff, reviews eligibility applications for State Trust Fund reimbursement, oversees state-led clean-ups, and determines the amount of the deductible for each site. (T.p.118). As administrator of the State Trust Fund, Mr. Matthis has a duty to follow the law and to make sure that the regulations and policies are consistently and fairly applied. (T.pp.118-119)
36. Mr. Matthis received and reviewed the Petitioner's application for eligibility. (T.pp.119-120). Mr. Matthis first reviewed whether the Petitioner's application contained adequate documentation and whether any applicable tank fees had been paid at the time the release was discovered. (T.p.120). The application was then forwarded to the regional office to verify information in the office incident file and to compare that information with the information submitted with the application. (T.p.120). Once the regional office staff completed their review, the application was returned to his attention and assigned to one of his staff members to review. (T.p.120)
37. Mr. Matthis sent A. J. Lancaster an eligibility letter that stated that the Lancaster Store Site was conditionally eligible for State Trust Fund reimbursement and that a \$50,000.00 deductible was to be applied. (T.pp.120-121)
38. Mr. Matthis corroborated Susanne Robbins' testimony regarding the subsequent correspondence between the Petitioner's attorney and the State Trust Fund as being accurate. (T.p.121).
39. Mr. Matthis signed Respondent's Exhibit 17 regarding the amount of the deductible. (T.p.121).
40. The Trust Fund made the determination that the \$50,000.00 was the appropriate deductible based upon the fact that the applicable law states that a \$50,000.00 deductible applies to discharges and releases discovered or reported between June 30, 1988 through December 31, 1991; that a release was discovered at the Lancaster Store Site in both 1989 and 1991 when the on-site water supply well was sampled; and that the release was found to be contaminated. (T.p.122)
41. Respondent's Exhibit 23 is a copy of N.C.G.S. § 143-215.94B(b), and the statute under which the Trust Fund Branch operates. (T.p.123). According to the dictates of this statute, when there is a release discovered or reported between June 30, 1988 and December 31, 1991, a \$50,000.00 deductible applies, and that when there is a release discovered on or after January 1, 1992 and reported between January 1, 1992 and December 31, 1993, the \$20,000 deductible applies. (T.p.123-124)
42. Respondent's Exhibit 24 contains part of the definition section of 15A NCAC 2P.0202 (T.p.124). 15A NCAC 2P.0202(b)(4) defines the term "discovered release" as "a release which an owner or operator, or its employee or agent, has been made aware of, has been notified of, or has a reasonable basis for knowing has occurred. (T.p.125). According to Mr. Matthis testimony the State Trust Fund's interpretation of this language is that a contaminated on-site water supply well constitutes a discovered release under this definition. (T.p.125)
43. Mr. Matthis further testified that, according to the State Trust Fund's interpretation, a release does not have to be a confirmed release to be a discovered release and that a suspected release is sufficient to constitute a discovered release. (T.p.126).
44. The issue of what constitutes a discovered release has previously been litigated in *York Oil* . (T.p.128). Mr. Matthis has applied the same interpretation of discovered release that was applied to the Lancaster Store Site to other sites in the past. (T.pp.127-130).
45. Mr. Matthis did not use federal or state release confirmation requirements when making State Trust Fund eligibility determinations, and the 15 NCAC 2N rules that incorporate these federal regulations are there for compliance enforcement purposes. (T.pp. 133, 135).
46. A regional office representative fills out the Pollution Incident/U.S.T. Leak Reporting Form, Respondent's Exhibit 7, and whether this form is accurately filled out or not does not affect the final agency decision regarding deductible determinations under the State Trust Fund. (T.pp. 138-139). The enforcement actions taken at a given site also do not affect State Trust Fund deductible determinations. (T.p.139). Petitioner never offered information of any alternate source, other

than the USTs at the Lancaster Store Site, for the contamination even though this information was requested. (T.p.141). It was incumbent on the Petitioner to establish that the contamination in the wells came from another source. (T.p.142)

47. The State Trust Fund's initial eligibility determinations are often made before it has been confirmed that a release came from an UST but that the applicant does have to ultimately show that the contamination resulted from a release or discharge from an UST. (T.pp.142-45).
48. According to Mr. Matthis' testimony, a suspected release and a discovered release are synonymous. (T.pp.145-46).
49. Mr. Matthis acknowledged that the 15A NCAC 2N rules and the federal rules incorporated therein by reference require that suspected releases must be confirmed.
50. The 15 NCAC 2N rules apply to regulation of USTs and do not apply to State Trust Fund eligibility and deductible determinations. (T.p.147). Under Mr. Mathis' interpretation of 15A NCAC 2P.0202(b)(4) (Respondent's Exhibit 24), Mr. Lancaster had "been made aware of" the release and had "a reasonable basis for knowing that the release had occurred" because of the well water sample results. (T.pp.147-48).
51. The State Trust Fund applications require a compliance certification by the applicant and that, for State Trust Fund purposes, the applicant has to certify that the USTs have been upgraded. (T.p.148-149)
52. Petitioner is the owner of the Lancaster Store Site, and he is the son of A.J. Lancaster, Sr. (T.p.150). The Lancaster Store Site is currently being operated by Bob and Peggy Pridgen and that the Pridgen's lease the site from Petitioner as they previously had from his father. (T.p.151). Petitioner became owner of the Lancaster Store Site when he inherited it from his father who died in November 1991. (T.p.151-52). Around the time of his father's death, Petitioner received a UST tank fee bill from the Department; he paid it; he subsequently paid the UST tank fees in 1992 and 1993. (T.p.153). Petitioner decided to close the USTs at the Lancaster Store Site after receiving notice that they had to be upgraded or closed. (T.pp.154-55). Petitioner hired Environmental Aspects to close the USTs at the Lancaster Store Site. (T.p.156). According to Petitioner's testimony there were two 6,000-gallon USTs, a 4,000-gallon UST, a 3,000-gallon UST and a 280-gallon kerosene UST at the Lancaster Store Site prior to the closure. (T.pp. 156-57). Petitioner testified that when the USTs were dug up, contaminated soil was found. (T.p.158). Petitioner acknowledged that the USTs were tested in 1991. (T.p.159).
53. The water supply well that was sampled in 1989 and 1991 is located on the Lancaster Store Site land and is shared by a family next door to the Lancaster Store Site. (T.p.164). There are residences scattered in the area around the Lancaster Store Site and that page three of Respondent's Exhibit 5 accurately depicts the whole picture of the area surrounding the store. (T.p.165). Tobacco fields are located south of the Lancaster Store Site. Petitioner's father's house and a tobacco field are located west of the Lancaster Store Site. (T.p.166-167). Tobacco fields, pastures, hay fields, and a playground on a farm surround the Lancaster Store Site. (T.p.167). The fourth page of Respondent's Exhibit 13 shows that a 6,000-gallon and a 4,000-gallon UST were tested on April 10, 1991 (T.p.168) and Petitioner acknowledged that the 3,000-gallon UST had failed a tank tightness testing "a while ago." (T.p.169). One of the Premium B 6,000-gallon USTs contained diesel fuel at one time and that this UST was at some point filled up with gasoline so that a tank tightness test could be performed. (T.p.169-170). Petitioner signed the State Trust Fund Application and that page 3 of 4 of the application (Respondent's Exhibit 1) indicates that one of the 6,000-gallon USTs contained diesel. (T.p.117). Petitioner stated on page 1 of 9 of his June 24, 1996 handwritten Comprehensive Site Assessment (Respondent's Exhibit 18) that "In 1991, A.J. Lancaster, Sr., the owner until his death, had these underground storage tanks pressure tested because operators were changing hands." (T.p.175). The nearest drinking water well was approximately 150 feet away from the UST site. (T.p.175).
54. Petitioner testified that his father had informed him of the results of the 1991 tank tightness tests. (T.pp.176-77). As executor of his father's estate, Petitioner hired Environmental Aspects. Environmental Aspects had not been his father's consultant. (T.p.178).
55. Another gas station was formerly located 100 yards in front of the Lancaster Store Site, but that this station was sold and the tanks removed sometime in the 1960's. (T.pp.179-180)
56. The other gas station was located beside house number 2 shown on page 3 of Respondent's Exhibit 5.

Based on the foregoing stipulations and Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. This contested case is properly before the Office of Administrative Hearings, and the Office of Administrative Hearings has jurisdiction of the subject matter and the parties hereto.

2. The Petitioner failed to carry his burden of proof of showing that the Respondent either acted arbitrarily or capriciously; acted erroneously; failed to use proper procedure; failed to act as required by law or rule; or otherwise exceeded its authority or jurisdiction when Respondent applied a \$50,000.00 deductible to the Lancaster Store Site pursuant to N.C.G.S. § 143-215.94B(b) under the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.
3. N.C.G.S. § 143-215.94B(b) provides:

(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars (\$1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

 - (1) For discharges or releases discovered or reported between 30 June 1988 and 31 December 1991 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of fifty thousand dollars (\$50,000) per occurrence.
 - (2) For discharges or releases discovered on or after 1 January 1992 and reported between 1 January 1992 and 31 December 1993 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars (\$20,000) per occurrence.
4. 15A NCAC 2P.0202(b)(4) provides the following definition of a discovered release:

“Discovered release” means a release which an owner or operator, or its employee or agent, has been made aware of, has been notified of, or has a reasonable basis for knowing has occurred.
5. A.J. Lancaster, Sr. was an owner of the tanks at issue and that he was made aware of and had a reasonable basis for knowing that a release had occurred from USTs at the Lancaster Store Site in both 1989 and 1991 based upon the on-site water supply well sample results which confirmed gasoline contamination in the form of benzene and MTBE and based upon the tank tightness testing performed on the USTs in 1991.
6. Petitioner has failed to carry his burden of proof that the Respondent either acted arbitrarily or capriciously; acted erroneously; failed to use proper procedure; failed to act as required by law or rule; or otherwise exceeded its authority or jurisdiction when Respondent applied a \$50,000.00 deductible to the Lancaster Store Site pursuant to N.C.G.S. § 143-215.94B(b) under the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund due to the fact that a discovered release as defined in 15A NCAC 2P.0202(b)(4) existed at the Lancaster Store Site in both 1989 and 1991 when the on-site water supply well sample confirmed petroleum contamination in the form of benzene contamination and MTBE contamination.

RECOMMENDED DECISION

Based upon the foregoing, stipulations, Findings of Fact and Conclusions of Law, the undersigned recommends that the Respondent’s interpretation of “discovered release” herein is correct and the Respondent’s decision to apply the \$50,000.00 deductible instead of the \$20,000.00 deductible for the Lancaster Store Site as set forth in its letters to A.J. Lancaster, Jr. dated March 3, 1998 and June 25, 1999, be affirmed and upheld as the final agency decision in this contested case.

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 G.S. § 150B-36(b).

NOTICE

The agency that will make the final decision in this contested case is the Department of Environment and Natural Resources (DENR).

DENR 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). DENR 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' attorneys of record and to the Office of Administrative Hearings.

This the 27th day of July, 2000.

Julian Mann, III
Chief Administrative Law Judge

ⁱ Please read "legislative candidate" as shorthand for "limited contributee" as defined by G.S. 163-278.13B as that statute is enforceable in light of Winborne v. Easley, 523 S.E.2D 149 (1999)

ⁱⁱ Please read "lobbyist" as shorthand for "limited contributor" as defined by G.S. 163-278.13B.