

**NORTH CAROLINA  
REGISTER**

**IN THIS ISSUE**



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**December 1, 2000**

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Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann III, Director  
Camille Winston, Deputy Director  
Molly Masich, Director of APA Services  
Ruby Creech, Publications Coordinator  
Linda Dupree, Editorial Assistant  
Dana Sholes, Editorial Assistant  
Rhonda Wright, Editorial Assistant

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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**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
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**Note:** Title 21 contains the chapters of the various occupational licensing boards.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & 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 <sup>th</sup> 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	
15:01	07/03/00	06/12/00	09/01/00	07/18/00	08/02/00	08/21/00	01/24/01	09/01/00	09/20/00	01/24/01	03/30/01
15:02	07/17/00	06/23/00	09/15/00	08/01/00	08/16/00	08/21/00	01/24/01	09/15/00	09/20/00	01/24/01	04/13/01
15:03	08/01/00	07/11/00	10/02/00	08/16/00	08/31/00	09/20/00	01/24/01	10/02/00	10/20/00	01/24/01	04/28/01
15:04	08/15/00	07/25/00	10/16/00	08/30/00	09/14/00	09/20/00	01/24/01	10/16/00	10/20/00	01/24/01	05/12/01
15:05	09/01/00	08/11/00	11/01/00	09/18/00	10/02/00	10/20/00	01/24/01	10/31/00	11/20/00	01/24/01	05/29/01
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15:12	12/15/00	11/22/00	02/15/01	01/02/01	01/16/01	01/22/01	05/00/02	02/13/01	02/20/01	05/00/02	09/11/01
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15:18	03/15/01	02/22/01	06/01/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
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15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/16/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02

## 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.*

**CONTINUATION OF A PUBLIC HEARING**

**Notice** of a public hearing was previously published in 15:9 NCR 901-906 for 15A NCAC 7H .0308 and .1705. The agency has continued the hearing to the following date and location:

**Public Hearing Date :** Thursday, January 25, 2001  
**Public Hearing time :** 4:30 p.m.  
**Public Hearing Location :** The Ramada Inn  
1701 Virginia Dare Trail  
Kill Devil Hills, NC 27948

**Comments Procedures:** Please contact Charles Jones, 151-B, Highway 24, Hestron Plaza II, Morehead City, NC 28557, telephone 252-808-2808. Comments will be received through January 25, 2001.

*IN ADDITION*

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U.S. Department of Justice

Civil Rights Division

JDR:CKD:NT:par:jdh  
DJ 166-012-3  
2000-3532

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

October 20, 2000

George A. Weaver, Esq.  
113 E. Nash Street, Suite 404  
Wilson, NC 27893

Dear Mr. Weaver:

This refers to two polling place changes for Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 1, 2000.

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

Sincerely,

Joseph D. Rich  
Acting Chief  
Voting Section

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

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

**CHAPTER 45 – COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES**

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

**Citation to Existing Rule Affected by this Rule-making:** 10 NCAC 45H .0200 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 90-88; 90-90; 143B-147

**Statement of the Subject Matter:** House Bill 1840 gives the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services the authority to adopt temporary rules regarding Psychiatric Residential Treatment Facilities.

**Reason for Proposed Action:** In order to remain consistent with action by DEA, staff requested that the Commission for MHDDSAS approve placing "Modafinil" in 10 NCAC 45H .0205(d)(7) and "Zaleplon" in 10 NCAC 45H .0205(b)(48). Also, in 10 NCAC 45H .0203(b)(1) the phrase "the baine-derived butorphanol" should be removed since it has now been rescheduled. In accordance, this phrase was removed in the general statutes of Senate Bill 920.

**Comment Procedures:** Written comments should be submitted to Charlotte F. Hall, Rulemaking Coordinator, Division of MHDDSAS, 3012 Mail Service Center, Raleigh, NC 27699-3012.

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 16 – DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend the rules cited as 16 NCAC 06D .0302; 06E .0301. Notice of Rule-making Proceedings was published in the Register on March 15, 2000 for 16 NCAC 06E .0301. 16 NCAC 06D .0302 is exempt from filing Rule-making Proceedings and the Legislative Oversight Committee.

Proposed Effective Date:
10 NCAC 06D .0302 – April 1, 2001
10 NCAC 06E .0301 - July 1, 2002

Public Hearing:
Date: December 19, 2000
Time: 1:00 p.m.
Location: Education Building, Room 224, 301 N. Wilmington St., Raleigh, NC

Reason for Proposed Action: State Board determined that parents should be notified of all state and locally-mandated tests, including their student's scores and the days of remedial instruction. The General Assembly amended G.S. 20-11 in 1999 ("Lose Control, Lose Your License") and directed the State Board to adopt rules to define "exemplary progress" and "successful completion of a treatment counseling program".

Comment Procedures: Any interested person may present comments orally at the hearing or in writing by January 2, 2001, submitted to the hearing officer at 301 N. Wilmington St., Raleigh, NC 27601-2825, by fax at (919) 807-3407, or by email to hwilson@dpi.state.nc.us.

Fiscal Impact
[ ] State
[ ] Local
[ ] Substantive (>=\$5,000,000)
[X] None

CHAPTER 06 – ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06D – INSTRUCTION

SECTION .0300 – TESTING PROGRAMS

16 NCAC 06D .0302 TEST ADMINISTRATION

- (a) Employees of the LEA shall administer tests to students who are required or permitted to participate.
(b) The department supplies shall supply the tests to the LEAs.
(c) LEAs shall:
(1) account to the department for all tests received;
(2) provide a locked storage area for all tests received;
(3) prohibit the reproduction of all or any part of the test; and
(4) prohibit their employees from disclosing the content of, or specific items contained in, the test to persons other than authorized employees of the LEA.
(d) LEAs must monitor test administration procedures. If school officials discover any instance of improper administration and determines determine that the validity of the test results has been affected, they must notify the local board of education and order the affected students to be retested.
(e) The Superintendent of Public Instruction may conduct audits of LEAs if he receives written complaints which allege improper test administration, and he may require the retesting of students.
(f) The department shall provide the mechanism for the scoring of all North Carolina mandated tests. In addition to the department shall provide score interpretation services to the LEA.
(g) LEAs shall, at the beginning of each school year, provide information to students and parents or guardians advising them of the district-wide and state-mandated tests that students will be required to take during that school year. In addition, LEAs shall provide information to the students and parents or guardians to advise them of the dates the tests will be administered and how the results from the tests will be used and the consequences thereof. Also, information provided to parents about tests shall include whether the SBE or the local board of education requires the test.
(h) LEAs shall report scores resulting from the administration of district-wide and state-mandated tests to students and parents or guardians along with available score interpretation information within 30 days from generation of the score at the LEA level or from the receipt of the score and interpretive documentation from the department.
(i) At the time the scores are reported for tests required for graduation such as the high school competency tests, the computer skills tests, and the high school exit exam, the LEA shall provide the information to students and parents or guardians to advise whether or not the student has met the standard for the test. If a student fails to meet the standard for the test, the student and parents or guardians shall be informed at the time of reporting, the date(s) when focused remedial instruction will be available and the date of the next testing opportunity.



## PROPOSED RULES

(j) In order to ensure adequate representation and the generalizability of the data used to develop tests and to conduct evaluation studies, selected LEAs and schools, determined by the department through random stratified samples, shall participate in field testing and other sample testing such as the National Assessment of Educational Progress (NAEP) and other national or international assessments as designated by the department or the SBE.

Authority G.S. 115C-12(9)c.

### SUBCHAPTER 06E – STUDENTS

#### SECTION .0300 – DRIVING TRAINING

##### 16 NCAC 06E .0301 DRIVER TRAINING

(a) In discharging their duty to provide a course of training and instruction in the operation of motor vehicles as set forth in G.S. 115C-216, local boards of education shall provide a program which meets the following standards and requirements:

- (1) Principals shall enroll students who meet the criteria established by G.S. 20-88.1(a)(i), (iii) and (iv);
- (2) The program will be free of charge to eligible students;
- (3) Enrollees must obtain either a temporary learner's permit or a restricted instruction permit before they begin behind-the-wheel instruction.
- (4) Classroom instruction will consist of at least 30 clock hours of instruction in the topics previously listed in the Healthful Living section of the Teacher Handbook. Beginning in school year 1992-93, students may take and pass a proficiency examination developed or designated by the Department of Public Instruction to waive the classroom instruction. Each student must complete a minimum of 6 hours of behind-the-wheel instruction.
- (5) The program will be reasonably available on a year-round basis to all eligible persons.
- (6) The local board of education will determine class size restrictions, but may not allow instruction in the car to less than two nor more than four students.
- (7) The local board of education will determine the amount of instruction per day for classroom or in-car instruction or a combination of both.
- (8) The local board of education will issue a certificate to students who satisfactorily complete the prescribed course.
- (9) Driver education instructors must possess a valid North Carolina driver's license and must have a driving record acceptable to the local board of education. In addition, instructors hired for driver education shall either:
  - (A) hold a driver education certificate issued by the SBE; or
  - (B) have non-certified status according to minimum standards established by Rule .0302 of this Section.
- (10) Except as previously allowed by the SBE, the program shall not be provided during the regular instructional day.

(b) Two or more local boards of education may jointly operate a program under a written agreement meeting the requirements of G.S. 160A-460 et seq. The agreement shall provide for one local board of education to assume administrative responsibility for the program.

(c) For purposes of G.S. 20-11, G.S. 20-13.2(c1), and G.S. 115C-12(28), the following definitions shall apply:

- (1) "High school diploma or its equivalent" means and includes the General Equivalency Diploma (G.E.D.) and the adult high school diploma.
  - (2) "Making progress toward obtaining a high school diploma" means that the student must pass at least seventy percent (70%) of the maximum of possible courses each semester and meet promotion standards established by the LEA.
  - (3) "Substantial hardship" means a demonstrable burden on the student or the student's family as evidenced by circumstances such as the following:
    - (A) The parent is unable to drive due to sickness or other impairment and the student is the only person of driving age in the household.
    - (B) The student requires transportation to and from a job that is necessary to the welfare of the student's family and the student is unable to obtain transportation by any means other than driving.
    - (C) The student has been unable to attend school due to documented medical reasons, but the student is demonstrating the ability to maintain progress toward obtaining a high school diploma.
  - (4) A "student who cannot make progress toward obtaining a high school diploma or its equivalent" shall mean a student who has been identified by the principal or principal's designee, together with the IEP committee or the school's student assistance team, as not having the capacity to meet the requirements for a high school diploma or its equivalent due to a disability.
  - (5) "Exemplary behavior" shall mean that a student whose operator's permit or license has been revoked pursuant to G.S. 20-13.2(c1) and who has returned to school has, since returning to school:
    - (A) had no additional incidents of misconduct for which expulsion, suspension, or assignment to an alternative educational setting is required; or
    - (B) had no violations of local school board policies such as attendance, dress codes, or other behaviors that may result in disciplinary action against the student.
  - (6) "Successful completion of a treatment counseling program" shall mean completion of a minimum of 12 hours of drug or alcohol treatment, counseling, a mental health treatment program, or other intervention program required by the LEA.
- (d) Each LEA shall determine the process by which decisions concerning the issuance of a driving eligibility certificate shall be appealed.
- (e) The principal of a high school or the principal's designee shall notify the Division of Motor Vehicles whenever a student is no longer making progress toward obtaining a high school

## PROPOSED RULES

diploma or its equivalent or when the student has dropped out of school.

(f) Each charter school, non-public school accredited by the SBE, and community college shall designate an official who shall notify the Division of Motor Vehicles whenever a student is no longer making progress toward obtaining a high school diploma.

Authority G.S. 20-88.1; 115C-12(28); 115C-216.

### 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 Highways intends to amend the rules cited as 19A NCAC 02D .0601-.0602, .0607, .0612, .0633. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.*

**Proposed Effective Date:** July 1, 2002

#### Public Hearing:

**Date:** December 19, 2000

**Time:** 2:00 p.m.

**Location:** Highway Building Auditorium, 1 South Wilmington Street, Raleigh, NC 27611

**Reason for Proposed Action:** HB 1854 ratified in the 2000 Session of the General Assembly created civil penalties for non-compliance with DOT overheight-overweight permit rules. These rules were amended in a temporary action effective October 1, 2000 to complement the changes HB 1854 and implement changes adopted by the Board of Transportation. The rules define the moves that can be made on NC highways. The rules require additional escorts and increased DMV inspections for mobile home shipments. The rules require mobile home manufacturers and dealers to maintain copies of all permitted moves to verify that permits were obtained prior to shipment. DMV will perform random audits of records to ensure compliance.

**Comment Procedures:** Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by December 20, 2000.

#### Fiscal Impact

- State** 19A NCAC 02D .0601  
 **Local**  
 **Substantive** (>\$5,000,000)  
 **None** 19A NCAC 02D .0602, .0607, .0612, .0633

### CHAPTER 02 – DIVISION OF HIGHWAYS

#### SUBCHAPTER 02D – HIGHWAY OPERATIONS

#### SECTION .0600 – OVERSIZE – OVERWEIGHT PERMIT

#### 19A NCAC 02D .0601 PERMITS-AUTHORITY, APPLICATION AND ENFORCEMENT

(a) The State Highway Administrator or his designee shall issue oversize/overweight permits for qualifying vehicles. Irrespective of the route shown on the permit, a permitted vehicle shall travel an alternate route:

- (1) if directed by ~~a peace~~ a law enforcement officer;
- (2) if directed by an official traffic control device to follow a route to a weighing device.

(3) ~~If if~~ the specified route on the permit is ~~officially detoured, detoured by an officially erected highway sign, traffic control devices, or law enforcement officer,~~ the driver of the permitted vehicle shall contact the ~~issuing Central Permit Office permit office or the issuing field office for house move permits as soon as reasonably possible for clearance of route or for a~~ revision of the permit.

(b) ~~Prior to application for an oversize and/or overweight permit, the vehicle/vehicle combination and/or the commodity in transport is required to be reduced or loaded to the least practical dimensions and/or weight.~~ Application for permits ~~with the exception of house move permits~~ shall be made ~~to the Central Permit Office in writing~~ on forms approved by the Department of Transportation or ~~by via telephone. telephone, wire service or written request.~~ Written applications are required for ~~over heights in excess of 14'.~~ Application for permits requiring a ~~bridge engineering study or other special conditions or considerations shall be submitted at least 10 working days prior to the date of the anticipated move for consideration of approval by the Department of Transportation designee. A surety bond to cover potential damage to highways and bridge structures may be required for permits issued in excess of 122,000 lbs. gross vehicle weight.~~ Applications for permits shall be submitted in writing to the Central Permit Office for consideration of approval for moves exceeding:

(1) a gross weight of 132,000 pounds with the fee specified in G.S. 20-119(b) at least 10 working days prior to the anticipated date of movement; or

(2) a width of 15' with documentation for variances at least 10 working days prior to the anticipated date of movement with the exception of a mobile/modular unit with maximum measurements of 13'6" high, 16' wide unit and a 3" gutter edge; a width of 16' 11" with the exception of house moves is required to be submitted with the fee specified in G.S. 20-119(b) with documentation for variances at least 10 working days prior to the anticipated date of movement; or

(3) a height of 14 feet at least two working days prior to the anticipated date of movement. A surety bond to cover potential damage to highways and bridge structures may be required for ~~overweight permits, permits issued in excess of 122,000 lbs gross vehicle weight.~~

(c) ~~The North Carolina licensed mobile/modular home retail dealer shall maintain records of all mobile/modular units moved by authority of an annual permit for a minimum of four years from the date of movement. The records shall be readily available for inspection and audit by officers of the Division of Motor Vehicles. Monthly reports shall be submitted by the~~

## PROPOSED RULES

dealer to the Central Permit Office on a form designed and furnished by the Department of Transportation. Failure to comply with any requirement may be grounds for denying, suspending, or revoking Manufacturer's and/or Dealer's License issued by the Division of Motor Vehicles as specified in Chapter 20 of the Motor Vehicle Law, Title 19A NCAC 03D.0219, or North Carolina Oversize/Overweight permit privileges.

(d) Officers of the Division of Motor Vehicles may perform on-site inspections of mobile/modular homes ready for shipment at the point of manufacture or at the dealer lot for compliance with G.S. 20, dealer and manufacturer regulations, permit regulations, and policy. Notification of violations shall be submitted by enforcement personnel to the Central Permit Office.

(e) The penalties provided in this Section are in addition to the penalties provided for in G.S. 20.

(f) Permits may be declared void by the State Highway Administrator or his designee upon determination that such overdimension/overweight permit was being used in violation of the General Statutes of North Carolina, Permit Rules or restrictions stated on the permit.

(g) Permits may also be denied, revoked or declared invalid as stated in Rule .0633 of this Section.

*Authority G.S. 20-118(f); 20-119; 136-18(5).*

### 19A NCAC 02D .0602 PERMITS-ISSUANCE AND FEES

(a) Permits may be issued for movements of loads which cannot be reasonably divided, dismantled or disassembled, or so loaded to meet legal requirements. Permits are issued on authorized forms with appropriate designation for qualifying moves on the most direct route of travel to the destination after consideration of vertical clearances, work zones, and other factors to ensure safe movement. To be valid, a permit must be signed by the permittee and carried in the towing unit while permitted load is in transit. A permit issued by the Department is not valid for travel over municipal streets (Defined defined as streets or highways not maintained by the State of North Carolina). Permitted vehicles shall not travel in convoy. Single trip permits may include a return trip to origin if requested at the time of original issuance and the return trip can be made within the validation of such permit. No single trip permit request shall be issued for a time period to exceed 30 days. Annual permits (blanket) are valid 12 months from the effective date of the permit issuance. City Passenger Buses which exceed the weight limits in G.S. 20-118(f) may be issued permits for operation on the highways of the state in the vicinity of the municipality and to qualify the vehicle for license.

(b) The Department of Transportation shall collect a fee as specified in G.S. 20-119(b). Only cash, certified check, money order or order, company-check check, or credit card will be accepted. No personal checks will be accepted. The Department shall bill permittees with established credit accounts monthly for permits issued for the previous month.

*Authority G.S. 20-119; 136-18(5).*

### 19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. Authorization for a permit may be given by the Central Permit Office or head of the Maintenance Unit for movement of loads in excess of 15 feet for buildings, structures, electrical equipment or machinery. After review of documentation of variances, the Central Permit Office or the State Maintenance and Equipment Engineer may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D.0600 et seq. Exception: A mobile/modular unit with maximum measurements of 13'6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 12 14' across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed to reduce the width or height may be hauled with the equipment without being considered a divisible load, load except as provided in this Rule. A 14' wide mobile/modular home unit with a roof overhang not to exceed a total of 12" may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12" of roof overhang or the total width of overhang on the appropriate side of the home. Reflective extenders of a design and color approved by the Department of Transportation equal to the width of the roof overhang or protrusion shall be attached to the front and rear of the home to clearly identify the total width of the unit while moving on North Carolina highways. A 16' wide mobile/modular home unit shall not be allowed any protrusions beyond the maximum 3" gutter edge. Permission/Authorization to move vehicles-commodities wider than 12 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width. Loads must be so placed on vehicle/vehicle combination so as to present least over dimension to traffic. A single trip permit shall may be issued vehicle specific not to exceed a width of 15 feet for all movements unless authorized by the Central Permit Office or Head of Maintenance, the State Maintenance and Equipment Engineer. Exception: A mobile/modular unit with maximum measurements of 13' 6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. Permits for house moves shall may be issued as specified in G.S. 20-356 through G.S. 20-372. An annual permit shall be issued vehicle specific not to exceed a maximum width of 12' and a maximum height of 13' 6" for movement authorizing travel on all highways in North Carolina. Mobile/modular homes with a maximum height of 13' 6" being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14 feet-14' unit with an allowable roof overhang not to exceed a total of 12". 12 inches. These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement. An annual permit may be co-issued to the North Carolina licensed mobile/modular home

**PROPOSED RULES**

retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14' unit with a total roof overhang not to exceed 12" and a height of 13' 6". The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

(b) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

(1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

- Steer Axle 12,000 lbs.
- Single axle 25,000 lbs.
- 2 axle tandem 50,000 lbs.
- 3 or more axle group 60,000 lbs.
- 3 axle single vehicle 60,000 lbs. to 70,000 lbs. determined by extreme wheelbase measurement
- 4 axle single vehicle 75,000 lbs. to 90,000 lbs. determined by extreme wheelbase measurement
- 5 axle single vehicle ~~86,000~~ 94,500 lbs.
- 5 axle vehicle combination minimum 51' extreme wheelbase 112,000 lbs.
- 6 axle single vehicle 100,000 lbs. to 108,000 lbs. determined by extreme wheelbase measurement
- 6 axle vehicle combination ~~108,000~~ 120,000 lbs. minimum 51' extreme wheelbase
- 7 or more-axle single vehicle 105,000 to 122,000 lbs. minimum 35' extreme wheelbase
- 7 axle vehicle combination 122,000 to 132,000 lbs. minimum 40' extreme wheelbase
- 7 axle vehicle combination with a gross wt. exceeding 132,000 lbs. requires a Department of Transportation Engineering Study.

(2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

~~(A) Self propelled scrapers with low pressure tires:~~

- Single axle 37,000 lbs.
- Tandem axle 50,000 lbs.
- 2 axle single vehicle 65,000 to 70,000 lbs. determined by extreme wheelbase measurement
- 3 axle single vehicle 75,000 to 80,000 lbs. determined by extreme wheelbase measurement
- 4 axle single vehicle 80,000 to 90,000 lbs. determined by extreme wheelbase measurement
- ~~2 AXLE VEHICLE~~
- ~~extreme wheelbase less than 10N 65,000 lbs.~~
- ~~10N or greater 70,000 lbs.~~
- ~~3 AXLE VEHICLE~~
- ~~single/tandem axle configuration~~
- ~~extreme wheelbase less than 16N 75,000 lbs.~~
- ~~16' or greater 80,000 lbs.~~
- ~~single/single/single axle configuration gross weight determined after review of schematics~~
- ~~4 AXLE VEHICLE~~
- ~~extreme wheelbase 28N or greater 90,000 lbs.~~
- ~~single axle 37,000 lbs.~~

~~(B) Self propelled truck cranes with counterweights and boom removed (if practical):~~

- ~~2 AXLE VEHICLE~~
- ~~single/single axle configuration~~
- ~~more than 8N 50,000 lbs.~~
- ~~single axle 25,000 lbs.~~
- ~~3 AXLE VEHICLE~~
- ~~single/tandem axle configuration~~
- ~~extreme wheelbase greater than 15N 70,000 lbs.~~
- ~~single axle 25,000 lbs.~~
- ~~tandem axle 50,000 lbs.~~
- ~~4 AXLE VEHICLE~~

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quad grouping (less than 8N between any two consecutive axles)	
extreme wheelbase greater than 18N	78,000 lbs.
single axle	20,000 lbs.
tandem/tandem	
extreme wheelbase greater than 16N but less than 22N	78,000 lbs.
tandem axle	50,000 lbs.
extreme wheelbase 22N or greater	90,000 lbs.
tandem axle	50,000 lbs.
<b>5-AXLE VEHICLE</b>	
tandem/tri axle configuration	
extreme wheelbase greater than 24N but less than 28N	86,000 lbs.
tandem axle	37,500 lbs.
tri axle	60,000 lbs.
extreme wheelbase 28N or greater	94,500 lbs.
tandem axle	37,500 lbs.
tri axle	60,000 lbs.
tandem/tandem/single axle configuration	
extreme wheelbase 31N or greater	94,500 lbs.
single axle	15,000 lbs.
tandem axle	50,000 lbs.
<b>6-AXLE VEHICLE</b>	
tri/tri axle configuration	
extreme wheelbase greater than 29N but less than 34N	100,000 lbs.
tri axle	60,000 lbs.
extreme wheelbase 34N or greater	108,000 lbs.
tri axle	60,000 lbs.
tandem/tandem/tandem axle configuration	
extreme wheelbase greater than 37N but less than 39N	100,000 lbs.
tandem axle	50,000 lbs.
(no two consecutive set of tandems to exceed 90,000 lbs.)	
extreme wheelbase 39N or greater	108,000 lbs.
tandem axle	50,000 lbs.
(no two consecutive set of tandems to exceed 90,000 lbs.)	
<b>7-AXLE VEHICLE</b> gross weight determined after review of schematics	

~~ALL VARIATIONS OF AXLE CONFIGURATIONS OTHER THAN THOSE LISTED WILL REQUIRE SCHEMATICS OF THE VEHICLE TO BE FURNISHED FOR REVIEW BY THE DEPARTMENT OF TRANSPORTATION.~~

- |   |  |
|---|--|
| <p>(3) <del>Vehicles</del> <u>A vehicle combination consisting of a power unit and trailer</u> hauling a sealed ship <del>containers container</del> may qualify for <del>ana specific route</del> overweight permit <u>not to exceed 94,500 lbs.</u> provided the <del>vehicle;vehieles:</del></p> <p>(A) <del>Are</del> <u>is</u> going to or from a designated seaport (to include in state and out of state) and <del>have</del> <u>has</u> been or will be transported by marine shipment;</p> | <p>(B) <del>Are</del> <u>is</u> licensed for <u>the</u> maximum allowable weight for a <u>51' extreme wheelbase measurement specified</u> <del>allowed</del> in G.S. 20-118;</p> <p>(C) <del>does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;</del></p> <p>(D) <del>is</del> <u>Are vehicle/vehicle—a vehicle combinations combination</u> with at least five axles;</p> <p>(E) <del>has</del> <u>Have</u> proper documentation (shippers bill of lading or trucking bill of lading) of sealed</p> |
|---|--|

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commodity being transported available for law enforcement officer inspection.

(c) Overlength permits will be limited as follows:

- (1) Single trip permits are limited to 85 105 feet ~~to include inclusive of the~~ towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 85 105 feet after review of route of travel. Mobile/modular ~~homes may be issued permits not to exceed 100~~ home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.
- (2) Annual (blanket) permits will not be issued for lengths to exceed 65 75 feet. ~~Front overhang may not exceed 3 feet unless if transported otherwise would create a safety hazard.~~ Mobile/modular home permits may be issued for a length not to exceed 100 105 feet.
- (3) ~~Front overhang may not exceed the length of 3' specified in Chapter 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3', an overlength permit may be issued.~~

(d) ~~There are no set limits for permitted height as it is controlled by clearances on designated route. An Overheight Permit Application for heights in excess of 14' must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. A 16' wide mobile/modular unit with a maximum 3" gutter edge shall not exceed a height of 13' 6" while traveling on North Carolina highways. The permit shall indicate "Check Height on Structures".~~ The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.

(e) The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. ~~Mobile/modular homes up to a width of a 14 foot unit with an allowable roof overhang not to exceed a total of 12 inches are restricted to travel between sunrise and sunset Monday through 12 noon on Saturday. Exception: A 16' wide mobile/modular home unit with a maximum three inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Thursday.~~

Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the ~~weekday~~ preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of ~~94,500 112,000~~ lbs. provided the permitted ~~vehicle/vehicle~~ :

- (4) has no other over legal dimension of width, height or length ~~is~~ included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with properly marked overhang (front and/or rear) not to exceed a total of 10 feet, feet, and

Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.

~~(2) is licensed for the maximum allowable weight determined by extreme axle measurements.~~

(f) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. Mobile/modular homes 14 feet wide are an exception and are restricted to a speed not to exceed 10 miles per hour below the posted limit. The driver of the permitted vehicle shall will maintain a safe speed consistent with the traveling public and avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs. ~~Seven axle self-propelled truck cranes with extreme wheel base of 44 feet shall not exceed a maximum speed of 45 miles per hour.~~

(g) Additional safety measures are as follows:

- (1) A yellow ~~or orange~~ banner measuring a total length of 7' x 18" high bearing the legend "Oversize Load" in 10" black letters 1.5 inches wide shall be displayed ~~on the front bumper of the towing unit for all loads in excess of 10 feet wide; in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10' or greater. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize ---ft. Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers;~~

- (2) Red flags measuring ~~18 inches~~ 18" square shall be displayed on all sides at the widest point of load for all loads in excess of ~~40 8' 6" feet~~ wide but the flags shall be so mounted as to not increase the overall width of the load;

~~(3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes, Motor Carrier and Housing and Urban Development (HUD) regulations.~~

~~(3)(4)~~ Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;

~~(4)(5)~~ Flashing amber lights shall be used as determined by the issuing permit office.

(h) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific

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permission from the office issuing the permit after confirmation of an emergency condition.

(i) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular ~~44 foot unit with an allowable roof overhang not to exceed 12 inches unit exceeding a width of 10'~~ shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

(j) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer ~~district engineer~~ having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

(k) ~~DOT The Department of Transportation~~ may require escort vehicles accompany oversize or overweight loads. The Department of Transportation shall coordinate with the proper agencies to establish an escort driver training and certification program. Once the program is established, the driver of the escort vehicle is required to be certified according to State regulations. North Carolina may reciprocate with other states that have an accredited escort certification program. Certification credentials are required to be carried in the vehicle readily available for enforcement inspection. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel will be considered to determine escort requirements.

*Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978.*

### 19A NCAC 02D .0612 PERMITS - HOUSE MOVES

(a) Application for a permit will be made by a ~~A~~ licensed housemover for ~~moves~~ movement of buildings or structures in excess of 15' in width to the appropriate Division of Highways district or division office in which the house is to be moved or in conjunction with other Division of Highways districts or divisions included in the proposed move.

(b) It is not necessary for an individual to acquire a housemover license prior ~~to~~ applying for a permit if the power unit and building is owned by the permittee and such move is to or from property owned individually by the permittee.

(c) ~~Conditions~~ Conditions, restrictions, and limitations on building-house move permits shall be determined by the Division of Highways division or district engineers and/or the Central Permit Office.

*Authority G.S. 20-119; 20-360; 136-18(5).*

### 19A NCAC 02D .0633 DENIAL: REVOCATION: REFUSAL TO RENEW: APPEAL: INVALIDATION

~~(a) An oversize/overweight permit may be denied for a period of up to six months upon written finding that the applicant violated, while in possession of a previously issued permit, any of the rules contained in this Section, or state and local laws and ordinances regulating the operation of overweight or oversized vehicles.~~

~~(b) An oversize/overweight permit may be revoked upon written findings that the permittee violated the terms and conditions of the permit, which shall incorporate by reference these Rules, as well as state and local laws and ordinances regulating the operation of overweight or oversized vehicles. Repeated violations may result in a permanent denial of the right to use the N.C. State Highway System of roads for transportation of overweight and/or overdimension vehicle/vehicle combinations or vehicle/vehicle combination and load. A permit may also be revoked for misrepresentation of the information on the application, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit.~~

~~(c) No permit shall be denied or revoked, or renewal refused, until a written notice of the denial or violation of the issued permit has been furnished to the applicant. The permittee may appeal in writing to the State Highway Administrator or his designee within 10 days of receipt of written notification of denial or revocation. The State Highway Administrator or his designee must give at least 10 days written notice of the time and place of the hearing to the applicant by personal service or certified mail, return receipt requested. A written decision by the State Highway Administrator or his designee must be within 10 days from the date of the hearing to the applicant. Upon revocation of the permit, it must be surrendered without consideration for refund of fees. Upon restoration of permit privileges a new oversize/overweight permit must be obtained prior to movement on North Carolina highways.~~

~~(d) Permits will be invalid if the vehicle or vehicle combination is found by a law enforcement officer to be operating in violation of permit conditions regarding route, time of movement, licensing, number of axles or any other special condition of the permit. The penalties under G.S. 20-118 and G.S. 20-119 apply in such situations. When the driver of a permitted vehicle is faced with a bona fide, verifiable emergency requiring that the vehicle be operated temporarily off route or off route due to verifiable and unintentional error of the driver, the permit will not be valid. The owner of the vehicle must either obtain a corrected permit from point of inspection to destination or the vehicles may be escorted back to the permitted route.~~

(a) An oversize or overweight permit may be revoked and considered void by the State Highway Administrator or his designee upon inspection and written documentation that the permittee violated the terms and conditions of the permit, or state and local laws and ordinances regulating the operation of oversized and overweight vehicles. A permit may also be revoked or considered void if information on the permit application is misrepresented, if the permit is obtained fraudulently, if the permit is altered, or if the permit is used in an unauthorized manner. Permits may be revoked or considered void by the State Highway Administrator or his designee if the

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vehicle or vehicle combination is found by a law enforcement officer to be operating in violation of the authorized route of travel, time of movement, escort requirements, axle weights, number of axles, or any other special conditions of the permit that may damage North Carolina highway infrastructure or create unsafe travel conditions for the motoring public. A permit that is determined by the State Highway Administrator or his designee to be revoked or void must be surrendered without consideration for refund of fees to the law enforcement officer for delivery to the State Highway Administrator or his designee. (b) No permit application shall be denied or renewal refused or an issued permit revoked or considered void until a verbal or written notice of the denial of permit request or revocation of the issued permit has been furnished to the permittee. The permittee has the right to appeal in writing to the State Highway Administrator or his designee within 10 days of receipt of a verbal or written notice of such denial or revocation. The State Highway Administrator or his designee is required to send a written notice by certified mail, return receipt requested, not less than 10 days prior to the date of the informal hearing. The State Highway Administrator or his designee is required to provide a written decision to the permittee within 10 days from the date of the informal hearing. (c) An oversize and/or overweight permit application may be denied for a period of up to six months upon written documentation that the applicant operated in violation of any of the rules contained in this Section, or any state and local law or any rule or ordinance regulating the operation of oversize or overweight vehicles. Repeated violations may result in a permanent denial of the right to use the N.C. State Highway System of roads for transportation of oversize or overweight loads or vehicles.

Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346; 143B-350(f).

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Transportation - Division of Motor Vehicles intends to amend the rule cited as 19A NCAC 03D .0219. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: December 19, 2000

Time: 2:00 p.m.

Location: Highway Building Auditorium, 1 South Wilmington Street, Raleigh, NC 27611

Reason for Proposed Action: This rule is amended to complement changes in permit rules in 19A NCAC 02D .0600. These changes are a result of statutory changes in the 2000 Session of the General Assembly and were filed as temporary rules with the 19A NCAC 02D .0600 rules.

Comment Procedures: Any interested person may submit written comments by mailing the comments to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by December 19, 2000.

Fiscal Impact

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

CHAPTER 03 – DIVISION OF MOTOR VEHICLE

SUBCHAPTER 03D – ENFORCEMENT SECTION

SECTION .0200 – MOTOR VEHICLE DEALER, SALES, DISTRIBUTOR AND FACTORY REPRESENTATIVE LICENSE

19A NCAC 03D .0219 BUSINESS RECORDS

(a) All motor vehicle dealers, manufacturers, factory branches, distributors, distributor branches and wholesalers shall keep a record for at least four years of all vehicles manufactured, received, sold, traded or junked. In addition a copy of any disclosure required by G.S. 20-71.4 received or given by the dealer must be retained for four years. An odometer disclosure form shall be retained for a period of five years as required by G.S. 20-347.1.

(b) All motor vehicle dealers, manufacturers, factory branches, distributor branches and wholesalers shall keep for a period of four years the following additional records for each vehicle and mobile/modular home manufactured, received, sold, traded or junked:

- (1) Make, body style, vehicle identification number, and year model;
(2) Name of person, firm or corporation from whom acquired;
(3) Date vehicle purchased or manufactured;
(4) Name of person, firm or corporation to whom sold or traded. If vehicle junked, date, name and address of person, firm or corporation to whom frame, motor and body sold;
(5) Date vehicle sold or traded;
(6) Copy of bill of sale (written statement); and
(7) The North Carolina oversize single trip or annual permit number authorizing movement of the mobile/modular unit, serial number or vehicle identification number of the mobile/modular unit, the date of move, transporter, and name and address of purchaser.

(c) All records required to be maintained in Paragraphs (a) and (b) shall be kept and maintained for every vehicle purchased or sold and shall be kept so as to be readily available for inspection upon demand from an authorized agent of the North Carolina Division of Motor Vehicles in order that the ownership of any vehicle purchased or sold can be traced.

(d) Manufacturer's Certificates of Origin and title for all vehicles owned by a motor vehicle dealer, manufacturer, factory



## *PROPOSED RULES*

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branch, distributor, distributor branch or wholesaler must be immediately available to assign to the purchaser.

(e) Retail installment sales must be made in accordance with G.S. 20-303. Cash sales may be made by proper endorsement and delivery of the title to the purchaser and any other receipt that the purchaser and seller agree upon.

(f) Pursuant to 16 CFR 455.2 a dealer shall not willfully remove the "Monroney Label" or sticker from a new automobile that is displayed for sale. The "Monroney Label" must be affixed to the new automobile at the time of sale to the ultimate purchaser.

"Ultimate Purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a new automobile for purposes other than a resale.

(g) Pursuant to 15 USC Sec. 1231 every dealer offering used cars for sale shall post buyers guides with warranty information as required by the Federal Trade Commission and same shall be displayed at the time of sale.

*Authority G.S. 20-1; 20-52; 20-71.4; 20-75; 20-79(a),(b); 20-82; 20-286(6),(15); 20-297; 20-302; 20-303; 20-347.*

## TEMPORARY RULES

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

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

**Rule-making Agency:** *North Carolina Medical Care Commission*

**Rule Citation:** *10 NCAC 42B .2407; 42C .2406; 42D .1832*

**Effective Date:** *November 1, 2000*

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

**Authority for the rulemaking:** *G.S. 131D-2; 143B-165; S.L. 2000-50*

**Reason for Proposed Action:** *House Bill 1514 which was ratified during the 1999 short session requires the Medical Care Commission to adopt temporary rules for the purpose of defining the circumstances under which adult care homes may admit residents on a short term basis for the purpose of caregiver respite.*

**Comment Procedures:** *Written comments should be mailed to Doug Barrick, 2708 Mail Service Center, Raleigh, NC 27699-2708. Should you have questions concerning the rules, feel free to contact Doug Barrick at 919-733-6650.*

### CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

#### SUBCHAPTER 42B – LICENSING OF HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

#### SECTION .2400 – MISCELLANEOUS RULES

##### 10 NCAC 42B .2407 RESPITE CARE

Rule 10 NCAC 42C .2406 shall control for this Subchapter except that respite care is subject to the rules of this Subchapter with the exception of Rules .1702, .1707, .1802, .2001, .2402 and .2403.

*History Note: Authority G.S. 131D-2; 143B-165; S.L. 2000-50; Temporary Adoption Eff. November 1, 2000.*

#### SUBCHAPTER 42C – LICENSING OF FAMILY CARE HOMES

#### SECTION .2400 – ADMISSION POLICIES

##### 10 NCAC 42C .2406 RESPITE CARE

(a) For the purposes of this Subchapter, respite care is defined as supervision, personal care and services provided for persons admitted to an adult care home on a temporary basis for temporary caregiver relief, not to exceed 30 days.

(b) Respite care is not required as a condition of licensure. However, respite care is subject to the requirements of this Subchapter except for Rules .2402, .2404, .2506, .3101, .3701, .3702 and .3802(a).

(c) The number of respite care residents and adult care home residents shall not exceed the facility's licensed bed capacity.

(d) The respite care resident contract shall specify the rates for respite care services and accommodations, the date of admission to the facility and the proposed date of discharge from the facility. The contract shall be signed by the administrator or designee and the respite care resident or his responsible person and a copy given to the resident and responsible person.

(e) Upon admission of a respite care resident into the facility, the facility shall assure that there is documentation of a negative TB skin test within the past 12 months and current physician orders for any medications, treatments and special diets for inclusion in the respite care resident's record. The facility shall assure that the respite care resident's physician or prescribing practitioner is contacted for verification of orders if the orders are not signed and dated within seven calendar days prior to admission to the facility as a respite care resident or for clarification of orders if orders are not clear or complete.

(f) The facility shall complete an assessment which allows for the development of a short-term care plan prior to or upon admission to the facility with input from the resident or responsible person. The assessment shall address respite resident needs, including identifying information, hearing, vision, cognitive ability, functional limitations, continence, special procedures and treatments as ordered by physician, skin conditions, behavior and mood, oral and nutritional status and medication regimen. The facility may develop and use its own assessment instrument or use the assessment instrument approved by the Department for initial admission assessments as stated in Rule .3701 of this Subchapter. The care plan shall be signed and dated by the facility's administrator or designated representative and the respite care resident or responsible person.

(g) The respite care resident's record shall include a copy of the signed respite care contract; the assessment and care plan; documentation of a negative TB skin test within the past 12 months; documentation of any contacts (office, home or telephone) with the resident's physician or other licensed health professionals from outside the facility; physician orders; medication administration records; a statement, signed and dated by the resident or responsible person, indicating that information on the home as required in Rule .2405 of this Subchapter has been received; a written description of any acute changes in the resident's condition or any incidents or accidents resulting in

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injury to the respite care resident, and any action taken by the facility in response to the changes, incidents or accidents; and how the responsible person or his designated representative can be contacted in case of an emergency.

(h) The respite care resident's responsible person or his designated representative shall be contacted and informed of the need to remove the resident from the facility if one or more of the following conditions exists:

(1) the resident's condition is such that he is a danger to himself or poses a direct threat to the health of others as documented by a physician; or

(2) the safety of individuals in the home is threatened by the behavior of the resident as documented by the facility.

Documentation of the emergency discharge shall be on file in the facility.

*History Note: Authority G.S. 131D-2; 143B-165;  
S.L. 2000-50;  
Temporary Adoption Eff. November 1, 2000.*

**SUBCHAPTER 42D – LICENSING OF HOMES FOR THE AGED AND INFIRM**

**SECTION .1800 – REMAINING POLICIES AND REGULATIONS**

**10 NCAC 42D .1832 RESPITE CARE**

(a) Rule 10 NCAC 42C .2406 shall control for this Subchapter except that respite care is subject to the rules of this Subchapter unless cross-referenced to the rules specified as exceptions in 10 NCAC 42C .2406(b).

(b) If the facility is staffing to census, the respite care residents shall be included in the daily census for determination of appropriate staffing levels according to the rules of this Subchapter.

*History Note: Authority G.S. 131D-2; 143B-165;  
S.L. 2000-50;  
Temporary Adoption Eff. November 1, 2000.*

## APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of October 21, 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
02 NCAC 34 .0505*	14:23 NCR
02 NCAC 34 .0506	14:23 NCR
02 NCAC 43L .0304-.0305	15:01 NCR
04 NCAC 03C .1501-.1502	15:04 NCR
10 NCAC 03R .0304*	15:02 NCR
10 NCAC 03R .1613	15:02 NCR
10 NCAC 03R .1615	15:02 NCR
10 NCAC 03R .1714	15:02 NCR
10 NCAC 03R .1912-.1913	15:02 NCR
10 NCAC 03R .1914*	15:02 NCR
10 NCAC 03R .2113	15:02 NCR
10 NCAC 03R .2713	15:02 NCR
10 NCAC 03R .3001-.3002	14:22 NCR
10 NCAC 03R .3010	14:22 NCR
10 NCAC 03R .3020	14:22 NCR
10 NCAC 03R .3030	14:22 NCR
10 NCAC 03R .3032	14:22 NCR
10 NCAC 03R .3040	14:22 NCR
10 NCAC 03R .3050-.3061	14:22 NCR
10 NCAC 03R .3063	14:22 NCR
10 NCAC 03R .3065	14:22 NCR
10 NCAC 03R .3067-.3088	14:22 NCR
10 NCAC 03R .4203	15:02 NCR
10 NCAC 03R .6101-.6111	14:22 NCR
10 NCAC 03R .6113-.6141	14:22 NCR
10 NCAC 03R .6250	15:02 NCR
10 NCAC 03R .6252-.6253	15:02 NCR
10 NCAC 03R .6256-.6261	15:02 NCR
10 NCAC 03R .6263-.6277	15:02 NCR
10 NCAC 03R .6279	15:02 NCR
10 NCAC 03R .6280*	15:02 NCR
10 NCAC 03R .6281	15:02 NCR
10 NCAC 03R .6282*	15:02 NCR
10 NCAC 03R .6283-.6290	15:02 NCR
10 NCAC 03R .6291*	15:02 NCR
10 NCAC 03R .6292-.6293	15:02 NCR
10 NCAC 03U .0302*	15:03 NCR
10 NCAC 03U .0604	15:03 NCR
10 NCAC 03U .0803	15:03 NCR
10 NCAC 03U .1304*	15:03 NCR
10 NCAC 03U .1606	15:03 NCR
10 NCAC 03U .1702*	15:03 NCR
10 NCAC 03U .1719-.1722	15:03 NCR

**APPROVED RULES**

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10	NCAC	03U	.1801	15:03 NCR
10	NCAC	03U	.1901	15:03 NCR
10	NCAC	03U	.1903	15:03 NCR
10	NCAC	03U	.1904*	15:03 NCR
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10	NCAC	03U	.2007	15:03 NCR
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10	NCAC	03U	.2012	15:03 NCR
10	NCAC	03U	.2101	15:03 NCR
10	NCAC	03U	.2201	15:03 NCR
10	NCAC	03U	.2206	15:03 NCR
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10	NCAC	14V	.3604	14:16 NCR
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10	NCAC	14V	.3806-.3807	15:02 NCR
10	NCAC	14V	.3808*	15:02 NCR
10	NCAC	14V	.3809	15:02 NCR
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10	NCAC	14V	.3811	15:02 NCR
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10	NCAC	14V	.3814-.3815*	15:02 NCR
10	NCAC	14V	.3817	15:02 NCR
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10	NCAC	46A	.0105	15:02 NCR
10	NCAC	46C	.0102	15:02 NCR
10	NCAC	46C	.0106	15:02 NCR
10	NCAC	46D	.0101-.0102	15:02 NCR
10	NCAC	46D	.0103*	15:02 NCR
10	NCAC	46D	.0104-.0105	15:02 NCR
10	NCAC	46D	.0108-.0109*	15:02 NCR
10	NCAC	46D	.0110	15:02 NCR
10	NCAC	46D	.0201	15:02 NCR
10	NCAC	46D	.0301-.0306	15:02 NCR
10	NCAC	46E	.0108-.0109	15:02 NCR
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10	NCAC	46F	.0108	15:02 NCR
10	NCAC	46F	.0111*	15:02 NCR
10	NCAC	46G	.0109-.0110	15:02 NCR
10	NCAC	46G	.0111*	15:02 NCR
10	NCAC	46G	.0113-.0114	15:02 NCR
10	NCAC	46G	.0115*	15:02 NCR
10	NCAC	46G	.0116	15:02 NCR
10	NCAC	46G	.0213-.0215*	15:02 NCR
10	NCAC	46H	.0101	15:02 NCR
10	NCAC	46H	.0102*	15:02 NCR
10	NCAC	46H	.0103-.0105	15:02 NCR
10	NCAC	46H	.0107	15:02 NCR
10	NCAC	46H	.0108-.0110*	15:02 NCR
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10	NCAC	46H	.0204	15:02 NCR
10	NCAC	46H	.0207	15:02 NCR

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*APPROVED RULES*

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10	NCAC	46H	.0302	15:02 NCR
10	NCAC	46H	.0305-.0306	15:02 NCR
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11	NCAC	10	.0717	15:03 NCR
11	NCAC	10	.0718*	15:03 NCR
11	NCAC	16	.0301-.0303	15:03 NCR
12	NCAC	09A	.0103*	14:19 NCR
13	NCAC	12	.0306-.0307*	15:04 NCR
13	NCAC	12	.0401-.0403*	15:04 NCR
13	NCAC	12	.0406-.0408*	15:04 NCR
13	NCAC	12	.0409	15:04 NCR
13	NCAC	12	.0501*	15:04 NCR
13	NCAC	12	.0801*	15:04 NCR
13	NCAC	20	.0101	15:04 NCR
13	NCAC	20	.0201*	15:04 NCR
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13	NCAC	20	.0602*	15:04 NCR
15A	NCAC	02B	.0258*	14:03 NCR
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15A	NCAC	03O	.0501-.0502*	14:20 NCR
15A	NCAC	03O	.0504	14:20 NCR
15A	NCAC	03O	.0506	14:20 NCR
15A	NCAC	03Q	.0107	14:20 NCR
21	NCAC	04B	.0103*	14:23 NCR
21	NCAC	04B	.0201	14:23 NCR
21	NCAC	04B	.0401	14:23 NCR
21	NCAC	04B	.0402*	14:23 NCR
21	NCAC	04B	.0403	14:23 NCR
21	NCAC	04B	.0405*	14:23 NCR
21	NCAC	04B	.0501	14:23 NCR
21	NCAC	04B	.0502*	14:23 NCR
21	NCAC	04B	.0601-.0602	14:23 NCR
21	NCAC	04B	.0605	14:23 NCR
21	NCAC	04B	.0803	14:23 NCR
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21	NCAC	04B	.0807-.0808	14:23 NCR
21	NCAC	04B	.0811*	14:23 NCR
21	NCAC	04B	.0812-.0814	14:23 NCR
21	NCAC	04B	.0816	14:23 NCR
21	NCAC	04B	.0818	14:23 NCR
21	NCAC	16I	.0102-.0103*	14:19 NCR
21	NCAC	16R	.0102*	14:19 NCR
21	NCAC	36	.0221	not required G.S. 150B-21.5(a)(5), Eff. December 1, 2000

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**TITLE 2 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**02 NCAC 34 .0505 SUB TERRANEAN TERMITE PREVENTION/RES BLDGS UNDER CONST**

- (a) All treatments performed pursuant to this Rule shall be performed at the label recommended rate and concentration only.
- (b) Basement or Crawl Space Construction
  - (1) Establish a vertical barrier in the soil by trenching or trenching and rodding along inside of the main foundation wall; the entire perimeter of all multiple masonry chimney bases, pillars, pilasters, and piers; and both sides of partition or inner walls with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. Trench shall be no less than six inches in depth or to the top of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
  - (2) After a building or structure has been completed and the excavation filled and leveled, so that the final grade has been reached along the outside of the main foundation wall, including any landscaping to be completed by the builder, establish a vertical barrier in the soil by trenching or trenching and rodding adjacent to the outside of the main foundation wall with a termiticide from the top of the grade to the bottom of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing and not below the bottom of the footing. Trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
  - (3) Establish a horizontal termiticide barrier in the soil within three feet of the main foundation, under slabs, such as patios, walkways, driveways, terraces, gutters, etc., attached to the building. Treatment shall be performed before slab is poured, but after fill material or fill dirt has been spread.
  - (4) Establish a horizontal termiticide barrier in the soil under the entire surface of floor slabs, such as basements, porches, entrance platforms, garages, carports, breezeways, sun rooms, etc. The treatment shall be performed before slab is poured but after fill material or fill dirt has been spread.
  - (5) Establish a vertical termiticide barrier in the soil around all critical areas, such as expansion and construction joints and plumbing and utility conduits, at their point of penetration of the slab or floor or, for crawl space construction, at the point of contact with the soil.

- (6) If concrete slabs are poured prior to treatment, treatment of slabs shall be performed as required by 2 NCAC 34 .0503(a) or (b): Except that; the buyer of the property and/or his authorized agent may release the licensee from further treatment of slab areas under this Rule provided such release is obtained in writing on the form prescribed by the Division. This form may be obtained by writing the North Carolina Department of Agriculture and Consumer Services, Structural Pest Control Division, PO Box 27647, Raleigh, NC 27611 or by calling (919) 733-6100.
- (c) Slab-on-Ground Construction. All parts of Paragraph (a) of this Rule shall be followed, as applicable, in treating slab-on-ground construction.
- (d) All treating requirements specified in this Rule shall be completed within 60 days following the completion of the structure, as described in Subparagraph (b)(2) of this Rule.
- (e) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee provides a warranty for the control of subterranean termites on the entire structure.
- (f) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using EPA registered topically applied wood treatment termiticides labeled for the protection of the entire structure when the licensee applies the material according to labeled directions and provides a warranty for the control of subterranean termites on the entire structure.

*History Note: Filed as a Temporary Repeal Eff. August 24, 1987 for a period of 30 days to expire on September 22, 1987; Authority G.S. 106-65.29; Eff. July 1, 1976; Readopted Eff. November 22, 1977; Amended Eff. August 1, 1980; Temporary Expired Eff. September 22, 1987; Amended Eff. March 1, 2001; July 1, 1998; January 1, 1991; January 1, 1989.*

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

**10 NCAC 03R .0304 DETERMINATION OF REVIEW**

- (a) After receipt of a letter of intent, the agency shall determine whether the proposed project requires a certificate of need.
- (b) When any of the equipment listed in G.S. 131E-176(16)(f1) or (p) is acquired in parts or piecemeal fashion, the acquisition shall be determined to require a certificate of need on the date that the components are assembled.
- (c) If the agency determines that the project requires a certificate of need, the agency shall determine the appropriate review category or categories for the proposed project, the type or types of application forms to be submitted, the number of separate applications to be submitted, the applicable review period for each application, and the deadline date for submitting each application, as contained in this Subchapter.
- (d) Copies of the application forms may be obtained from the agency.
- (e) Proposals requiring review shall be reviewed according to the categories and schedule set forth in the duly adopted State

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Medical Facilities Plan in effect at the time the scheduled review period commences, as contained in this Subchapter.

(f) Applications are competitive if they, in whole or in part, are for the same or similar services and the agency determines that the approval of one or more of the applications may result in the denial of another application reviewed in the same review period.

*History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Authority G.S. 131E-177;*

*Eff. October 1, 1981;*

*Amended Eff. November 1, 1996; January 4, 1994; January 1, 1990; January 1, 1987;*

*Temporary Amendment Eff. January 1, 2000;*

*Amended Eff. April 1, 2001.*

**10 NCAC 03R .1914 REQUIRED PERFORMANCE STANDARDS**

(a) An applicant proposing to acquire a linear accelerator shall demonstrate that each of the following standards shall be met:

- (1) an applicant's existing linear accelerators located in the proposed service area served at least 250 patients or provided 6,500 ESTV treatments per machine in the twelve months prior to the date the application was submitted;
- (2) each proposed new linear accelerator shall be utilized at an annual rate of 250 patients or 6,500 ESTV treatments during the third year of operation of the new equipment; and
- (3) an applicant's existing linear accelerators located in the proposed service area shall be projected to be utilized at an annual rate of 250 patients or 6,500 ESTV treatments per machine during the third year of operation of the new equipment.

(b) A linear accelerator shall not be held to the standards in Paragraph (a) of this Rule if the applicant provides documentation that the linear accelerator has been or shall be used exclusively for clinical research and teaching.

(c) An applicant proposing to acquire radiation therapy equipment other than a linear accelerator shall provide the following information:

- (1) the number of patients that are projected to receive treatment from the proposed radiation therapy equipment, classified by type of equipment, diagnosis, treatment procedure, and county of residence; and
- (2) the maximum number and type of procedures that the proposed equipment is capable of performing.

(d) The applicant shall document all assumptions and provide data supporting the methodology used to determine projected utilization as required in this Rule.

*History Note: Filed as Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Authority G.S. 131E-177(1);*

*Eff. January 4, 1994;*

*Amended Eff. November 1, 1996;*

*Temporary Amendment Eff. January 1, 1999;*

*Temporary Eff. January 1, 1999 Expired on October 12, 1999;*

*Temporary Amendment Eff. January 1, 2000;*

*Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;*

*Amended Eff. April 1, 2001.*

**10 NCAC 03R .6280 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)**

(a) Adult Treatment Beds. It is determined that there is no need for additional chemical dependency (substance abuse) treatment beds for adults.

(b) Adult Detox-Only Beds. It is determined that there is a need for additional detox-only beds for adults. The following table lists the mental health planning areas that need detox-only beds for adults and identifies the number of such beds needed in each planning area. It is determined that there is no need for additional detox-only beds for adults in any other mental health planning area.

Mental Health Planning Areas (Constituent Counties)	Mental Health Planning Regions	Number of Detox-Only Beds Needed
1 (Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain)	W	10
4 (Transylvania, Henderson)	W	10
5 (Caldwell, Burke, Alexander, McDowell)	W	10
6 (Rutherford, Polk)	W	10
7 (Cleveland)	W	10
11 (Rowan, Cabarrus, Stanly, Union)	W	10
12 (Surry, Yadkin, Iredell)	NC	2
14 (Rockingham)	NC	10
16 (Alamance, Caswell)	NC	6
17 (Orange, Person, Chatham)	NC	2



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19	(Vance, Granville, Franklin, Warren)	NC	10
20	(Davidson)	SC	10
22	(Robeson, Bladen, Scotland, Columbus)	SC	5
25	(Johnston)	SC	7
26	(Wake)	SC	31
30	(Wayne)	E	4
31	(Wilson, Greene)	E	10
32	(Edgecombe, Nash)	E	6
33	(Halifax)	E	10
34	(Craven, Jones, Pamlico, Carteret)	E	10
35	(Lenoir)	E	10
37	(Hertford, Bertie, Gates, Northampton)	E	4
38	(Beaufort, Washington, Tyrrell, Hyde, Martin)	E	5
39	(Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck)	E	10
40	(Duplin, Sampson)	E	10

(c) "Detox-only beds for adults" are chemical dependency treatment beds that are occupied exclusively by persons who are eighteen years of age or older who are experiencing physiological withdrawal from the effects of alcohol or other drugs.

(d) Detox-only beds for adults may be developed outside of the mental health planning area in which they are needed if:

- (1) The beds are developed in contiguous mental health planning areas that are within the same mental health planning region, as defined by 10 NCAC 3R .6253(c); and
- (2) The program board in the planning area in which the beds are needed and the program board in the planning area in which the beds are to be developed each adopt a resolution supporting the development of the beds in the contiguous planning area.

(e) Child/Adolescent Treatment Beds. It is determined that there is no need for additional chemical dependency (substance abuse) treatment beds for children/adolescents.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);*

*Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.*

**10 NCAC 03R .6282 POLICIES FOR GENERAL ACUTE CARE HOSPITALS**

(a) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 3C .6200 and .3102(d).

(b) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered an alternative to new construction. Hospitals falling below utilization targets in paragraph (d) of this Rule are assumed to have underutilized space. Any such

hospital proposing new construction must clearly and convincingly demonstrate that it is more cost-effective than conversion of existing space.

(c) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 3R .6256 through .6281:

- (1) The State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:

- (A) Serves as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate and postgraduate education;
- (B) Houses extensive basic medical science and clinical research programs, patients and equipment; and
- (C) Serves the treatment needs of patients from a broad geographic area through multiple medical specialties.

- (2) Exemption from the provisions of 10 NCAC 3R .6256 through .6281 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 which projects comply with one of the following conditions:

- (A) Necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or
- (B) Necessary to accommodate patients, staff or equipment for a specified and approved

expansion of research activities, as certified by the head of the entity sponsoring the research; or

(C) Necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.

(3) A project submitted by an Academic Medical Center Teaching Hospital under this Policy that meets one of the above conditions shall also demonstrate that the Academic Medical Center Teaching Hospital's teaching or research need for the proposed project cannot be achieved effectively at any non-Academic Medical Center Teaching Hospital provider which currently offers the service for which the exemption is requested and which is within 20 miles of the Academic Medical Center Teaching Hospital.

(4) Any service, facility or equipment that results from a project submitted under this Policy after January 1, 1999 shall be excluded from the inventory of that service, facility or equipment in the State Medical Facilities Plan.

(d) **Reconversion to Acute Care.** Facilities that have redistributed beds from acute care bed capacity to psychiatric, rehabilitation, or nursing care use, shall obtain a certificate of need to convert this capacity back to acute care. Applicants proposing to reconvert psychiatric, rehabilitation, or nursing care beds back to acute care beds shall demonstrate that the hospital's average annual utilization of licensed acute care beds as reported in the most recent licensure renewal application form is equal to or greater than the target occupancies shown below, but shall not be evaluated against the acute care bed need determinations shown in 10 NCAC 3R .6256.

Licensed Acute Care Bed Capacity	Percent Occupancy
1-49	65%
50 - 99	70%
100 - 199	75%
200 - 699	80%
700 +	81.5%

(e) **Replacement of Acute Care Bed Capacity.** The evaluation of proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds) shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to the target occupancy of the total number of beds in that hospital which is determined as follows:

Total Licensed Acute Care Beds	Target Occupancy (Percent)
1 - 49	65%
50 - 99	70%
100 - 199	75%
200 - 699	80%
700 +	81.5%

(f) **Allogeneic Bone Marrow Transplantation Services.** Allogeneic bone marrow transplants shall be provided only in facilities having the capability of doing HLA matching and of management of patients having solid organ transplants. At their

present stage of development it is determined that allogeneic bone marrow transplantation services shall be limited to Academic Medical Center Teaching Hospitals.

(g) **Solid Organ Transplantation Services.** Solid organ transplant services shall be limited to Academic Medical Center Teaching Hospitals at this stage of the development of this service and availability of solid organs.

(h) **Cardiac Catheterization Equipment and Services.** Mobile cardiac catheterization equipment, as defined in 10 NCAC 3R .1613(14), and services shall only be approved for development on hospital sites. Fixed cardiac catheterization equipment means cardiac catheterization equipment that is not mobile cardiac catheterization equipment, as that term is defined in 10 NCAC 3R .1613(14).

(i) **Magnetic Resonance Imaging Scanners Need Determination for Planning Radiation Oncology Treatments.** Magnetic resonance imaging scanners for planning radiation oncology treatments, as defined in 10 NCAC 3R .6271, shall not be counted in the inventory for magnetic resonance imaging (MRI) scanners.

(j) **Magnetic Resonance Imaging Scanners.** Fixed magnetic resonance imaging (MRI) scanners means MRI scanners that are not mobile MRI scanners, as that term is defined in 10 NCAC 3R .2713(5).

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.*

**10 NCAC 03R .6291 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES**

(a) **Transfer of Beds from State Psychiatric Hospitals to Community Facilities.** Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community. State hospital beds which are relocated to community facilities shall be closed within ninety days following the date the transferred beds become operational in the community. Facilities proposing to operate transferred beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the beds are to be located, the Secretary of Health and Human Services, and the person submitting the proposal.

(b) **Allocation of Psychiatric Beds.** A hospital submitting a Certificate of Need application to add inpatient psychiatric beds shall convert excess licensed acute care beds to psychiatric beds. In determining excess licensed acute care beds, the hospital shall subtract the average occupancy rate for its licensed acute care beds over the previous 12-month period from the appropriate target occupancy rate for acute care beds listed in 10 NCAC 3R .6282(d) and multiply the difference in the percentage figure by the number of its existing licensed acute care beds to calculate the excess licensed acute care beds.

(c) Linkages Between Treatment Settings. An applicant applying for a certificate of need for psychiatric inpatient facility beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1 2001.*

**10 NCAC 03U .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER**

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, shall apply for a license using the form provided by the Division. If the operator will be a group, organization, or other entity, an officer of the entity who is legally empowered to bind the operator shall complete and sign the application.

(b) The applicant shall arrange for inspections of the center by the local health, building and fire inspectors. The applicant shall provide an approved inspection report signed by the appropriate inspector to the Division representative.

(1) A provisional classification may be accepted in accordance with Rule .0401(1) of this Subchapter.

(2) When a center does not conform with a specific building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The Division may accept the inspector's documentation in lieu of compliance with the specific standard. Nothing in this Regulation is to preclude or interfere with issuance of a provisional license pursuant to Section .0400 of this Subchapter.

(c) The applicant, or the person responsible for the day-to-day operation of the center, shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center will comply with applicable requirements for activities, equipment, and staff/child ratios for the capacity of the center and type of license requested. The applicant shall make the following written information available to the Division for review to verify compliance with provisions of this Subchapter and the licensing law:

- (1) daily schedules;
- (2) activity plans;
- (3) emergency care plan;
- (4) discipline policy;
- (5) incident reports;
- (6) incident logs; and
- (7) a copy of the certified criminal history check for the applicant, or the applicant's designee as defined in Rule .2701(g) of this Subchapter, from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months.

(d) The applicant shall, at a minimum, demonstrate to the Division representative that measures will be implemented to have the following information in the center's files and readily available to the representative for review:

(1) Staff records which include an application for employment and date of birth; documentation of previous education, training, and experience; medical and health records; documentation of participation in training and staff development activities; and required criminal records check documentation;

(2) Children's records which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;

(3) Daily attendance records;

(4) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the signature of the person that conducted the drill;

(5) Records of monthly playground inspections documented on a checklist provided by the Division; and

(6) Records of medication administered.

(e) The Division representative shall measure all rooms to be used for child care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The Division representative shall enter the dimensions of each room to be used for child care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.

(f) The Division representative shall make one or more inspections of the center and premises to assess compliance with all applicable standards.

(1) If the center is in compliance, the Division shall issue the license.

(2) If the center does not comply, the representative may recommend issuance of a provisional license in accordance with Section .0400 of this Subchapter or the representative may recommend denial of the application. Final disposition of the recommendation to deny is the decision of the Secretary.

(3) The license shall be displayed in an area that parents are able to view daily.

(g) When a person applies for a child care facility license, the Secretary may deny the application for the license based on the compliance history of the person applying for a license under the following circumstances:

(1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;

(2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;

(3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person; or

(4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:

- (A) would participate in the administration or operation of the facility;
- (B) has a financial interest in the operation of the facility;
- (C) provides care to children at the facility;
- (D) resides in the facility; or
- (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business.

*History Note: Authority G.S. 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 110-99; 143B-168.3;*

*Eff. January 1, 1986;*

*Amended Eff. April 1, 2001; July 1, 1998; January 1, 1996; November 1, 1989; July 1, 1988; January 1, 1987.*

**10 NCAC 3U .1304 REQUIREMENTS FOR CHILD CARE CENTERS LICENSED IN A RESIDENCE**

Licensed child care centers in an occupied residence shall comply with the North Carolina Building Code standards in Volume I, General Construction, for Large Day Care Homes developed by the Building Code Council which are hereby incorporated by reference and include subsequent amendments. For purposes of this Rule, licensed child care centers in an occupied residence include centers that are licensed for three to 12 children when any preschool-aged children are in care, or for three to 15 children when only school-aged children are in care. A copy of the North Carolina Building Code standards is on file at the Division of Child Development located at the address given in Rule .0102 of this Subchapter and will be available for public inspection during regular business hours.

*History Note: Authority G.S. 110-91(4); 143B-168.3;*

*Eff. July 1, 1998;*

*Amended Eff. April 1, 2001.*

**10 NCAC 3U .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME**

(a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:

- (1) Only one licensed family child care home shall operate at the location address of any home.
- (2) The applicant shall list each location address where a licensed family child care home will operate.

(b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures shall apply:

- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.
- (2) The coordinating parent is responsible for knowing the current location address at all times and shall provide the information to the Division upon request.

(c) The operator shall assure that the structure in which the family child care home is located complies with the following requirements:

- (1) Comply with the North Carolina Building Code for family child care homes or have written approval for

use as a family child care home by the local building inspector as follows:

(A) Meet Volume IB Uniform Residential Building Code or be a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations published by the NC Department of Insurance.

Exception: Single wide manufactured homes will be limited to a maximum of three preschool-aged children (not more than two may be two years of age or less) and two school-aged children.

(B) All children shall be kept on the ground level with an exit at grade.

(C) All homes shall be equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.

(D) All homes shall be provided with at least one five lb. 2-A: 10-B: C type extinguisher readily accessible for every 2,500 square feet of floor area.

(E) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved for that installation and are provided with a protective screen attached securely to substantial supports will be allowed. However, unvented fuel burning heaters and portable electric space heaters of all types are prohibited.

(2) Assure that all indoor areas used by children are heated in cool weather and ventilated in warm weather.

(3) Cover or insulate hot pipes or radiators which are accessible to the children.

(d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include a copy of the applicant's certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months; a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course; proof of negative results of the applicant's tuberculosis test completed within the past 12 months; a completed health questionnaire; a copy of current pet vaccinations for any pet in the home; a negative well water bacteriological analysis if the home has a private well; copies of any inspections required by local ordinances; and any other documentation required to support the issuance of a license required by the Division.

(e) Upon receipt of an acceptable application and supporting documentation as required by the Division, a Division representative shall make an announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine compliance with the standards, to offer technical assistance when needed, and to provide information about local resources.

(1) If the home is found to be in compliance with the applicable requirements of G.S. 110 and this Section, a license shall be issued.

- (2) If the home is not in compliance but has the potential to comply, the Division representative shall establish with the operator a reasonable time period for the home to achieve full compliance. If the Division representative determines that the home is in compliance within the established time period, a license shall be issued.
- (3) If the home is not in compliance, cannot potentially comply, or fails to comply within the appropriate time, the Division shall deny the application. Final disposition of the recommendation to deny is the decision of the Division.

(f) In emergency situations as determined by the Division, the Division may allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule. A person is not able to operate legally until he or she has received from the Division either temporary permission to operate or a license.

(g) When a person applies for a child care facility license, the Secretary may deny the application for the license based on the compliance history of the person applying for a license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person; or
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
  - (A) would participate in the administration or operation of the facility;
  - (B) has a financial interest in the operation of the facility;
  - (C) provides care to the children at the facility;
  - (D) resides in the facility; or
  - (E) would be on the facility's board of director's, be a partner of the corporation, or otherwise have responsibility for the administration of the business.

- (h) Use of the license is limited to the following conditions:
  - (1) The license cannot be bought, sold, or transferred from one individual to another.
  - (2) The license is valid only for the location address/addresses listed on it.
  - (3) The license must be returned to the Division in the event of termination or revocation.
  - (4) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent, guardian, or custodian when the child is enrolled.

- (i) A licensee is responsible for notifying the Division whenever a change occurs which affects the information shown on the license.

*History Note: Authority G.S. 110-88(5); 110-91; 110-93; 110-99; 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 2001; July 1, 1998; January 1, 1991; November 1, 1989; January 1, 1987.*

**10 NCAC 3U .1904 ADMINISTRATIVE SANCTIONS**

(a) A special provisional license may be issued for a six-month period when the Division determines that abuse or neglect occurred in a child care center or home. The following provisions shall apply:

- (1) the special provisional license and the reasons for its issuance shall be posted in a prominent place in the center or home as soon as they are received by the operator;
- (2) the special provisional license and reasons for issuance shall remain posted for the entire six months covered by the license, and also during the time of any administrative proceedings;
- (3) no new children shall be enrolled in the center or home until the Division is satisfied that the abusive or neglectful situation no longer exists and gives the operator written permission to accept new children; and
- (4) an operator may obtain an administrative hearing on the issuance of a special provisional license in accordance with the provisions of G.S. 150B-23.

(b) A written warning specifying corrective action to be taken by the operator of the child care center or home may be issued when the investigation is concluded and the Division determines that abuse or neglect occurred in a center or home and the situation does not warrant issuance of a special provisional license.

(c) A civil penalty, in accordance with the schedules listed in Rules .1716 and .2206 of this Subchapter, may be levied against the operator of a child care home or center when the Division determines that child abuse or neglect has occurred while the child was in the care of the home or center. In addition, any violation of the terms of a special provisional license may result in the assessment of a civil penalty as provided in Rule .1716 and Rules .2202 through .2206 of this Subchapter.

(d) Failure to implement the corrective action plan required by a written warning pursuant to G.S. 110-88(6a) may result in either the assessment of a civil penalty as provided in Section .2200 of this Subchapter or the issuance of a special provisional license or may result in both actions being taken.

(e) The type of sanction imposed by the Secretary shall be determined by one or more of the following criteria:

- (1) severity of the incident;
- (2) probability of reoccurrence;
- (3) prior incidents of abuse or neglect in the center or home;
- (4) history of compliance with child care requirements; or
- (5) the Division's assessment of the operator's response to the incident.

(f) Nothing in this Rule shall restrict the Secretary from using any other statutory or administrative penalty available pursuant to G.S. 110-102.2 and Section .2000 of this Subchapter, or the

provisions in 150B-3(c) to summarily suspend a license if the health, safety or welfare of any child is in jeopardy.

*History Note: Authority G.S. 110-88(5); 110-88(6a); 110-102.2; 110-103.1; 143B-168.3; 150B-3; 150B-23; Eff. January 1, 1986; Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989; July 1, 1988.*

**10 NCAC 3U .2006 ADMINISTRATIVE PENALTIES: GENERAL PROVISIONS**

- (a) Pursuant to G.S. 110-102.2, the secretary or designee may order one or more administrative penalties against any operator who violates any provision of Article 7 of Chapter 110 of the General Statutes or of this Subchapter.
- (b) Nothing in this Section shall restrict the Secretary from using any other statutory or civil penalty available. A civil penalty in accordance with G.S. 110-103.1 and Section .2200 of this Subchapter may be imposed in conjunction with any other administrative activity.
- (c) The issuance of an administrative penalty may be appealed pursuant to G.S. 150B-23.

*History Note: Authority G.S. 110-102.2; 110-103.1; 143B-168.3; 150B-23; Eff. July 1, 1988; Amended Eff. April 1, 2001; November 1, 1989.*

**10 NCAC 3U .2008 WRITTEN REPRIMANDS**

- (a) A written reprimand may be issued to censure any violation which the Division determines to have been a brief uncustomary event which is unlikely to recur in the ordinary operation of the center or home.
- (b) The reprimand shall describe the reasons for its issuance including identification of the specific section of the statutes or rules violated.

*History Note: Authority G.S. 110-102.2; 143B-168.3; Eff. July 1, 1988; Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989.*

**10 NCAC 3U .2010 SUSPENSION**

- (a) Suspension of a permit for a period of time not to exceed 45 days may be ordered when violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety, and/or the operator has not made reasonable efforts to conform to standards.
- (b) The operator shall be notified in advance of the determination to suspend the permit and the reasons for such action. The operator may request an agency review of the situation and shall be given an opportunity to show compliance with all requirements for retention of the permit.
- (c) The suspension order shall specify the period of suspension and the reasons for its issuance. The operator shall surrender the permit to the Division on the effective date of the suspension order and shall refrain from operating a center or home during the suspension period.
- (d) If suspension is stayed pending appeal, the suspension order shall be posted in a prominent place in the center or home pending final action.

(e) Failure to comply with the suspension order shall result in civil action in accordance with G.S. 110-103.1 and/or criminal penalty in accordance with G.S. 110-103. The Division may also seek injunctive relief in accordance with G.S. 110-104.

*History Note: Authority G.S. 110-102.2; 143B-168.3; 150B-3; Eff. July 1, 1988; Amended Eff. April 1, 2001; November 1, 1989.*

**10 NCAC 3U .2011 REVOCATION**

- (a) Revocation of a permit may be ordered when violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety, or the operator has not made reasonable efforts to conform to standards or is unable to comply.
- (b) The operator shall be notified in advance of the determination to revoke the permit and the reasons for such action. The operator may request an agency review of the situation and shall be given an opportunity to show compliance with all requirements for retention of the permit.
- (c) The revocation order shall specify the reasons for its issuance and the effective date of revocation and shall be posted prominently in the center or home immediately upon receipt. The operator shall surrender the permit on the effective date of the revocation order and shall refrain from operating the center or home thereafter.
- (d) Failure to comply with the revocation order shall result in civil action in accordance with G.S. 110-103.1 or a criminal penalty in accordance with G.S. 110-103, or both. The Secretary may also seek injunctive relief in accordance with G.S. 110-104.

*History Note: Authority G.S. 110-102.2; 143B-168.3; 150B-3; Eff. July 1, 1988; Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989.*

**10 NCAC 14V .0802 DEFINITIONS**

In addition to the definitions contained in G.S. 122C-3 and Rule .0103 of this Subchapter, the following definitions shall also apply:

- (1) "Atypical development" means those from birth to 60 months of age who:
  - (a) have autism;
  - (b) are diagnosed hyperactive;
  - (c) have an attention deficit disorder, severe attachment disorder, or other behavioral disorders; or
  - (d) exhibit evidence of, or are at risk for, atypical patterns of behavior and social-emotional development in one or more of the following areas:
    - (i) delays or abnormalities in achieving emotional milestones;
    - (ii) difficulties with:
      - (A) attachment and interactions with parents, other adults, peers, materials and objects;
      - (B) ability to communicate emotional needs;
      - (C) motor or sensory development;
      - (D) ability to tolerate frustration and control behavior; or
      - (E) ability to inhibit aggression;

- (iii) fearfulness, withdrawal, or other distress that does not respond to the comforting of caregivers;
  - (iv) indiscriminate sociability; for example, excessive familiarity with relative strangers;
  - (v) self-injurious or other aggressive behavior;
  - (vi) substantiated evidence that raises concern for the child's emotional well-being regarding:
    - (A) physical abuse;
    - (B) sexual abuse; or
    - (C) other environmental circumstances indicating an abused or neglected juvenile as defined in G.S. 7A-517(1) and (21).
- (2) "Developmentally delayed children" means those whose development is delayed in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication, social and emotional; and adaptive skills. The specific level of delay must be:
- (a) for children from birth to 36 months of age, documented by scores one and one-half standard deviations below the mean on standardized tests in at least one of the above areas of development. Or, it may be documented by a 20 percent delay on assessment instruments that yield scores in months; and
  - (b) for children from 36 to 60 months of age, documented by test performance two standard deviations below the mean on standardized tests in one area of development or by performance that is one standard deviation below the norm in two areas of development. Or, it may be documented by a 25 percent delay in two areas on assessment instruments that yield scores in months.
- (3) "Early Intervention Services" means those services provided for infants and toddlers specified in Section 303.12 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations, published January 1, 1992 and incorporated by reference.
- (a) For the purposes of these services, "transportation" means assistance in the travel to and from the multidisciplinary evaluation; specified early intervention services provided by certified developmental day centers or other center-based services designed specifically for children with or at risk for disabilities; and speech, physical or occupational therapy, or other early intervention services if provided in a specialized setting away from the child's residence.
  - (b) Transportation assistance may be provided by staff, existing public or private services, or by the family, who shall be reimbursed for their expenses, in accordance with applicable fee provisions.
  - (c) For the purposes of these services, "special instruction" means individually designed education and training in the strengths and needs of the child and family as identified in the multidisciplinary evaluation, in which the focus is on the major developmental areas and individual family needs. It occurs in two primary types of settings; home and inclusive center-based:
- (i) The inclusive center-based settings may be those designed primarily for children with or at risk for disabilities, such as developmental day centers or therapeutic preschools, if they allow for planned and ongoing contact with children without disabilities.
  - (ii) Inclusive center-based settings also include those established primarily for children without disabilities, such as preschools, family day care homes, licensed child care centers:
    - (A) when provided in these programs, special instruction also includes consultation and training for staff on curriculum design, teaching and behavior management strategies, and approaches to modification of the environment to promote learning; and
    - (B) service coordination activities, including assistance to the family in identifying such programs must be provided with special instruction, if requested by the family; and
    - (C) All types of early intervention services shall be provided in natural environments to the maximum extent possible. The provision of early intervention services in a setting other than a natural environment shall occur only when early intervention cannot be achieved satisfactorily in a natural environment.
- (4) "Health Services" means those services provided for infants and toddlers specified in Section 303.13 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations, published June 22, 1989 and incorporated by reference.
- (5) "High risk children" means those from birth to 36 months of age for whom there is clinical evidence of conditions which have a high probability of resulting in developmental delay or atypical development and for whom there is clinical evidence that developmental or therapeutic intervention may be necessary. There are two categories of high risk children. These are:
- (a) High Risk-Established: Diagnosed or documented physical or mental conditions which are known to result in developmental delay or atypical development as the child matures. Such conditions include, but need not be limited to the following:
    - (i) chromosomal anomaly or genetic disorders associated with developmental deficits;
    - (ii) metabolic disorders associated with developmental deficits;
    - (iii) infectious diseases associated with developmental deficits;
    - (iv) neurologic disorders;
    - (v) congenital malformations;
    - (vi) sensory disorders; or
    - (vii) toxic exposure.
  - (b) High Risk-Potential: Documented presence of indicators which are associated with patterns of development and which have a high probability of meeting the criteria for developmental delay or

atypical development as the child matures. There shall be documentation of at least three of the parental or family, neonatal, or postneonatal risk conditions. These conditions are as follows:

- (i) maternal age less than 15 years;
- (ii) maternal PKU;
- (iii) mother HIV positive;
- (iv) maternal use of anticonvulsant, antineoplastic or anticoagulant drugs;
- (v) parental blindness;
- (vi) parental substance abuse;
- (vii) parental mental retardation;
- (viii) parental mental illness;
- (ix) difficulty in parent-infant bonding;
- (x) difficulty in providing basic parenting;
- (xi) lack of stable housing;
- (xii) lack of familial and social support;
- (xiii) family history of childhood deafness;
- (xiv) maternal hepatitis B;
- (xv) birth weight less than 1500 grams;
- (xvi) gestational age less than 32 weeks;
- (xvii) respiratory distress (mechanical ventilator greater than six hours);
- (xviii) asphyxia;
- (xix) hypoglycemia (less than 25 mg/dl);
- (xx) hyperbilirubinemia (greater than 20 mg/dl);
- (xxi) intracranial hemorrhage;
- (xxii) neonatal seizures;
- (xxiii) suspected visual impairment;
- (xxiv) suspected hearing impairment;
- (xxv) no well child care by age six months;
- (xxvi) failure on standard developmental or sensory screening test;
- (xxvii) significant parental concern;
- (xxviii) chronic lung disease;
- (xxix) parent history of suspected abuse or neglect; and
- (xxx) mothers who are seen by a Maternal Outreach Worker from the local health department.

(6) "Natural environments" means settings that are natural or normal for the child's age peers who have no disabilities.

(7) Incorporation by reference in any of the rules in this Section of portions of the Code of Federal Regulations includes subsequent amendments and editions of the referenced material, which may be obtained at no cost from the Branch Head, Child and Adolescent Services, Developmental Disabilities Section, Division of MH/DD/SAS, 325 N. Salisbury Street, Raleigh, NC 27603.

*History Note: Authority G.S.122C-3; 143B-147; 150B-1(d); 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.; Eff. May 1, 1996; Temporary Amendment Eff. May 21, 1999; Temporary Amendment Expired February 8, 2000; Codifier determined that findings did not meet criteria for temporary rule on May 22, 2000; Temporary Amendment Eff. May 30, 2000; Amended Eff. April 1, 2001.*

**10 NCAC 14V .3805 DEFINITIONS**

For the purpose of the rules in this Section, the following terms shall have the meanings indicated:

- (1) "American Society of Addiction Medicine (ASAM) Placement Criteria" means the Patient Placement Criteria for the Treatment of Substance-Related Disorders, copyright 1996 by the American Society of Addiction Medicine.
- (2) "Certified ADETS Instructor" means an individual who is certified by the Division in accordance with 10 NCAC 14V .3800 ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS (ADETS) contained in Division publication APSM 30-1 RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE FACILITIES AND SERVICES and available at the current printing cost.
- (3) "Clinical Interview" means the face to face interview with a substance abuse counselor intended to gather information on the client, including, but not limited to the following; demographics, medical history, past and present driving offense record, alcohol concentration of current offense, social and family history, substance abuse history, vocational background and mental status.
- (4) "Continuing Care" means an outpatient service designed to maximize the recovery experience begun in more intensive inpatient or outpatient treatment. As a continuation of the treatment experience this service is expected to begin upon the client's discharge from intensive treatment.
- (5) "Division" means the same as defined in G.S. 122C-3 (hereafter referred to as DMH/DD/SAS).
- (6) "DMH Form 508-R (DWI Services Certificate of Completion)" means the form which is used in documenting the offenders completion of the DWI substance abuse assessment and treatment or ADETS.
- (7) "Driving Record" means a person's North Carolina complete driving history as maintained by the North Carolina Driver's License Division's history file, as well as records in other states in which the client has resided,
- (8) "DSM" means the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety-five cents (\$39.95) for the soft cover edition and fifty four dollars and ninety-five cents (\$54.95) for the hard cover edition. Where used in these definitions, incorporation by reference of DSM-IV includes subsequent amendments and editions of the referenced material.
- (9) "DWI Facility Authorization Process" means the process specified in 10 NCAC 14V .3806, by which facilities are granted the privilege to serve this sanctioned population.
- (10) "DWI Offenses" means impaired driving as described in G.S. 20-138.1, impaired driving in a commercial vehicle as described in G.S. 20-138.2 and/or driving by person less than 21 years old after consuming alcohol or drugs as described in G.S. 20-138.3.
- (11) "DWI Categories of Service" means:



Level I Alcohol and Drug Education Traffic School (ADETS);

Level II Short Term Outpatient Treatment;

Level III Longer Term Outpatient Treatment;

Level IV Day or Intensive Outpatient Treatment;

Level V Inpatient and/or Residential Treatment.

- (12) "DWI Substance Abuse Assessment" means a service provided to persons charged with or convicted of a DWI offense to determine the presence or absence of a substance abuse handicap. The assessment involves a clinical interview as well as the use of an approved standardized test.
- (13) "Facility" means the term as defined in G.S. 122C-3(14).
- (14) "Interpreter" means a person who can accurately provide spoken exchange between languages including idiomatic differences.
- (15) "Language Barrier" means the situation in which a client's primary and native language is not English, and staff available to the facility do not speak a language in which the client is proficient.
- (16) "Licensure Rules" means the rules contained in 10 NCAC 14V .0100 through .7200 of the North Carolina Administrative Code and published in Division publication APSM 30-1, RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE FACILITIES AND SERVICES.
- (17) "Minimal Program Content" means the required educational topics, learning experiences and counseling issues applicable to each level of treatment (See Rule .3817 of this Section - Minimal Program Content)
- (18) "Notice of Intent" means the initial step in the process for a licensed substance abuse facility or exempt agency to be authorized to provide services to DWI offenders in accordance with Rule .3806 of this Section. This written notice shall declare the facility's intent to comply with applicable laws and rules and shall be copied to the designated area authority as provided in G.S.122C-142.1 (a).
- (19) "Special Service Plan" means a plan for persons who exhibit unusual circumstances, such as severe hearing impairment; other physical disabilities, and/or concurrent psychiatric illness.
- (20) "Standardized Test" means an instrument approved by the Department of Health and Human Services with documented reliability and validity, which serves to assist the assessment agency or individual in determining if the client has a substance abuse handicap. A current listing of the approved standardized tests may be obtained at no cost by writing the DWI/Criminal Justice Branch, Division of MH/DD/SAS, 3008 Mail Service Center, Raleigh, NC 27699-3008.
- (21) "Substance Abuse Handicap" means a degree of dysfunction directly related to the recurring use, abuse or dependence upon an impairing substance as described in the current edition of the DSM.

*Eff. April 1, 2001.*

**10 NCAC 14V .3808 QUALIFICATIONS OF INDIVIDUALS PERFORMING ASSESSMENTS**

Individuals performing DWI substance abuse assessments shall have at least one of the following qualifications:

- (1) certification/licensure or other credential issued by the North Carolina Substance Abuse Professional Certification Board that acknowledges an individual to be qualified to provide counseling for persons with substance abuse disorders; or
- (2) graduation from a masters degree level program and one year of supervised experience in the profession of alcohol and drug abuse counseling; and be registered with the North Carolina Substance Abuse Professional Certification Board; or
- (3) graduation from a four-year college or university and two years of supervised experience in the profession of alcohol and drug abuse counseling, and be registered with the North Carolina Substance Abuse Professional Certification Board; or
- (4) graduation from high school or equivalent and three years of supervised experience in the profession of alcohol and drug abuse counseling and be registered with the North Carolina Substance Abuse Professional Certification Board; or
- (5) be licensed by the Board of Medical Examiners of the State of North Carolina or the North Carolina Psychology Board; or
- (6) be a diplomat of the American Society of Addiction Medicine.

*History Note: Authority G.S. 20-17.6(c); 122C-142.1; 143B-147; Eff. April 1, 2001.*

**10 NCAC 14V .3810 RESPONSIBILITIES OF TREATMENT AND ADETS PROVIDERS**

- (a) All providers shall conduct an orientation/intake interview with every client being admitted to a level of treatment, in which the assessment, diagnosis and placement shall be reviewed in the light of the client's current situation and an individual treatment plan shall be developed in compliance with 10 NCAC 14V .0203 located in the Licensure Rules as defined in Rule .3805(16) of this Section.
- (b) Any facility accepting a transferred case shall provide the level of intervention required by the assessor, unless there is a subsequent negotiated agreement between the assessor and the service provider at which time a corrected DMH-508R shall be completed by assessor.
- (c) The facility providing the recommended treatment or ADETS shall have the individual execute the appropriate release of information giving that facility permission to report the client's progress to the DMHDDSAS, Division of Motor Vehicles, Court, Department of Correction; and, assessing and treatment agencies, as appropriate.
- (d) Identification of a substance abuse handicap shall be considered indicative of the need for treatment, when diagnostic criteria apply. In such instances, educationally-oriented and support group services shall only be provided as a supplement to a more extensive treatment plan.

*History Note: Authority G.S. 122C-3; 122C-142.1; 143B-147;*

(e) When the court determines that an individual shall receive services, such services shall be provided by a facility licensed by the State to provide services.

*History Note: Authority G.S. 20-17.6(c); 122C-142.1; 143B-147; Eff. April 1, 2001.*

**10 NCAC 14V .3812 PRE-TRIAL ASSESSMENTS**

(a) A DMH Form 508-R shall be initiated for each individual who voluntarily refers himself or herself for a DWI assessment, under the provisions of G.S. 20-179(e)(6).  
 (b) The DMH Form 508-R shall not be used to report the results of the pre-trial assessment to the court or attorney. The results shall be summarized in a concise, easy to interpret fashion on agency letterhead and signed by the individual who performed the assessment or the assessor's supervisor.

*History Note: Authority G.S. 20-179(e)(6) and (m); 143B-147; Eff. April 1, 2001.*

**10 NCAC 14V .3814 DOCUMENTATION REQUIREMENTS**

(a) When conducting the assessment for an individual charged with, or convicted of, offenses related to Driving While Impaired (DWI), a DMH Form 508-R shall be completed.  
 (b) If treatment is recommended, client record documentation shall include, but not be limited to the following minimum requirements for each DWI Category of Service listed in Rule .3805 of this Section, except for the ADETS category:  
     (1) all items specified in the "clinical interview", as defined in Rule .3805 of this Section;  
     (2) results of the administration of an approved "standardized test", as defined in Rule .3805 of this Section;  
     (3) release of information as set forth in Rules .3807 and .3810 of this Section; and  
     (4) release of information covering any collateral contacts, and documentation of the collateral information.  
 (c) Substance abuse facility policies and operational procedures shall be in writing and address and comply with each of the requirements in 10 NCAC 14V .0201.  
 (d) Substance abuse treatment records shall comply with the elements contained in 10 NCAC 14V .0203, .0204, .0206 of this Subchapter and 10 NCAC 14V .3807 and 10 NCAC 14V .3810.

*History Note: Authority G.S. 20-179 (e)(6) and (m); 122C-142.1; 143B-147; Eff. April 1, 2001.*

**10 NCAC 14V .3815 AUTHORIZATION TO PROVIDE DWI SUBSTANCE ABUSE ASSESSMENTS**

Any facility that provides DWI assessments shall comply with 10 NCAC 14V .3801 through .3817 of this Subchapter.

*History Note: Authority G.S. 20-17.6 (c); 122C-142.1; 143B-147; Eff. April 1, 2001.*

**10 NCAC 45G .0410 SPECIAL CONTROLLED**

**SUBSTANCES EMERGENCY KIT**

(a) A (special) controlled substances emergency kit shall be permitted in those skilled nursing facilities, intermediate care facilities and combination facilities which are licensed with the Department of Human Resources:  
 (b) The controlled substances emergency kit shall contain not more than seven controlled drug entities (Schedules II-V) as determined by the medical staff of the facility with the approval of the pharmaceutical services committee.  
 (c) Controlled substances for emergency use shall be obtained through purchase orders from the licensed pharmacist who regularly provides medications to the facility and its patients. When Schedule II drugs are purchased, federal Drug Enforcement Administration order forms must be used.  
 (d) Controlled substances for emergency use shall be provided in a single unit-dose form.  
 (e) A facility shall be permitted to possess not more than five doses of each controlled drug entity for each 50 licensed beds or fraction thereof. The five doses of each drug entity may be of the same or differing concentrations.  
 (f) The controlled emergency drug supply shall be used to meet the urgent needs of patients, consistent with good medical practice. The need for such use shall be documented in the patient's medical record consistent with applicable state and federal statutes and regulations.  
 (g) The controlled substance emergency kit shall be securely locked and stored with access limited to authorized personnel.  
 (h) Only those persons designated by the director of the facility shall have access to the controlled substances emergency kit.  
 (i) The pharmacist-supplier of the controlled drugs for emergency use shall have primary responsibility for the proper control and accountability of such drugs in the facility.  
 (j) No person, individual, practitioner or facility shall be permitted to perform by virtue of these regulations any act otherwise prohibited by law.  
 (k) Nothing in these regulations shall compel any licensed pharmacist to provide controlled drugs for emergency use to any facility against his professional judgment.  
 (l) Requirements contained in North Carolina Board of Pharmacy rule 21 NCAC 46 .1414(i) relating to emergency kits generally shall apply.  
 (m) Exceptions to these regulations shall not be made unless otherwise provided by law.  
 (n) Each registrant desiring to maintain a controlled substance emergency kit must be registered with the Federal Drug Enforcement Administration or receive an exemption from registration by that agency.

*History Note: Authority G.S. 90-100; 143B-147; Eff. June 30, 1978; Amended Eff. September 30, 1978; Temporary Amendment Eff. June 15, 1999; Temporary Amendment Expired February 28, 2000; Codifier determined that findings did not meet criteria for temporary rule on May 22, 2000; Temporary Amendment Eff. May 30, 2000; Amended Eff. April 1, 2001.*

**10 NCAC 46D .0103 ELIGIBILITY**

- (a) Child care services may be provided to families demonstrating a need for services as defined by one of the reasons for care described in 10 NCAC 46H .0100.
- (b) Eligibility criteria for child care services are described in 10 NCAC 46H .0200.
- (c) Eligibility for the service shall be determined by the local department of social services or other agency authorized to determine eligibility for child care services under the conditions described in 10 NCAC 46H .0207.
- (d) Application for the service shall be made to the agency responsible for determining eligibility as described in Paragraph (c) of this Rule.

*History Note: Authority G.S. 143B-153(2a); Eff. October 26, 1979; Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990; April 1, 1987; February 1, 1986.*

**10 NCAC 46D .0108 SANCTIONS AND APPEALS FOR FRAUDULENT MISREPRESENTATION**

- (a) The Division may impose sanctions for fraudulent misrepresentation when a person, whether a provider or recipient of child care subsidies, or someone claiming to be a provider or recipient of child care subsidies, does the following:
  - (1) With the intent to deceive, that person makes a false statement or representation regarding a material fact, or fails to disclose a material fact; and
  - (2) As a result of the false statement or representation or the omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.
- (b) The Division may impose the following sanctions for fraudulent misrepresentation in addition to requiring the provider or recipient to repay the amount of child care subsidy for which they were ineligible to receive:
  - (1) After the first incidence of fraudulent misrepresentation by a recipient, the recipient shall be ineligible to receive subsidized child care services for 12 months;
  - (2) After the first incidence of fraudulent misrepresentation by a provider, the provider shall not be reimbursed with subsidized child care funds for any new children that enroll in the provider's program for twelve months; and
  - (3) After the second incidence of fraudulent misrepresentation by a recipient or by a provider, the recipient or provider shall be permanently ineligible to participate in the subsidized child care program.
- (c) A recipient may appeal any sanction imposed in Paragraph (b) of this Rule by following the appeals procedures used by the Division as codified in 10 NCAC 3B .0700.
- (d) A child care provider may appeal any sanction imposed in Paragraph (b) of this Rule by following the appeals procedures used by the Division pursuant to G.S. 150B-23.

*History Note: Authority G.S. 143B-153; Eff. April 1, 2001.*

**10 NCAC 46D .0109 CORRECTION OF OVERPAYMENTS**

- (a) A local purchasing agency that makes an overpayment as a result of fraudulent misrepresentation by the recipient or

provider as described in Rule .0108(a) of this Subchapter may recoup the amount of the overpayment as follows:

- (1) The local purchasing agency may recoup the overpayment from the recipient if the recipient at the time the overpayment occurred was at least 18 years of age or older; and
- (2) Overpayments due to fraudulent misrepresentation shall be collected by voluntary repayment by the recipient or provider or by involuntary repayment by pursuing court action.

- (b) A local purchasing agency that makes an overpayment due to agency error in complying with program rules and statues shall correct the overpayment by adjustment through the state's subsidized child care reimbursement system.

*History Note: Authority G.S. 143B-153; Eff. April 1, 2001.*

**10 NCAC 46F .0107 APPROVAL FOR PARTICIPATION IN THE SUBSIDIZED CHILD CARE PROGRAM**

- (a) Any family child care home which wishes to participate in the state subsidized child care program as defined in 10 NCAC 46A .0105 shall comply with the standards for family child care homes as codified in 10 NCAC 3U .1700 and all other applicable state family child care home requirements in 10 NCAC 3U and G.S. 110 Article 7.
- (b) The operator of any family child care home participating in the subsidized child care program shall assure that the home complies with all applicable provisions of the Civil Rights Act of 1964 and all requirements imposed therein.
- (c) Any family child care home that wishes to participate in the subsidized child care program must be approved by the local purchasing agency for participation and payment.
- (d) Each family child care home shall submit appropriate information to enable the local purchasing agency to establish a payment rate for the home in accordance with the rate setting policies in the annual appropriations act and codified in Subchapter 46C.
- (e) Approval indicates that all requirements have been met.

*History Note: Authority G.S. 143B-153; Eff. January 1, 1985; Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990.*

**10 NCAC 46F .0111 APPEALS**

Any appeal for denial or termination of approval shall be made according to the appeals procedures used by the Division pursuant to G.S. 150B-23.

*History Note: Authority G.S. 143B-153(2a); 150B-23; Eff. January 1, 1988; Amended Eff. April 1, 2001; July 1, 1990.*

**10 NCAC 46G .0111 LOCAL PURCHASING AGENCY RESPONSIBILITY**

- (a) The local purchasing agency shall review the application and parent/responsible adult-provider self-check list and shall determine compliance with the requirements established by the Social Services Commission for all nonlicensed child care

homes from which care is purchased with funds administered by the local purchasing agency.

(b) The county director of social services may deny or revoke approval of an arrangement where the caregiver or an individual who resides in the home where care is provided was found by the county director to be the perpetrator of abuse or neglect in accordance with G.S. 7B-302 or G.S. 108A, Article 6, and where approval of the arrangement poses a threat to the child's health or safety. Approval may also be denied or revoked as described under the standard set forth in this Rule when an investigation of abuse or neglect is currently in process. Information regarding the fact that the prospective provider or individual in the home has been reported or investigated for alleged abuse or neglect shall not be given to the parent or any other individual unless such information is a matter of public record.

*History Note: Authority G.S. 143B-153(2a); 45 C.F.R. 98.41; 45 C.F.R. 255.4(c); 45 C.F.R. 257.41; Eff. February 1, 1993; Amended Eff. April 1, 2001.*

**10 NCAC 46G .0115 APPEALS**

Any nonlicensed child care home desiring to appeal a decision by the local purchasing agency shall follow the appeals procedures for public assistance programs pursuant to G.S. 108A-79 and any subsequent amendments. The local purchasing agency shall provide the nonlicensed child care home provider or applicant with information about the procedures for such an appeal.

*History Note: Authority G.S. 143B-153(2a); Eff. February 1, 1993; Amended Eff. April 1, 2001.*

**10 NCAC 46G .0213 PARENT-PROVIDER CHECKLIST**

Prior to approval, each provider shall submit a checklist to the local purchasing agency that indicates compliance with all applicable requirements. The checklist shall be completed and signed by the provider and the parent or responsible adult.

*History Note: Authority G.S. 143B-153(2a); Eff. February 1, 1993; Amended Eff. April 1, 2001.*

**10 NCAC 46G .0214 HEALTH AND SAFETY STANDARDS**

Each nonlicensed child care home shall comply with the following requirements in order to maintain a safe, healthy and sanitary environment for children:

- (1) A health and emergency information form completed and signed by the child's parent or guardian shall be on file for each child who attends. The completed form shall be on file on the first day the child attends with the exception of the child's immunization record which must be completed within 30 days after the first day the child attends. A recommended form is available from the Division. However, the provider may use another form, provided that form includes the following information:
  - (a) the child's name, address, and date of birth;

- (b) the names of individuals to whom the child may be released;
  - (c) the general status of the child's health;
  - (d) any allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or health professional;
  - (e) the names and phone numbers of persons to be contacted in an emergency situation;
  - (f) the name and phone number of the child's health provider and preferred hospital;
  - (g) authorization for the provider to administer specified medication according to the parent's instructions, if the parent so desires;
  - (h) authorization for the provider to seek emergency medical care in the parent's absence;
  - (i) a record of the child's immunizations as required pursuant to G.S. 130A-152.
- (2) The parent and provider shall discuss and agree upon the methods of discipline to be used with each child. The use of corporal punishment by the nonlicensed home operator, substitute caregiver, or any other person in the home, is prohibited except as allowed in G.S. 110-101.1. No child shall ever be placed in a locked or closed room, closet, or box.
  - (3) All areas used by the children, indoors and outdoors, shall be kept clean and orderly and free of items which are hazardous to children. Hazardous materials such as combustibles, medications, and cleaning supplies shall be kept in locked storage or stored out of the reach of children. Firearms and ammunition shall be kept separate and both shall be kept in locked storage. Any in-ground pools on the premises shall be enclosed by a fence four feet high to prevent chance access by children. Access to above-ground pools on the premises shall be prevented by locking and securing the ladder in a place or storing the ladder in a place inaccessible to the children.
  - (4) First-aid supplies shall be kept in a place easily accessible to the provider but out of the reach of children.
  - (5) The nonlicensed home provider shall have access to a working telephone in case of emergency. A written plan shall be developed that describes how the provider will access emergency assistance. Emergency phone numbers shall be readily available.
  - (6) To assure the safety of children whenever they are transported, the provider, or any other transportation provider, shall comply with all applicable state and federal laws concerning the transportation of passengers. All children, regardless of age or location in the vehicle, shall be restrained by individual seat belts or child restraint devices. Children shall never be left in a vehicle unattended by an adult.
  - (7) Garbage shall be stored in waterproof containers with tight fitting covers.
  - (8) The provider shall have sanitary toileting facilities, and sanitary diaper changing and handwashing facilities.
  - (9) Soiled diapers shall be placed in a covered leak-proof container which is emptied and cleaned daily.

- (10) The provider shall wash his or her hands after toileting and after diapering each child, and before and after feeding children or handling food.
- (11) The provider shall complete and keep on file the health self-questionnaire form provided by the Division.
- (12) Each provider shall obtain written proof that she is free of active tuberculosis prior to initial approval. The results indicating the individual is free of active tuberculosis shall be obtained within 12 months prior to applying for participation in the subsidized child care program.
- (13) The provider shall serve nutritious meals and snacks appropriate in amount and type of foods served for the ages of children in care.
- (14) The provider shall provide daily opportunities for supervised outdoor play or fresh air, weather permitting.
- (15) The provider shall assure that the structure in which the nonlicensed home arrangement is located has clean drinking water, a sanitary disposal system, weather-tight construction, and is otherwise safe for human habitation. Indoor areas used by children shall be heated in cool weather and ventilated in warm weather. The nonlicensed home arrangement shall be free of rodents.
- (16) Fuel burning heaters used when the children are in care shall be properly vented to the outside. Fuel burning heaters, fireplaces, stoves, and portable electric heaters, when in use, shall have a securely attached guard.
- (17) A battery-operated smoke detector shall be installed in the primary caregiving area of each nonlicensed child care home.
- (18) The nonlicensed home provider shall refrigerate all perishable food and beverages in a working refrigerator in good repair.
- (19) The provider shall successfully complete a basic first aid course within three months of beginning participation in this program. The provider shall renew the basic first aid course every three years.
- (20) The nonlicensed home provider shall submit to the local purchasing agency criminal record check information required in 10 NCAC 3U .2704, for himself or herself and for any member of the household who is over 15 years of age and present when children are in care, within five working days of applying to participate in the subsidized child care program.

*History Note:* Authority G.S. 110-90.2(a)(2); 143B-153(2a); Eff. February 1, 1993; Amended Eff. April 1, 2001; February 1, 1996; February 1, 1994.

**10 NCAC 46G .0215 PROVIDER REQUIREMENTS**

- (a) Each provider shall ensure that the parent or adult legally responsible for the child has unlimited access to his or her child and to the provider during the hours care is provided.
- (b) No person shall be permitted to participate as a child care provider in the subsidized child care program:
  - (1) who has been convicted of a crime involving child abuse, child neglect, or moral turpitude;
  - (2) who is an habitually excessive user of alcohol;

- (3) who illegally uses narcotics or other impairing drugs;
  - (4) who is mentally or emotionally impaired to an extent that may be injurious to children;
  - (5) who the Division has disqualified based on the provider's criminal history; or
  - (6) when the Division has disqualified an individual residing in the provider's home based on the household member's criminal history.
- (c) The provider shall be at least 18 years of age.

*History Note:* Authority G.S. 143B-153(2a); Eff. February 1, 1993; Amended Eff. April 1, 2001.

**10 NCAC 46H .0102 METHODS OF SERVICE PROVISION**

- (a) Child care services may be provided directly by a Department of Health and Human Services agency or the county departments of social services or may be provided through contractual arrangement.
- (b) The service must be provided in child care facilities or arrangements that meet rules adopted by the Social Services Commission.

*History Note:* Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. April 1, 2001.

**10 NCAC 46H .0108 LIMITATIONS**

- (a) Child care services as a support for protective services shall not be provided to children living in foster care arrangements.
- (b) Child care services as a support for training leading to employment for the parent or responsible adult shall not be provided when the parent is participating in graduate or post-graduate studies.
- (c) Child care services are limited to a total of two years when the parent or responsible adult is enrolled in a post-secondary degree program.

*History Note:* Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990.

**10 NCAC 46H .0109 PARENTAL FREEDOM OF CHOICE**

- (a) Parents receiving assistance for their children through the subsidized child care program shall choose any child care provider, approved for participation in the subsidized child care program under Subchapters 46E, 46F, or 46G of these Rules, to provide child care services for their eligible children. The parent's choice of provider shall be accepted when there is space available in the facility and the child's enrollment will not violate the provider's licensed capacity.
- (b) Purchasing agencies administering funds through the subsidized child care program shall notify parents applying for participation in the program of their right to choose the approved child care provider which will provide child care services to their eligible children.

*History Note:* Authority G.S. 143B-153; Eff. July 1, 1991;

*Amended Eff. April 1, 2001.*

*Eff. April 1, 2001.*

**10 NCAC 46H .0110 DEFINITION OF SPECIAL NEEDS CHILD**

(a) A special needs child is one who qualifies under one or more than one of the criteria listed in this Paragraph:

- (1) a child who is determined by the area mental health/developmental disabilities/substance abuse program to meet the definition of special needs pursuant to G.S. 122C and codified in 10 NCAC 14V .0802(1), (2), and (5); including subsequent amendments; or
- (2) a child who is determined by the local educational agency (LEA) to meet the definition of special needs pursuant to G.S. 115C as defined in the Department of Public Instruction's "Procedures Governing Programs and Services for Children With Disabilities," Section .1501A, except that the definition of an academically gifted child in .1501A is not considered a special needs child when determining the eligibility of a child for the subsidized child care program. This incorporation includes subsequent amendments and editions.

A copy of 10 NCAC 14V .0800 may be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina, 27699-6714, (919) 733-2678. A copy of "Procedures Governing Programs and Services for Children With Disabilities" may be obtained from the North Carolina Department of Public Instruction, Attention: Cash Management, 301 North Wilmington Street, Raleigh, North Carolina 27601-2825, (919) 715-1018.

(b) The agency determining eligibility for the services shall have on file a signed letter, statement, or summary from the person authorized to make the diagnosis to document the "special need" condition and a summary of the special services required to meet the child's needs as outlined in the child's individualized plan. An individualized plan is required to be developed by the area mental health program or the local educational agency for every child who is determined to meet the definition of a special needs child pursuant to PL 99-457, G.S. 122C-3 and G.S. 115C-146.1.

(c) Eligibility for the supplemental rate shall be contingent upon the provider's compliance with the activities designated for the provider in the child's individualized plan.

*History Note: Authority G.S. 143B-153(2a); Eff. December 1, 1992; Amended Eff. April 1, 2001; February 1, 1996.*

**TITLE 11 - DEPARTMENT OF INSURANCE**

**11 NCAC 10 .0718 "FORM F" AFFIDAVIT**

The affidavit required by G.S. 58-21-35(b) shall contain a signed statement by the applicant that insurance is not available from licensed companies, the name and address of the insured, a description of the risk, the nature and amount of insurance, the premium charged, policy period, policy number, and a statement by the surplus lines licensee that the insurance is not available from licensed companies.

*History Note: Authority G.S. 58-2-40; 58-21-35;*

**TITLE 12 - DEPARTMENT OF JUSTICE**

**12 NCAC 09A .0103 DEFINITIONS**

The following definitions apply throughout this Chapter, except as modified in 12 NCAC 9A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(b).
- (2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of Crime Control and Public Safety as authorized by G.S. 18B-500.
- (3) "Commission" means the North Carolina Criminal Justice Education and Training Standards Commission.
- (4) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (5) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
  - (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
  - (c) a plea of no contest, nolo contendere, or the equivalent.
- (6) "Correctional Officer" means any employee of the North Carolina Department of Correction who is responsible for the custody or treatment of inmates.
- (7) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(c) and further includes probation and parole intake officers; probation/parole officers-surveillance; probation/parole intensive officers; and, state parole case analysts.
- (8) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.
- (9) "Criminal Justice Training Points" means points earned toward the Criminal Justice Officers' Professional Certificate Program by successful completion of commission-approved criminal justice training courses. 20 classroom hours of commission-approved criminal justice training equals one criminal justice training point.
- (10) "Department Head" means the chief administrator of any criminal justice agency and specifically includes any chief of police or agency director. "Department Head" also includes a designee formally appointed in writing by the Department head.
- (11) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (12) "Educational Points" means points earned toward the Professional Certificate Programs for studies satisfactorily completed for semester hour or quarter

hour credit at an accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.

- (13) "Enrolled" means that an individual is currently actively participating in an on-going formal presentation of a commission-accredited basic training course which has not been concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
- (a) for law enforcement officers, that the officer is then attending an approved course presentation averaging a minimum of 12 hours of instruction each week; and
  - (b) for Youth Services and Department of Correction personnel, that the officer is then attending the last or final phase of the approved training course necessary for fully satisfying the total course completion requirements.
- (14) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (15) "In-Service Training" means any and all training prescribed in 12 NCAC 09E .0102 which must be satisfactorily completed by all certified law enforcement officers during each full calendar year of certification.
- (16) "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- (17) "Law Enforcement Code of Ethics" means that code adopted by the Commission on September 19, 1973, which reads:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to

influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts or corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

- (18) "Law Enforcement Officer" means an appointee of a criminal justice agency or of the State or of any political subdivision of the State who, by virtue of his office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from this title are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E.
- (19) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of commission-approved law enforcement training courses. 20 classroom hours of commission-approved law enforcement training equals one law enforcement training point.
- (20) "LIDAR" means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.
- (21) "Local Confinement Personnel" means any officer, supervisor or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.
- (22) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:
- (a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item (22)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common

law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving which is expressly included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

(b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor manual as published by the North Carolina Department of Justice which is hereby incorporated by reference and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor does expressly include, either first or subsequent

offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, driving while license permanently revoked or permanently suspended, and those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor manual. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.

- (23) "Parole Case Analyst" means an employee of the North Carolina Department of Correction who works under the supervision of the North Carolina Parole Commission, whose duties include analyzing and processing cases under consideration for parole, preparing and presenting parole recommendations, analyzing and processing executive clemency matters and interviewing inmates.
- (24) "Pilot Courses" means those courses developed consistent with the curriculum development policy adopted by the Commission on May 30, 1986. This policy shall be administered by the Education and Training Committee of the Commission consistent with 12 NCAC 9C .0404.
- (25) "Probation/Parole Officer" means an employee of the Division of Adult Probation and Parole whose duties include supervising, evaluating, treating, or instructing offenders placed on probation or parole or assigned to any other community-based program operated by the Division of Adult Probation and Parole.
- (26) "Probation/Parole Intake Officer" means an employee of the Division of Adult Probation and Parole, other than a regular Probation/Parole officer, whose duties include conducting, preparing, or delivering investigations, reports, and recommendations, either before or after sentencing, upon the request or referral of the court, the Parole Commission, or the Director of the Division of Adult Probation and Parole.
- (27) "Probation/Parole Intensive Officer" means an employee of the Division of Adult Probation and Parole other than a regular probation/parole officer, probation/parole intake officer, and probation/parole officer-surveillance who is duly sworn, empowered with the authority of arrest and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Adult Probation and Parole, whose duties include supervising, investigating, reporting, counseling, treating, and surveillance of serious offenders in an intensive probation and parole program operated by the Division of Adult Probation and Parole who serves as the lead officer in such a unit.
- (28) "Probation/Parole Officer - Surveillance" means an employee of the Division of Adult Probation and Parole other than a regular probation/parole and a



probation/parole intake officer who is duly sworn, empowered with the authority of arrest and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Adult Probation and Parole whose duties include supervising, investigating, reporting, and surveillance of serious offenders in an intensive probation and parole program operated by the Division of Adult Probation and Parole who is trained in community corrections and law enforcement techniques.

- (29) "Qualified Assistant@ means an additional staff person designated as such by the School Director to assist in the administration of a course when an accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited course.
- (30) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band, or transmits microwave energy in the 24,050 to 24,250 MHZ frequency (K) band, or, transmits microwave energy in the 33,400 to 36,000 MHZ (Ka) band.
- (31) "Resident" means any youth committed to a facility operated by the North Carolina Division of Youth Services.
- (32) "School" or "criminal justice school" means an institution, college, university, academy, or agency which offers criminal justice, law enforcement, penal, correctional, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (33) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (34) "Speed-Measuring Instruments" (SMI) means those devices or systems, including radar time-distance, and LIDAR, formally approved and recognized under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as specifically referenced in the approved list of 12 NCAC 9C .0601.
- (35) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (36) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.
- (37) "State Youth Services Officer" means an employee of the North Carolina Division of Youth Services whose duties include the evaluation, treatment, instruction, or supervision of juveniles committed to that agency.

*History Note:* Filed as a Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995; Filed as a Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;

*Eff. January 1, 1981; Amended Eff. November 1, 1981; August 15, 1981; Readopted Eff. July 1, 1982; Amended Eff. April 1, 2001; August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1995; November 1, 1993; March 1, 1990; July 1, 1989.*

**TITLE 13 - DEPARTMENT OF LABOR**

**13 NCAC 12 .0306 VACATION PAY**

- (a) Employers shall notify employees of the employer's policies and practices concerning vacation pay as follows:
  - (1) Orally or in writing at the time of hiring;
  - (2) By making a copy of the policies and practices available to them in writing or through a posted notice maintained in a place accessible to the employees; and
  - (3) Before the effective date of any changes, in writing or through a posted notice maintained in a place accessible to the employees.
- (b) All vacation policies and practices shall address:
  - (1) How and when vacation is earned so that the employees know the amount of vacation to which they are entitled;
  - (2) Whether or not vacation time may be carried forward from one year to another, and if so, in what amount;
  - (3) When vacation time must be taken;
  - (4) When and if vacation pay may be paid in lieu of time off; and
  - (5) Under what conditions and in what amount vacation pay will be paid upon discontinuation of employment.
- (c) Ambiguous policies and practices shall be construed against the employer and in favor of employees.
- (d) Vacation benefits granted under a policy which does not establish an earning period cannot be reduced or eliminated as a result of a change in policy. An example of such a policy is: "Employees are entitled to one week of vacation per calendar year." If a policy which establishes an earning period or accrual rate is changed, employees are entitled to a pro rata share of the benefits earned under the original policy through the effective date of the change and of the benefits earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

*History Note:* Authority G.S. 95-25.2; 95-25.12; 95-25.13; 95-25.19; Eff. November 1, 1980; Legislative Objection Lodged Eff. March 27, 1981; Amended Eff. March 1, 2001; April 1, 1999; February 1, 1982.

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

- (a) Employers may pay wages based on bonuses, commissions or other forms of calculation as infrequently as annually, if the employees are so notified before earning such wages.
- (b) Employers shall notify employees of the employers' policies and practices concerning pay, wages based on bonuses, commissions, or other forms of calculation as follows and in accordance with Rule .0801 of this Chapter:
  - (1) Orally or in writing at the time of hiring;

- (2) By making a copy of the policies and practices available to them in writing or through a posted notice maintained in a place accessible to the employees; and,
  - (3) Before the effective date of any changes, in writing or through a posted notice maintained in a place accessible to the employees.
- (c) Ambiguous policies and practices shall be construed against the employer and in favor of employees.
- (d) All policies or practices relating to bonuses, commissions, or other forms of calculation wages shall address:
- (1) How and when bonuses, commissions or other forms of calculation wages are earned so that the employees know the amount of bonuses, commissions or other forms of calculation wages to which they are entitled; and
  - (2) Under what conditions and in what amount bonuses, commissions or other forms of calculation wages will be paid upon discontinuation of employment.
- (e) Wages computed under a bonus, commission, or other forms of calculation policy or practice which does not establish specific earning criteria cannot be reduced or eliminated as a result of a change in policy or practice. An example of such a policy is: "Employees earn commissions of xx% on all 'sales' (where sales are not defined by the employer)." If the employer changes a policy or practice which establishes specific earning criteria, the employee is entitled to the bonus, commission or other forms of calculation wages earned under the original policy through the effective date of the change and is entitled to the bonus, commission or other forms of calculation wages earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

*History Note:* Authority G.S. 95-25.6; 95-25.7; 95-25.13; 95-25.19;  
*Eff. February 1, 1982;*  
*Amended Eff. March 1, 2001; April 1, 1999.*

**13 NCAC 12 .0401 CERTIFICATION OF YOUTHS**

- (a) Unless exempted by the Wage and Hour Act, all employees under 18 years of age must obtain a youth employment certificate prior to starting work. Where there is no employer-employee relationship, a youth is not employed as a worker and a certificate is not required.
- (b) Youths who reside in homes for dependent children may perform domestic activities without being considered employees. Such activities include personal care, maintenance of living quarters, work around the residence or its farm and other activities normally performed by children when living at home and under direct parental control.
- (c) A youth employment certificate is valid only for the employer specified on the certificate. This certificate is valid at all locations of this employer. A new certificate must be obtained for each new employer. A certificate remains valid for a youth who terminates employment but then resumes work at the same place of employment.

*History Note:* Authority G.S. 95-25.5; 95-25.14; 95-25.19;  
*Eff. November 1, 1980;*  
*Amended Eff. March 1, 2001; February 1, 1982.*

**13 NCAC 12 .0402 APPLICATION FOR A YOUTH**

**EMPLOYMENT CERTIFICATE**

- (a) A youth may obtain a youth employment certificate from the county director of social services' office or approved designee in the county in which the youth resides or the county in which the youth intends to work.
- (b) The youth must provide proof of age by means of one of the following:
  - (1) A birth certificate;
  - (2) Evidence from the bureau of vital statistics in the state in which the youth was born;
  - (3) Any state driver's license, learner's permit, or state-issued identification card;
  - (4) Passport;
  - (5) School records or insurance records; or
  - (6) Other documentary evidence determined as equivalent by the Wage and Hour Office.
- (c) The youth shall obtain a youth employment certificate form on which the youth and the employer must supply the following information:
  - (1) Youth's name, address, phone number, sex, age and birth date;
  - (2) Employer's company name, type of business, address and phone number; and
  - (3) Job description.
- (d) The youth employment certificate must be signed by the youth in the presence of the issuing officer, by a parent, guardian, or person standing in place of a parent as defined in 29 CFR 570.126, and by the employer.
- (e) A youth may obtain a youth employment certificate electronically from the Department of Labor, if available. The Department shall use electronic means to verify the age and permissibility of employment based on type of employment and prohibitions in G.S. 95-25.5 and the child labor provisions of the F.L.S.A. Electronically issued youth employment certificates shall not be valid until signed by the youth, the employer and the youth's parent, guardian, or person standing in place of a parent as defined in 29 CFR 570.126.

*History Note:* Authority G.S. 95-25.5; 95-25.19;  
*Eff. November 1, 1980;*  
*Amended Eff. March 1, 2001.*

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

- (a) The county director of social services, approved designee or the Department of Labor shall review the youth employment certificate to see that it is complete and shall ascertain the age of the youth by the means prescribed in Rule .0402 of this Section and the permissibility of employment based on type of employment and prohibitions in G.S. 95-25.5 and the child labor provisions of the F.L.S.A.
- (b) The county director of social services, approved designee or Department of Labor shall sign, date and issue the certificate. The employer's copy of the certificate shall be given to the youth. Certificates shall not be issued if:
  - (1) The proposed employment does not comply with all statutory requirements and prohibitions, and all rules and regulations promulgated under this Section; or
  - (2) The proposed employment will be in violation of the F.L.S.A. and all rules promulgated thereunder.

(c) The county director of social services or Department of Labor shall maintain one copy of the certificate on file for two years following the date of issuance and shall send one copy to the Wage and Hour Office at the end of each week.

(d) The employer's copy of the youth employment certificate must be given to the employer by the youth on or before the first day of employment. The employer shall not employ a youth until the employer has received its copy of the issued certificate. The employer shall maintain the certificate on record where it is readily accessible to any person authorized to inspect or investigate youth employment. The employer shall maintain the certificate on record so long as the youth is employed thereunder and for two years after the employment terminates.

(e) The employer or youth may request a review of the denial of a certificate by written or oral request to the Wage and Hour Office. Appeals of the review decisions rendered must be made in writing within 15 days to the Wage and Hour Administrator who shall issue a written decision. Requests for appeal of the Administrator's decision must be addressed to the Office of Administrative Hearings in accordance with G.S. 150B, Article 3.

*History Note: Authority G.S. 95-25.5; 95-25.14; 95-25.15; Eff. November 1, 1980; Amended Eff. March 1, 2001; February 1, 1982.*

**13 NCAC 12 .0406 DETRIMENTAL OCCUPATIONS**

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

- (1) Welding, brazing and torch cutting as defined in the Occupational Safety and Health Administration (OSHA) General Industry Standards, 29 CFR 1910. 251 through 255 and OSHA Construction Standards, 29 CFR 1926.350 through 354;
- (2) Any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form;
- (3) Any work involving exposure to lead or any of its compounds in any form;
- (4) At any work involving exposure to benzene or any benzene compound which is volatile or which can penetrate the skin;
- (5) Occupations in canneries, seafood and poultry processing establishments which involve the use, setting up, adjusting, repairing, or cleaning of cutting or slicing machines, or freezing or packaging activities;
- (6) Any work which involves the risk of falling a distance of 10 feet or more, including the use ladders and scaffolds;
- (7) Any work as an electrician or electrician's helper;
- (8) Any work in confined spaces as defined by OSHA General Industry Standard, 29 CFR 1910.146 and OSHA Construction Standard, 29 CFR 1926.21;
- (9) Occupations in which the use of a respirator is required by OSHA General Industry Standard, 29 CFR 1910.134 or OSHA Construction Industry Standards, 29 CFR 1926.

(b) Youths and employers working under the supervision of bona fide apprenticeship and student-learner programs, as

defined by the Fair Labor Standards Act and the rules and regulations promulgated thereunder, are exempt from the prohibition against employment of youths in detrimental occupations.

*History Note: Authority G.S. 95-25.5; 95-25.19; Eff. February 1, 1982; Amended Eff. March 1, 2001.*

**13 NCAC 12 .0407 DESIGNATION OF YOUTH EMPLOYMENT CERTIFICATE ISSUERS**

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

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

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

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

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

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

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

*History Note: Authority G.S. 95-25.5; 95-25.19;*

*Eff. March 1, 2001.*

**13 NCAC 12 .0408 DEFINITIONS RELATIVE TO ABC RESTRICTIONS**

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

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

*History Notes: Authority G.S. 95-25.5; 95-25.19; Eff. March 1, 2001.*

**13 NCAC 12 .0501 EXEMPTIONS**

(a) G.S. 95-25.14(a)(1) provides an exemption from the minimum wage, overtime, youth employment and related record keeping requirements of the Wage and Hour Act for any person employed in an "enterprise" as defined by the F.L.S.A. Persons who are not employed by an "enterprise", but who are subject to the F.L.S.A. because they are engaged in commerce or in the production of goods for commerce are subject to both the F.L.S.A. and the Wage and Hour Act, unless otherwise exempted.

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

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

(G) Newspaper carriers and makers of wreaths composed of natural materials as specified in 29 U.S.C. 213(d).

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

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

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

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

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

*History Note: Authority G.S. 95-25.14; 95-25.19; Eff. November 1, 1980; Amended Eff. March 1, 2001.*

**13 NCAC 12 .0801 RECORDS TO BE MAINTAINED**

(a) Every employer shall maintain complete and accurate records which contain the following information for each employee in each workweek, unless the employee is specifically exempted:

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

workweek may have one record keeping for the entire group);

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

(b) All other records required by statute or rule for the enforcement of any provision of the Wage and Hour Act must also be maintained by the employer. Such records include, but are not limited to, the following: tip credits; costs of meals, lodging or other facilities; start and end time for youth under age 18; youth employment certificates; wage deductions; vacation and sick leave policies; policies and procedures relating to promised wages; and records required to compute wages as defined by G.S. 95-25.2(16).

*History Note: Authority G.S. 95-25.13; 95-25.15; 95-25.19; Eff. November 1, 1980; Amended Eff. March 1, 2001; February 1, 1982.*

**13 NCAC 20 .0201 COMPUTING TIME PERIODS**

In computing any period of time described in G.S. Chapter 95, Article 20 or this Chapter, the day of the triggering act or event shall not be counted. If the last day of the period falls on a Saturday, Sunday or a legal holiday, it shall not be counted and the period shall end at the close of the next day which is not a Saturday, Sunday, or a legal holiday. The Commissioner shall use Rule 6 of the NC Rules of Civil Procedure, G.S. 1A-1, Rule 6(a), as a guide in interpretation of this Rule. "Legal holiday" means the legal holidays observed by the Superior Courts of North Carolina. A list of legal holidays is available from the Administrative Office of the Courts and each local Clerk of Superior Court in North Carolina.

*History Note: Authority G.S. 95-232; 95-234; Eff. March 1, 2001.*

**13 NCAC 20 .0304 CONTRACTOR PROCEDURES**

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

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

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

*History Note: Authority G.S. 95-231; 95-232; 95-234; Eff. March 1, 2001.*

**13 NCAC 20 .0503 RELEASE OF CONFIDENTIAL INFORMATION**

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

- (1) to the examinee or to any other person upon written authorization signed by the examinee;
- (2) to laboratories performing screening, confirmation tests, or retests of confirmed positive results;
- (3) for employment-related reasons. Examples of employment-related reasons include: performance evaluations, discipline and provision of references; or
- (4) to a government agency, court or other tribunal having jurisdiction over any claim or proceeding involving the examinee and the examiner.

*History Note: Authority G.S. 95-23; 95-232; 95-234; Eff. March 1, 2001.*

**13 NCAC 20 .0602 REASONABLE EXPENSES**

"Reasonable expenses for retesting" means:

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

*History Note: Authority G.S. 95-232; 95-234; Eff. March 1, 2001.*

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

**15A NCAC 02B .0258 TAR-PAMLICO RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: BASINWIDE STORMWATER REQUIREMENTS**

- (a) PURPOSE. The purposes of this Rule are as follows.
  - (1) To achieve and maintain a reduction in nitrogen loading to the Pamlico estuary from lands in the Tar-Pamlico River Basin on which new development occurs. The

goal of this Rule is to achieve a 30 percent reduction relative to pre-development levels;

- (2) To limit phosphorus loading from these lands to the estuary. The goal of this Rule is to limit phosphorus loading to pre-development levels;
- (3) To provide control for peak stormwater flows from new development lands to ensure that the nutrient processing functions of existing riparian buffers and streams are not compromised by channel erosion; and
- (4) To minimize, to the greatest extent practicable, nitrogen and phosphorus loading to the estuary from existing developed areas in the basin.

(b) **APPLICABILITY.** This Rule shall apply to local governments in the Tar-Pamlico basin according to the following criteria.

(1) This Rule shall apply to the following municipal areas:

- (A) Greenville
- (B) Henderson
- (C) Oxford
- (D) Rocky Mount
- (E) Tarboro
- (F) Washington

(2) This Rule shall apply to the following counties:

- (A) Beaufort
- (B) Edgecombe
- (C) Franklin
- (D) Nash
- (E) Pitt

(3) The Environmental Management Commission may designate additional local governments as subject to this Rule by amending this Rule based on the potential of those jurisdictions to contribute significant nutrient loads to the Tar-Pamlico River. At a minimum, the Commission shall review the need for additional designations as part of the Basinwide process for the Tar-Pamlico River Basin. The Commission shall consider, at a minimum, the following criteria related to local governments: population within the basin, population density, past and projected growth rates, proximity to the estuary, and the designation status of municipalities within candidate counties.

(c) **REQUIREMENTS.** All local governments subject to this Rule shall develop stormwater management programs for submission to and approval by the Commission according to the following minimum standards:

(1) A requirement that developers submit a stormwater management plan for all new developments proposed within their jurisdictions. These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:

- (A) The nitrogen load contributed by the proposed new development activity shall not exceed 70 percent of the average nitrogen load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and nitrogen export research data. Based on 1995 land use data and available research, the nitrogen load value shall be 4.0 pounds per acre per year;
- (B) The phosphorus load contributed by the proposed new development activity shall not exceed the average phosphorus load contributed by the non-

urban areas in the Tar-Pamlico River basin based on land use data and phosphorus export research data. Based on 1995 land use data and available research, the phosphorus load value shall be 0.4 pounds per acre per year;

(C) The new development shall not cause erosion of surface water conveyances. At a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the 1-year, 24-hour storm event; and

(D) Developers shall have the option of partially offsetting their nitrogen and phosphorus loads by providing treatment of off-site developed areas. The off-site area must drain to the same classified surface water, as defined in the Schedule of Classifications, 15A NCAC 2B .0316, that the development site drains to most directly. The developer must provide legal assurance of the dedicated use of the off-site area for the purposes described here, including achievement of specified nutrient load reductions and provision for regular operation and maintenance activities, in perpetuity. The legal assurance shall include an instrument, such as a conservation easement, that maintains this restriction upon change of ownership or modification of the off-site property. Before using off-site treatment, the new development must attain a maximum nitrogen export of six pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development.

- (2) A public education program to inform citizens of how to reduce nutrient pollution and to inform developers about the nutrient and flow control requirements set forth in Part (c)(1).
- (3) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers.
- (4) A program to identify and remove illegal discharges.
- (5) A program to identify and prioritize opportunities to achieve nutrient reductions from existing developed areas.
- (6) A program to ensure maintenance of BMPs implemented as a result of the provisions in Subparagraphs (c)(1) and (c)(5).
- (7) A program to ensure enforcement and compliance with the provisions in Subparagraph (c)(1).
- (8) Local governments may include regional or jurisdiction-wide strategies within their stormwater programs as alternative means of achieving partial nutrient removal or flow control. At a minimum, such strategies shall include demonstration that any proposed measures will not contribute to degradation of surface water quality, degradation of aquatic or wetland habitat or biota, or destabilization of conveyance structure of involved surface waters. Such local governments shall also be responsible for including appropriate supporting information to quantify nutrient and flow reductions provided by these measures and describing the

administrative process for implementing such strategies.

(d) **TIMEFRAME FOR IMPLEMENTATION.** The timeframe for implementing the stormwater management program shall be as follows:

- (1) Within 12 months of the effective date of this Rule, the Division shall submit a model local stormwater program that embodies the minimum criteria described in Paragraph (c) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.
- (2) Within 12 months of the Commission's approval of the model local stormwater program or within 12 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall submit their local stormwater management programs to the Commission for review and approval. These local programs shall meet or exceed the requirements in Paragraph (c) of this Rule.
- (3) Within 18 months of the Commission's approval of the model local stormwater program or within 18 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall adopt and implement their approved local stormwater management program.
- (4) Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.

(e) **COMPLIANCE.** A local government that fails to submit an acceptable local stormwater management program within the timeframe established in this Rule or fails to implement an approved program shall be in violation of this Rule. In this case, the stormwater management requirements for its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126. Any local government that is subject to an NPDES municipal stormwater permit pursuant to this Rule shall:

- (1) Develop and implement comprehensive stormwater management program to reduce nutrients from both existing and new development. This stormwater management program shall meet the requirements of Paragraph (c) of this Rule for new and existing development.
- (2) Be subject to the NPDES permit for at least one permitting cycle (five years) before it is eligible to submit a local stormwater management program to the Commission for consideration and approval.

*History Note: Authority G. S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-282(d). Eff. April 1, 2001.*

**15A NCAC 3M .0201 GENERAL**

- (a) Striped bass is defined as striped bass (*Morone saxatilis*) and its hybrids taken in coastal and joint waters.
- (b) Hook-and-line fishing equipment is not commercial fishing equipment in the striped bass fishery. It is unlawful to sell or purchase striped bass taken by hook-and-line. Striped bass taken legally with hook-and-line may be possessed and transported.

(c) It is unlawful to possess striped bass imported from other states less than 18 inches long (total length).

(d) It is unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass except:

- (1) during the open season in internal coastal waters established in 15A NCAC 3M .0202;
- (2) during any open season established for the Atlantic Ocean in 15A NCAC 3M .0204; or
- (3) during any open season of another state without possession of the following:
  - (A) a bill of lading as described in 15A NCAC 3I .0114;
  - (B) a numbered, state-issued tag from the State of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1994; September 1, 1991; Temporary Amendment Eff. May 1, 2000; Amended Eff April 1, 2001.*

**15A NCAC 30 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the permittee, a responsible party or person holding a power of attorney:

- (1) full name, physical address, mailing address, date of birth, and signature of the permittee on the application. If the permittee is not appearing before a license agent or the designated Division contact, the permittee's signature on the application must be notarized;
- (2) current picture identification of permittee, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) full names and dates of birth of designees of the permittee who will be acting under the requested permit where that type permit requires listing of designees;
- (4) certification that the permittee and their designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) for permit applications from business entities, the following documentation is required:
  - (A) business name;
  - (B) type of business entity: Corporation, partnership, or sole proprietorship;
  - (C) name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
  - (D) for a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
  - (E) for a partnership, if the partnership is established by a written partnership agreement, a current copy

- of such agreement shall be provided when applying for a permit;
- (F) for business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable;
  - (G) For renewal of a permit, the information required in Parts (D), (E), and (F) of this Subparagraph is only required if a change has occurred since the last issuance of a permit.
- (6) additional information as allowed by statutes or rules may also be required by the Division for specific permits.
- (b) A permittee must hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
- (1) pound net permit;
  - (2) permit to waive the requirement to use turtle excluder devices in the Atlantic Ocean.
- (c) A permittee and their designees must hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
- (1) permit to transplant (prohibited) polluted shellfish;
  - (2) permit to transplant oysters from seed management areas;
  - (3) permit to use mechanical methods for oysters or clams on shellfish leases or franchises;
  - (4) permit to harvest rangia clams from prohibited (polluted) areas.
- (d) A permittee must hold a valid Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category.
- (e) A permittee must hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (f) Applications submitted without complete and required information shall be considered incomplete and shall not be processed until all required information has been submitted. Incomplete applications will be returned to the applicant with deficiency in the application so noted.
- (g) A permit will be issued only after the application has been deemed complete by the Division of Marine Fisheries and the permittee certifies to fully abide by the permit general and specific conditions established under 15A NCAC 3J .0107, 3K .0103, 3K .0104, 3K .0107, 3K .0206, 3K .0303, 3K .0401, 3O .0502, and 3O .0503 as applicable to the requested permit.
- (h) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:
- (1) potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
  - (2) applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
  - (3) applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.
- (i) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefore. The applicant may submit further information, or reasons why the permit should not be denied or modified.

- (j) Permits are valid from the date of issuance through the expiration date printed on the permit. This time frame may be based on calendar year, fiscal year, or other as deemed appropriate by the Division.
- (k) To renew a permit, the permittee shall file a certification that the information in the original application is still currently correct, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.
- (l) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in 15A NCAC 3.
- (m) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.
- (n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.
- (o) Permit applications shall be available at all Division Offices.
- (p) Any permit which is valid at time of adoption of this Rule will be valid until the expiration date stated on the permit.

*History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52; Temporary Adoption Eff. May 1, 2000; Eff. April 1, 2001.*

**15A NCAC 30 .0502 PERMIT CONDITIONS; GENERAL**

The following conditions apply to all permits issued by the Division of Marine Fisheries:

- (1) it is unlawful to operate under the permit except in areas, at times, and under conditions specified on the permit;
- (2) it is unlawful to operate under a permit without having the permit or copy thereof in possession of the permittee or their designees at all times of operation and the permit or copy thereof must be ready at hand for inspection, except for Pound Net Permits;
- (3) it is unlawful to operate under a permit without having a current picture identification in possession and ready at hand for inspection;
- (4) it is unlawful to refuse to allow inspection and sampling of a permitted activity by an agent of the Division;
- (5) it is unlawful to fail to provide complete and accurate information requested by the Division in connection with the permitted activity;
- (6) it is unlawful to hold a permit issued by the Division of Marine Fisheries when not eligible to hold any license required as a condition for that permit as stated in 15A NCAC 3O .0501;
- (7) it is unlawful to fail to provide reports within the time frame required by the specific permit conditions;
- (8) it is unlawful to fail to keep such records and accounts as may be required by the Division for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational fisheries;
- (9) it is unlawful to assign or transfer permits issued by the Division, except for Pound Net Permits as authorized by 15A NCAC 3J .0107(d);



- (10) the Fisheries Director, or his agent, may, by conditions of the permit, specify any or all of the following for the permitted purposes:
  - (a) species;
  - (b) quantity or size;
  - (c) time period;
  - (d) location;
  - (e) means and methods;
  - (f) disposition of resources;
  - (g) marking requirements; or
  - (h) harvest conditions.
- (11) unless specifically stated as a condition on the permit, all statutes, rules and proclamations apply to the permittee and their designees.
- (12) as a condition of accepting the permit from the Division of Marine Fisheries, the permittee agrees to abide by all conditions of the permit and agrees that if specific conditions of the permit, as identified on the permit, are violated or if false information was provided in the application for initial issuance, renewal or transfer, the permit may be suspended or revoked by the Fisheries Director.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;*  
*Temporary Adoption Eff. May 1, 2000;*  
*Eff. April 1, 2001.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 4 - COMMISSION FOR AUCTIONEERS**

**21 NCAC 04B .0103 DEFINITIONS**

Whenever used in this Chapter:

- (1) "Auctioneers Law" or "licensing law" shall refer to G.S. 85B;
- (2) "Auctioneering" or "conduct of auction" or "conduct of business" shall mean, in addition to the actual calling of bids, any of the following:
  - (a) contracting for an auction or auctions;
  - (b) accepting consignments of items for sale at auction;
  - (c) advertising an auction;
  - (d) offering items for sale at auction;
  - (e) accepting payment and disbursing monies for items sold at auction; or
  - (f) otherwise soliciting, arranging, sponsoring, or managing an auction or auctions or holding oneself out as an auctioneer.
- (3) "Board" shall mean the North Carolina Auctioneers Commission;
- (4) "Minimum Bid" as used in auctions shall mean minimum opening bids;
- (5) "Principal(s)" as it pertains to auction firms shall mean director(s), officer(s) and partner(s).

*History Note: Authority G.S. 85B-1; 85B-3.1;*  
*Eff. November 1, 1984;*  
*Amended Eff. April 1, 2001; April 1, 1996; January 1, 1995.*

**21 NCAC 04B .0402 LICENSE RENEWAL**

- (a) Any licensee desiring the renewal of a license which is in good standing shall apply for same and shall submit the required fees and such records or documentation requested by the Executive Director to verify the licensee's compliance with G.S. 85B and the rules promulgated in this Chapter. All licenses expire on June 30 each year.
- (b) Applications for renewal of licenses will only be processed by the Board upon receipt of the required fee and any records, documents, or information, requested pursuant to Paragraph (a) of this Rule.
- (c) Any person or entity who engages in any auctioneering activities governed by the auctioneers law while the license is lapsed will be subject to the penalties pursuant to G.S. 85B-9.
- (d) Licenses lapsed or suspended in excess of 24 months shall not be renewable. Persons or firms whose license has been lapsed or suspended in excess of 24 months and who desire to be licensed shall apply for a new license and shall meet all the requirements then existing. Persons or firms whose license has been lapsed or suspended in excess of 24 months and who desire to be licensed are exempt from the auctioneer school or the apprenticeship requirements should the continuing education requirements be met for all lapsed, suspended and inactive years.

*History Note: Authority G.S. 85B-3.1; 85B-4;*  
*Eff. November 1, 1984;*  
*Amended Eff. April 1, 2001; January 1, 1995; April 1, 1989.*

**21 NCAC 04B .0405 INVOLVEMENT IN COURT ACTION OR ADMINISTRATIVE HEARING**

- (a) All auctioneers, apprentice auctioneers and auction firms, including their principals and designated person(s), shall report to the Board any and all criminal arrests for, charges of or convictions of a misdemeanor that has as an essential element dishonesty, deceit, fraud or misrepresentations, or any arrests, charges or convictions of any felony. Convictions include findings of guilt, guilty pleas, and pleas of nolo contendere. The Board must receive written notice of any such arrest, charge or criminal conviction within 30 days of the occurrence of any or all of these events.
- (b) All auctioneers, apprentice auctioneers and auction firms, including their principals and designated person(s), shall report to the Board any and all civil suits involving them that are based upon any allegation of gross negligence, dishonesty, fraud, misrepresentation or incompetency, or that in any way involve an auction sale or a transaction related to an auction matter or auctioneering. The Board must receive written notice of any such civil suit within 30 days of the date the complaint in the suit is served on the defendant in the action, or the date a pleading containing one or more of these allegations is served on a party.
- (c) All auctioneers, apprentice auctioneers and auction firms, including their principals and designated person(s), shall report to the Board any and all administrative proceedings which are commenced against them which involve any potential revocation or suspension of, or other disciplinary action against, any auction license or auctioneer license that they hold in another state. The Board must receive written notice of any such administrative proceeding within 30 days of the date the auctioneer, apprentice auctioneer or auction firm, including its principals and designated person(s), is notified of the administrative proceeding.

*History Note: Authority G.S. 85B-3.1; 85B-4;  
Eff. November 1, 1984;  
Amended Eff. April 1, 2001; January 1, 1995; April 1, 1989.*

**21 NCAC 04B .0502 REQUIREMENTS FOR APPROVAL/MINIMUM STANDARDS**

(a) In order to be accepted as an approved school, and in order to remain approved, the course curriculum must contain classroom instruction in the following subjects for the minimum number of hours shown:

- (1) Essential Core Curriculum (minimum 50 hours);
  - 16 Hours - Bid Calling, Voice Control, Proper Breathing Techniques, and Use and Sequence of Numbers;
  - 4 Hours - Advertising;
  - 8 Hours - Auctioneers Law and Rules and Regulations;
  - 2 Hours - Uniform Commercial Code and Bulk Transfers;
  - 2 Hours - Drafting and Negotiating Contracts;
  - 2 Hours - Closing Statements and Settlements;
  - 8 Hours - Accounting and Mathematics;
  - 1 Hour - Auctioneering Ethics;
  - 2 Hours - Handling Sale Proceeds and Escrow Accounts;
  - 2 Hours - Auction Preparation and Setup;
  - 3 Hours - Review and Testing (End of Course).

- (2) Supplemental Instruction Areas (min. 30 hours):
 

Antiques	Heavy Equipment
Real Estate	Automobiles
Tobacco	Cattle and Livestock
Environmental Issues	Public Speaking
Computers	Estate Sales
Firearms	Appraising
Foreclosure/Bankruptcy Sales	
Sales Tax Requirements	
Art, Rugs, Jewelry	
Hygiene & Personal Appearance	
Body Language	Ring Work
Farm Machinery	Consignment
	Auctions

Minimum hours are not required in individual supplemental subjects, however, all topics must be addressed in the school.

- (3) Courses that include students that will become North Carolina applicants must provide a minimum of 2 hours of instruction on the North Carolina Auctioneers Law and Rules, G.S. 85B and 21 NCAC 4B. This instruction shall be included within the minimum required 8 hours instruction of Auctioneers Law and Rules and Regulations.

(b) Students attending an approved course must attend and successfully complete a minimum of 80 hours of classroom instruction according to the list of subjects and minimum hours of instruction in each subject specified in Paragraph (a) of this Rule. An hour of creditable instruction is defined as 50 minutes of classroom instruction or practical exercise accompanied by a 10 minute break.

(c) Each course offered must include instruction by a minimum of five different instructors, at least two of whom must be

professional auctioneers. Regardless of the total number of hours taught by any given instructor, no more than 20 hours of an individual's instruction may be counted to satisfy the requirements of Paragraph (a) of this Rule.

(d) The school shall establish standards for all persons who instruct in an approved school with minimum training or experience, or a combination thereof, in the particular field in which they are instructing.

(e) The school shall provide or make available suitable facilities, equipment, materials and supplies necessary for the course, specifically including:

- (1) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all students; and
- (2) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training.

*History Note: Authority G.S. 85B-3.1; 85B-4(d);  
Eff. November 1, 1984;  
Amended Eff. April 1, 2001; March 1, 1995.*

**21 NCAC 04B .0806 COURSE COMPLETION REPORTING**

(a) Course sponsors must prepare and submit to the Board reports verifying completion of each continuing education course conducted. Sponsors must submit these reports to the Board in a manner that will assure receipt by the Board within thirty calendar days following the course, but in no case later than May 15 for courses conducted prior to that date. Reports shall include the following:

- (1) Official course name;
- (2) Sponsor or coordinator name, mailing address, and telephone number;
- (3) Coordinator signature certifying that the information is correct;
- (4) Name, address, North Carolina license number, and social security number of each licensee who satisfactorily completes the course and who desires continuing education credit for the course;
- (5) Physical location where course was conducted;
- (6) Date(s), starting and ending times of course; and
- (7) Number of credit hours.

(b) At the request of the Board, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of the course upon completion of the course.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course a course completion certificate. Sponsors must provide the certificates to licensees within thirty calendar days following the course, but in no case later than May 15 for any course completed prior to that date. The certificate shall be retained by the licensee as secondary proof of having completed the course. Course completion certificates shall include the following:

- (1) Official course name;
- (2) Name of licensee who satisfactorily completes the course;
- (3) Date(s) of attendance;
- (4) Number of credit hours; and

(5) Coordinator signature certifying that the information is correct.

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Board of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Board's attendance or student participation standards shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

*History Note: Authority G.S. 85B-4(e1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**21 NCAC 04B .0811 MINIMUM CLASS SIZE**

The minimum class size for any session of an approved continuing education course shall be five students, as determined by the sponsor's preregistration records. The minimum class size requirement shall not apply to class sessions when the sponsor notifies the Board in writing of the scheduled class session and advertises in advance the scheduled class session in the general auction community where the class session is to be held. A sponsor who conducts a class session for fewer than five students shall submit with the reports verifying completion of the course a copy of the advertisement for the class session plus a statement or other documentation indicating the date of the advertisement and the advertising method.

*History Note: Authority G.S. 85B-4(e1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**CHAPTER 16 - BOARD OF DENTAL EXAMINERS**

**21 NCAC 16I .0102 CONTINUING EDUCATION REQUIRED**

(a) As a condition of license renewal, each dental hygienist must complete a minimum of six clock hours of continuing education each calendar year. Two of the six clock hours may be acquired through home study courses. For home study courses to be counted towards this continuing education requirement, the hygienist must successfully complete a test following the course and obtain a certificate of completion. Current certification in CPR is required in addition to the mandatory continuing education hours.

(b) A dental hygienist who can demonstrate a disabling condition may request a variance in required continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the hygienist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny such requests on a case by case basis. In considering the request, the

Board may require additional documentation substantiating any specified disability.

*History Note: Authority G.S. 90-225.1;  
Eff. May 1, 1994;  
Amended Eff. April 1, 2001; August 1, 1998.*

**21 NCAC 16I .0103 APPROVED COURSES AND SPONSORS**

(a) Courses in satisfaction of the continuing education requirement must be directly related to clinical patient care. Hours spent reviewing dental or dental hygiene publications or videos shall not count toward fulfilling the continuing education requirement, with the exception of home study courses as described in .0102 of this Subchapter.

- (b) Approved continuing education course sponsors include:
- (1) providers recognized by the American Dental Association's Continuing Education Recognition Program, the Academy of General Dentistry, the American Dental Hygienists' Association, or components of such organizations;
  - (2) North Carolina Area Health Education Centers;
  - (3) educational institutions with dental, dental hygiene or dental assisting schools or departments;
  - (4) national, state or local societies or associations; and
  - (5) local, state or federal governmental entities.

*History Note: Authority G.S. 90-225.1;  
Eff. May 1, 1994;  
Amended Eff. April 1, 2001; August 1, 1998.*

**21 NCAC 16R .0102 APPROVED COURSES AND SPONSORS**

(a) Courses allowed to satisfy the continuing education requirement must be directly related to clinical patient care. Hours spent reviewing dental journals, publications or videos shall not count toward fulfilling the continuing education requirement, with the exception of home study courses as described in .0101 of this Subchapter.

- (b) Approved continuing education course sponsors include:
- (1) those recognized by the Continuing Education Recognition Program Of the American Dental Association;
  - (2) the Academy of General Dentistry;
  - (3) North Carolina Area Health Education Centers;
  - (4) educational institutions with dental, dental hygiene or dental assisting schools or departments;
  - (5) national, state or local societies or associations; and
  - (6) local, state or federal governmental entities.

*History Note: Authority G.S. 90-31.1;  
Eff. May 1, 1994;  
Amended Eff. April 1, 2001.*

**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>
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Bonnie D. Drew v. Department of Health & Human Services	00 DCS 0906	Morrison	08/28/00
Amy W. Hill v. Department of Health & Human Services	00 DCS 0974	Lassiter	09/08/00
Amelia B. Bradshaw v. Department of Health & Human Services	00 DCS 0996	Mann	09/13/00
Deborah Gray v. Department of Health & Human Services	00 DCS 1068	Morrison	09/19/00
Kimberly D. Mays v. Department of Health & Human Services	00 DCS 1099	Gray	10/27/00
Jennifer C. Dillard v. Department of Health & Human Services	00 DCS 1119	Wade	09/29/00
Johnny K. Moore v. Department of Health & Human Services	00 DCS 1179	Morrison	10/04/00
Latisha Eason Parker v. Department of Health & Human Services	00 DCS 1195	Wade	10/31/00
Jannai Neal v. Department of Health & Human Services	00 DCS 1227	Conner	10/24/00
Sheila Foy v. Department of Health & Human Services	00 DCS 1238	Gray	10/27/00

Estelle Roberta Allison Teague and Marlene Allison Creary v. Department of Health & Human Services	99 DHR 0120	Reilly	05/15/00
Philistine Thompson v. Department of Health & Human Services	99 DHR 0741	Gray	08/22/00
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00
Lakecher McFadden v. Department of Health & Human Services	99 DHR 1631	Conner	09/18/00

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Mary Johnson McClure v. Department of Health & Human Services	00 DHR 0368	Lassiter	06/19/00		
Barry Arthur Kelly, Linda Snipes Kelley v. Department of Health and Human Services	00 DHR 0038	Gray	09/15/00		
Vonda Scales Shore v. Department of Health & Human Services	00 DHR 0500	Lassiter	10/06/00		
Ann Marie & Daniel Short v. Department of Health & Human Services	00 DHR 0574	Reilly	05/22/00		
Lynell Holley Walton v. DHHS, (Health Care Personnel Registry & Investigations)	00 DHR 0605	Chess	08/15/00		
Deborah A. Shands v. Butner Adolescent Treatment Center	00 DHR 0695	Mann	07/27/00		
Larry E. Cummins MD, PI Case #1999-1752 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0797	Lassiter	08/01/00		
Larry E. Cummins MD, PI Case #1999-1117 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0798	Lassiter	08/01/00		
Robert and Shirley Harmon on behalf of Gary Harmon v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 0955	Chess	09/07/00		
Walter W. Griswold for Kimberly Griswold v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 1025	Chess	09/07/00		
Carolyn W. Cooper and Happy Days Child Care v. DHHS, Div of Child Development	00 DHR 1031	Gray	08/31/00		
Larnetra D. Noel v. NC Department of Human Services	00 DHR 1327	Chess	10/06/00		
<b>Division of Facility Services</b>					
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR	41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00		
Elyse Glover v. DHHS, Div of Facility Svcs., Personnel Registry Case	99 DHR 1036	Lassiter	06/29/00		
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00		
Camille Faustin v. DHHS, Division of Facility Services	00 DHR 0298	Smith	06/28/00		
David Jordan v. DHHS, Division of Facility Services	00 DHR 0311	Lassiter	06/19/00		
Lester Lee Huskins v. DHHS, Division of Facility Services	00 DHR 0391	Lassiter	08/29/00		
Celestine L. Bristel v. DHHS, Division of Facility Services	00 DHR 0636	Lassiter	08/15/00		
MariaGoretti Aduago Obialor v. DHHS, Div. of Facility Services	00 DHR 0743	Morrison	08/31/00		
Huelva Dale Corbett v. DHHS, Div. of Facility Services	00 DHS 0780	Gray	09/27/00		
Phoebe Visconti Sanders v. DHHS, Div. of Facility Services	00 DHR 0802	Lassiter	09/27/00		
Iola Cook Jefferson v. DHHS, Division of Facility Services	00 DHR 0835	Lassiter	07/24/00		
Michelle E. Lee v. DHHS, Division of Facility Services	00 DHR 0869	Conner	10/10/00	15:10 NCR	1045
Betty Jean Ellis v. DHHS, Division of Facility Services	00 DHR 0880	Lassiter	09/08/00		
Hartis Stallings v. DHHS, Division of Facility Services	00 DHR 1037	Lassiter	08/29/00		
Desiree P. Garay v. DHHS, Division of Facility Services	00 DHR 1038	Conner	09/20/00		
Lauren Hoodenpyle v. DHHS Division of Facility Services	00 DHR 1045	Chess	09/12/00		
Jacqueline Alexander v. DHHS, Division of Facility Services	00 DHR 1126	Lassiter	09/07/00		
Debra Brown v. DHHS, Division of Facility Services	00 DHR 1136	Lassiter	09/07/00		
Tracy Smith v. DHHS, Division of Facility Services	00 DHR 1236	Lassiter	10/16/00		
Michele Carver v. DHHS, Div. of Facility Services, Health Care Personnel Registry	00 DHR 1289	Lassiter	10/05/00		
<b>ENVIRONMENT AND NATURAL RESOURCES</b>					
Ronnie L. Sturdivant v. Dept. of Environment & Natural Resources	98 EHR 1222	Lassiter	05/11/00	15:04 NCR	501
Dixie Lumber Company of Cherryville, Inc. v. Department of Environment & Natural Resources	99 EHR 0395	Wade	05/04/00		
Shuttle Cleaning Service, Inc., Phillip Allen (Owner) v. Dept. of Environment & Natural Resources	99 EHR 1167	Reilly	05/19/00	15:06 NCR	696
Murphy Family Farms v. Department of Environment & Natural Resources	99 EHR 1181	Gray	08/14/00		
William A. Weston, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1538	Conner	05/24/00	15:03 NCR	343
William F. McBrayer, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1566	Wade	08/21/00		
Howard L. Hardy, Kenneth & Vester Freeman v. Department of Environment & Natural Resources	99 EHR 1600	Gray	08/31/00		
Gregory Marc Edwards v. Department of Environment & Natural Resources	99 EHR 1635	Wade	09/29/00		
David Sinclair v. Dept. of Environment & Natural Resources	00 EHR 0126	Conner	08/15/00	15:06 NCR	693
Jerry D. Phillips v. Department of Environment & Natural Resources	00 EHR 0151	Chess	09/28/00		
Amos Walter Jackson v. Dept. of Environment & Natural Resources	00 EHR 0568	Gray	09/22/00		
Archie D. Fellenzer, Jr. v. CAMA	00 EHR 0836	Morrison	11/03/00		
Carolina Mountain Construction, Inc. v. Dept. of Env. & Natural Resources	00 EHR 0902	Chess	09/07/00		
Peter Pallas v. New Hanover County Board of Health	00 EHR 1149	Chess	10/19/00		
Jerry J. Fowler v. Department of Environment & Natural Resources	00 EHR 1154	Chess	10/27/00		
<b>Coastal Resources Commission</b>					
Gregory A. Bohmert v. Coastal Resources Commission	99 EHR 1438	Reilly	05/24/00	15:03 NCR	342
<b>Division of Air Quality</b>					
Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00		
VXIII Airborne Corps & Fort Bragg, Dept. of the Army, USA v. State of North Carolina, Dept. of Environment and Natural Resources, Division of Air Quality	00 EHR 0227	Conner	08/31/00		
<b>Division of Land Resources</b>					
James Carlis Reavis and Melinda D. Reavis v. NC DENR, Division of Land Resources	98 EHR 1292	Gray	10/16/00		
<b>Division of Water Quality</b>					

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Fred J. McPherson v. DENR, Division of Water Quality	00 EHR 0160	Morrison	09/01/00		
Frederick Holland, Hervie S. Honeycut, and Mary Jane P. Osborne v. NC DENR, Division of Water Quality	00 EHR 0332	Conner	09/18/00		
<b>Division of Waste Management</b>					
A. J. Lancaster, Jr. v. NC DENR, Div. of Waste Management	99 EHR 0994	Mann	07/27/00	15:05 NCR	636
<b>JUSTICE</b>					
Pierre Deberry Debnam v. NC Criminal Justice Education and Training Standards Commission	00 DOJ 0719	Morrison	08/15/00		
<b>Alarm Systems Licensing Board</b>					
John Martin Canter v. Alarm Systems Licensing Board	00 DOJ 0573	Gray	06/02/00		
Kenneth Waits Putnam v. Alarm Systems Licensing Board	00 DOJ 0574	Gray	06/07/00		
James Thomas Wagg v. Alarm Systems Licensing Board	00 DOJ 1124	Lassiter	11/02/00		
<b>Education and Training Standards Division</b>					
Peter A. Davis v. Sheriffs' Education & Training Standards Comm.	99 DOJ 0531	Reilly	09/14/00		
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00		
Juan Montez Jones v. N.C. Criminal Justice Education & Training Standards Commission	99 DOJ 1716	Conner	07/05/00		
Larry G. McClain v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1721	Morrison	06/28/00		
Ersal Overton, III v. Sheriffs' Education & Training Standards Comm.	99 DOJ 0791	Mann	08/23/00	15:08 NCR	883
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0056	Gray	03/01/00		
William H. Norton, III v. NC Sheriffs' Educ. & Training Stds. Comm.	00 DOJ 0563	Gray	09/19/00		
James Edward Ellebe v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0948	Lassiter	07/31/00		
Dexter Dwayne Boyd v. Criminal Justice Education & Training Standards Commission	00 DOJ 1366	Lassiter	05/26/00		
<b>Private Protective Services Board</b>					
Charles A. Joyce and Carolina Security Patrol, Inc. v. Private Protective Services Board	00 DOJ 0004	Conner	08/14/00		
George Thomas Bond v. Private Protective Services	00 DOJ 0014	Conner	05/11/00		
Robert V. Croom and Robert V. Wooster v. Private Protective Services Board	00 DOJ 0058	Morrison	05/16/00		
Sharon Blackstock v. Private Protective Services Board	00 DOJ 0059	Morrison	05/16/00		
Samuel G. Slater v. Private Protective Services Board	00 DOJ 0090	Morrison	05/12/00		
Keith Lewis v. Private Protective Services Board	00 DOJ 0113	Connor	06/07/00		
John W. Fromm v. Private Protective Services Board	00 DOJ 0570	Conner	06/07/00		
Jason Stewart Duckett v. Private Protective Services Board	00 DOJ 0572	Gray	06/07/00		
Shannon Ray Nance v. Private Protective Services Board	00 DOJ 0609	Gray	06/07/00		
Franklin Delano Gann, Jr. v. Private Protective Services Board	00 DOJ 0670	Morrison	06/15/00		
William Junior Holmes v. Private Protective Services Board	00 DOJ 0671	Morrison	06/15/00		
Michael Burt v. Private Protective Services Board	00 DOJ 0672	Morrison	06/15/00		
Jason William Kane v. Private Protective Services Board	00 DOJ 0952	Wade	09/08/00		
Anthony Queen Williams v. Private Protective Services Board	00 DOJ 1005	Morrison	09/01/00		
Calvin Earl McRae v. Private Protective Services Board	00 DOJ 0736	Morrison	08/02/00		
<b>PUBLIC INSTRUCTION</b>					
Stacia R. Parker v. Charlotte-Mecklenburg Board of Education	99 EDC 0389	Gray	08/23/00		
Charlie Lee Richardson v. Department of Public Instruction	99 EDC 0788	Reilly	04/11/00	15:01 NCR	45
Dale Y. Farmer v. Department of Public Instruction	00 EDC 0373	Gray	05/26/00		
Cumberland County Board of Education v. Mr. and Mrs. Wesley Waters for Weston Harold Waters	00 EDC 0465	Wade	08/11/00		
Kings Mountain Board of Education, Larry Allen, Melony Bolin, Ronald Hawkins, Shearra Miller, Stella Putnam, Joanne Cole, Otis Cole, Charlie Smith, Frank Smith, and Angela Smith v. NC State Board of Education and Cleveland County Board of Commissioners	00 EDC 0800	Morrison	06/26/00	15:04 NCR	492
James William Stockstill v. Orange County Board of Education, Orange County Schools and Randy Bridges	00 EDC 1261	Conner	09/28/00		
<b>DEPARTMENT OF INSURANCE</b>					
Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan	98 INS 1662	Gray	05/25/00		
<b>MISCELLANEOUS</b>					
Nancy York Vorys v. Raleigh Police Department	00 MIS 1436	Gray	10/27/00		
<b>STATE PERSONNEL</b>					
Denise M. Ashe v. Northampton County Board of Commissioners, Northampton County Board of Social Services, Northampton County Department of Social Services	95 OSP 1011	Gray	08/29/00		
Michele Smith v. Cumberland Co. Dept. of Social Services	97 OSP 1344	Morgan	07/11/00		
Marshe Morgan v. Black Mount Center, NC DHHS	98 OSP 1302	Gray	07/11/00	15:05 NCR	624
Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR	47
Betty R. Holman v. Broughton Hospital	99 OSP 0580	Hunter	05/08/00		
Doris A. Archibald v. Dare County Health Department	99 OSP 0622	Gray	08/10/00		
Mack Reid Merrill v. NC Department of Correction	99 OSP 0627	Wade	08/23/00	15:07 NCR	772
Russell J. Suga v. Employment Security Commission of NC	99 OSP 0768	Gray	06/23/00		
Glenn Roger Forrest v. NC Department of Transportation	99 OSP 0853	Lassiter	08/24/00	15:07 NCR	781
Sarah C. Hauser v. Forsyth Co., Department of Public Health	99 OSP 0923	Lassiter	04/20/00	15:01 NCR	5
Larry Mayo v. Employment Security Commission of NC	99 OSP 1023	Wade	06/30/00		



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Michael Duane Maxwell v. Dept. of Health & Human Services	99 OSP 1068	Reilly	08/03/00	15:09 NCR	924
Joel T. Lewis v. Department of Correction	99 OSP 1116	Reilly	05/31/00		
Christopher D. Lunsford v. NC Dept. of Administration, Motor Fleet	99 OSP 1142	Morrison	08/11/00		
Van Sutton v. Office of Juvenile Justice/Dobbs School	99 OSP 1204	Gray	07/13/00		
Benny Callihan v. Department of Correction	99 OSP 1381	Wade	09/06/00		
Russell J. Suga v. Employment Security Commission of NC	99 OSP 1649	Gray	06/09/00	15:04 NCR	508
Preston D. Stiles v. NC Dept of Health & Human Svcs., Caswell Center	99 OSP 1757	Anderson	08/28/00		
Lawrence E. Cooke v. Craven Correctional Facility, NC Dept of Correction	00 OSP 0013	Conner	07/05/00		
Fred J. Hargro, Jr. v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0029	Morrison	08/08/00		
Robert Boyd Choat v. Department of Correction	00 OSP 0102	Reilly	07/24/00		
Vicky Ruffin-Jenkins v. Sparc Academy	00 OSP 0207	Connor	06/26/00		
Jesse C. Whitaker v. Facilities Operations (NCSU)	00 OSP 0342	Chess	07/11/00		
Gladys M. Sanders v. NC Department of Correction	00 OSP 0362	Gray	09/27/00		
Lillie B. Whitaker v. Center Point Human Resources, Ronald Morton	00 OSP 0443	Lassiter	07/24/00		
Starr M. Strickland v. Correction Enterprises, NC Dept. of Correction	00 OSP 0460	Chess	10/24/00		
Addie M. Williams v. Pender Correctional Inst., Dept. of Correction	00 OSP 0562	Conner	09/12/00		
Shelby Gorham-Teel v. NC Dept of Corrections, Div. of Prisons	00 OSP 0586	Chess	07/10/00		
Michael Jackson v. University Graphics, NC State University	00 OSP 0621	Lassiter	08/16/00		
Marvin Clark v. NC Department of Correction	00 OSP 0623	Gray	08/03/00		
James F. Pridgen, Jr. v. A&T State University, Millicent Hopkins	00 OSP 0652	Mann	07/27/00		
Mark Esposito v. NCDOT/Aviation, Bill Williams, Director	00 OSP 0791	Lassiter	07/24/00		
Marilyn R. Horton v. Gaston-Lincoln Mental Health	00 OSP 0912	Morrison	10/19/00		
Jeffrey L. Teague v. NC Department of Correction	00 OSP 0978	Chess	10/27/00		

**STATE TREASURER**

Jean C. Burkhart v. NC Dept. of State Treasurer, Retirement Systems Division	99 DST 1475	Mann	05/30/00	15:05 NCR	638
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**DEPARTMENT OF REVENUE**

Eddie B. Thomas v. NC Department of Revenue	00 REV 0530	Gray	08/24/00		
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**UNIVERSITY OF NORTH CAROLINA**

Theresa T. Godfrey v. UNC Hosp. at Chapel Hill, Dept of Pharm. Billing	00 UNC 0763	Lassiter	09/08/00		
Betty S. Matheson v. UNC Hospitals, Patient Accounting Department, OR Services	00 UNC 1020	Gray	10/09/00		

**NC BOARD OF ETHICS**

H. Michael Poole, Ph.D v. Perry Newsome, Exec. Dir. NC Board of Ethics	00 EBD 0696	Lassiter	08/25/00		
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