

**NORTH CAROLINA
REGISTER**

IN THIS ISSUE



**Volume 15, Issue 6
Pages 645 - 700**

September 15, 2000

This issue contains documents officially filed through August 24, 2000.

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
*21	Occupational Licensing Boards	Marital and Family Therapy	31
22	Administrative Procedures (Repealed)	Medical Examiners	32
23	Community Colleges	Midwifery Joint Committee	33
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		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
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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 PROCEEDINGS	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
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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.

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.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 2 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B – SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 – CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATER AND WETLAND OF NORTH CAROLINA

EXTENSION OF COMMENT PERIOD

The purpose of this notice is to inform interested parties that the comment period for the proposed reclassification of Mill Creek and its tributaries from source to the Little River (Moore County, Cape Fear River Basin) has been extended until September 18, 2000. The reclassification is proposed to add the supplemental classification of High Quality Waters to Mill Creek and its tributaries. The notice of text and notice of public hearing appeared in the June 15, 2000 (Volume 14:24) issue of the *NC Register*. A public hearing was held on July 18, 2000 in the Town of Southern Pines.

It is very important that all interested and potentially affected persons or parties make their views known to the Environmental Management Commission whether in favor or opposed to any or all provisions of the proposal (specifically, 15A NCAC 2B .0311 - High Quality Waters). Please submit written comments, data, or other information relevant to this proposal in writing to:

Jeff Manning
Planning Branch
Division of Water Quality
1617 Mail Service Center
Raleigh, NC 27699-1617

Additional information may be obtained by contacting Jeff Manning at the address above, by calling (919) 733-5083, ext. 579, or by e-mail to Jeff.Manning@ncmail.net

IN ADDITION

U.S. Department of Justice

Civil Rights Division

JDR:JBG:KIF:par
DJ 166-012-3
2000-2420

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

August 8, 2000

Richard J. Rose, Esq.
Poyner & Spruill
P.O. Box 353
Rocky Mount, NC 27802-0353

Dear Mr. Rose:

This refers to five annexations (71, 79 (1999), 18, 19, and 20 (2000)) and their designation to wards of the city of Rocky Mount in Edgecombe and Nash Counties, 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 June 15, 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

RULE-MAKING PROCEEDINGS

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 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 41 – CHILDREN'S SERVICES

Notice of Rule-making Proceedings is hereby given by the Social Services 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: 10 NCAC 41S; 41T - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 131D-10.5; 143B-153

Statement of the Subject Matter: The Social Services Commission intends to amend rules in 10 NCAC 41S and 41T governing the licensure of residential child care facilities. The majority of amendments are technical changes, either to correct grammar or to clarify the content or the intent of the rule. One amendment has been mandated by the General Assembly, that any death of a child be reported to the licensing authority. Amendment of these rules will ensure that the latest residential child care and child welfare practice standards are being implemented in residential settings. Implementation of the most up-to-date child care and child welfare practice standards will ensure that children in out-of-home care are better protected.

Reason for Proposed Action: Revised licensure rules for residential child care facilities were adopted in July, 1999. During the first year of implementation, input has been sought from licensees and the licensing consultants regarding licensure effectiveness. Recommended changes include those for clarification of content or intent or errors in grammar or typing. One addition has been mandated by a recent change in State law.

Comment Procedures: Anyone wishing to comment should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919-733-3055.

CHAPTER 17 – BOARD OF DIETETICS/NUTRITION

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

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 17 .0100, .0200, .0300, .0400 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90:350-369

Statement of the Subject Matter: Licensure, Review and Approval of Weight Control Services, Dietitian/Nutrition Students or Trainees, and Unlicensed Individuals.

Reason for Proposed Action: National Credentialing Agency changed the way exams are given, which impacts the rules in these Sections. Change in the practice of dietetics over the last 7 years.

Comment Procedures: Direct comments to Kim Dove, RD, LDN, NC Board of Dietetic/Nutrition, PO Box 1509, Garner, NC 27529.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

PROPOSED RULES

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 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to adopt the rules cited as 13 NCAC 17 .0201-.0205 and amend the rules cited as 13 NCAC 17 .0101, .0103, .0106. Notice of Rule-making Proceedings was published in the Register on April 3, 2000.

Proposed Effective Date: March 1, 2001

Public Hearing:

Date: October 2, 2000

Time: 2:00 p.m.

Location: NC Department of Labor, Training Room, Suite 205, 4 W. Edenton, St, Raleigh, NC 27601

Reason for Proposed Action: There have been technological advances which are not addressed in the current rules, e.g., the possibility for meetings between employers and applicants to occur by telephonic or video conference. There have also been changes in industry practices and procedures. The proposed text updates the rules to deal with changes in technology, industry practice and procedures. The proposed rules also clarify the responsibilities of Private Personnel Services to make them more understandable and thus, to make compliance easier.

Comment Procedures: Written comments may be submitted to the attention of Angela S. Waldorf, NC Department of Labor, 4 W. Edenton St, Raleigh, NC 27601. Comments will be accepted through October 16, 2000.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 17 – PRIVATE PERSONNEL SERVICES

SECTION .0100 – PRIVATE PERSONNEL SERVICES REGULATIONS

13 NCAC 17 .0101 DEFINITIONS

As used in G.S. 95, Article 5A and this Chapter, unless the context clearly requires otherwise:

- (1) "Accept an employer's offer of employment," as used in G.S. 95-47.1(1), means to consent verbally orally or in writing to take the job the employer is offering. This offer or acceptance may be made directly between the

employer and the applicant or may be communicated through a representative of the private personnel service acting as the applicant's agent.

- (2) "Advertising" means any material or method used by a private personnel service for solicitation or promotion of business. This includes, but is not limited to, newspapers, radio, television, the internet, business cards, invoices, letterheads, or other forms that may be used in combination with the solicitation and promotion of business.
(3) "Candidates" means applicants or persons seeking assistance in finding employment.
(4) "Communication," as used in G.S. 95-47.1(4), means a written communication.
(5) "Days" means calendar days.
(6) "Division" means the Private Personnel Service Division Office of the North Carolina Department of Labor.
(7) "Employer fee paid personnel consulting service" means any business that consults with employers in locating and placing employees where the sole obligation for the placement fee is assumed by the employer in all circumstances and the applicant is never obligated for the fee, directly or indirectly, even if the applicant quits or is terminated for cause.
(8) "Employment agency" or "agency" means the same thing as a private personnel service which is as defined in G.S. 95-47.1(16).
(9) "Existing licensed business," as used in G.S. 95-47.2(f), means any existing licensed private personnel service or job listing service.
(10) "Indirectly" being responsible for a fee to a private personnel service includes the applicant paying, or repaying, any portion of the fee paid to the private personnel service by the employer or any other person.
(11) "Material information," as used in G.S. 95-47.2(d)(3)a, and the rules in this Chapter means any facts or knowledge that are relevant to operating a private personnel service.
(12) "Meeting between an employer and an applicant" as used in G.S. 95-47.1(10) and the Rules in this Chapter includes but is not limited to interviews in person, conducted by telephonic conference, video conference, or other electronic means.
(13) "Operate" means to engage in the business of a private personnel service within the State of North Carolina. Within the State of North Carolina includes, but is not limited to, any of the following:

PROPOSED RULES

- (a) Property, offices, or employees located in North Carolina;
 - (b) Use of a North Carolina phone number;
 - (c) Use of a North Carolina address; ~~or~~
 - (d) Interviewing applicants in North ~~Carolina.~~
Carolina;
 - (e) Placing applicants in North Carolina;
 - (f) Collecting money from applicants in North Carolina;
 - (g) Directing North Carolina applicants to interviews;
 - (h) Directing applicants to interviews with North Carolina employers; or
 - (i) Advertising in North Carolina.
- (14) "Partnership" and "corporation," when used in the context of owners of a private personnel service, mean any similar state-chartered legal entity. Examples of similar state-chartered legal entities include, but are not limited to, limited liability partnerships and limited liability corporations.
- ~~(11)~~(15) "Premises," as used in G.S. 95-47.2(d)(3)c., means the property occupied by any owner or manager of the private personnel service where the business of the private personnel service is conducted. Two businesses occupy the same premises if a person can move from one to the other without traveling through a public area available to non-customers.
- ~~(12)~~(16) "Private personnel service industry" means all private personnel services that are or may be required to be licensed to operate in the State of North Carolina.
- ~~(13)~~(17) "Refund policy" means a voluntary refund policy adopted by the private personnel service. It does not mean the fee reimbursement provisions mandated by G.S. 95-47.3A and such a fee reimbursement shall not be considered as a refund policy which would trigger operation of the "Termination of Employment" provisions under ~~Rule .0108(f)(6)~~ Rule .0107(f)(6) of this Chapter.
- ~~(14)~~(18) "Responsible for the operation" means to conduct the daily administrative functions required to direct and control the business. This includes, but is not limited to, current and ongoing knowledge and oversight of the following: all placement functions; hours the business operates; hiring, supervision, and dismissal of the business' personnel; the finances and financial records of the business; advertising; job orders; compliance with G.S. 95, Article 5A; and the needs of applicants and employers who work with the business to receive placement and hiring assistance. It further means that the person is available during working hours to answer questions and respond to the needs of applicants, employers, the business' own employees, and the ~~Division.~~ Private Personnel Service Office.
- ~~(15)~~(19) Except in G.S. 95-47.2(d)(1), in G.S. 95-47.2(d)(3)b.2 and in G.S. 95-47.2(d)(3)b.3, "rules", "regulations", or "rules or regulations" as used in G.S. 95, Article 5A and in this Chapter refer to administrative rules adopted by the Department of Labor pursuant to G.S. 95, Article 5A and G.S. 150B.

~~(16)~~(20) "Temporary help service" means any business which employs persons whom it assigns to assist its customers. The employer-employee relationship exists between the temporary help service and the employee. A temporary help service never charges the employee a fee for providing its service even if it leads to a permanent placement with the temporary help service customer.

Authority G.S. 95-47.9.

13 NCAC 17 .0103 DURATION AND RENEWAL OF LICENSE

- (a) Period Issued. A license to operate a private personnel service shall be valid for one year from the date of issuance, which is the date that appears on the actual license.
- (b) Renewal:
 - (1) At least ~~30~~ 60 days prior to the date of expiration, the Commissioner shall notify each licensee in writing of the expiration of the license.
 - (2) Renewal applications, completed on a form provided by the ~~Division,~~ must Private Personnel Service Office, shall be submitted to the ~~Division~~ Private Personnel Service Office at least ~~40~~ 30 days prior to the expiration date of the license. The renewal application shall be executed before a notary public and shall include all material changes in the operation of the private personnel service ~~different~~ from the latest application for licensure or renewal or shall certify that no such changes have occurred.
 - (3) The Commissioner shall deny the application for renewal of license if any grounds exist that would have caused denial of the original license application or if the private personnel service has any unrectified violations of Chapter 95, Article 5A or the Rules in this Chapter.
- ~~(c) Review of Licensee's Records:~~
 - ~~(1) At the time of application for renewal, the Division's records regarding the licensee's operation shall be reviewed, including but not limited to, records of inspections and investigations conducted by the Division.~~
 - ~~(2) In determining whether a license should be renewed, the Commissioner will look to the reasons for denying a license found in G.S. 95-47.2(d)(3), G.S. 95-47.2(e), and G.S. 95-47.2(f).~~

Authority G.S. 95-47.2; 95-47.9.

13 NCAC 17 .0106 JOB ORDERS

- (a) Bona Fide Job Order Required. No private personnel service shall offer or hold itself out as being able to secure a specific position of employment for an applicant without having a bona fide job order. A bona fide job order is one which:
 - (1) Is recorded on a form;
 - (2) Contains, at a minimum, the following:
 - (A) Name and title of the person communicating the job order to the private personnel service;

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(B) Date recorded or last verified, whichever is most recent;

(C) Name and address of the employer;

(D) Job title and requirements;

(E) Wages or salary, including any bonus that is included in the stated anticipated annual earnings;

(F) Anticipated hours worked;

(G) Any compensation that is based on commission;

(H) Whether it is the applicant or the employer that is responsible for the placement fee; and

(I) Name of the person recording the job order.

~~(b) Oral Job Orders Must be Reduced to Writing. A bona fide job order shall be recorded on a form containing the following:~~

~~(1) Name and title of person communicating job order to the private personnel service;~~

~~(2) Name of person recording the job order;~~

~~(3) Date;~~

~~(4) Name and address of employer and name and title of person to whom the applicant is to report for an interview;~~

~~(5) Job title and job requirements;~~

~~(6) Requisite education/experience;~~

~~(7) All known conditions of employment, including salary, or salary range, wages, commissions, benefits, hours and number of days of work per week;~~

~~(8) Name of person or organization who is responsible for the placement fee.~~

~~(b) Private Personnel Service Responsible for Explaining Conditions of Employment. At a minimum, the private personnel service shall fully disclose to the applicant all of the required information in 13 NCAC 17.0106(a), Paragraph (a)(2)(a) of this Rule. The private personnel service shall ask the employer for the following information, at a minimum, and shall disclose it to the applicant if received from the employer:~~

~~(1) Name and title of person to whom the applicant is to report for an interview;~~

~~(2) Requisite education and experience; and~~

~~(3) All known conditions of employment, including regular and overtime wages, commissions, benefits, hours, work schedule, whether overtime is expected, whether overtime is included in the expected annual earnings and actual days worked per week.~~

~~(c) Private Personnel Service Responsible for Explaining Conditions of Employment. Prior to the applicants' interview with the employer, the private personnel service must disclose to the applicant information in Subparagraph (b)(4) through (b)(8) of this Rule, these items having been reduced to writing from conversations with or documents received from the employer and being accurate to the best of the private personnel service's knowledge at the time of the interview.~~

~~(c) Disclosure requirements. Disclosure required by this rule shall occur prior to the applicant's interview with the employer. The private personnel service shall base its disclosure upon documents received from the employer or conversations with the employer which shall be reduced to writing. Disclosure shall be accurate to the best of the private personnel service's knowledge.~~

~~(d) Commission-based Compensation:~~

(1) If an applicant is to be compensated, in whole or in part, by commissions and the employer will be responsible for a potential fee reimbursement, then the job order must also be signed by the employer.

(2) A private personnel service may, however, forego the written job order requirement if it is willing to assume liability for a potential fee reimbursement in accordance with G.S. 95-47.4(f) and G.S. 95-47.4(h)(2).

(e) Job Order Verification. At least once a month, the private personnel service shall verify job orders for which candidates are referred or for which advertisements are placed. placed shall be verified at least once every month.

Authority G.S. 95-47.3A; 95-47.6; 95-47.9.

SECTION .0200 – GENERAL PROVISIONS

13 NCAC 17 .0201 ACCEPTING FEES FROM APPLICANT AND EMPLOYER

In order to prevent deceptive or unfair trade practices as described in G.S. 95-47.2(d)(3), 95-47.6(2), 47.6(9) and 75-1.1, if a private personnel service accepts a fee in a single placement from both an applicant and an employer it shall disclose that fact and the fact that it does not represent the applicant exclusively to the applicant. The required disclosures shall be in writing.

Authority G.S. 95-47.47.2; 95-47.6; 75-1.1.

13 NCAC 17 .0202 ACTIVITIES OF BUSINESS CONSIDERED TO BE A PRIVATE PERSONNEL SERVICE

(a) A business that engages in the activities below, and is not covered by G.S. 95-47.1(16)a-f., shall be considered to be a private personnel service if it:

(1) Operates in North Carolina;

(2) Operates for profit or is a nonprofit business that charges a fee;

(3) Holds, or may hold, the applicant liable for a direct or indirect fee to the business; and

(4) Performs one of the following:

(A) Secures employment for the applicant with any employer other than itself; or

(B) By any form of advertising, holds itself out to applicants as able to:

(i) Secure employment with any employer other than itself; or

(ii) Provide information or service of any kind purporting to promote, lead to, or result in employment for the applicant with an employer other than the business itself.

(b) "Secure [or secures] employment for the applicant," as used in Items (a)(4)(a) and (b)(i) of this Rule means find work or a job in any location or for any duration. Examples of a business that secures employment for an applicant may include: employment agency; staffing service; model or talent agency; athlete agent; escort service; computer consultant; nurses pool; nurses service; medical care service such as respiratory therapist or home health care agency; companion care service; home, pet,

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or baby sitting service; nanny or au pair agency; outplacement service; head hunter; retained search business; contingency search business; employee leasing service; career coach; career consultant; career counselor; or temporary service.

(c) Examples of activities that "provide information or service of any kind purporting to promote, lead to, or result in employment for the applicant with an employer other than the business itself" shall include, but not be limited to, the following:

- (1) Recommending a specific potential employer to an applicant;
- (2) Preparing a résumé or cover letters to be sent to an employer suggested or recommended by the business;
- (3) Setting up an appointment on behalf of an applicant, or otherwise making contact with a prospective employer on behalf of an applicant;
- (4) Counseling an applicant on techniques for job search, interview, salary or benefits negotiations, or any other job seeking methodology to be used with a potential employer suggested or recommended by the business;
- (5) Advertising to applicants that the business can help the applicant find employment. Examples of such advertising include: "job hunting?" "help people find a job;" "open the floodgates to employment opportunity;" "take care of the pragmatic details of career research" or "take care of creation of a client's personal marketing materials" where the business suggests specific potential employers; provides access to "inside job leads," "unpublished information," or the "hidden job market;" or provides "outplacement;" or
- (6) Conducting industry research for an applicant in order to determine specific potential employers.

(d) The name of the business, or description of services the business offers, does not control whether the Commissioner finds the service to be a private personnel service.

Authority G.S. 95-47.1, G.S. 95-47.4, G.S. 95-47.6.

13 NCAC 17 .0203 OPERATION WHILE LICENSE APPLICATION IS PENDING

During the time the Commissioner is considering whether the applicant's license will be granted, the applicant may operate as an employer fee paid personnel consulting service. Before operating as an employer fee paid personnel consulting service, the applicant shall file the required Certification of Employer Fee Paid Status form with the Commissioner.

Authority G.S. 95-47.1, G.S. 95-47.2.

13 NCAC 17 .0204 REVIEW OF LICENSEE'S RECORDS

In matters relating to complaints, licensure and re-licensure, the license applicant or private personnel service shall permit the Commissioner to inspect records required by G.S. 95, Article 5A and the rules in this Chapter.

Authority G.S. 95-47.2; 95-47.3A; 95-47.5; 95-47.6; 95-47.8; 95-47.9; 95-47.14; 95-47.15.

13 NCAC 17 .0205 DISCLOSURE OF FINANCIAL RELATIONSHIPS

Unless clearly disclosed in writing in advance, the private personnel service shall not, directly or indirectly, share a fee with or receive a fee from a collection agency (as defined in G.S. 58-70-15) or a loan agency (as defined in G.S. 105-88).

Authority G.S. 95-47.2; 95-47.3; 95-47.3A; 95-47.4; 95-47.6; 95-47.9.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02L .0202. Notice of Rule-making Proceedings was published in the Register on January 16, 1996.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: October 4, 2000

Time: 7:00 p.m.

Location: Archdale Building, Ground floor Hearing Room, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *This rulemaking proposes eighteen new Groundwater Quality Standards that are incorporated into an amendment to 15A NCAC 2L .0202. The Director of the Division of Water Quality has approved interim maximum allowable concentrations for each of these substances as authorized by 15A NCAC 2L .0202(c). These substances are Acenaphthene, Acenaphthylene, Anthracene, Atrazine, Benzo(a)anthracene, Benzo(g,h,i)perylene, Bromodichloromethane, Caprolactam, Carbon Disulfide, Chloroethane, Chrysene, 1,3-Dichloropropene (cis and trans isomers), 1,1-Diphenyl, Fluoranthene, Isopropyl Ether, Methanol, Pyrene, and Simazine. In general, if a substance is not naturally occurring, and if no 15A NCAC 2L .0202 groundwater standard has been established, then the substance is not allowed in detectable concentrations in Class GSA and GA groundwaters. Responsible parties often request interim maximum allowable concentrations when substances without standards are found at their contaminant cleanup sites. On May 15, 1995 the Director of the Division of Water Quality approved interim maximum allowable concentrations for the eighteen substances proposed for this rulemaking. Once established, an interim maximum allowable concentration remains in effect until a Groundwater Quality Standard is adopted pursuant to NCGS 150B. The 15A NCAC 2L .0202 rules require that action be initiated to establish groundwater standards within three months of establishing an interim concentration.*

On June 19, 2000, the Division of Public Health conducted a biennial review as required under 15A NCAC 2L .0202(f). Except for Atrazine and Simazine, the concentrations shown in the proposed amendment to title 15A NCAC 2L .0202 are the

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recommended Groundwater Quality Standards for these substances. Based on more recent toxicological and health information, it is proposed that the final standards for Atrazine

and Simazine be made lower than the current interim maximum allowable concentrations as follows:

<u>Substance</u>	<u>Current Proposed Standard in the Rule</u>	<u>Change Recommended on June 19, 2000</u>
Atrazine	0.003 milligrams per liter	0.00015 milligrams per liter
Simazine	0.0035 milligrams per liter	0.00029 milligrams per liter

In addition, the Division of Public Health has recommended that the descriptive narrative for Atrazine be changed to read as "Atrazine and Chlorotriazine metabolites" to more accurately inform the public as to the type of substance regulated. 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 16, 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, DENR-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 (\geq \$5,000,000)
 None

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2L - GROUNDWATER CLASSIFICATIONS AND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND GROUNDWATER QUALITY STANDARDS

15A NCAC 02L .0202 GROUNDWATER QUALITY STANDARDS

(a) The groundwater quality standards for the protection of the groundwaters of the state are those specified in this Rule. They are the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage.

(b) The groundwater quality standards for contaminants specified in Paragraphs (g) and (h) of this Rule shall be as listed, except that:

- (1) Where the standard for a substance is less than the practical quantitation limit, the detection of that substance at or above the practical quantitation limit shall constitute a violation of the standard.
- (2) Where two or more substances exist in combination, the Director shall consider the effects of chemical interactions as determined by the Division of Epidemiology and may establish maximum concentrations at values less than those established in accordance with Paragraphs (c) and (g) of this Rule. In the absence of information to the contrary, the carcinogenic risks associated with carcinogens present shall be considered additive and the toxic effects associated with non-carcinogens present shall also be considered additive.
- (3) Where naturally occurring substances exceed the established standard, the standard will be the naturally occurring concentration as determined by the Director.

(c) Except for tracers used in concentrations which have been determined by the Division of Epidemiology to be protective of human health, and the use of which has been permitted by the Division, substances which are not naturally occurring and for which no standard is specified shall not be permitted in detectable concentrations in Class GA or Class GSA groundwaters. Any person may petition the Director to establish an interim maximum allowable concentration for an unspecified substance, however, the burden of demonstrating those concentrations of the substance which correspond to the levels described in Paragraph (d) of this Rule rests with the petitioner. The petitioner shall submit relevant toxicological and epidemiological data, study results, and calculations necessary to establish a standard in accordance with the procedure prescribed in Paragraph (d) of this Rule. Within three months after the establishment of an interim maximum allowable concentration for a substance by the Director, the Director shall initiate action to consider adoption of a standard for that substance.

(d) Groundwater quality standards for substances in Class GA and Class GSA groundwaters are established as the lesser of:

- (1) Systemic threshold concentration calculated as follows:
[Reference Dose (mg/kg/day) x 70 kg (adult body weight) x Relative Source Contribution (.10 for inorganics; .20 for organics)] / [2 liters/day (avg. water consumption)];
- (2) Concentration which corresponds to an incremental lifetime cancer risk of 1×10^{-6} ;
- (3) Taste threshold limit value;
- (4) Odor threshold limit value;
- (5) Maximum contaminant level; or

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(6) National secondary drinking water standard.
 (e) The following references, in order of preference, shall be used in establishing concentrations of substances which correspond to levels described in Paragraph (d) of this Rule.

- (1) Integrated Risk Information System (U.S. EPA).
- (2) Health Advisories (U.S. EPA Office of Drinking Water).
- (3) Other health risk assessment data published by U.S. EPA.
- (4) Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.

(f) Groundwater quality standards specified in Paragraphs (g) and (h) of this Rule and interim maximum allowable concentrations established pursuant to Paragraph (c) of this Rule shall be reviewed on a biennial basis. Appropriate modifications to established standards will be made in accordance with the procedure prescribed in Paragraph (d) of this Rule where modifications are considered appropriate based on data published subsequent to the previous review.

(g) Class GA Standards. Where not otherwise indicated, the standard refers to the total concentration in milligrams per liter of any constituent in a dissolved, colloidal or particulate form which is mobile in groundwater. This does not apply to sediment or other particulate matter which is preserved in a groundwater sample as a result of well construction or sampling procedures.

- (1) acetone: 0.7
- (2) acenaphthene: 0.08
- (3) acenaphthylene: 0.21
- ~~(2)~~ (4) acrylamide (propenamamide): 0.00001
- (5) anthracene: 2.1
- ~~(3)~~ (6) arsenic: 0.05
- (7) atrazine: 0.0030
- ~~(4)~~ (8) barium: 2.0
- ~~(5)~~ (9) benzene: 0.001
- (10) benzo(a)anthracene (benz(a)anthracene): 0.0000479
- (11) benzo(g,h,i)perylene: 0.21
- ~~(6)~~ (12) boron: 0.32
- (13) bromodichloromethane: 0.00056
- ~~(7)~~ (14) bromoform (tribromomethane): 0.00019
- ~~(8)~~ (15) butylbenzyl phthalate: 0.10
- ~~(9)~~ (16) cadmium: 0.005
- (17) caprolactam: 3.5
- ~~(10)~~ (18) carbofuran: 0.036
- (19) carbon disulfide: 0.7
- ~~(11)~~ (20) carbon tetrachloride: 0.0003
- ~~(12)~~ (21) chlordane: 2.7×10^{-5}
- ~~(13)~~ (22) chloride: 250.0
- ~~(14)~~ (23) chlorobenzene: 0.05
- (24) chloroethane: 2.80
- ~~(15)~~ (25) chloroform (trichloromethane): 0.00019
- ~~(16)~~ (26) 2-chlorophenol: 0.0001
- ~~(17)~~ (27) chromium: 0.05
- (28) chrysene: 0.00479
- ~~(18)~~ (29) cis-1,2-dichloroethene: 0.07
- ~~(19)~~ (30) coliform organisms (total): 1 per 100

- ~~(20)~~ (31) milliliters
- ~~(21)~~ (32) color: 15 color units
- ~~(22)~~ (33) copper: 1.0
- ~~(23)~~ (34) cyanide: 0.154
- ~~(24)~~ (35) 2, 4-D (2,4-dichlorophenoxy acetic acid): 0.07
- ~~(25)~~ (36) 1,2-dibromo-3-chloropropane: 2.5×10^{-5}
- ~~(26)~~ (37) dichlorodifluoromethane (Freon-12; Halon): 1.4
- ~~(27)~~ (38) 1,1 dichloroethane: 0.7
- ~~(28)~~ (39) 1,2-dichloroethane (ethylene dichloride): 0.00038
- ~~(29)~~ (40) 1,1-dichloroethylene (vinylidene chloride): 0.007
- (41) 1,2-dichloropropane: 0.00056
- ~~(30)~~ (42) 1,3-dichloropropene (cis and trans isomers): 0.00019
- ~~(31)~~ (43) di-N-butyl (or dibutyl) phthalate (DBP): 0.7
- ~~(32)~~ (44) diethylphthalate (DEP): 5.0
- ~~(33)~~ (45) di(2-ethylhexyl) phthalate (DEHP): 0.003
- ~~(34)~~ (46) di-n-octyl phthalate: 0.14
- ~~(35)~~ (47) p-dioxane (1,4-diethylene dioxide): 0.007
- ~~(36)~~ (48) dioxin: 2.2×10^{-10}
- ~~(37)~~ (49) diphenyl (1,1-diphenyl): 0.35
- ~~(38)~~ (50) dissolved solids (total): 500
- ~~(39)~~ (51) diundecyl phthalate (Santicizer 711): 0.14
- ~~(40)~~ (52) endrin: 0.002
- ~~(41)~~ (53) epichlorohydrin (1-chloro-2,3-epoxypropane): 0.00354
- ~~(42)~~ (54) ethylbenzene: .029
- ~~(43)~~ (55) ethylene dibromide (EDB; 1,2-dibromoethane): 4.0×10^{-7}
- ~~(44)~~ (56) ethylene glycol: 7.0
- ~~(45)~~ (57) fluoranthene: 0.28
- ~~(46)~~ (58) fluorene: 0.28
- ~~(47)~~ (59) fluoride: 2.0
- ~~(48)~~ (60) foaming agents: 0.5
- ~~(49)~~ (61) gross alpha (adjusted) particle activity (excluding radium-226 and uranium): 15 pCi/l
- ~~(50)~~ (62) heptachlor: 8.0×10^{-6}
- ~~(51)~~ (63) heptachlor epoxide: 4.0×10^{-6}
- ~~(52)~~ (64) heptane: 2.1
- ~~(53)~~ (65) hexachlorobenzene (perchlorobenzene): 0.00002
- ~~(54)~~ (66) n-hexane: 0.42
- ~~(55)~~ (67) iron: 0.3
- ~~(56)~~ (68) isopropyl ether (diisopropyl ether): 0.07
- ~~(57)~~ (69) lead: 0.015
- ~~(58)~~ (70) lindane: 2.0×10^{-4}
- ~~(59)~~ (71) manganese: 0.05
- ~~(60)~~ (72) mercury: 0.0011
- ~~(61)~~ (73) metadichlorobenzene (1,3-dichlorobenzene): 0.62
- ~~(62)~~ (74) methanol: 3.5
- ~~(63)~~ (75) methoxy chlor: 0.035
- ~~(64)~~ (76) methylene chloride (dichloromethane): 0.005
- ~~(65)~~ (77) methyl ethyl ketone (MEK; 2-butanone): 0.17
- ~~(66)~~ (78) methyl tert-butyl ether (MTBE): 0.2
- ~~(67)~~ (79) naphthalene: 0.021

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- ~~(63)~~(79) nickel: 0.1
- ~~(64)~~(80) nitrate: (as N) 10.0
- ~~(65)~~(81) nitrite: (as N) 1.0
- ~~(66)~~(82) orthodichlorobenzene (1,2-dichlorobenzene): 0.62
- ~~(67)~~(83) oxamyl: 0.175
- ~~(68)~~(84) paradichlorobenzene (1,4-dichlorobenzene): 0.075
- ~~(69)~~(85) pentachlorophenol: 0.0003
- ~~(70)~~(86) pH: 6.5 - 8.5
- ~~(71)~~(87) phenanthrene: 0 .21
- ~~(72)~~(88) phenol: 0.30
- ~~(89)~~ pyrene: 0.21
- ~~(73)~~(90) radium-226 and radium-228 (combined): 5 pCi/l
- ~~(74)~~(91) selenium: 0.05
- ~~(75)~~(92) silver: 0.018
- ~~(93)~~ simazine: 0.0035
- ~~(76)~~(94) styrene (ethenylbenzene): 0.1
- ~~(77)~~(95) sulfate: 250.0
- ~~(78)~~(96) tetrachloroethylene (perchloroethylene; PCE): 0.0007
- ~~(79)~~(97) toluene (methylbenzene): 1.0
- ~~(80)~~(98) toxaphene: 3.1×10^{-5}
- ~~(81)~~(99) 2, 4, 5,-TP (Silvex): 0.05
- ~~(82)~~(100) trans-1,2-dichloroethene: 0.07
- ~~(83)~~(101) 1,1,1-trichloroethane (methyl chloroform): 0.2
- ~~(84)~~(102) trichloroethylene (TCE): 0.0028
- ~~(85)~~(103) trichlorofluoromethane: 2.1
- ~~(86)~~(104) vinyl chloride (chloroethylene): 1.5×10^{-5}
- ~~(87)~~(105) xylenes (o-, m-, and p-): 0.53
- ~~(88)~~(106) zinc: 2.1

Notice is hereby given in accordance with G.S. 150B-21.2 that the Sedimentation Control Commission intends to amend the rule cited as 15A NCAC 4C .0107. Notice of Rule-making Proceedings was published in the Register on May 1, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: October 2, 2000
Time: 7:00 p.m.
Location: Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *In 1997, the Sediment Control Commission adopted a Plan of Action. As part of that Plan of Action, several work groups were established. One of the work groups recommended changes to Rule 15A NCAC 4C .0107 (.0007 at that time). This change was based on the version of the Sedimentation Pollution Control Act of 1973 (SPCA) in effect at that time. The rule change was adopted by the SCC in 1998, moved through the rule-making process, was approved by the RRC in September and became effective August 1, 2000. While the permanent rule was moving through the process, HB 1098 was passed by the General Assembly and ratified in July 1999. HB 1098 made several changes to the SPCA including a change allowing the assessment of civil penalties from the date of discovery of the violation. It was brought to the attention of the SCC that the newly amended 4C .0107 would require that a civil penalty be assessed from the date of the receipt of the Notice of Violation which was the requirement in the "old" version of the SPCA. The SCC at its November 1999 meeting decided that the rule should be consistent with the change in HB 1098. At that meeting, the SCC adopted proposed changes to 15A NCAC 4C .0107, to make it consistent with HB 1098 as a temporary rule and to start the process for permanent rule-making. The temporary rule became effective August 1, 2000.*

Comment Procedures: *Written comments may be submitted to Bill Noyes, State Sedimentation Specialist, Division of Land Resources, Land Quality Section, 1612 Mail Service Center, Raleigh, NC 27699-1612, (919) 733-4574. Comments will be accepted through October 16, 2000.*

Fiscal Impact

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

CHAPTER 4 - SEDIMENTATION CONTROL

**SUBCHAPTER 4C - SEDIMENTATION CONTROL
CIVIL PENALTIES**

(h) Class GSA Standards. The standards for this class shall be the same as those for Class GA except as follows:

- (1) chloride: allowable increase not to exceed 100 percent of the natural quality concentration.
- (2) total dissolved solids: 1000 mg/l.

(i) Class GC Waters.

- (1) The concentrations of substances which, at the time of classification exceed the standards applicable to Class GA or GSA groundwaters shall not be caused to increase, nor shall the concentrations of other substances be caused to exceed the GA or GSA standards as a result of further disposal of contaminants to or beneath the surface of the land within the boundary of the area classified GC.
- (2) The concentrations of substances which, at the time of classification, exceed the standards applicable to GA or GSA groundwaters shall not be caused to migrate as a result of activities within the boundary of the GC classification, so as to violate the groundwater or surface water quality standards in adjoining waters of a different class.
- (3) Concentrations of specific substances, which exceed the established standard at the time of classification, shall be listed in Section .0300 of this Subchapter.

Authority G.S. 143-214.1; 143B-282(a)(2).

PROPOSED RULES

SECTION .0100 – SEDIMENTATION CONTROL CIVIL PENALTIES

15A NCAC 04C .0107 PROCEDURES: NOTICES

(a) The notice of violation shall describe the violation with reasonable particularity and shall state that upon failure to comply, the person shall become subject to the assessment of a civil penalty. particularity, request that all illegal activity cease, and inform the violator that a civil penalty may be assessed pursuant to G.S. 113A-64. If particular actions need to be taken to comply with the Sedimentation Pollution Control Act, the notice shall specify the actions to be taken, shall specify a time period for compliance, and shall state that upon failure to comply within the allotted time the person shall become subject to the assessment of a civil penalty for each day of the continuing violation beginning with the date of the violation.

(b) The stop work order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of the assessment of a civil penalty pursuant to G.S. 113A-64(a)(1). Copies of the stop work order shall be served upon persons the Department has reason to believe may be responsible for the violation by any means authorized under G.S. 1A-1, Rule 4.

Authority G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1; 143B-10.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Parks and Recreation Authority intends to amend the rule cited as 15A NCAC 12K .0106. Notice of Rule-making Proceedings was published in the Register on May 1, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: October 4, 2000

Time: 2:00 p.m. – 4:00 p.m.

Location: Ground Floor Hearing Room, Archdale Building; 512 North Salisbury Street, Raleigh, NC

Reason for Proposed Action: The rule allows local government to request a waiver from the Parks and Recreation Authority to purchase land before its grant application is approved. The rule change will not create an advantage or disadvantage for any PARTF grant applicant. Local grant applications are all evaluated according to criteria identified in 15A NCAC 12K .0105. The rule change will not effect the amount of money a local government can request from the Trust Fund because any local government can submit multiple applications. Each application is capped at \$250,000.00.

Comment Procedures: Send comments to the Agency contact Dedra Alston. Comments may be submitted to Baynard Alcorn, Division of Parks and Recreation; 1615 Mail Service Center; Raleigh, NC 27699-1615; (919) 715-2659. Comments will be accepted through October 16, 2000.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 12 – PARKS AND RECREATION AREA RULES

SUBCHAPTER 12K – PARKS AND RECREATION TRUST FUND GRANTS FOR LOCAL GOVERNMENT

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 12K .0106 GRANT AGREEMENT

(a) Upon Authority approval, a written agreement shall be executed between the grant recipient(s) and the Authority on behalf of the Department.

(b) The agreement shall define the Department's and grant recipient's responsibilities and obligations, the project period, project scope and the amount of grant assistance.

(c) The approved application and support documentation shall become a part of the grant agreement.

(d) State Clearinghouse environmental review comments made as a result of application review shall be addressed by the applicant prior to execution of the project agreement. Projects judged to have a significant environmental impact shall submit an environmental assessment.

(e) The grant agreement may be amended upon mutual consent and approval by the Department on behalf of the Authority and the grant recipient(s). The grant recipient(s) shall submit in writing to the Department a formal amendment request for approval. The Department may approve the amendment based on local circumstances which justify the amendment request.

(f) Projects may not begin until the Authority on behalf of the Department and grant recipient(s) sign the agreement. agreement unless a waiver has been requested by the applicant in writing and approved by the Authority or its executive committee. Waivers may only be granted for land acquisition projects requiring immediate action.

(g) Following execution of the grant agreement, a check in the amount of the approved grant shall be presented to the grant recipient(s).

(h) Complete accounting records including a certified project data sheet and performance report verifying eligible costs shall be submitted by the grant recipient(s) to the Department for approval prior to or at the time of the close-out inspection. The Department shall approve the accounting when the records are consistent with the project agreement and budget.

Authority G.S. 113-44.15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services intends to adopt the rules cited as 15A NCAC 16A .1301-.1307. Notice of Rule-

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making Proceedings was published in the Register on February 1, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: October 16, 2000

Time: 10:00 a.m.

Location: Room 264, Adams Building, Dorothea Dix Campus, Raleigh, NC

Reason for Proposed Action: Cardiovascular disease and diabetes are leading causes of death and disability in persons over the age of 65, especially those with limited incomes. Financial support for the purchase of medications for the control of these illnesses is intended to extend the productive years and quality of life of such persons, and to reduce costs related to unnecessary hospital and nursing home admissions.

Comment Procedures: Written comments may be submitted to Charles D. Reed, Pharmacist, NC Division of Public Health, 1915 Mail Service Center, Raleigh, NC 27699-1915, within 30 days after the date of publication of this issue of the NC Register. Copies of the proposed rules may be obtained by contacting Charles Reed at (919)715-3338.

Fiscal Impact

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

CHAPTER 16 - ADULT HEALTH

SUBCHAPTER 16A - CHRONIC DISEASE

SECTION .1300 - PRESCRIPTION DRUG ASSISTANCE PROGRAM

15A NCAC 16A .1301 GENERAL

The Prescription Drug Assistance Program shall provide financial assistance for prescription drug costs to eligible and enrolled persons over the age of 65 years and who have been diagnosed by a physician as having cardiovascular disease or diabetes and require prescription medication to treat one or more of these conditions.

Authority S.L. 1999, c. 237, s.11.1.(a).

15A NCAC 16A .1302 DEFINITIONS

- (a) "Cardiovascular disease" shall mean diagnoses of hypertension, angina, arrhythmia, or heart failure.
- (b) "Diabetes" shall mean diabetes mellitus.
- (c) "Prescription drug" shall mean any drug product required by federal or state law to include "Rx only" or "Caution: Federal law prohibits dispensing without prescription" upon its label prior to dispensing of the product to a patient, or any drug

required by the North Carolina Medicaid Pharmacy Program to be dispensed pursuant to a prescription.

(d) "Outpatient prescription drug" shall mean any drug defined in Paragraph (c) of this Rule that is dispensed by a pharmacy which holds a valid permit issued by the North Carolina Board of Pharmacy to a patient for use outside of a health or medical inpatient facility such as a hospital, long-term care facility, or medical clinic.

Authority S.L. 1999, c. 237, s.11.1.(a).

15A NCAC 16A .1303 FINANCIAL ELIGIBILITY

Persons who are not eligible for full Medicaid benefits, who do not have other insurance coverage for drugs, and whose income is not more than 150% of the federal poverty level may be enrolled in the program.

Authority S.L. 1999, c. 237, s.11.1.(a).

15A NCAC 16 .1304 LIMITATIONS

Notwithstanding any other provision of the rules of this Section, enrollment in the program is subject to the following:

- (1) Until July 1, 2000, enrollment in the program shall be limited to residents of the following 30 North Carolina counties: Beaufort, Bertie, Bladen, Brunswick, Carteret, Columbus, Craven, Duplin, Edgecombe, Greene, Halifax, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Pitt, Robeson, Sampson, Washington, Wayne, and Wilson. Thereafter, enrollment in the program shall be open to residents of all counties in the State.
- (2) For 30 days from the inception of the program, persons receiving Medicaid benefits as Qualified Medicare Beneficiaries or Specified Low-Income Medicare Beneficiaries shall be given priority notification and may be enrolled in the program on a first-come first-served basis. Thereafter, enrollment in the program will be open to all eligible persons on a first-come first served basis.
- (3) A waiting list of eligible persons may be established by the program. Admission to the list and subsequent enrollment in the Program shall be on a first-come first-served basis.
- (4) Enrollment of eligible persons and reimbursement to providers shall be subject to the availability of funds.

Authority S.L. 1999, c. 237, s.11.1.(a).

15A NCAC 16A .1305 APPLICATION PROCESS

- (a) Applications for enrollment shall be submitted on forms provided by the Prescription Drug Assistance Program, North Carolina Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915.
- (b) Notification of approval or denial of enrollment shall be sent to applicants within 30 calendar days of receipt of application.
- (c) Benefits shall be effective upon receipt of a program identification card by the enrollee.

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(d) All program identification cards and benefits shall expire on June 30 of each year.

(e) In order to continue receiving benefits, enrollees shall reapply prior to July 1 of each year on forms provided by the Prescription Drug Assistance Program, North Carolina Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915, except that persons receiving Medicaid benefits as Qualified Medicare Beneficiaries or Specified Low-Income Medicare Beneficiaries shall not be required to reapply. Applications for enrollment received after July 1 of each year will be processed on a first-come first served basis subject to the availability of funds.

Authority S.L. 1999, c. 237, s.11.1.(a).

15A NCAC 16 .1306 COVERED SERVICES

The Prescription Drug Assistance Program shall provide financial assistance for prescription drug costs on behalf of enrollees as follows:

- (1) Outpatient prescription drugs for the treatment of hypertension, angina, arrhythmia, heart failure, and diabetes mellitus shall be authorized and shall be supplied in quantities:
 - (a) not to exceed a 100 day supply; and
 - (b) consistent with the prescriber's instructions for use.
- (2) Each prescription order dispensed to the enrollee shall be subject to a co-payment of six dollars (\$6.00), payable by the enrollee to the pharmacy provider, for quantities up to a 100 day supply.
- (3) A prescription drug prescribed by a brand or trade name for which one or more generically- equivalent drugs are available shall be considered to be an order for the drug by its generic name, except when the prescriber personally indicates in his or her own handwriting on the prescription order, "Brand Medically Necessary" or "Dispense as Written."

Authority S.L. 1999, c. 237, s.11.1.(a).

15A NCAC 16A .1307 REIMBURSEMENT

(a) Reimbursement for outpatient prescription drugs dispensed to enrollees shall be made to the pharmacy provider of service at a rate not to exceed the lesser of:

- (1) the applicable North Carolina Medicaid Pharmacy Program reimbursement rate; or
- (2) the pharmacy provider's usual and customary charge.

(b) Claims for reimbursement shall be submitted in the manner required by the Prescription Drug Assistance Program and any person or entity engaged in the processing of claims on behalf of the Program.

Authority S.L. 1999, c. 237, s.11.1.(a).

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Motor

Vehicles intends to adopt the rules cited as 19A NCAC 3G .0214-.0225. Notice of Rule-making Proceedings was published in the Register on July 3, 2000.

Proposed Effective Date: April 1, 2001

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

Reason for Proposed Action: *The rules proposed for adoption will ensure minimum physical standards for school bus drivers which will provide safe transportation for school children and other motorists.*

Comment Procedures: *Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by October 16, 2000.*

Fiscal Impact

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

CHAPTER 3 – DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3G – SCHOOL BUS AND TRAFFIC SAFETY SECTION

SECTION .0200 – SCHOOL BUS DRIVER TRAINING

19A NCAC 03G .0214 PHYSICAL REQUIREMENTS

All North Carolina school bus drivers shall:

- (1) Meet the vision standards stated in the "Rules and Regulations Governing the Issuance and Cancellation of School Bus Driver Certificates" which requires a minimum of 20/40 in each eye, color vision, adequate depth perception and field of vision. The driver shall be able to scan the roadway and mirrors for potential hazards and problems without difficulty or restrictions.
- (2) Be able to communicate with all students and give verbal warnings or instructions quickly and loudly if necessary while maintaining control of the bus at all times.
- (3) Demonstrate the ability to exercise good judgment and react quickly to any adverse situation.
- (4) Demonstrate the ability to maintain control of the bus and passengers under all normal and adverse circumstances.
- (5) Demonstrate the ability to help evacuate the bus and assist passengers to a place of safety during practice drills or emergency situations. Evacuation may include carrying or dragging passengers. The driver may be

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required to fight a bus fire if he or she is unable to remove all passengers from the bus.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0215 PERFORMANCE REQUIREMENTS

A North Carolina school bus driver shall pass the "North Carolina School Bus Driver Physical Performance Evaluation." The evaluation shall assess a school bus driver's physical abilities and agility and include a required pre-employment examination.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0216 PERFORMANCE EVALUATION CONDITIONS

(a) The physical performance evaluation shall be required for all new drivers and as part of the re-certification process of current drivers. The evaluation may also be used when a current driver's physical ability is in question.

(b) If a driver has failed any part of the evaluation, the instructor should terminate the test to avoid any possible injury to the driver.

(c) A driver who fails any part of this test may not drive a school bus until he or she retakes and passes the entire evaluation.

(d) A re-testing shall be authorized by the local education authority (LEA).

(e) If a driver has received such authorization, he may request a retest in not less than five days nor more than 30 days after the date of the first examination.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0217 EVALUATION ADMINISTRATION

(a) Only Driver Education Specialists (DEs) with the North Carolina Division of Motor Vehicles as defined in 19A NCAC 03G.0203 and .0204 shall administer or conduct the physical performance evaluation.

(b) All DEs and Field Supervisors administering the test after July 1, 2000 shall complete a training and certification course offered by the School Bus and Traffic Safety Section of the Division of Motor Vehicles before administering the test.

(c) All new Driver Education Specialists hired after July 1, 2000 shall pass the physical performance evaluation as part of the DE certification training course.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0218 BUSES USED FOR DRIVER TESTING

(a) School bus driver evaluation shall be administered on the largest type of school bus that the driver is licensed to drive which is possessed by the public school system, private school, charter school, contracted service, or LEA. If a driver will ever be required to operate a bus with a clutch or manual door in

either a small or large bus as defined in 03G.0219, the driver shall be tested on the operation of the clutch and manual door. The director of the DMV School Bus and Traffic Safety section, district field supervisors, and Department of Public Instruction's transportation consultants shall publish a list of specific models, types, and sizes of buses to be used for the physical performance evaluation. If a private school, charter school, or contracted service does not have a listed designated bus, the local DES and district field supervisor shall work with the concerned school transportation authority to designate specific buses for that school. All new hires shall pass the physical performance evaluation for the LEA for which they are going to drive.

(b) All tests shall be conducted on a designated type school bus. The driver's seat shall adjust to the full range of movement which includes up, down, forward, and backward, as when it was installed at the factory. The rear emergency door shall be checked to ensure the door will fully open.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0219 SCHOOL BUS SIZE TEST REQUIREMENTS

(a) For purposes of this Rule, any school bus with a designed seating capacity below 30 passengers is small.

(b) For purposes of this rule, any school bus designed for seating 30 or more passengers is large.

(c) Taking the test on any vehicle within a type qualifies a driver on all vehicles within that size type. If a driver tests on a 66 passenger bus and the employer then adds a 78 passenger bus, the driver is already qualified to drive the larger vehicle because it is within the same type. If the driver takes the test in the small bus, he may not drive any large size school bus until he has successfully completed testing in a large vehicle.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0220 ENTER AND EXIT BUS TEST

A school bus driver applicant shall be required to perform the following activities:

- (1) Climb and descend the school bus steps three times within 30 seconds;
- (2) Use only one hand on the handrail or door handle;
- (3) Not use his or her hands to assist in picking up a leg;
- (4) Not jump or skip over a step while ascending or descending;
- (5) Turn around at the top of the steps; and
- (6) Alternate his or her feet as he or she ascends and descends the steps. There shall be only one foot on a step at one time.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0221 THROTTLE AND BRAKE TEST

(a) For the throttle/brake test, the applicant shall demonstrate the ability to alternately activate the throttle and brake controls ten times in ten seconds.

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(b) The seated driver shall move his foot from the throttle to the brake and back to the throttle. The throttle/brake/throttle cycle shall be repeated ten times within ten seconds.

(c) This test shall be conducted with the engine running. If the bus is an air brake bus the air pressure shall be built up to at least 100 psi.

(d) For the brake test, the applicant shall fully depress and maintain constant pressure on the brake pedal for 60 seconds. In vehicles equipped with a clutch, the driver shall also depress and hold the clutch pedal in for the duration of the test.

(e) If the driver will ever be required to operate a vehicle with a clutch, he shall be tested on a vehicle with a clutch.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0222 DOOR TEST

(a) The applicant shall manually open and close the bus entrance door three consecutive times within 20 seconds.

(b) If the driver may be required to drive a bus with a manual door, he shall be tested in that type of school bus. If the driver will only be required to drive a bus with an automatic door, he shall demonstrate his ability to operate the manual override on that door three times in a series.

(c) If the test is conducted on a bus with an automatic door, the driver may stand on the top step or the bus floor, whichever is more suitable for his or her height.

(d) If the test is conducted on a bus with a manual door, the driver shall be seated in the driver's seat with the seat belt fastened.

(e) For purposes of this rule, the term "consecutively" shall mean that there shall be no stopping between the three opening and closing cycles.

(f) The test shall start and end with the door closed.

(g) The driver may use only one hand. If the door control is on the right side, the right hand shall be used. If the door control is on the left side, the left hand shall be used.

(h) If the test is conducted on a bus with a manual door, the door shall be fully opened and fully closed within the safety latch.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0223 REAR EMERGENCY DOOR TEST

(a) A school bus driver shall start in a seat belted position, leave the driver's seat, and exit the bus from the rearmost floor-level emergency door exit within 20 seconds.

(b) A school bus driver shall not jump out the emergency exit. The driver shall use the "sit and slide" method for evacuation.

(c) For purposes of this rule, in rear engine buses, the emergency exit is the side emergency door which has access without seats in the way. In all other buses, the correct exit is the rear door emergency exit at the back seats.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0224 HAND CONTROLS TEST

(a) The DES shall select from among the following to be evaluated: passenger stop amber warning lights, headlights, hazard lights, windshield wipers, defroster fans, and interior lights.

(b) The applicant shall operate a minimum of four hand controls with at least one on the right side of the steering wheel while operating the vehicle. Each response shall be completed within eight seconds of the request from the DES.

(c) New drivers shall watch the DES conduct a demonstration drive and drive the bus for at least an hour prior to hand control testing.

(d) If two different controls are not available to the right of the steering wheel, the applicant shall use only one for the right. The other three shall be from the left side of the steering wheel.

Authority G.S. 120-39(b); 20-218.

19A NCAC 03G .0225 PASS AND FAIL RECORDS

(a) If a driver fails a test standard, the test shall be stopped immediately.

(b) The DES shall give a copy of the SB&TS-298 form to the driver and to the LEA. The original form 298 shall be placed in the driver's CDL folder.

Authority G.S. 20-39(b); 20-218.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 18 – BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Electrical Contractors intends to amend the rules cited as 21 NCAC 18B .0209, .0404. Notice of Rule-making Proceedings was published in the Register on August 1, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: October 12, 2000

Time: 9:00 a.m.

Location: State Board of Examiners of Electrical Contractors, 1200 Front St., Suite 105, Raleigh, NC 27609

Reason for Proposed Action: *The Board has mandated employment of additional investigative personnel which will require an increase of annual license fees. The Board has also directed staff to implement statewide computer-based testing, allowing more frequent examinations at numerous places and dates. The improved availability of examinations to applicants will require an increase in examination fees. The proposal would increase the fees to the ceiling set by the General Assembly in the past, and match the current temporary rule in effect.*

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Comment Procedures: All comments should be directed to the Board in writing and addressed to Mr. Robert L. Brooks, Jr., Executive Director, State Board of Examiners of Electrical Contractors, PO Box 16727, Raleigh, NC 27619-8727. Comments must be received on or before October 16, 2000.

SUBCHAPTER 18B – BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING LICENSING ACT

SECTION .0200 - EXAMINATIONS

Fiscal Impact

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

21 NCAC 18B .0209 FEES

(a) The combined application and examination fees for the regular qualifying examinations in the various license classifications are as follows:

APPLICATION AND EXAMINATION FEE SCHEDULE: REGULAR

CLASSIFICATION	APPLICATION FEE	EXAMINATION FEE	TOTAL COMBINED FEE
Limited	\$15.00	\$15.00	\$ 30.00
Intermediate	\$30.00	\$30.00 45.00	\$ 60.00 75.00
Unlimited	\$65.00	\$50.00 85.00	\$115.00 150.00
SP-SFD	\$15.00	\$15.00	\$ 30.00
Special Restricted	\$15.00	\$15.00	\$ 30.00

(b) The combined application and examination fees for a specially-arranged qualifying examination in the various license classifications are as follows:

APPLICATION AND EXAMINATION FEE SCHEDULE:
SPECIALLY-ARRANGED

CLASSIFICATION	APPLICATION FEE	EXAMINATION FEE	TOTAL COMBINED FEE
All Classifications	\$100.00	\$100.00	\$200.00

(c) The fee for a supervised review of a failed examination with the Board or staff assistance is ten dollars (\$10.00) for all classifications.

(d) The total combined application and examination fees for regular or specially-arranged examinations in all classifications and the fees for examination reviews may be in the form of cash, check or money order made payable to the Board and must accompany the respective applications when filed with the Board.

(e) Application and examination fees received with applications filed for qualifying examinations shall be retained by the Board unless:

- (1) an application is not duly filed as prescribed in Rule .0210 of this Section, in which case the combined application and examination fee shall be returned; or
- (2) the applicant does not take the examination during the examination period applied for and files with the Board a written request for a refund, setting out extenuating

circumstances. The Board shall refund the application fee, the examination fee, or both, if it finds extenuating circumstances.

(f) Examination review fees are non-refundable unless the applicant does not take the review and files with the Board a written request for a refund, setting out extenuating circumstance. The Board shall refund the fee if it finds extenuating circumstances.

(g) Any fee retained by the Board shall not be creditable toward the payment of any future application of examination fee or the fee for an examination review.

(h) Extenuating circumstances for the purposes of Paragraphs (e)(2) and (f) of this Rule shall be the applicant's illness, bodily injury or death, or death of the applicant's spouse, child, parent or sibling, or a breakdown of the applicant's transportation to the designated site of the examination or examination review.

Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44.

21 NCAC 18B .0404 ANNUAL LICENSE FEES

(a) The annual license fees and license renewal fees for the various license classifications are as follows:

LICENSE FEE SCHEDULE
CLASSIFICATION LICENSE FEE

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Table with 2 columns: License Type and Fee. Rows include Limited (\$30.00), Intermediate (\$75.00), Unlimited (\$150.00), SP-SFD (\$30.00), and Special Restricted (\$30.00).

(b) License fees may be in the form of cash, check or any money order made payable to the Board and must accompany the applicant's license application or license renewal application when either is filed with the Board.

Authority G.S. 87-42; 87-44.

CHAPTER 50 – BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors intends to adopt the rules cited as 21 NCAC 50 .1401 - .1410. Notice of Rule-making Proceedings was published in the Register on July 17, 2000.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: October 5, 2000

Time: 6:00 p.m.

Location: McKimmon Center, Raleigh, North Carolina

Reason for Proposed Action: The Board wishes to receive public comment on the question whether to require continuing education as a condition of license renewal, and, if so, the desired components or requirements of a continuing education program. The draft rules raise issues as to course content, hours required, credentials of speakers and courses, renewal year affected, as well as the efficacy of voluntary programs.

Comment Procedures: Comment may be provided to the Board on or before October 16, 2000, by mailing to the Board at 3801 Wake Forest Road, Suite 201, Raleigh, NC 27609, addressed to Rule-making Coordinator.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

SECTION .1400 – CONTINUING EDUCATION

21 NCAC 50 .1401 CONTINUING EDUCATION REQUIREMENTS

(a) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Plumbing, Heating or Fuel Piping license, must have completed six hours of approved

continuing education during the preceding calendar year as a condition of license renewal.

(b) Courses must be in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of: the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. No more than two hours annually may be dedicated to ethics, taxation, payroll, cash management, contract preparation or similar subjects as related to plumbing or heating contracting.

(c) At least once every three calendar years, each applicant for license renewal, other than fire sprinkler licensees, must complete a four hour block of instruction devoted entirely to N.C. and local building codes including recent changes or amendments to those codes. This four hour block may be counted towards the required six hours for the calendar year in which the block is taken.

(d) Persons holding multiple qualifications from the Board must complete at least two hours in each qualification, totalling at least six hours annually.

(e) License may not be renewed without documentation of the required continuing education in the form required by the Board. Falsification or misstatement of continuing education information as to course attendance, instruction, content or otherwise shall be grounds for failure to renew license and disciplinary action, including revocation or suspension of license.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1402 EXEMPTIONS AND CREDITS

(a) Continuing Education courses taken in 1999, 2000, 2001 or 2002 may be applied to the six hour annual requirement for 2003 renewals. Thereafter, licensees may not carry over hours from one calendar year to the next.

(b) Newly licensed individuals will have no continuing education requirements for the calendar year in which they first become licensed.

(c) Licensees who are unable to fulfill the required number of hours as the result of illness as certified by an attending physician or other hardships may petition the Board in writing for an exemption or request approval of an individualized plan tailored to their physical limitations. Such requests will be dealt with on a case by case basis by the Board without undue delay, consistent with the requirements applicable to all licensees.

(d) Licensees who are over the age of 65, and who will not be engaged in bidding supervising or other activities for which license is required during the coming year, except as an employee of another licensee, may apply to the Board for an

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exemption. If exemption is granted and the licensee thereafter wishes to engage in activity requiring license, the continuing education must be completed and satisfactory proof provided to the Board before any activity requiring license is undertaken.

(e) Approved instructors shall be given credit for lecture hours spent educating other licensees in approved courses.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1403 COMPUTATION OF CONTINUING EDUCATION HOURS

(a) To obtain one hour of continuing education credit a licensee and a course sponsor must certify the licensee's completion of one hour of actual instruction in a sponsored course. Except with prior approval by the Board, a licensee will receive no credit for a course for which the licensee has previously received credit in the current or two preceding calendar years.

(b) Actual instruction does not include introductory remarks, breaks, business meetings, marketing of equipment, advertisements or time spent on non-approved subjects. Each hour of actual instruction may include one break of 10 minutes duration.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1404 COURSE REQUIREMENTS AND LIMITATIONS

(a) In order for course credit to be obtained, the course must be approved and consist of instruction in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of: the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. Business ethics, taxation, payroll, cash management, contract preparation or similar subjects as related to plumbing or heating contracting may be approved.

(b) In order for course credit to be obtained, the course must be taught by an instructor approved by the Board.

(c) Courses shall have a minimum of two hours of actual instruction and a maximum of six hours of actual instruction, per day.

(d) Courses shall be held in facilities conducive to learning. Such facilities would include community colleges, technical schools, community centers, and other acceptable meeting rooms.

(e) Courses shall be open to all interested licensees that the host facility can reasonably accommodate and for audit by Board representatives; courses may not be restricted to employees, dealers or members of a particular firm or group.

(f) Once listed on the six-month course roster, a course may not be cancelled during that six month period.

(g) Though courses may have commercial sponsors, the courses shall not include promotion of products or services of a particular firm or manufacturer.

(h) Correspondence, home study, license exam preparation (cram) courses will not be approved.

(i) For the information of all licenses, the Board will maintain a calendar of all courses available during a six-month period.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1405 APPROVAL OF COURSES

(a) To obtain approval of a course an applicant must submit a written application to the board at least forty-five days before the proposed course date which application must include:

(1) two substantially complete sets of written course materials and a detailed course outline; and

(2) an application cover sheet on a form supplied by the Board identifying the applicant, the approved training agency, all speakers, the proposed date(s) of the course, the host facility, the place where applications for enrollment should be sent, the cost, the total continuing education hours being offered, and any hours dedicated to the block course on code.

(b) Preliminary review of course applications will be carried out by a committee of approved training agencies appointed by the Board.

(c) As a condition of course approval, providers agree to submit to the board, in the form provided by the Board, and within 30 days of the conclusion of the course, an alphabetical listing of all licensees who attended and completed the course and a copy of any course materials distributed to participants.

(d) Providers who fail to provide the information set forth in Paragraph (c) of this Rule will not thereafter be approved to conduct a course.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1406 APPROVAL OF COURSE INSTRUCTORS

(a) All course instructors must be approved by the Board, biennially. To be approved, each instructor must submit to the Board an application containing: their name, address, course title, hours and sponsor, and a description of the instructor's qualifications. For the year 2002, one-half of the course instructors will be approved for one year only.

(b) Licensees who have been disciplined by the Board shall not be approved as instructors within three years following satisfactory compliance with the disciplinary Order.

(c) Instructors will be approved based on a finding of a satisfactory level of understanding of the subject matter, day-to-day experience in application of the subject matter, prior satisfactory teaching experience in the case of repeat applicants, personal integrity and adherence to the statutes and rules of the Board.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1407 CERTIFICATION OF COURSE COMPLETION BY LICENSEES AND SPONSORS

(a) Licensees shall submit, prior to license renewal, a certification of the number of continuing education hours completed in that calendar year.

PROPOSED RULES

(b) Upon request, applicants will provide proof of course sponsor, title and teacher, location and date, hours in fact attended, and other information requested by the Board.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1408 ADVERTISEMENTS BY COURSE SPONSORS OR INSTRUCTORS

Approved course sponsors and instructors may include in brochures and course descriptions a statement substantially as follows:

This course has been approved by the North Carolina State Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors for continuing education credit in the amount of __ hours, of which __ hours will count towards the four hour block on state and local building codes. This course is not sponsored by the Board.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1409 TERMINATION OF COURSE OR SPONSOR APPROVAL

The Board may suspend or terminate approval of any course or instructor if the Board finds a failure to comply with the Board's rules, the course outline, or for misstatements as to content or participation, and may specify the conditions under which future applications would be favorably considered.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1410 PETITIONS FOR REINSTATEMENT OF LICENSE

Following a finding of noncompliance with these continuing education requirements, renewal will not be allowed, discipline may be imposed as indicated by 21 NCAC 50 .1401, and the licensee may be required to complete sufficient coursework to eliminate the deficiency prior to license reinstatement or renewal.

Authority G.S. 87-21(b)(3); 87-22.

CHAPTER 54 – NORTH CAROLINA PSYCHOLOGY BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Psychology Board intends to amend the rules cited as 21 NCAC 54 .1901, .1903-.1904. Notice of Rule-making Proceedings was published in the Register on May 3, 1999.

Proposed Effective Date: April 1, 2001

Public Hearing:

Date: October 3, 2000

Time: 10:00 a.m.

Location: 895 State Farm Rd., Suite 101, Boone, NC 28607

Reason for Proposed Action: The Association of State and Provincial Psychology Boards (ASPPB) develops the national examination that is provided to state psychology licensing boards. ASPPB determined that the examination will move paper-and-pencil delivery to computerized delivery in 2001. This change affects the scoring system and the frequency of the administration of the examination.

Comment Procedures: An interested person may comment either orally at the public hearing or submit written comments to Martha Storie, Executive Director, NC Psychology Board, 895 State Farm Rd., Suite 101, Boone, NC 28607. Written comments must be received by 5:00 p.m. on October 16, 2000. Any person wishing to speak at the public hearing is required to notify the Board in writing no later than three business days prior to the hearing date of their intent to comment orally at this public hearing.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

SECTION .1900 – EXAMINATION

21 NCAC 54 .1901 TYPES

(a) Written Qualifying Examinations. The Board shall administer national National and state written examinations. examinations shall be administered. The examinations shall be taken only for licensure purposes. The applicant shall bear the responsibility for complying with deadlines and procedures established by the examination contractor and testing vendor when approved to take a computer administered examination.

(1) National Examination. The Board shall administer national examination is a current form of the Examination for Professional Practice in Psychology (EPPP). (EPPP) which is developed by the Association of State and Provincial Psychology Boards (ASPPB). The EPPP assesses the applicant's knowledge of the subject matter of psychology and his or her understanding of professional and ethical problems in the practice of psychology. For paper and pencil administrations of the EPPP in April, 2001, and in October, 2001, the The passing point for licensed psychologist shall be set at 70% of the total scored items on the examination. examination, and the The passing point for psychological associate shall be set at 64% of the total scored items on the examination. For computer delivered administrations of the EPPP beginning in April, 2001, and for all other administrations of the EPPP thereafter, the passing point for licensed psychologist shall be a scaled score of 500, and the passing point for psychological associate shall be a scaled score of 440. This examination shall not be required for an applicant who has previously taken the EPPP and whose score met the

PROPOSED RULES

North Carolina passing point which was established for that particular administration date of the examination, ~~examination unless the Board determines subsequent to disciplinary action taken pursuant to G.S. 90-270.15 that an applicant for relicensure shall be required to take and pass a current form of the EPPP.~~

(2) State Examination. ~~The Board shall administer to all approved applicants for licensure a~~ The Board-developed state examination which assesses the applicant's knowledge of the North Carolina Psychology Practice Act, selected rules of the Board covering such topics as education and supervision, and other legal requirements. The passing point for all licensees shall be set at 78% of the total scored items on the examination.

(b) Oral Examination. Upon proof that an applicant or licensee has engaged in any of the prohibited actions specified in G.S. 90-270.15(a), the Board may administer a state oral examination which assesses knowledge of the North Carolina Psychology Practice Act, selected rules of the Board covering such topics as education and supervision, and other legal requirements.

(c) Special Administrations. Candidates with documented impairments or disabilities shall be tested under conditions that shall minimize the effect of the impairments or disabilities on their performance. In general, those lifestyle accommodations which an individual uses to compensate for impairments or disabilities, and which have become accepted practice for the individual in his or her graduate program or since the onset of the applicant's impairment of disability, shall be considered as the most appropriate accommodation for testing. Special test administrations shall be as comparable as possible to a standard administration.

Authority G.S. 90-270.9; 90-270.11; 90-270.15(b).

21 NCAC 54 .1903 RETAKING

An applicant may take the examination no more than 4 times in a 12-month (365 days) period and no more frequently than every 60 days upon payment of the required fee. The 12-month period begins on the date of the letter which notifies the applicant that his or her credentials have been approved for examination by the Board. After failing the examination for the fourth time or after the passage of 12 months as defined in this Rule, whichever occurs first, an applicant must totally reapply for licensure. Except as exempt under G.S. 90-270.4, after failing the examination for the second time, an applicant shall not practice or offer to practice psychology without first becoming licensed. An applicant who has not passed an examination is allowed to retake such on the next scheduled examination date upon payment of the required examination fee. If an applicant fails an examination twice, he/she must totally reapply. The examination may be taken only for licensure purposes.

Authority G.S. 90-250.5(b); 90-270.9.

21 NCAC 54 .1904 FAILURE TO APPEAR

~~If an applicant does not appear for an examination on the first scheduled examination date to which admitted by the Board, he/she within 4 months (120 days) after being approved for examination by the Board, he or she shall be deemed to have failed the examination. The four-month period begins on the date of the letter which notifies the applicant that his or her credentials have been approved for examination by the Board. The applicant shall be permitted to take the examination on the next scheduled examination date within the next 4 months (120 days) without reapplying, reapplying for licensure. If the applicant does not appear for an examination within the next 4 months (120 days), he or she shall be deemed to have failed the examination a second time and must reapply for licensure. Except as exempt under G.S. 90-270.4, after failing the examination for the second time, an applicant shall not practice or offer to practice psychology without first becoming licensed. If an applicant does not appear for examination on two consecutive examination dates, he/she shall totally reapply. If an applicant does not appear for reexamination on the first scheduled examination date following failure of an examination, he/she shall totally reapply.~~

Authority G.S. 90-270.5(b); 90-270.9.

CHAPTER 57 – REAL ESTATE APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Appraisal Board intends to amend the rule cited as 21 NCAC 57A .0501. Notice of Rule-making Proceedings was published in the Register on July 3, 2000.

Proposed Effective Date: July 1, 2001

Public Hearing:

Date: October 17, 2000

Time: 9:00 a.m.

Location: McKimmon Center; Gorman Street, Raleigh, NC

Reason for Proposed Action: This rule-making proceeding was initiated as a result of a petition submitted by Thomas G. Hildebrandt, Jr.

Comment Procedures: Written comments should be submitted to Mel Black, Executive Director, North Carolina Appraisal Board, PO Box 20500; Raleigh, NC 27619-0500. Comments will be received through October 17, 2000.

Fiscal Impact

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

SUBCHAPTER 57A – LICENSING, CERTIFICATION AND PRACTICE

PROPOSED RULES

SECTION .0500 - STANDARDS OF APPRAISAL PRACTICE

the same time they are submitted to the Board's attorney.

21 NCAC 57A .0501 APPRAISAL STANDARDS

Authority G.S. 93E-1-10.

(a) Every state-registered trainee, state-licensed and state-certified real estate appraiser shall, in performing the acts and services of a state-registered trainee, state-licensed or state-certified real estate appraiser, comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation, which standards, including subsequent amendments and editions of those standards which may from time to time be approved, are hereby adopted by reference in accordance with G.S. 150B-21.6. For the purpose of this Rule, the "Uniform Standards of Professional Appraisal Practice" are the preamble, Ethics Provision, Competency Provision, Departure Provision, Jurisdictional Exception, Definitions, Supplemental Standards, Statements on Appraisal Standards, and Standards 1, 2, and 3.

(b) A copy of the portions of the "Uniform Standards of Professional Appraisal Practice" specified in Paragraph (a) of this Rule is included in the Board's Licensing and Certification booklet available free of charge.

(c) Investigation Standards, Procedures and Reports.

(1) When investigating any complaint involving the quality of assignment results provided by a licensed or certified appraiser, the staff of the Board shall comply with Standard 3 of the Uniform Standards of Professional Appraisal Practice (USPAP).

(2) Any investigation conducted under this rule shall consist initially of reviewing the respondent's assignment results for consistency and overall conformity with applicable USPAP standards. The investigator shall have the discretion to expand the review to include a full investigation of any portion of the assignment results that appears not to conform to applicable standards. If the investigator concludes that the assignment results lack credibility or are presented in a misleading manner, the investigator must develop an opinion as to whether the deficiencies cited, either individually or in the aggregate, have materially affected the respondent's conclusions regarding value.

(3) A staff investigator making an investigation under this rule shall prepare a written report which shall set forth all relevant factors required by USPAP and shall summarize all of the investigator's reasons, conclusions and opinions. The report shall differentiate between the investigator's allegations of factual error in the respondent's assignment results and the investigator's own subjective opinions and shall fully set forth the basis for the investigator's opinions. The report shall identify the Board as the client and the respondent as an intended user, and a copy of the report shall be provided to the respondent at the same time it is submitted to the Board's attorney. If the investigator revises or amends the report, any revisions or amendments shall also be provided to the respondent at

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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: *Division of Facility Services*

Rule Citation: *10 NCAC 03R .6252, .6270*

Effective Date: *August 17, 2000*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 131E-176(25); 131E-177(1); 131E-183(b)*

Reason for Proposed Action: *Rule 10 NCAC 03R .6255 requires that need determination as specified in 10 NCAC 03R .6256 through 10 NCAC 03R .6281 be revised continuously throughout the calendar year. This includes cases where certificates of need are awarded subsequent to the preparation of the inventories in the State Medical Plan. Specifically, the need determination for magnetic resonance imaging (MRS) scanners for Service Area 9 had to be revised as there is no longer a need for the one additional fixed MRI shown in the 2000 State Medical Facilities plan for the Cabarrus/Montgomery/Rowan/Stanly Service Area.*

Comment Procedures: *Should you have questions concerning the rules, feel free to contact Jackie Sheppard, Division of Facilities Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.*

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .6200 - PLANNING POLICIES AND NEED DETERMINATIONS FOR 2000

10 NCAC 03R .6252 CERTIFICATE OF NEED REVIEW SCHEDULE

The Department of Health and Human Services (DHHS) has established the following review schedules for certificate of need applications.

- (1) Acute Care Beds (in accordance with the need determination in 10 NCAC 3R .6256)

Hospital Service System	CON Beginning Review Date
Onslow County	March 1, 2000

- (2) Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 3R .6261)

Hospital Service System	CON Beginning Review Date
Cabarrus County	October 1, 2000

- (3) Radiation Oncology Treatment Centers (in accordance with the need determination in 10 NCAC 3R .6269)

Radiation Oncology Treatment Center Service Area	CON Beginning Review Date
13 (Durham, Caswell, Granville, Person, Vance Warren)	October 1, 2000

- (4) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 3R .6270)

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Magnetic Resonance Imaging Planning Area	CON Beginning Review Date
3 (Buncombe, Madison, McDowell, Mitchell, Yancey)	April 1, 2000
9 (Cabarrus, Montgomery, Rowan, Stanly)	October 1, 2000
12 (Alamance)	April 1, 2000
13 (Caswell, Durham, Granville, Person, Vance, Warren)	April 1, 2000
15 (Davidson, Guilford, Randolph, Rockingham)	October 1, 2000
21 (Bladen, Brunswick, Columbus, Duplin, New Hanover Pender)	April 1, 2000

(5) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 3R .6271)

Magnetic Resonance Imaging Planning Area	CON Beginning Review Date
13 (Caswell, Durham, Granville, Person, Vance, Warren)	October 1, 2000

(6) Nursing Care Beds (in accordance with the need determinations in 10 NCAC 3R .6272 and .6273)

County	CON Beginning Review Date
Caswell	October 1, 2000
Rockingham	April 1, 2000
Perquimans	September 1, 2000
Statewide Demonstration Project	June 1, 2000

(7) Home Health Agencies or Offices (in accordance with the need determination in 10 NCAC 3R .6274)

County	CON Beginning Review Date
Pamlico	April 1, 2000

(8) Dialysis Stations Adjusted Need Determination (in accordance with the need determination in 10 NCAC 3R .6276)

County	CON Beginning Review Date
McDowell	March 1, 2000

(9) Chemical Dependency (Substance Abuse) Beds - Adult Detox-Only Beds (in accordance with the need determination in 10 NCAC 3R .6280)

Mental Health Planning Area	CON Beginning Review Date
1 (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain)	June 1, 2000
4 (Henderson, Transylvania)	June 1, 2000
5 (Alexander, Burke, Caldwell, McDowell)	June 1, 2000
6 (Rutherford, Polk)	June 1, 2000
7 (Cleveland)	June 1, 2000

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11	(Rowan, Stanly, Cabarrus, Union)	June 1, 2000
12	(Surry, Yadkin, Iredell)	June 1, 2000
14	(Rockingham)	June 1, 2000
16	(Alamance, Caswell)	June 1, 2000
17	(Orange, Person, Chatham)	June 1, 2000
19	(Vance, Granville, Franklin, Warren)	June 1, 2000
20	(Davidson)	March 1, 2000
22	(Bladen, Columbus, Robeson, Scotland)	March 1, 2000
25	(Johnston)	March 1, 2000
26	(Wake)	March 1, 2000
30	(Wayne)	June 1, 2000
31	(Wilson, Greene)	June 1, 2000
32	(Edgecombe, Nash)	June 1, 2000
33	(Halifax)	June 1, 2000
34	(Carteret, Craven, Jones, Pamlico)	June 1, 2000
35	(Lenoir)	June 1, 2000
37	(Bertie, Gates, Hertford, Northampton)	June 1, 2000
38	(Beaufort, Hyde, Martin, Tyrrell, Washington)	June 1, 2000
39	(Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans)	June 1, 2000
40	(Duplin, Sampson)	June 1, 2000

(10) There are ten categories of facilities and services for certificate of need review. The DHHS shall determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 3R .0304. For proposals which include more than one category, the DHHS may require the applicant to submit separate applications. If it is not practical to submit separate applications, the DHHS shall determine in which category the application shall be reviewed. The review of an application for a certificate of need shall commence in the next applicable review schedule after the application has been determined to be complete. The ten categories of facilities and services are:

- (a) Category A. Proposals submitted by acute care hospitals, except those proposals included in Categories B through H and Category J, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.
- (b) Category B. Proposals for nursing care beds; new continuing care retirement communities applying for exemption under 10 NCAC 3R .6286; and relocations of nursing care beds under 10 NCAC 3R .6288.
- (c) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency treatment facilities; substance abuse and chemical dependency treatment beds in existing health care facilities, with the exception of proposals in Category G.
- (d) Category D. Proposals for new dialysis stations in response to the "county need" or "facility need" methodologies; and relocations of existing dialysis stations to another county, with the exception of proposals in Category G.
- (e) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities; and new or expanded ambulatory surgical facilities except those proposals included in Category H.
- (f) Category F. Proposals for new home health agencies or offices, new hospices, new hospice inpatient facility beds, and new hospice residential care facility beds.
- (g) Category G. Proposals for conversion of hospital beds to nursing care under 10 NCAC 3R .6285; new dialysis stations as the result of an "adjusted need determination" in McDowell County; and Adult Detox-Only beds in the South Central Mental Health Region.
- (h) Category H. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac catheterization equipment, cardiac angioplasty equipment, heart-lung bypass machines, gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176(14f), diagnostic centers as defined in G.S. 131E-176(7a), and oncology treatment centers as defined in G.S. 131E-176(18a).
- (i) Category I. Proposals involving cost overruns; expansions of existing continuing care retirement communities which are licensed by the Department of Insurance at the date the application is filed and are applying under 10 NCAC 3R .6286 for exemption from need determinations in 10 NCAC 3R .6272; relocations within the same county of existing health service facilities, beds or dialysis stations which do not involve an increase in the number of health service facility beds or stations; reallocation of beds or services; Category A proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals submitted pursuant to 10 NCAC 3R .6282(c) by Academic

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Medical Center Teaching Hospitals designated prior to January 1, 1990; and any other proposal not included in Categories A through H and Category J.

(j) Category J. Proposals for demonstration projects; and conversions of acute care hospitals to long-term acute care hospitals.

(11) A service, facility, or equipment for which a need determination is identified in Items (1) through (9) of this Rule shall have only one scheduled review date and one corresponding application filing deadline in the calendar year, even though the following review schedule shows multiple review dates for the broad category. Applications for certificates of need for new institutional health services not specified in Items (1) through (9) of this Rule shall be reviewed pursuant to the following review schedule, with the exception that no reviews are scheduled if the need determination is zero. Need determinations for additional dialysis stations pursuant to the "county need" or "facility need" methodologies shall be reviewed in accordance with 10 NCAC 3R .6275.

CON Beginning Review Date	Review Categories for HSA I, II, III	Review Categories for HSA IV, V, VI
January 1, 2000	--	--
February 1, 2000	--	--
March 1, 2000	A, E, G, I	A, B, E, G, I
April 1, 2000	B, F, H, I	F, H, I
May 1, 2000	--	--
June 1, 2000	A, C, D, I, J	C, D, I, J
July 1, 2000	--	A, I
August 1, 2000	E, I	--
September 1, 2000	--	B, E, I
October 1, 2000	A, B, F, H, I	F, H, I
November 1, 2000	-	--
December 1, 2000	C, D, I	A, C, D, I

(12) In order to give the DHHS sufficient time to provide public notice of review and public notice of public hearings as required by G.S. 131E-185, the deadline for filing certificate of need applications is 5:00 p.m. on the 15th day of the month preceding the "CON Beginning Review Date." In instances when the 15th day of the month falls on a weekend or holiday, the filing deadline is 5:00 p.m. on the next business day. The filing deadline is absolute and applications received after the deadline shall not be reviewed in that review period.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2000;
Temporary Amendment Eff. August 17, 2000.*

10 NCAC 03R .6270 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is a need for ~~seven~~ six additional fixed Magnetic Resonance Imaging (MRI) scanners in the following Magnetic Resonance Imaging Planning Areas. It is determined that there is no need for an additional fixed MRI scanner in any other planning area in the State, except as otherwise provided in 10 NCAC 3R. 6271.

Magnetic Resonance Imaging Planning Areas (Constituent Counties)	MRI Scanners Need Determination
3 (Buncombe, Madison, McDowell, Mitchell, Yancey)	1
9 (Cabarrus, Montgomery, Rowan, Stanly)	4
12 (Alamance)	1
13 (Caswell, Durham, Granville, Person, Vance, Warren)	1
15 (Davidson, Guilford, Randolph, Rockingham)	2
21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)	1

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2000;
Temporary Amendment Eff. August 17, 2000.*

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of June 19, 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	.0206*	14:13 NCR
2	NCAC 52B	.0401*	14:13 NCR
2	NCAC 52B	.0406	14:13 NCR
2	NCAC 52B	.0407*	14:13 NCR
2	NCAC 52B	.0409-.0412*	14:13 NCR
10	NCAC 26H	.0304*	14:17 NCR
10	NCAC 26M	.0301-.0305	14:17 NCR
10	NCAC 41S	.0613*	14:18 NCR
10	NCAC 42E	.0705*	not required G.S. 150B-21.5, Eff. July 1, 2000
10	NCAC 42E	.1207-.1208*	not required G.S. 150B-21.5, Eff. July 1, 2000
10	NCAC 42E	.1401-.1406*	not required G.S. 150B-21.5, Eff. July 1, 2000
10	NCAC 42S	.0301*	not required G.S. 150B-21.5, Eff. July 1, 2000
10	NCAC 42Z	.0501*	not required G.S. 150B-21.5, Eff. July 1, 2000
10	NCAC 42Z	.0901*	not required G.S. 150B-21.5, Eff. July 1, 2000
16	NCAC 6D	.0305-.0306*	14:17 NCR
19A	NCAC 3D	.0802	14:20 NCR

TITLE 2 - DEPARTMENT OF AGRICULTURE

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

**SECTION .0200 - ADMISSION OF LIVESTOCK TO
NORTH CAROLINA**

**02 NCAC 52B .0206 IMPORTATION REQUIREMENTS:
EQUINE**

(a) Horses, ponies, mules, asses, zebras, and all other equine species may be imported into the state when accompanied by an official health certificate giving an accurate description of them and certifying that as determined by a physical examination they are free from any evidence of an infectious or transmissible disease and have not been exposed to any infectious or transmissible disease, and attesting that any animal over six months of age has passed a negative official test, as defined in 2 NCAC 52B .0401, for equine infectious anemia within 12 months prior to entry, provided that stallions imported into North Carolina from any country where contagious equine metritis (CEM) is recognized by the U.S. Department of Agriculture to exist must also comply with requirements of

Paragraph (c) of this Rule. The EIA test form shall list one horse only. Equine without a current EIA test may be imported into the state for direct shipment to a livestock market or equine sale that is approved to provide EIA testing, pursuant to 2 NCAC 52B .0410.

(b) No health certificate will be required for horses, ponies, mules and asses which are consigned to a race track or entering the state temporarily for the purpose of exhibition, provided such animals are accompanied by certificates verifying a negative test for equine infectious anemia within 12 months prior to entry.

(c) Any stallion imported into North Carolina from any country where CEM is recognized by the U.S. Department of Agriculture to exist shall be accompanied by a written permit from the State Veterinarian, and shall be placed under quarantine by a representative of the State Veterinarian upon arrival. Prior to being used for breeding, he shall be treated by or under the direct supervision of an accredited veterinarian licensed to practice in North Carolina, according to the procedure prescribed in the Federal Register/Vol. 45, No. 3/Friday, January 4, 1980/Rules and Regulations/Pages 1003 through 1006 (9 C.F.R., Part 92).

(d) For the purpose of Paragraph (c) of this Rule the following shall apply:

- (1) Stallion. A male horse other than gelding;
- (2) Breeding. Natural or artificial insemination of a mare;

- (3) CF test. A complement-fixation test on equine serum for the detection of specific antibodies of the CEM bacterium.

History Note: Authority G.S. 106-307.5; 106-405.17; S.L. 1999-237, s. 13.6; Eff. April 1, 1984; Amended Eff. December 1, 1987; Temporary Amendment Eff. October 1, 1999; Amended Eff. March 1, 2001.

SECTION .0400 - EQUINE INFECTIOUS ANEMIA (EIA)

02 NCAC 52B .0401 DEFINITIONS

The following definitions are in effect throughout this Section:

- (1) Equine. Any member of the equine family, including horses, ponies, mules, asses and other equines;
- (2) Reactor. An equine over six months of age that reacts positively to an approved test for equine infectious anemia;
- (3) Official Test. A test recognized by Veterinary Services, APHIS, USDA, pursuant to 9 CFR 75.4;
- (4) Date of Test. Date blood sample is collected from the equine;
- (5) Licensed Accredited Veterinarian. A veterinarian licensed to practice in North Carolina by the North Carolina Veterinary Medical Board and accredited by the USDA;
- (6) Exposed Equine. An equine which the State Veterinarian or his authorized representative has reasonable grounds to believe has been exposed to equine infectious anemia; An equine shall be considered exposed when in the professional judgment of a state or federally employed, or accredited, veterinarian designated by the State Veterinarian, the equine has been exposed. A premises may be approved by the State Veterinarian for the permanent quarantine of an equine which is positive to an official test for equine infectious anemia when it can be determined that other equines will not be exposed to the disease;
- (7) Division. Veterinary Division of the North Carolina Department of Agriculture and Consumer Services;
- (8) Dealer. Any person who buys equine for his own account for the purpose of resale, or for the account of others;
- (9) Public Place. Any premises owned or operated by any governmental entity, any privately owned or operated premises open to the public, or any privately owned or operated premises where three or more equine originating from three or more premises are gathered.

History Note: Authority G.S. 106-405.17; S.L. 1999-237, s. 13.6; Eff. April 1, 1984; Temporary Amendment Eff. October 1, 1999; Amended Eff. March 1, 2001.

02 NCAC 52B .0407 TESTING FOR EIA

- (a) Equine tested for equine infectious anemia (EIA) must be completely and accurately identified by a licensed, accredited

veterinarian, using the official test form provided by the office of the State Veterinarian.

(b) Only one form shall be utilized by the testing veterinarian for each equine to be tested. Any distinctive markings and their location on the animal such as brands, tattoos, stars, snips, stockings, or other markings shall be noted on the official chart.

(c) Equine receiving on-farm or private treaty test shall not be sold or ownership otherwise transferred until the results of the equine infectious anemia test performed on the animal are returned. Positive test results shall automatically result in the quarantine of the animal without further notice at the premises of the owner or where the test was conducted.

(d) All test results shall be reported to the office of the State Veterinarian. Tests conducted at a laboratory within the state shall be reported on official forms supplied by the Division. Licensed, accredited veterinarians submitting samples for testing in U.S. Department of Agriculture approved laboratories outside of North Carolina shall supply a copy of the test record to the office of the State Veterinarian within five days upon receipt of the test results from the testing laboratory.

(e) The owner or manager of a market or sale shall announce, prior to the sale or auction, that all equines not accompanied by either the original or a copy of an official negative test for EIA will be tested. Each buyer of such equine at the sale or auction shall sign an agreement to maintain such equine at a specified location until notified of the results of the test. Equine that prove negative to the test may move in normal trade channels. Owners of equine that react to the test must comply with 2 NCAC 52B .0408.

History Note: Authority G.S. 106-405.17; S.L. 1999-237, s. 13.6; Temporary Adoption Eff. October 1, 1999; Eff. March 1, 2001.

02 NCAC 52B .0409 ADJACENT OR EXPOSED EQUINE

When an equine is found positive by an official equine infectious anemia (EIA) test and an EIA retest by state personnel, all equine on the same premises (farm, pasture, or stable), and all other equine located on adjacent farms, pastures, or stables within 880 yards shall be required to be tested by state regulatory personnel or a licensed, accredited veterinarian. All exposed equine, as defined in 2 NCAC 52B .0401(6), shall be quarantined until tested and found negative to the EIA test 60 days after removal of the reactor.

History Note: Authority G.S. 106-405.17; S.L. 1999-237, s. 13.6; Temporary Adoption Eff. October 1, 1999; Eff. March 1, 2001.

02 NCAC 52B .0410 MARKET AND SALE RESPONSIBILITY

(a) Livestock markets and all others conducting sales of equine shall send a written request for approval of all sales to the State Veterinarian at least two weeks prior to sale. The State Veterinarian shall approve the request if:

- (1) the applicant is in compliance with this Section at the time of the application;
- (2) it appears that the applicant is able to comply with this Section at the time of the proposed sale; and

- (3) the Veterinary Division has personnel available to monitor the sale to determine compliance with this Section.
- (b) Livestock markets or equine sales offering to provide equine infectious anemia (EIA) testing must employ a licensed, accredited veterinarian.
- (c) Livestock markets or sales that have permanent facilities, including a licensed, accredited veterinarian, may handle equine that do not have a negative test, provided each such equine is tested as provided in this Section.
- (d) Livestock markets and all others conducting sales of equine shall have check-in procedures, including at least the following:
 - (1) See that the correct name and mailing address of the owner is on the "check-in" form, along with the license number of the vehicle that transported the animal;
 - (2) Apply a backtag or paint number at "check-in" and note it on the "check-in" form;
 - (3) See that all EIA test records are collected and presented to the market veterinarian or representative of the State Veterinarian for verification prior to the sale.
- (e) Equine shall be presented to the market or sale veterinarian if testing is required, and assistance shall be provided for drawing blood samples for the EIA test.
- (f) The market or sale management shall maintain records of sales for a minimum of two years, so that animals that react positively to the EIA test may be traced.
- (g) Those managing the sale shall not permit the sale of equine on the premises except through the market or sale.
- (h) Non-compliance with these Rules is grounds for revocation of approval to conduct sales.

History Note: Authority G.S. 106-405.17; S.L. 1999-237, s. 13.6; Temporary Adoption Eff. October 1, 1999; Eff. March 1, 2001.

02 NCAC 52B .0411 MARKET OR SALE VETERINARIANS

- (a) Market or sale veterinarians shall:
 - (1) Collect blood samples of five cubic centimeters in a blood collection tube with identification of each equine presented for test;
 - (2) Properly identify each equine tested on a Department of Agriculture and Consumer Services form as to name, age, sex, breed, color and markings, brands, tattoos, scars; and
 - (3) Mail blood and form to an approved laboratory by the end of the next business day following the sale.
- (b) Each market veterinarian involved in the equine infectious anemia (EIA) program shall notify the State Veterinarian of such involvement.

History Note: Authority G.S. 106-405.17; S.L. 1999-237, s. 13.6; Temporary Adoption Eff. October 1, 1999; Eff. March 1, 2001.

02 NCAC 52B .0412 SLAUGHTER SALES

Market or sale operators who wish to conduct a sale of equine only for slaughter without EIA testing must sign an agreement

with the State Veterinarian to comply with the terms of this Section.

History Note: Authority G.S. 106-405.17; S.L. 1999-237, s. 13.6; Temporary Adoption Eff. October 1, 1999; Eff. March 1, 2001.

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

10 NCAC 26H .0304 RATE SETTING METHOD FOR NON-STATE FACILITIES

(a) A prospective rate shall be determined annually for each non-state facility to be effective for dates of service for a 12 month rate period beginning each July 1. The prospective rate shall be paid to the provider for every Medicaid eligible day during the applicable rate year. The prospective rate may be determined after the effective date and paid retroactively to that date. The prospective rate may be changed due to a rate appeal under Rule .0308 of this Section or facility reclassification under Paragraph (b) of this Rule. Each non-state facility, except those facilities where Paragraph (v) of this Rule applies, shall be classified into one of the following groups:

- (1) Group 1 - Facilities with 32 beds or less.
- (2) Group 2 - Facilities with more than 32 beds.
- (3) Group 3 - Facilities with medically fragile clients. For rate reimbursement purposes under this Rule medically fragile clients are defined as any individual with complex medical problems who have chronic debilitating diseases or conditions of one or more physiological or organ systems which generally make them dependent upon 24-hour a day medical/nursing/health supervision or intervention.
- (4) Facilities in group 1 or 2 in Subparagraph (a)(1) or (2) of this Rule shall be further classified in accordance to the level of disability of the facility's clients, as measured by the Developmental Disabilities Profile (DDP) copyrighted assessment instrument which along with the scoring instrument are hereby incorporated by reference, including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603 at a cost of twenty cents (\$.20) per page. A summary of the levels of disability is shown in the following chart:

FACILITY DDP SCORE

Level	Low	High
1	200.00	300.00
2	125.00	199.99

3	100.00	124.99
4	75.00	99.99
5	50.00	74.99

(b) Facilities shall be reclassified into appropriate groups as defined in Paragraph (a) of this Rule.

- (1) When a facility is reclassified, the rate shall be adjusted retroactively back to the date of the event that caused the reclassification. This adjustment shall give full consideration to any reclassification based on the change in facts or circumstances during the year. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.
- (2) The provider shall be given the opportunity to appeal the merits of the reclassification of any facility, prior to any decision by the Division of Medical Assistance.
- (3) The provider shall be notified in writing 30 days before the implementation of new rates resulting from the reclassification of any facility.
- (4) The providers and the Division of Medical Assistance shall make every reasonable effort to ensure that each facility is properly classified for rate setting purposes.
- (5) A provider shall file any request for facility reclassification in writing with the Division of Medical Assistance no later than 60 days subsequent to the proposed reclassification effective date.
- (6) For facilities certified prior to July 1, 1993, the facility DDP score calculated for fiscal year 1993 shall be used to establish proper classification at July 1, 1995.
- (7) For facilities certified after June 30, 1993, the most recent facility DDP score shall be used to establish proper classification.
- (8) A facility reclassification review shall use the most current facility DDP score.
- (9) A facility's DDP score shall be subject to independent validation by the Division of Medical Assistance.
- (10) A new facility that has not had a DDP survey conducted on its clients shall be categorized as a level 2 facility for rate setting purposes, pending completion of the DDP survey. Upon completion of the DDP survey, the facility shall be subject to reclassification and rates shall be adjusted retroactively back to the date of certification. Overpayments related to this retroactive adjustment shall be paid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.

(c) Facility rates under this Rule shall be established at July 1, 1995, under the following:

- (1) For facilities certified prior to July 1, 1993, rates shall be derived from the 1993 cost reports.
- (2) For facilities certified during fiscal year 1993-1994, the fiscal year 1994 facility specific cost report shall be used to derive rates.
- (3) For facilities certified during fiscal year 1994-1995, the fiscal year 1995 facility specific cost report shall be used to derive rates. Rates for these facilities shall not be adjusted, except for the impact of inflation under Paragraph (k) of this Rule, until the fiscal year 1995 cost report has been properly reviewed. Rates for these

facilities shall be adjusted retroactively back to July 1, 1995, once the fiscal year 1995 facility specific cost report has been reviewed. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.

- (4) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 shall not have their rates established in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule. The rates for these facilities shall remain at the level approved in the rate appeal proceeding adjusted only for inflation, as reflected in Paragraph (k) of this Rule.

(d) For facilities certified after June 30, 1993, rates developed from filed cost reports for fiscal years subsequent to 1993 may be retroactively adjusted if there is found to exist more than a two percent difference between the filed per diem cost and either the desk audited or field audited per diem cost for the same reporting period. Rates developed from desk audited cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the desk audited per diem cost and the field audited per diem cost for the same reporting period. The rate adjustment may be made after written notification to the provider 30 days prior to implementation of the rate adjustment.

(e) Each prospective rate developed in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule consists of the sum of two components as follows:

- (1) Indirect care rate.
- (2) Direct care rate.

(f) A uniform industry wide indirect care rate shall be established for each facility category shown under Subparagraph (a)(1), (a)(2), or (a)(3) of this Rule.

- (1) The indirect rate for group 1 facilities is based on the fiftieth percentile of the following costs incurred by all group 1 facilities with six beds or less, except those related by common ownership or control to more than 40 said facilities. The sum of the cost of property ownership and use, administrative and general, and operation and maintenance of plant, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.
- (2) The indirect rate for group 2 facilities is based on the fiftieth percentile of the costs noted in Part (f)(1) of this Rule incurred by the group 2 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.
- (3) The indirect rate for group 3 facilities is based on the fiftieth percentile of the costs noted in Part (f)(1) of this Rule incurred by the group 3 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.
- (4) The indirect rates established under Subparagraphs (f)(1), (f)(2), and (f)(3) of this Rule shall be reduced as determined based on industry cost analysis by an amount not to exceed four percent to account for expected operating efficiencies.

(g) The direct care rate for facilities certified prior to July 1, 1993, shall be based on the Myers and Stauffer study performed on the 1993 base year cost reports.

- (1) The direct care rate for all facilities certified during fiscal years subsequent to fiscal year 1993 is based on the first facility specific cost report filed after certification. Based on said cost report, the direct care rate is equal to the sum of all allowable costs reflected in the ICF-MR cost report cost centers, as included in the ICF-MR cost report format effective July 1, 1993, except for the following indirect cost centers:
 - (A) Property Ownership and Use
 - (B) Operation and Maintenance of Plant and Housekeeping-Non-Labor
 - (C) Administrative and General
- (2) The direct care rate shall be limited to the lesser of the actual amount incurred in the base year or the cost limit derived from the fiftieth percentile of direct care costs incurred by the related facility group in the fiscal year 1993 base year, based on the Myers and Stauffer study.
- (3) The fiftieth percentile cost limit shall be reduced by one percent each year, for the four year period beginning July 1, 1996, in order to account for expected operating efficiencies, as determined based on industry cost analysis.
- (4) The fiftieth percentile cost limit shall be increased each year by price level changes calculated in accordance with Paragraph (k) of this Rule.
- (h) The indirect rate shall not be subject to cost settlement.
 - (1) Costs above the indirect rate shall not be paid to the provider.
 - (2) Costs savings below the indirect rate shall not be recouped from the provider.
- (i) The direct care rate shall be subject to cost settlement, based on the cost report, subject to audit, filed with the Division of Medical Assistance.
 - (1) Costs above the direct rate shall not be paid to the provider.
 - (2) Cost savings below the direct rate shall be recouped from the provider.
- (j) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 may choose to cost settle under the provisions of Paragraphs (h) and (i) of this Rule, or under the following procedure:
 - (1) If, during a cost reporting period, total allowable costs are less than total prospective payments, then a provider may retain one-half of said difference, up to an amount of five dollars (\$5.00) per patient day. The balance of unexpended payments shall be refunded to the Division of Medical Assistance. Costs in excess of a facility's total prospective payment rate are not reimbursable.
 - (2) The facilities subject to this Paragraph shall make the election on cost settlement methodology on or before the filing of the annual cost report with the Division of Medical Assistance.
 - (3) An election to follow the cost settlement procedures of Paragraphs (h) and (i) of this Rule shall be irrevocable.
 - (4) Rates established for these facilities during future rate appeal proceedings shall be subject to the cost settlement procedures of Paragraphs (h) and (i) of this Rule.
- (k) To compute each facility's current prospective rate, the direct and indirect rates established by Paragraphs (f) and (g) of this Rule shall be adjusted for price level changes since the base year. No inflation factor for any provider shall exceed the maximum amount permitted for that provider by federal or state law and regulations.
 - (1) Price level adjustment factors are computed using aggregate costs in the following manners:
 - (A) Costs shall be separated into three groups:
 - (i) Labor,
 - (ii) Non-labor,
 - (iii) Fixed.
 - (B) The relative weight of each cost group is calculated to the second decimal point by dividing the total costs of each group (labor, nonlabor, and fixed) by the total cost of the three categories.
 - (C) Price level adjustment factors for each cost group shall be established as follows:
 - (i) Labor. The percentage change for labor costs is based on the projected average hourly wage of North Carolina service workers. Salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Division of Medical Assistance based upon market analysis.
 - (ii) Nonlabor. The percentage change for nonlabor costs is based on the projected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.
 - (iii) Fixed. No price level adjustment shall be made for this category.
 - (D) The weights computed in Part (k)(1)(B) of this Rule shall be multiplied by the rates computed in Part (k)(1)(C) of this Rule. These weighted rates shall be added to obtain the composite inflation rate to be applied to both the direct and indirect rates.
 - (2) If necessary, the Division of Medical Assistance shall adjust the annual inflation factor in order to prevent payment rates from exceeding upper payment limits established by Federal Regulations.
 - (1) Effective July 1, 1995, any rate reductions resulting from this Rule shall be implemented based on the following deferral methodology:
 - (1) Rates shall be reduced for the excess of current rates over base year costs plus inflation.
 - (2) Rates shall be reduced a maximum of 50 percent of the fiscal 1996 inflation rate for the excess of actual costs over applicable cost limits. This reduction shall result in the facility receiving at a minimum 50 percent of the 1996 inflation rate. Any excess reduction shall be carried forward to future years.
 - (3) Total reduction in future years related to the excess reduction carried forward from Subparagraph (1)(2) of this Rule, shall not exceed the annual rate of inflation. This reduction shall result in the facility receiving at a minimum the rate established in Paragraph (1)(2) of this Rule. Any excess reduction shall be carried forward to future years, until the established rate equals that generated by Paragraphs (f), (g), and (k) of this Rule.

- (4) Rates calculated based on Subparagraphs (1)(2) and (3) of this Rule shall be cost settled based on the provisions of Subparagraph (j)(1) of this Rule until the fiscal year that the facility receives full price level increase under Paragraph (k) of this Rule.
- (A) A provider may make an irrevocable election to cost settle under the provisions of Paragraphs (h) and (i) of this Rule during the deferral period.
- (B) Once the rates calculated based on Subparagraphs (1)(2) and (3) of this Rule reach the fiscal year that the facility receives the full price level increase under Paragraph (k) of this Rule, then said fiscal year's rates shall be cost settled based on Paragraphs (h) and (i) of this Rule.
- (C) Chain providers are allowed to file combined cost reports, for cost settlement purposes, for facilities that use the same cost settlement methodology and have the same uniform rate.
- (D) A provider may elect to continue cost settlement under Subparagraph (j)(1) of this Rule after the deferral period expires. Said election shall be made each year, 30 days prior to the cost report due date.
- (m) The initial rate for facilities that have been awarded a Certificate of Need is established at the lower of the fair and reasonable costs in the provider's budget, as determined by the Division of Medical Assistance, or the projected costs in the provider's Certificate of Need application, adjusted from the projected opening date in the Certificate of Need application to the current rate period in which the facility is certified based on the price level change methodology set forth in Paragraph (k) of this Rule, or the rate currently paid to the owning provider, if the provider currently has an approved chain rate for facilities in the related facility category. The rate may be rebased to the actual cost incurred in the first full year of normal operations in the year an audit of the first year of normal operation is completed.
- (1) In the event of a change in ownership, the new owner receives no more than the rate of payment assigned to the previous owner.
- (2) Except in cases wherein the provider has failed to file supporting information as requested by the Division of Medical Assistance, initial rates shall be granted to new enrolled facilities no later than 60 days from the provider's filing of properly prepared budgets and supporting information.
- (3) The initial rate for a new facility shall be applicable to all dates of service commencing with the date the facility is certified by the Medicaid Program.
- (4) The initial rate for a new facility shall not be entered into the Medicaid payment system until the facility is enrolled in the Medicaid program and a Medicaid identification number has been assigned to the facility by the Division of Medical Assistance.
- (n) A provider with more than one facility may be allowed to recover costs through a combined uniform rate for all facilities.
- (1) Combined uniform rates for chain providers shall be approved upon written request from the provider and after review by the Division of Medical Assistance.
- (2) In determining a combined uniform rate for a particular facility group, the weighted average of each facility's rate, calculated in accordance to all other provisions of this Rule, shall be used.
- (3) A chain provider with facility(s) that fall under Paragraphs (h) and (i) of this Rule and with facility(s) that fall under Subparagraph (1)(4) of this Rule may elect to include the facilities in a combined cost report and elect to cost settle under either Paragraphs (h) and (i) or Subparagraph (1)(4) of this Rule. The cost settlement election shall be made each year, 30 days prior to the cost report due date.
- (o) Each out-of-state provider shall be reimbursed at the lower of the applicable North Carolina rate, as established by this Rule for in-state facilities, or the provider's per diem rate as established by the state in which the provider is located. An out-of-state provider is defined as a provider that is enrolled in the Medicaid program of another state and provides ICF-MR services to a North Carolina Medicaid client in a facility located in the state of enrollment. Rates for out-of-state providers are not subject to cost settlement.
- (p) Under no circumstances shall the Medicaid per diem rate exceed the private pay rate of a facility.
- (q) Should the Division of Medical Assistance be unable to establish a rate for a facility, based on this Rule and the applicable facts known, the Division of Medical Assistance may approve an interim rate.
- (1) The interim rate shall not exceed the rate cap established under this Rule for the applicable facility group.
- (2) The interim rate shall be replaced by a permanent rate, effective retroactive to the commencement of the interim rate, by the Division of Medical Assistance, upon the determination of said rate based on this Rule and the applicable facts.
- (3) The provider shall repay to the Division of Medical Assistance any overpayment resulting from the interim rate exceeding the subsequent permanent rate.
- (r) In addition to the prospective per diem rate developed under this Rule, effective July 1, 1992, an interim payment add on shall be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart 2, Rule 1910.1030 of the Code of Federal Regulations. The interim rate shall be subject to final settlement reconciliation with reasonable cost to meet the requirements of Rule 1910.1030. The final settlement reconciliation shall be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate shall be allowed, subject to final settlement reconciliation, in subsequent rate periods until cost history is available to include the cost of meeting the requirements of Rule 1910.1030 in the prospective rate. This interim add on shall be removed, upon 10 days written notice to providers, should it be determined by appropriate authorities that the requirements under Title 29, Part 1910, Subpart 2, Rule 1910.1030 of the Code of Federal Regulations do not apply to ICF-MR facilities.
- (s) All rates, except those noted otherwise in this Rule, approved under this Rule are considered to be permanent.
- (t) In the event that the rate for a facility cannot be developed so that it shall be effective on the first day of the rate period, due to the provider not submitting the required reports by the due date, the average rate for facilities in the same facility group, or the facility's current rate, whichever is lower, shall be in effect until

such time as the Division of Medical Assistance can develop a new rate.

(u) When the Division of Medical Assistance develops a new rate for a facility for which a rate was paid in accordance with Paragraph (t) of this Rule, the rate developed shall be effective on the first day of the second month following the receipt by the Division of Medical Assistance of the required reports. The Division of Medical Assistance may, upon its own motion or upon application and cause related to patient care shown by the provider, within 60 days subsequent to submission of the delinquent report, make the rate retroactive to the beginning of the rate period in question. Any overpayment to the provider resulting from this temporary rate being greater than the final approved prospective rate for the facility shall be repaid to the Medicaid Program.

(v) ICF-MR facilities meeting the requirements of the North Carolina Division of Facility Services as a facility affiliated with one or more of the four medical schools in the state and providing services on a statewide basis to children with various developmental disabilities who are in need of long-term high acuity nursing care, dependent upon high technology machines (i.e. ventilators and other supportive breathing apparatus) monitors, and feeding techniques shall have a prospective payment rate that approximates cost of care. The payment rate may be reviewed periodically, no more than quarterly, to assure proper payment. A cost settlement at the completion of the fiscal period year end is required. Payments in excess of cost are to be returned to the Division of Medical Assistance.

(w) A special payment in addition to the prospective rate shall be made in the year that any provider changes from the cash basis to the accrual basis of accounting for vacation leave costs. The amount of this payment shall be determined in accordance with Title XVIII allowable cost principles and shall equal the Medicaid share of the vacation accrual that is charged in the year of the change including the cost of vacation leave earned for that year and all previous years less vacation leave used or expended over the same time period and vacation leave accrued prior to the date of certification. The payment shall be made as a lump sum payment that represents the total amount due for the entire fiscal year. An interim payment may be made based on an estimate of the cost of the vacation accrual. The payment shall be adjusted to actual cost after audit.

(x) The annual prospective rate, effective beginning each July 1, for facilities that commenced operations under the Medicaid Program subsequent to the base year used to establish rates, and therefore did not file a cost report for the base year, shall be based on the facility's initial rate, established in accordance with Paragraph (m) of this Rule, and the applicable price level changes, in accordance with Paragraph (l) of this Rule.

(y) Effective for fiscal years beginning on or after fiscal year 1998, installation cost of Fire Sprinkler Systems in an ICF-MR Facility shall be reimbursed in the following manner.

(1) Upon receipt of the documentation listed in Parts (A) through (E) of this Subparagraph, the Division of Medical Assistance shall reimburse directly to the provider 90 percent of the verified cost.

(A) All related invoices.

(B) Verification from the Division of Facility Services that the Sprinkler System is needed to maintain certification for participation in the Medicaid program.

(C) Statement from appropriate authorities that the Sprinkler System has been installed. Examples of appropriate authorities for this purpose would include local building inspectors, fire/safety inspectors, insurance company inspectors, or the construction section of the Division of Facilities Services.

(D) Three bids to install the system.

(E) Prior approval from the Division of Medical Assistance for any installation projected to cost more than twenty-five thousand dollars (\$25,000). Prior approval shall be granted based upon determination by the Division of Medical Assistance that the cost is reasonable considering the specifics of the installation. The burden to provide adequate documentation that the cost is reasonable is the responsibility of the provider.

(2) The unreimbursed installation cost shall be reimbursed after audit through the annual Cost Settlement Process. This portion shall be offset by profits, after taking into consideration any indirect profits and direct losses. Any overpayments determined after audit shall be returned to the program by the provider through the annual cost settlement process.

(3) The installation of the Sprinkler System is subject to Prudent Buyer Standards contained in the HCFA-15.

(4) The Sprinkler System's installation costs shall be recorded on the provider's ICF-MR Cost Report.

History Note: Filed as a Temporary Amendment Eff. July 8, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. Part 447, Subpart C; Eff. December 1, 1984; Amended Eff. August 1, 1995; November 1, 1993; March 1, 1988; January 1, 1987; Temporary Amendment Eff. September 8, 1999; August 7, 1998; Amended Eff. April 1, 2001; August 1, 2000.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41S - MINIMUM LICENSING STANDARDS FOR RESIDENTIAL CHILD CARE

SECTION .0600 - SERVICE DELIVERY

10 NCAC 41S .0613 DISCIPLINE AND BEHAVIOR MANAGEMENT

(a) The residential child care facility shall have written policies and procedures on discipline and behavior management, including the type and use of physical restraint holds, if utilized. A copy of the written policies and procedures shall be provided to and discussed with each child and the child's parents or legal custodians prior to or at the time of admission. -Policies and procedures shall include:

(1) Proactive means for interacting with and teaching children which emphasize praise and encouragement for exhibiting self control and desired behavior; and

(2) Methods for protecting children and others when a child is out of control.

(b) The residential child care facility shall implement standards for behavior which are reasonable and developmentally appropriate.

(c) The residential child care facility shall not engage in discipline or behavior management which includes:

- (1) Corporal/physical punishment;
- (2) Cruel, severe, or humiliating actions;
- (3) Discipline of one child by another child;
- (4) Denial of food, sleep, clothing or shelter;
- (5) Denial of family contact, including family time, telephone or mail contacts with family;
- (6) Assignment of extremely strenuous exercise or work;
- (7) Verbal abuse or ridicule;
- (8) Mechanical restraints;
- (9) Drug used as a restraint, except as outlined in 10 NCAC 41S .0613(e);
- (10) Seclusion or isolation time-out; or
- (11) Physical restraints except as outlined in 10 NCAC 41S .0613(f).

(d) Time-out means the removal of a child to a separate unlocked room or area from which the child is not physically prevented from leaving. The residential child care facility may use time-out as a behavioral control measure when the facility provides it within hearing distance and sight of a staff member. The length of time alone shall be appropriate to the child's age and development.

(e) Drug used as a restraint means a medication used to control behavior or to restrict a child's freedom of movement and is not a standard treatment for the child's medical or psychiatric condition. A drug used as a restraint shall be employed only if required to treat a medical condition. It shall not be employed for the purpose of punishment, staff convenience or as a substitute for adequate staffing.

(f) Physical restraint of a child means physically holding a child who is at imminent risk of harm to himself or others until the child is calm. If physical restraints are utilized:

- (1) Physical restraint holds shall be administered only by staff trained in the use of physical restraint holds. No child or group of children shall be allowed to participate in the physical restraint of another child;
- (2) Before employing a physical restraint, the residential child care facility shall take into consideration the child's medical condition and any medications the child may be taking.
- (3) No child shall be physically restrained utilizing a protective or mechanical device. Physical restraint holds shall:
 - (A) not be used for purposes of discipline or convenience;
 - (B) only be used when there is imminent risk of harm to the child or others and less restrictive approaches have failed;
 - (C) be administered in the least restrictive manner possible to protect the child or others from imminent risk of harm; and
 - (D) end when the child becomes calm.
- (4) The residential child care facility shall:
 - (A) Ensure that any physical restraint hold utilized on a child is administered by a trained staff member with a second staff member in attendance. An exception may occur when no other staff member

is present or can be called for immediate assistance. Concurrent with the administration of a physical restraint hold and for a minimum of 15 minutes subsequent to the termination of the hold, a staff member shall:

- (i) monitor the child's breathing;
- (ii) ascertain that the child is verbally responsive and motorically in control; and
- (iii) shall ensure that the child remains conscious without any complaints of pain.

If at any time during the administration of a physical restraint hold the child complains of being unable to breathe or loses motor control, the staff member administering the physical restraint hold shall immediately terminate the hold or adjust the position to ensure that the child's breathing and motor control are not restricted. If at any time the child appears to be in distress, a staff member shall immediately seek medical attention for the child. Following the use of a physical restraint hold, a staff member shall conduct an interview with the child about the incident, and the staff administering the physical restraint hold shall be interviewed about the incident.

(B) Document each incident of a child being subjected to a physical restraint hold on an incident report.

This report shall include:

- (i) the child's name, age, height and weight;
- (ii) the type of hold utilized;
- (iii) the duration of the hold;
- (iv) the staff member administering the hold;
- (v) staff member witnessing the hold;
- (vi) supervisory staff who reviewed the incident report;
- (vii) less restrictive alternatives that were attempted prior to utilizing physical restraint;
- (viii) the child's behavior which necessitated the use of physical restraint;
- (ix) whether the child's condition necessitated medical attention;
- (x) planning and debriefing conducted with the child and staff to eliminate or reduce the probability of reoccurrence; and
- (xi) the total number of restraints of the child since admission.

Within 48 hours, supervisory staff shall review the incident report to ensure that correct steps were followed and shall forward the report to the legal custodian and the licensing authority on a report form developed by the licensing authority. If a child dies as a result of a physical restraint hold, the residential child care facility shall immediately report the death of the child to the legal custodian and to the licensing authority.

(C) Submit a summary report to the Division of Social Services by the 10th day of each month indicating the number of physical restraint holds used during the previous month on each child and any injuries that resulted;

- (D) Ensure that any physical restraint hold utilized on a child is administered by a trained staff member who has completed at least 16 hours of training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of the child's breathing, verbal responsiveness and motor control. Training shall also include debriefing children and staff involved in physical restraint holds. Thereafter, staff authorized to use physical restraint holds shall annually complete at least eight hours of behavior management training, including techniques for de-escalating problem behavior; and
- (E) Complete an annual review of the discipline and behavior management policies and techniques to verify that the physical restraint holds being utilized are being applied properly and safely. This review shall be documented and submitted to the licensing authority as part of the annual licensing renewal application.

History Note: Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237; Eff. July 1, 1999; Temporary Amendment Eff. July 20, 1999; Temporary Amendment Eff. May 15, 2000; Amended Eff. April 17, 2001.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42E - ADULT DAY CARE STANDARDS FOR CERTIFICATION

SECTION .0700 – INTRODUCTION

10 NCAC 42E .0705 CORRECTIVE ACTION

(a) Adult day care programs shall be inspected annually and monitored at least monthly to assure compliance with the standards. Where a violation of G.S. 131D-6 or of this Subchapter is identified by staff of the county department of social services or the Division of Aging or other authorized inspectors such as sanitarians, building and fire safety inspectors, the program director of the adult day care program must be notified in writing of the nature of the violation by that inspector and requested to take corrective action by the county department of social services. The county department of social services will determine, in consultation with the program director, the date by which corrective action must be completed based upon the severity of the violation and the effect of the violation on the participants of the program.

- (1) Where a violation presents a clear and immediate danger to the participants' health or safety, the program director is required to take immediate corrective action, after written notification, to correct the source of danger or to remove the participants from the source of danger. The specific time for completion of corrective action will be included in the written notice.
- (2) Where a violation has the potential to endanger the participants' health, safety, or welfare, the program director is required to take corrective action. The date specified for the completion of the corrective action

must be no later than 30 days after the written notification.

- (3) Where a violation does not directly endanger the participants, such as a violation of administrative or record keeping standards, the program director is required to take corrective action. The date specified for the completion of the corrective action must be no later than 90 days after the written notification.
- (b) If the violation continues beyond the established time for completion of corrective action, the program will be considered to be in willful violation of the standards and negative action will be taken in accordance with Rules .1402, .1404, and .1405 of this Subchapter.

History Note: Authority G.S. 131D-6; 143B-153; Eff. January 1, 1986; Amended Eff. July 1, 2000; July 1, 1990.

SECTION .1200 - CERTIFICATION PROCEDURE

10 NCAC 42E .1207 PROCEDURE

- (a) All individuals, groups or organizations operating or wishing to operate an adult day care program as defined by G.S. 131D-6 must apply for a certificate to the county department of social services in the county where the program is to be operated.
- (b) A designated social worker will supply necessary forms and standards for certification and will make a study of the program.
- (c) The following forms and materials make up an initial certification package and must be submitted through the county department of social services to the state Division of Aging:

- (1) The program policy statement;
- (2) Organizational diagram;
- (3) Job descriptions;
- (4) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period;
- (5) A floor plan of the facility showing measurements, restrooms and planned use of space;
- (6) Form DSS-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the facility, no more than 30 days prior to submission with the certification package;
- (7) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent completed and signed by the local building inspector, or fire inspector or fire marshall if a building inspector is not available, indicating approval of the facility, no more than 30 days prior to submission with the certification package;
- (8) Form DSS-2386 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian, indicating approval of the facility, no more than 30 days prior to the submission with the certification package;
- (9) Written notice and the effective date, if a variance of local zoning ordinances has been made in order for property to be utilized for an adult day care program;
- (10) A copy of the articles of incorporation, bylaws and names and addresses of board members, for adult day care programs sponsored by a non-profit corporation;

- (11) The name and mailing address of the owner if a proprietary program;
 - (12) A medical statement for each proposed staff member certifying to freedom from communicable disease or condition and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 30 days prior to submission with the certification package. When such certification cannot be made, the proposed staff member may be hired based on an assessment of whether the work tasks would pose a significant risk to the health of the employee, co-workers, or the public, or whether the employee is unable to perform the normally assigned job duties; and
 - (13) DSS-1500 (Adult Day Care Certification Report). This form must be submitted by the county department of social services with a copy to the program.
- (d) The following forms and materials make up a certification package for the renewal of a certification and must be submitted through the county department of social services, no more than 60 days prior to the end of the current period of certification, to the state Division of Aging:
- (1) Form DSS-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the facility, no more than 12 months prior to submission with the certification package;
 - (2) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent when structural building modifications have been made during the previous 12 months, completed and signed by the local building inspector, or fire inspector or fire marshal if a building inspector is not available, indicating approval of the facility, within 30 days following completion of the structural building modifications;
 - (3) Form DSS-2386 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian, indicating approval of the facility, no more than 12 months prior to submission with the certification package;
 - (4) A medical statement for each staff member certifying to freedom from communicable disease or condition and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 12 months prior to submission with the certification package. When such a certification cannot be made, employment may be continued, terminated, or reassigned based on an assessment of whether the employee's work tasks would pose a significant risk to the health of the employee, co-workers, or the public, or whether the employee is unable to perform normally assigned job duties;
 - (5) An updated copy of the policy statement, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
 - (6) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period; and
 - (7) DSS-1500 (Adult Day Care Certification Report). This form must be submitted with the certification package by the Department of Social Services to the Division of Aging at least 30 days in advance of the expiration date of the certificate, with a copy to the program.
- (e) If during the study of the program it does not appear that all standards can be met, the county department will so inform the applicant, indicating in writing the reasons, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application will be completed and submitted to the Division of Aging for consideration.
- (f) Following review of the certification package, a pre-certification visit may be made by staff of state Division of Aging.
- (g) The Division of Aging will promptly notify in writing to the applicant and the county department of social services of the action taken after a review of the certification package and visit, if made.
- History Note: Authority G.S. 130A-148; 131D-6; 143B-153; Eff. January 1, 1986; Amended Eff. July 1, 2000; May 1, 1992; July 1, 1990.*
- 10 NCAC 42E .1208 CHANGES IN PERSONNEL**
- Whenever there is a change in program director or operator, the qualifications of the new staff person as meeting the standards in Rule .0905 or .0906 of this Subchapter must be documented in writing to the county department of social services no later than the effective date of the change. The adult day care consultant of the Division of Aging shall be notified in writing of the change and the county department of social services' satisfaction that standards are met.
- History Note: Authority G.S. 131D-6; 143B-153; Eff. January 1, 1986; Amended Eff. July 1, 2000.*
- SECTION .1400 - CERTIFICATION INFORMATION**
- 10 NCAC 42E .1401 THE CERTIFICATE**
- (a) The certificate will be issued by the Division of Aging when, in the division's judgment, minimum requirements for certification have been met under the rules of this Subchapter. The certificate must be conspicuously posted in a public place in the facility.
- (b) The certificate will be in effect for 12 months from the date of issuance unless revoked for cause, voluntarily or involuntarily terminated, or changed to provisional certification status.
- History Note: Authority G.S. 131D-6; 143B-153; Eff. January 1, 1986; Amended Eff. July 1, 2000.*
- 10 NCAC 42E .1402 PROVISIONAL CERTIFICATE**
- (a) A provisional certificate may be issued in accordance with the following:
- (1) A provisional certificate may be issued by the Division of Aging when the certification renewal process

identifies violations and a plan for corrective action is in place. The provisional certification will continue until timely corrections have been made and the division so informed, or until revoked.

- (2) A provisional certificate may be issued by the Division of Aging when corrective action has not been completed by the completion date established in a corrective action plan. The provisional certification will continue until timely corrections have been made and the division so informed, or until revoked.

- (3) A provisional certificate may be issued by the Division of Aging when renewal materials have not been submitted in a timely fashion, but were received by the division prior to the expiration date of the current period of certification. The provisional certificate will remain in place until revoked or until replaced with full certification.

(b) In no instance will a provisional certificate be in effect for longer than six months.

(c) When a provisional certificate is issued, the program must post a copy of the notice from the Division of Aging, identifying the reasons for it, adjacent to the current certificate.

History Note: Authority G.S. 131D-6; 143B-153; Eff. January 1, 1986; Amended Eff. July 1, 2000; July 1, 1990.

10 NCAC 42E .1403 TERMINATION OF CERTIFICATION

The certificate will automatically terminate under the following conditions:

- (1) In a private for-profit program, when ownership in its entirety is transferred; in a private, non-profit program, when the board of directors is dissolved; in a public agency, when the board of that agency is dissolved;
- (2) When the program moves to another location;
- (3) When the required certification renewal materials are not received by the Division of Aging by the expiration date of the current period of certification.

History Note: Authority G.S. 131D-6; 143B-153; Eff. January 1, 1986; Amended Eff. July 1, 2000; July 1, 1990.

10 NCAC 42E .1404 DENIAL OR REVOCATION OF CERTIFICATE

(a) A certificate may be denied or revoked by the Division of Aging at any time for failure to comply with the rules of this Subchapter.

(b) When a program fails to comply with the rules of this Subchapter at the time initial certification is requested, certification will be denied by the Division of Aging. A notice setting forth the particular reasons for such action will be delivered personally or by certified mail to the applicant. Such denial becomes effective 20 days after the receipt of the notice.

(c) Revocation of a certificate, when violations have not been corrected by the date established by a corrective action plan, may be effected by personal delivery or certified mail, of a notice setting forth the particular reasons for such action. Such revocation becomes effective 20 days after the receipt of the notice.

(d) In accordance with 150B-3(c), if the division finds that the health, safety, or welfare of the participants requires emergency action and incorporates this finding in its notice, the certificate may be summarily suspended. Notice of the summary suspension shall be effected by serving the program director by personal delivery or certified mail. The summary suspension will be effective on the date specified in the notice or upon service of the notice, whichever is later.

(e) When a program receives a notice of denial or revocation, the program director must inform each participant and participant caretaker, as appropriate, of the notice and the basis on which it was issued.

History Note: Authority G.S. 131D-6; 143B-153; Eff. January 1, 1986; Amended Eff. July 1, 2000; July 1, 1990.

10 NCAC 42E .1405 PENALTY

(a) If the program is in willful violation as specified in Rule .0705 of this Subchapter, a penalty may be imposed.

(b) The amount of the penalty, within the limitation established by G.S. 131D-6, shall be determined based on the degree and extent of the harm or potential harm caused by the willful violation.

- (1) Where a violation presents a clear and immediate danger to the participants a civil penalty of one hundred dollars (\$100.00) per day will be imposed effective from the day that corrective action was to have been completed.
- (2) Where a violation has the potential to endanger the participants' health, safety or welfare a civil penalty of fifty dollars (\$50.00) per day will be imposed effective from the day that corrective action was to have been completed.
- (3) Where a violation does not directly endanger the participants a civil penalty of ten dollars (\$10.00) per day will be imposed effective from the date on which corrective action was to have been completed.

(c) The Division of Aging shall determine the penalty levied against a program based on the severity of the violation as described in (b) of this Rule and will notify the program by registered or certified mail. The penalty shall become due 20 days after receipt of the notice.

History Note: Authority G.S. 131D-6; 143B-153; Eff. January 1, 1986; Amended Eff. July 1, 2000; July 1, 1990.

10 NCAC 42E .1406 PROCEDURE FOR APPEAL

(a) When the program is notified by the Division of Aging of a negative action, the program may ask for an informal review by division staff. If the review is not satisfactory, the program may request a hearing.

(b) The program may request a hearing within 60 days after receipt of written notification from the division of a negative action, by written notice through registered or certified mail to the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. In addition, at any time before the hearing, the Division of Aging may rescind the notice of negative action upon being satisfied that the reasons for such action have been corrected.

(c) Except as provided for in Rule .1404(d) of this Subchapter, upon receipt of a request for a hearing, the enforcement of the negative action shall be suspended pending final agency decision.

(d) The petition for a hearing shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 3 .0103. In accordance with G.S. 1A-1, Rule 4 (j) 4, the petition shall be served on a registered agent for service of process for the Department of Health and Human Services. A list of registered agents may be obtained from the Office of Legislative and Legal Affairs.

(e) Procedures for the processing of an appeal of an adverse certification action and for the final decision are specified in G.S. 150B, Article 3 and 10 NCAC 1B .0200.

History Note: Authority G.S. 131D-6; 143B-153; Eff. January 1, 1986; Amended Eff. July 1, 2000; March 1, 1992; July 1, 1990.

SUBCHAPTER 42S - DAY CARE SERVICES FOR ADULTS

SECTION .0300 - CLIENT ELIGIBILITY: FEES AND CHARGES

10 NCAC 42S .0301 LIMITATIONS

Limitations on the provision of day care services for adults include the following:

- (1) Day care services for adults may be provided on a time-limited basis to individuals enrolled in adult day care who are no longer able to maintain themselves in an independent living situation and for whom placement in group care is necessary. Under these circumstances, adult day care services may continue to be provided for a maximum of 90 days after entering the group care facility. State and federal funds may not be used to support the provision of adult day care for individuals in group care beyond this 90 day period.
- (2) Day care services for adults may be provided on a time-limited basis for individuals preparing to leave a group care facility for an independent living arrangement. Under these circumstances, adult day care services may be provided for a period of up to 90 days prior to the individual's discharge from the group care facility. Continued eligibility for adult day care after discharge from the group care facility shall be determined on the basis of basic eligibility criteria and need for the service as stated in 10 NCAC 35E .0101 or 10 NCAC 22E .0106(6) and (12).
- (3) If a day care program's written admission criteria limit the number of persons with certain conditions which can be served at any one time and an eligible client with such a condition cannot be accepted because the program has its maximum number of persons with that condition, the client must be considered for enrollment at the first opening for persons with that condition.
- (4) Day care programs which receive federal or state funds administered by the Division of Social Services and which serve persons whose care is paid through some source other than federal or state funds must charge at

least as much for those persons as for persons whose care is paid through funds administered by the division.

History Note: Authority G.S. 143B-153; Eff. July 1, 1979; Amended Eff. July 1, 2000; July 1, 1984; July 1, 1983; January 1, 1983; July 1, 1982.

SUBCHAPTER 42Z - ADULT DAY HEALTH STANDARDS FOR CERTIFICATION

SECTION .0500 - INTRODUCTION AND DEFINITIONS

10 NCAC 42Z .0501 INTRODUCTORY STATEMENT

Subchapter 42Z contains standards for certification of adult day health programs. The standards relate to all aspects of operation of an adult day health program including administration, facility and program operation. In order for payment to be made for adult day health services provided to individuals who are eligible for this service under Title XIX of the Social Security Act, the provider must be certified as meeting these standards. Certification is the responsibility of the adult day health program, the county departments of health and social services and the Department of Health and Human Services, Division of Aging.

History Note: Authority G.S. 131D-6; Eff. July 1, 1990; Amended Eff. July 1, 2000.

SECTION .0900 - CERTIFICATION INFORMATION

10 NCAC 42Z .0901 PROCEDURE

- (a) All individuals, groups or organizations operating or wishing to operate an adult day health program as defined by G.S. 131D-6 must apply for a certificate to the county department of social services in the county where the program is to be operated.
- (b) A designated social worker will supply necessary forms and standards for certification and will make a study of the program.
- (c) The following forms and materials make up an initial certification package and must be submitted through the county department of social services to the state Division of Aging:
 - (1) The program policy statement;
 - (2) Organizational diagram;
 - (3) Job descriptions;
 - (4) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period;
 - (5) A floor plan of the facility showing measurements, restrooms and planned use of space;
 - (6) Form DSS-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the facility, no more than 30 days prior to submission with the certification package;
 - (7) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent completed and signed by the local building inspector, or fire inspector or fire marshall if a building inspector is not available, indicating approval of the facility, no more

- than 30 days prior to submission with the certification package;
- (8) Form DSS-2386 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian, indicating approval of the facility, no more than 30 days prior to the submission with the certification package;
 - (9) Written notice and the effective date, if a variance of local zoning ordinances has been made in order for property to be utilized for an adult day health program;
 - (10) A copy of the articles of incorporation, bylaws and names and addresses of board members, for adult day health programs sponsored by a non-profit corporation;
 - (11) The name and mailing address of the owner if a proprietary program;
 - (12) A medical statement of each proposed staff member certifying to freedom from communicable disease or condition and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 30 days prior to submission with the certification package. When such certification cannot be made, employment may commence, continue, terminate, or be reassigned based on an assessment on whether the employee's work tasks would pose a significant risk to the health of the employee, co-workers or the public, or whether the employee is unable to perform the normally assigned job duties; and
 - (13) DSS-6205 (Adult Day Health Certification Report). This form must be submitted by the county department of social services with a copy to the program.
- (d) The following forms and materials make up a certification package for the renewal of a certification and must be submitted through the county department of social services, no more than 60 days prior to the end of the current period of certification, to the state Division of Aging:
- (1) Form DSS-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the facility, no more than 12 months prior to submission with the certification package;
 - (2) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent when structural building modifications have been made during the previous 12 months, completed and signed by the local building inspector, or fire inspector or fire marshall if a building inspector is not available, indicating approval of the facility, within 30 days following completion of the structural building modifications;
 - (3) Form DSS-2386 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian, indicating approval of the facility, no more than 12 months prior to submission with the certification package;
 - (4) A medical statement for each staff member certifying to freedom from communicable disease or condition and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 12 months prior to submission with the certification package. When such certification cannot be made, employment may commence, continue, terminate, or be reassigned based on an assessment on whether the employee's

work tasks would pose a significant risk to the health of the employee, co-workers or the public, or whether the employee is unable to perform the normally assigned job duties;

- (5) An updated copy of the policy statement, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
 - (6) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period; and
 - (7) DSS-6205 (Adult Day Health Certification Report). This form must be submitted with the certification package by the Department of Social Services to the Division of Aging at least 30 days in advance of the expiration date of the certificate, with a copy to the program.
- (e) If during the study of the program it does not appear that all standards can be met, the county department will so inform the applicant, indicating in writing the reasons, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application will be completed and submitted to the Division of Aging for consideration.
- (f) Following review of the certification package, a pre-certification visit may be made by staff of state Division of Aging.
- (g) The Division of Aging will promptly notify in writing to the applicant and the county department of social services of the action taken after a review of the certification package and visit, if made.

History Note: Authority G.S. 130A-148; 131D-6; 143B-153; Eff. May 1, 1992; Amended Eff. July 1, 2000; March 1, 1993.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6D – INSTRUCTION

SECTION .0300 - TESTING PROGRAMS

16 NCAC 06D .0305 END-OF-COURSE TESTS

- (a) The LEA shall include each student's end-of-course test results in the student's permanent records and high school transcript.
- (b) The LEA shall give each end-of-course test within a 110-minute period within the final 10 days of the course.
- (c) Starting with the 2000-2001 school year LEAs shall use EOC test results as at least 25% of the student's final grade for the following courses: English I, Algebra I, Biology, US History, and Economic, Legal, and Political Systems (ELPS), LEAs shall use EOC test results from other courses as a part of the student's final grade. LEAs shall adopt policies regarding the use of EOC test results in assigning final grades.

(d) Students who are enrolled for credit in courses in which end-of-course tests are required shall take the appropriate end-of-course test.

(e) Students who are exempt from final exams by local board of education policy shall not be exempt from end-of-course tests.

(f) Each student shall take the appropriate end-of-course test the first time the student takes the course even if the course is an honors or advanced placement course.

(g) Students shall take the appropriate end-of-course test at the end of the course regardless of the grade level in which the course is offered.

(h) Students who are identified as failing a course for which an end-of-course test is required shall take the appropriate end-of-course test.

(i) Effective with the 1999-2000 school year students may drop a course with an end-of-course test within the first 10 days of a block schedule or within the first 20 days of a traditional schedule.

History Note: Authority G.S. 115C-12(9)c.; 115C-81(b)(4); Eff. November 1, 1997; Amended Eff. July 1, 2000; August 1, 1999.

16 NCAC 06D .0306 TESTING CODE OF ETHICS

(a) This Rule shall apply to all public school employees who are involved in the state testing program.

(b) The superintendent or superintendent's designee shall develop local policies and procedures to ensure maximum test security in coordination with the policies and procedures developed by the test publisher. The principal shall ensure test security within the school building.

- (1) The principal shall store test materials in a secure, locked area. The principal shall allow test materials to be distributed immediately prior to the test administration. Before each test administration, the building level test coordinator shall accurately count and distribute test materials. Immediately after each test administration, the building level test coordinator shall collect, count, and return all test materials to the secure, locked storage area.
- (2) "Access" to test materials by school personnel means handling the materials but does not include reviewing tests or analyzing test items. The superintendent or superintendent's designee shall designate the personnel who are authorized to have access to test materials.
- (3) Persons who have access to secure test materials shall not use those materials for personal gain.
- (4) No person may copy, reproduce, or paraphrase in any manner or for any reason the test materials without the express written consent of the test publisher.
- (5) The superintendent or superintendent's designee shall instruct personnel who are responsible for the testing program in testing administration procedures. This instruction shall include test administrations that require procedural modifications and shall emphasize the need to follow the directions outlined by the test publisher.
- (6) Any person who learns of any breach of security, loss of materials, failure to account for materials, or any other deviation from required security procedures shall immediately report that information to the principal,

building level test coordinator, school system test coordinator, and state level test coordinator.

(c) Preparation for testing.

- (1) The superintendent shall ensure that school system test coordinators:
 - (A) secure necessary materials;
 - (B) plan and implement training for building level test coordinators, test administrators, and proctors;
 - (C) ensure that each building level test coordinator and test administrator is trained in the implementation of procedural modifications used during test administrations; and
 - (D) in conjunction with program administrators, ensure that the need for test modifications is documented and that modifications are limited to the specific need.
- (2) The principal shall ensure that building level test coordinators:
 - (A) maintain test material security and accountability of test materials;
 - (B) identify and train personnel, proctors, and backup personnel for test administrations; and
 - (C) encourage a positive atmosphere for testing.
- (3) Test administrators shall be school personnel who have professional training in education and the state testing program.
- (4) Teachers shall provide instruction that meets or exceeds the standard course of study to meet the needs of the specific students in the class. Teachers may help students improve test-taking skills by:
 - (A) helping students become familiar with test formats using curricular content;
 - (B) teaching students test-taking strategies and providing practice sessions;
 - (C) helping students learn ways of preparing to take tests; and
 - (D) using resource materials such as test questions from test item banks, testlets and linking documents in instruction and test preparation.

(d) Test administration.

- (1) The superintendent or superintendent's designee shall:
 - (A) assure that each school establishes procedures to ensure that all test administrators comply with test publisher guidelines;
 - (B) inform the local board of education of any breach of this code of ethics; and
 - (C) inform building level administrators of their responsibilities.
- (2) The principal shall:
 - (A) assure that school personnel know the content of state and local testing policies;
 - (B) implement the school system's testing policies and procedures and establish any needed school policies and procedures to assure that all eligible students are tested fairly;
 - (C) assign trained proctors to test administrations; and
 - (D) report all testing irregularities to the school system test coordinator.
- (3) Test administrators and proctors shall:

- (A) administer tests according to the directions in the administration manual and any subsequent updates developed by the test publisher;
- (B) administer tests to all eligible students;
- (C) report all testing irregularities to the school system test coordinator; and
- (D) provide a positive test-taking climate.
- (4) Proctors shall serve as additional monitors to help the test administrator assure that testing occurs fairly.
- (e) Scoring. The school system test coordinator shall:
 - (1) ensure that each test is scored according to the procedures and guidelines defined for the test by the test publisher;
 - (2) maintain quality control during the entire scoring process, which consists of handling and editing documents, scanning answer documents, and producing electronic files and reports. Quality control shall address at a minimum accuracy and scoring consistency;
 - (3) maintain security of tests and data files at all times, including:
 - (A) protecting the confidentiality of students at all times when publicizing test results; and
 - (B) maintaining test security of answer keys and item-specific scoring rubrics.
 - (f) Analysis and reporting. Educators shall use test scores appropriately. This means that the educator recognizes that a test score is only one piece of information and must be interpreted together with other scores and indicators. Test data help educators understand educational patterns and practices. The superintendent shall ensure that school personnel analyze and report test data ethically and within the limitations described in this Paragraph.
 - (1) Educators shall release test scores to students, parents, legal guardians, teachers, and the media with interpretive materials as needed.
 - (2) Staff development relating to testing must enable personnel to respond knowledgeably to questions related to testing, including the tests, scores, scoring procedures, and other interpretive materials.
 - (3) Items and associated materials on a secure test shall not be in the public domain. Only items that are within the public domain may be used for item analysis.
 - (4) Educators shall maintain the confidentiality of individual students. Publicizing test scores that contain the names of individual students is unethical.
 - (5) Data analysis of test scores for decision-making purposes shall be based upon:
 - (A) disaggregation of data based upon student demographics and other collected variables;
 - (B) examination of grading practices in relation to test scores; and
 - (C) examination of growth trends and goal summary reports for state-mandated tests.
 - (g) Unethical testing practices include, but are not limited to, the following practices:
 - (1) encouraging students to be absent the day of testing;
 - (2) encouraging students not to do their best because of the purpose of the test;
 - (3) using secure test items or modified secure test items for instruction;
 - (4) changing student responses at any time;
 - (5) interpreting, explaining, or paraphrasing the test directions or the test items;
 - (6) reclassifying students solely for the purpose of avoiding state testing;
 - (7) not testing all eligible students;
 - (8) failing to provide needed modifications during testing, if available;
 - (9) modifying scoring programs including answer keys, equating files, and lookup tables;
 - (10) modifying student records solely for the purpose of raising test scores;
 - (11) using a single test score to make individual decisions; and
 - (12) misleading the public concerning the results and interpretations of test data.
 - (h) In the event of a violation of this Rule, the SBE may, in accordance with the contested case provisions of G.S. 150B, impose any one or more of the following sanctions:
 - (1) withhold ABCs incentive awards from individuals or from all eligible staff in a school;
 - (2) file a civil action against the person or persons responsible for the violation for copyright infringement or for any other available cause of action;
 - (3) seek criminal prosecution of the person or persons responsible for the violation; and
 - (4) in accordance with the provisions of 16 NCAC 6C .0312, suspend or revoke the professional license of the person or persons responsible for the violation.

History Note: Authority G.S. 115C-12(9)c.; 115C-81(b)(4); Eff. November 1, 1997 Amended Eff. July 1, 2000.

RULES REVIEW COMMISSION

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

RULE REVIEW COMMISSION

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

RULES REVIEW COMMISSION

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.

RULE REVIEW COMMISSION

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

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter*

*James L. Conner, II
Robert Roosevelt Reilly Jr.
Beryl E. Wade*

<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	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
Child Support Enforcement Section				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00	
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00	
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00	
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00	
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00	
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00	
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00	
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00	
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00	
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00	
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00	
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00	
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00	
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00	
Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00	
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00	
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00	
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00	
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00	
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00	
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00	
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00	
Izell Anthony Twigg v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00	
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00	
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00	
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00	
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00	

CONTESTED CASE DECISIONS

Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00
Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00
Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Connor	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00
Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Connor	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 ²	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 ²	Conner	07/28/00
Rickey L. Gullede v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
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1. Map/Diagram of Sinclair Farm
2. Scott Faircloth's March 15, 1999 inspection report
3. March 15, 1999 photograph at Sinclair Farm
4. March 15, 1999 photographs at Sinclair Farm
5. March 15, 1999 photographs at Sinclair Farm
6. Chain of Custody Sheet for March 15, 1999 water quality samples
7. Certificate of Analysis for March 15, 1999 water quality samples
8. Jeffrey Brown's March 15, 1999 inspection report
9. Notice of Violation – March 17, 1999
10. DWQ Enforcement Report – June 7, 1999
11. Civil Penalty Assessment – January 11, 1999
12. Assessment Factors worksheet

Based upon careful consideration of the testimony and evidence received during the contested case hearing as well as the entire record of this proceeding, the undersigned makes the following:

FINDINGS OF FACT

1. **Petitioner is an individual residing at 6978 Faison Highway, Faison, North Carolina, in Sampson County.**
2. Respondent is a State agency established pursuant to N.C. Gen. Stat. §§ 143B-275 et seq. and vested with the statutory authority to enforce the State's environmental pollution laws, including laws enacted to protect water quality of the State.
3. Petitioner owns and operates a swine operation located off of Highway 403 in Sampson County, North Carolina. This facility was deemed permitted as a nondischarge facility on November 22, 1993 in accordance with 15A NCAC 2H.0217.
4. On March 15, 1999, during a routine inspection of Petitioner's swine farm, Scott Faircloth, an employee of the North Carolina Division of Soil and Water Conservation observed a discharge of wastewater from the rear of hog house number two to a diversion ditch which runs to Six Runs Creek, in the Cape Fear River Basin. Mr. Faircloth observed the wastewater exiting the hog house through a pit fan and flowing through the diversion ditch into Six Runs Creek.
5. DWQ staff members Jeffrey Brown, Robert Heath, and John Hasty arrived at the Sinclair Farm at approximately 4:30 p.m. on March 15, 1999 to investigate the cause of the discharge. John Hasty took fecal coliform bacteria samples at the source of the animal wastewater, the point of discharge, and at upstream and downstream locations. The results of analysis of the fecal coliform samples reflected an elevated fecal coliform level of 110,000 colonies per 100 milliliters in Six Runs Creek at the downstream sample location.
6. During Jeffrey Brown's inspection of the farm on March 15, 1999, Petitioner informed him that the sprinklers in hog house number 2 had been left running on the evening of March 14, 1999. A pipe that conveys wastewater from hog house number 2 to the lagoon had become blocked with debris which resulted in wastewater exiting through the pit fan at the rear of the hog house.
7. A Notice of Violation (NOV) was sent to Petitioner by Respondent on March 17, 1999 informing Petitioner that the discharge of animal waste to "waters of the State" was a violation of his non-discharge permit.
8. On January 1, 2000, the Director of DWQ assessed a \$4000.00 civil penalty against Petitioner for a violation of N.C. Gen. Stat. § 143-215.1 and 15A BCC 2H.0217 for the unpermitted discharge of wastewater from the David Sinclair swine farm to Six Runs Creek, which is Class C Swamp waters of the State. This penalty was 40% of the maximum penalty authorized by statute. Petitioner was also assessed \$656.96 in enforcement costs.
9. In assessing the civil penalty against Petitioner, Respondent considered each of the factors listed in N.C. Gen. Stat. § 143-282.1(b) as required by N.C. Gen. Stat. § 143-215.6A(c).

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Office of Administrative Hearings, and the Office has jurisdiction over the parties and the subject matter.
2. All parties have been correctly designated, and there is no question as to misjoinder or nonjoinder.

CONTESTED CASE DECISIONS

3. Petitioner is a "person" within the meaning of N.C. Gen. Stat. § 143-215.6A pursuant to N.C. Gen. Stat. § 143-212(4).
4. Pursuant to N.C. Gen. Stat. 243-215.1, Petitioner was prohibited from causing or permitting any waste to be discharged to waters of the State without a permit.
5. On March 15, 1999, Petitioner violated his non-discharge permit issued in accordance with N.C. Gen. Stat. § 143-215.1 and 15A NCAC 2H.0217, by discharging animal wastewater from the David Sinclair swine farm to Six-Runs Creek.
6. Six Runs Creek is waters of the State within the meaning of N.C. Gen. Stat. § 143-215.1 pursuant to N.C. Gen. Stat. § 143-212(6).
7. Respondent had authority to assess a civil penalty against Petitioner in this matter pursuant to N.C. Gen. Stat. § 143-215.6A, which provided (as of the date of violation and assessment) that a civil penalty of not more than ten thousand dollars (\$10,000) per violation may be assessed against any person who fails to act in accordance the terms, conditions or requirements of a permit required by N.C. Gen. Stat. § 143-215.1.
8. Respondent had authority to assess enforcement costs against Petitioner in this matter pursuant to N.C. Gen. Stat. § 143-215.3(a)(9) and N.C. Gen. Stat. § 143-282.1(b)(8).
9. In determining the amount of the penalty, Respondent properly considered the factors set forth in N.C. Gen. Stat. § 143B-282.1, as required by N.C. Gen. Stat. § 143-215.6A.
10. A \$4,000.00 civil penalty plus \$656.96 in enforcement costs for the violation is reasonable and appropriate under the circumstances and is in accordance with the water quality statutes and the rules promulgated thereunder.
11. In assessing the civil penalty, Respondent did not act erroneously, fail to use proper procedure, act arbitrarily and capriciously, or fail to act as required by law or rule.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDED DECISION

The Environmental Management Commission should uphold the Director of the Division of Water Quality's decision to assess a civil penalty in the amount of \$4,000.00 plus \$656.96 in enforcement costs against Petitioner.

ORDER

It is hereby ordered that the Environmental Management Commission serve a copy of the final decision on the Office of Administrative Hearings, 6714, Mail Service Center, Raleigh, North Carolina 27699-6714 in accordance with North Carolina General Statute § 150B-36(b).

NOTICE

The Environmental Management Commission, the agency making the final decision in this contested case, is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. § 150B-36(a).

The Environmental Management Commission is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to the Office of Administrative Hearings.

This the 14th day of August, 2000.

James L. Conner, II
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
99 EHR 1167

SHUTTLE CLEANING SERVICE, INC.)
PHILLIP ALLEN (OWNER),)
Petitioner,)
v.)
DEPARTMENT OF ENVIRONMENT NATURAL)
RESOURCES,)
Respondent.)

RECOMMENDED DECISION

This contested case came on for hearing before the undersigned administrative law judge on March 30, 2000 in Hendersonville. Mr. Stephen R. Little represented the petitioner. Ms. Sueanna P. Sumpter represented the respondent. The petitioner presented two witnesses and introduced Exhibits # 1, 3, 4, 5, 6, 7, 11 and 12. The petitioner made an offer of proof concerning Exhibit # 8, 9 and 10. The respondent presented three witnesses and introduced Exhibits # 1 – 14 and 16. The petitioner submitted a proposed recommended decision on May 1, 2000.

ISSUE

- 1. Did the Petitioner violate the provisions of GS 143-215.1(a)(1) by making an outlet into the waters of the State without a permit?
- 2. What is the proper amount of the civil penalties and cost?

FINDINGS OF FACT

- 1. Petitioner Phillip B. Allen is the owner of the business known as “Shuttle Cleaning Service, Inc.” The business is located between US Highway 221 and Peppers Creek approximately 15 miles north of Marion. The petitioner cleans the interior of certain pre-identified trucks, traditional trailer type and tanker type. The petitioner mostly cleans tankers transporting inert rock particles and trailers used for transporting sanitary I.V. fluids from nearby Baxter Laboratories. The petitioner confirms the identity of the previous cargo before washing the empty trailers. The petitioner does not wash out any trailers that were used to haul toxic substances or materials.
- 2. Petitioner was issued a Subsurface Disposal System Permit for the construction and operation of a wastewater treatment and disposal system specifically designed to treat the wash water generated from the interior cleaning of truck trailers at the facility.
- 3. Section 6 of Part I of the 1990 permit requires the petitioner to take “adequate measures ... to divert storm water from the disposal area.” The slanted and recessed disposal area is referred to as the “wash pit.” The permit specifically prohibited “diversion or bypassing of the untreated wastewater from the [wash pit].”
- 4. When the 1990 in-place inspection was conducted of the up-graded wash pit and the underground wastewater treatment and disposal system, there were two outlets in the floor of the wash pit in opposite corners. These two outlets were present on the floor of the wash pit at all times relevant to this matter. Facing the back wall of the wash pit, the drain outlet to the permitted subsurface disposal treatment facility was in the *right* corner, on the side closest to US Highway 221. A drain pipe leading directly to Peppers Creek was located on the floor of the *left* side, closest to Peppers Creek. The underground pipe leading from the left corner directly to Peppers Creek is referred to as the “flood-control pipe.”
- 5. The mouth of the flood-control pipe at the left corner of the wash pit floor was 6 inches wide and was threaded so that a metal plug could be screwed into it from the wash pit to prevent wastewater from entering the flood-control pipe. In the opposite rear corner of the wash pit, the drain leading to the state-approved treatment system had a 4-inch-wide mouth and was protected by a series of two grates to prevent debris from washing into the underground treatment facility. The drain opening to the underground treatment facility was in a recessed block, approximately twelve inches lower than the mouth of the flood-control pipe in the opposite corner. The floor of the wash pit was sloped to cause water to flow toward the drain of the permitted underground treatment facility.

6. In keeping with the stringent provisions of the permit that restricted its use, the flood-control pipe was approved by inspectors in 1990 as “adequate measures” to remove storm water after heavy rains from the wash pit.

7. The site was inspected for compliance on January 10, 1991 by Inspector Reid. He gave a satisfactory mark both to the self-monitoring program and to the operations and maintenance of the facility. He commented in his report that a truck was being washed at the time of his inspection, but there was no discharge from the old drain line (the flood-control pipe) to Peppers Creek.

8. The petitioner’s policy and practice was for the plug to be removed from the flood-control pipe *only* either *to prevent* an accumulation of storm water (if personnel were on duty when a heavy rainstorm began) or *to remove* accumulated storm water (if the plug could not be removed at the beginning of or during a heavy rainstorm). The plug in the flood-control pipe could only be removed through the use of a very large wrench and could not be removed by hand.

9. After the petitioner received the 1990 permit, the respondent received no complaints about the petitioner’s operations until March 1996. Inspector Parker made his first visit to the site on March 27, 1996. The complaint that prompted Mr. Parker’s visit was that of water entering Peppers Creek from the flood-control pipe on an unspecified date. No evidence was offered that the water leaving the flood-control pipe and entering Peppers Creek, as seen by an unidentified third person on the unspecified previous date, was not accumulated storm water that was being released into Peppers Creek in compliance with Item 6 of Part I of the 1990 permit. There was no discharge entering Peppers Creek from the flood-control pipe on March 27, 1996. Nevertheless, during the visit, Mr. Parker accused the petitioner of discharging wastewater through the flood-control pipe into Peppers Creek. The petitioner attempted to explain to Mr. Parker that wastewater was handled through the state permitted disposal system and only storm water was released from the pit into Peppers Creek by means of the flood-control pipe. Mr. Parker had no knowledge of either the existence of or the provisions of the 1990 permit when he made his first visit to the petitioner’s site on March 27, 1996.

10. One week after Mr. Parker’s first visit to the site, the respondent’s sent a Notice Of Violation letter dated April 2, 1996, by certified mail to the petitioner. This letter was mailed April 2, 1996. The petitioner signed the green return receipt card on the next day.

11. The petitioner called Mr. Reid to explain that the NOV letter of April 2, 1996, was apparently due to Mr. Parker’s lack of familiarity with the site. The petitioner thereafter heard nothing more from Mr. Parker or anyone else for over two years.

12. Mr. Parker made his second visit to the site approximately two years later, on April 26, 1998. The petitioner was not at the site when Mr. Parker made his inspection. Mr. Parker spoke with the lady in the office who was apparently in charge, Ms. Sandra Crowe. Mr. Parker told Ms. Crowe that there was “an illegal discharge” at the facility but gave no explanation. Ms. Crowe telephoned the petitioner so that Mr. Parker could speak directly with the petitioner. Mr. Parker told the petitioner that there was an illegal discharge at the site because wastewater was entering Peppers Creek through the flood-control pipe. The petitioner then told Mr. Parker that “If the plug is out of the flood-control pipe, tell the operator to put the plug back in it. And if it is out, someone’s head is going to roll!” Mr. Parker would not pass along this instruction to any of Shuttle Cleaning’s employees. The petitioner then spoke again with Sandra Crowe and instructed her to check the plug on the flood-control pipe with the large wrench kept at the office for that purpose. Mr. Parker left the site before Ms. Crowe could walk the approximately 15 feet from the office to the wash pit and reach into the water with the wrench. The plug was tight and secure inside the flood-control pipe. The petitioner arrived at the site later in the afternoon but hours after Mr. Parker had left. The petitioner observed no problems. However, the petitioner was not aware of any cracks in the floor of the wash pit on this date.

13. Mr. Parker issued a Notice Of Violation dated April 16, 1998 to be sent to the petitioner as a result of his visit to the site on that date. Mr. Parker returned to the site on April 27, 1998. Since the Notice of Violation had not been delivered, Mr. Parker obtained the mail from the US Post Office in Marion and personally gave it to the petitioner on April 27, 1998, at which time the petitioner signed the green return receipt card.

14. On 27 April 1998, Mr. Parker returned to the site. He demonstrated that, through the use of a red-colored dye, a small amount of wash water was entering Peppers Creek through the flood-control pipe at a time when the plug was securely closed in the mouth of the flood-control pipe on the floor of the wash pit. The petitioner concluded that some of the wash water was seeping through cracks in the floor of the wash pit and somehow reentering the flood-control pipe even though the plug was securely in place on the flood-control pipe. The petitioner responded by immediately stating that he would obtain concrete from the construction site for his new replacement facility approximately one-half mile north and use the concrete to cover up all possible cracks in the floor of the wash pit. He also said he would push concrete into the flood-control pipe to permanently prevent any chance of wash water from entering Peppers Creek.

15. When the buckets of concrete arrived a few minutes later, the petitioner removed the plug from the mouth of the flood-control pipe. Using a stick, he felt broken areas below the mouth of the flood-control pipe. The gravel under the wash pit apparently was acting as a french drain and causing the seepage through the cracks to re-enter the flood-control pipe even with the plug being tightly on the pipe. He crammed the concrete into the flood-control pipe and spread it on the floor of the wash pit in the entire area

near the flood-control pipe, thereby permanently sealing all of the cracks and the flood-control pipe itself. The petitioner asked Mr. Parker to wait and watch him apply the concrete. Mr. Parker refused and left the premises before seeing the problem corrected permanently.

16. During one of his April 1998, inspections, Mr. Parker took several photographs of the floor of the wash pit while the interior of a trailer was being washed out. The photographs show milky-colored water standing several inches deep in the wash pit, completely covering the area where the flood-control pipe was located. A red-pink tint in the milky water shows that some of the water was seeping through cracks in the floor near the flood-control pipe. If the plug had not been tightly secure in the flood-control pipe, the six-inch-wide opening to the flood-control pipe would have been clearly visible, as there would not have been any standing water near the mouth of the flood-control pipe.

17. At no time was there ever a grill or a grate placed over the flood-control pipe. At all times, however, there were two grills or grates over the drain leading to the state-approved septic system. The photograph labeled as Respondent's exhibit 6H (and the enlargement of the same photograph labeled as Respondent's exhibit 7) is of the grate above the drain to the approved septic system. After the concrete permanently sealed the floor cracks and the flood-control pipe, the petitioner paid a private hauler to pump accumulated storm water from the wash pit and haul it away. This was done after each heavy rainfall between April 1998, and the date that the petitioner moved to the new Shuttle facility several months later.

18. Approximately one year after his third and final visit to the site, Mr. Parker prepared a report for Kerr T. Stevens, the State Director of the Division of Water Quality, to use as he determined the amount of a civil penalty to assess against the petitioner. There were twelve factors included in the report. Included in Mr. Parker's comments on the first factor was his assertion: "Due to the fact that Shuttle Cleaning Service, Inc. washes out any type truck that comes there for the cleaning service any conceivable material could be washed out of the truck." This assertion is incorrect as established by the previous findings of fact.

19. In his comments about the fifth factor in the report, Mr. Parker asserted:

Mr. Allen has saved thousands of dollars by discharging this wastewater to state surface waters without any type of treatment. Mr. Allen could have installed a wastewater treatment system or could have used a pump and haul system.

In fact, the petitioner did install a wastewater treatment system. Mr. Parker knew about the existence of that wastewater treatment system when he wrote this report in April of 1999. The wastewater treatment system had been originally permitted in 1990 to treat the wash water generated from washing the interior of selected trucks. Further, for several months after April 27, 1998, the petitioner paid to use a pump and haul system to remove accumulated storm water from the wash pit after the flood-control pipe was cemented over. There was no credible evidence offered that petitioner had ever intentionally discharged any wastewater from the wash pit to Peppers Creek after receiving the permit in 1990. There is no credible evidence that the petitioner had saved any amount of money.

20. The sixth factor contains the conclusion that the petitioner willfully and intentionally committed a discharge violation. The comments under this sixth factor includes a partial quote from the petitioner that leaves a false impression of the entire conversation.

21. The seventh factor of the report, concerning the petitioner's prior record, contains an assumption based on no evidence of when the discharge through the cracked pipe began or when the petitioner knew of the discharge. In fact, the only evidence of anyone's knowledge of the discharge was when the dye was interjected into the system.

22. The ninth factor in the report, indicating the type of violator and general nature of business, fails to acknowledge that the petitioner is selective in the types of truck trailers that are washed at the facility

23. The tenth factor in the report, dealing with the violator's degree of cooperation or recalcitrance, contains a summary opinion from Mr. Parker that the petitioner was not cooperative without any acknowledgement that the petitioner had a good relationship with Mr. Reid. The undersigned agrees that the petitioner was contentious and feisty but Mr. Parker's display of arrogance in investigating and enforcing environmental requirements also added to a difficult relationship between the two.

24. The eleventh factor in the report pertains to mitigating considerations. Mr. Parker wrote that, "Mr. Allen claims the discharge pipe was installed to drain rain water from the pit." The flood-control pipe was installed in accordance with the 1990 permit as a means for removing rain water from the wash pit.

25. Mr. Parker failed to refer to the following mitigating factors.

- a. The history of cooperation between the petitioner and respondent's staff member James R. Reid.

b. The provision in item 6 of part I of the permit that required adequate measures to remove storm water from the wash pit and the acceptance by the respondent of the flood-control pipe as a method to do so.

c. The 1991 NPDES Compliance Inspection Report completed by James R. Reid that gave a satisfactory evaluation to the facility site, to the operations and maintenance of the site and to the overall compliance by the site with NPDES requirements.

d. The absence of any complaints after the issuance of the 1990 permit until the complaint that caused Mr. Parker to make his first visit to the subject site on March 27, 1996.

e. The fact, there was no follow-up or additional contact with the petitioner by Mr. Parker after the petitioner's telephone conversation with Mr. Reid in April 1996, until late March of 1998.

f. The fact that the business was in the process of relocating to a new and larger facility.

g. The quick response by the petitioner after Mr. Parker explained the situation on April 27, 1998, and showed the petitioner that there was a trickle of wash water entering Peppers Creek from the flood-control pipe. Although the plug was tightly in place in the wash pit, the petitioner filled the cracked flood-control pipe with concrete and smoothed concrete over all of the cracks on the floor of the wash pit to prevent any wash water from getting into the flood-control pipe.

h. The payment by the petitioner to pump and haul accumulated storm water out of the wash pit for the couple of months between April 1998, and the date the business occupied its new site.

26. Mr. Stevens, learned only on March 29, 2000 that petitioner had received a state-issued permit in 1990 to operate a subsurface wastewater treatment and disposal system and that the flood-control pipe had been accepted as a method for removing storm water from the wash pit. Mr. Stevens also learned that the petitioner had permanently corrected the problem of seepage into the broken flood-control pipe within minutes after learning of the discharge. Mr. Stevens also learned about the mitigating factors.

27. The petitioner did not intentionally make an outlet to the waters of the State without a permit.

28. On July 9, 1999, Mr. Stevens assessed a civil penalty of \$6,000.00 against the petitioner for making an outlet to the waters of the State without a permit on April 16, 1998. The outlet refers to the flood-control pipe through which there was some discharge into Peppers Creek. Mr. Stevens assessed a second civil penalty of \$7,200.00 against the petitioner for making an outlet to the waters of the State without a permit on April 27, 1998. The total civil penalty for these two dates was \$13,200.00 representing 66% of the maximum penalty authorized by law even though he concluded that the degree and extent of harm to the natural resources of the State were not significant. He further concluded that the effect on ground water or surface water quality and the cost of rectifying the damage were not significant. Mr. Stevens then added enforcement costs in the amount of \$716.55.

CONCLUSIONS OF LAW

1. The discharge of wastewater that seeped through the cracks in the bottom of the wash pit on April 16, 1998 and April 27, 1998, then into the cracked underground flood-control pipe, and finally into Peppers Creek was a violation of GS 143-215.1(a)(1).

2. These violations on April 16, 1998 and 27 April 27, 1998 were not intentional but were the result of inadvertent discharges at the site. The environment was not significantly affected and the petitioner did not profit from the discharge. Furthermore, when the discharge was discovered, he acted quickly to stop the discharge.

3. The imposition of the civil penalties were arbitrary and capricious because they were based not on the facts of the case but rather affected by the animosity of Mr. Parker towards the petitioner.

RECOMMENDED DECISION

The respondent's July 9, 1999, assessment against the petitioner for civil penalties and enforcement costs in the total amount of \$13,916.55 for the petitioner's unintentional violations of GS 143-215.1(a)(1) should be reduced to the following amounts:

A. \$1000.00 for the unintentional violation of GS 143-215.1(a)(1) on April 16, 1998 without a permit.

B. \$1000.00 for the unintentional violation of GS 143-215.1(a)(1) on April 27, 1998 without a permit.

CONTESTED CASE DECISIONS

C. \$716.55 for enforcement costs.

NOTICE

The Environmental Management Commission is the agency making the final decision in this contested case. It will give each party an opportunity to file exceptions to this recommended decision and to present written arguments to the Commission. The Commission will serve a copy of the final decision on all parties and furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

This 19th day of May, 2000.

Robert Roosevelt Reilly, Jr.
Administrative Law Judge