

**NORTH CAROLINA
REGISTER**

IN THIS ISSUE



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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

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
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20	Treasurer	Massage & Bodywork Therapy	30
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule for 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 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	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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15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
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16:03	08/01/01	07/11/01	10/01/01	08/16/01	08/31/01	09/20/01	05/00/02	10/01/01	10/22/01	05/00/02	04/28/02
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16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/16/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

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 after the first or fifteenth 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.

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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 02D .1008 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-215.3(a)(1); 143-215.107(a)(6)

Statement of the Subject Matter: Under the Clean Air Act, states may adopt vehicle emission standards that differ from the Federal standards as long as they are equal to the respective California vehicle standards. California is proposing to require new heavy duty truck emissions not to exceed the levels required when the engines were first certified by EPA. The industry employed so called "defeat" devices on new trucks that caused the emissions, including nitrogen oxides, to greatly exceed the certified levels. The California standard will cover new model trucks starting in 2004. Otherwise these trucks could be put in service with much higher emissions than required by the Federal standards under a Federal agreement to defer compliance for several years. North Carolina was originally expecting these reductions based on the certified standards and would benefit significantly from joining with California and several other states in developing these truck standards. There would be no testing of trucks required by North Carolina as the rule would simply require all trucks sold here to be certified as meeting the California standards.

Reason for Proposed Action: To reduce the emissions of nitrogen oxides from new heavy duty trucks.

Comment Procedures: Comments will be accepted by Thom Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, (919) 733-1489.

CHAPTER 21 – HEALTH: PERSONAL HEALTH

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 02I .0500 and .0600 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 150B-4; 150B-20

Statement of the Subject Matter: These rules are required by G.S. 150B-20(a) to establish rules for submitting a rule-making petition and the procedure the agency follows in considering a rule-making petition. These rules are required by G.S. 150B-4 to establish the procedure for filing a petition for declaratory ruling and to prescribe the circumstances in which declaratory ruling shall or shall not be issued. These rules will pertain to the Division of Air Quality, the Division of Water Quality including the Groundwater Section, and the Division of Water Resources.

Reason for Proposed Action: G.S. 150B-4 requires the Environmental Management Commission to prescribe in its rules the circumstances in which declaratory rulings shall or shall not be issued. G.S. 150B-20 requires the Commission to establish procedures for submitting a rule-making petition and the procedures the agency follows in considering a petition.

Comment Procedures: Comments on this Notice of Rule-making Proceedings may be made to Jeff Manning, DENR-DWQ Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699, phone (919) 733-5083 ext. 579, email Jeff.Manning@ncmail.net.

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 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt the rule(s) cited as 01 NCAC 17 .0701-.0713. Notice of Rule-making Proceedings was published in the Register on November 15, 2000.

Proposed Effective Date: August 12, 2001

Public Hearing:

Date: May 21, 2001

Time: 10:00 a.m. – 1:00 p.m.

Location: Family & Children's Services, 315 E. Washington St., Greensboro, NC

Date: June 1, 2001

Time: 10:00 a.m. – 1:00 p.m.

Location: Pitt County Agricultural Building, 403 Government Circle, Greenville, NC

Date: June 6, 2001

Time: 10:00 a.m. – 1:00 p.m.

Location: Pack Memorial Library, 67 Haywood St., Asheville, NC

Reason for Proposed Action: *Under the above mentioned legislation, judges in the General Court of Justice now have the authority to order a person responsible for domestic violence to attend and complete an abuser treatment program that has been approved by the Department of Administration. This authority first was granted in civil actions under G.S. 50B and then as a special condition of probation in criminal matters in G.S. 15A-1343. With the grant of rulemaking authority in S.L. 2000-67, s. 21.5, the Department of Administration proposes these rules as procedures it will use to determine which programs it approves for this purpose.*

Comment Procedures: *Public comment at the public hearings is welcome and encouraged within the following parameters: Individuals may sign up to speak on the day of the hearing beginning at 9:00 a.m. All comments MUST be submitted in writing prior to being delivered orally. Oral comments will be strictly limited to a maximum of five minutes in duration, additional comments may be included in written version. There will be no response or rebuttal to comments during the hearing from the Department of Administration.*

Fiscal Impact

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

CHAPTER 17 – COUNCIL ON THE STATUS OF WOMEN

SECTION .0700 – ABUSER TREATMENT PROGRAMS

01 NCAC 17 .0701 RESPONSIBILITY

The Department of Administration is responsible for approving abuser treatment programs prior to judges in the General Court of Justice being able to order parties responsible for acts of domestic violence to attend and complete such a program under the provisions of G.S. 50B-3(a)(12) or as a special condition of probation under G.S. 15A-1343(b1)(9a). The Secretary of the Department of Administration is authorized to adopt and is responsible for adopting rules regarding the process for attaining and maintaining approval of abuser treatment programs for this purpose. The administration of this approval program is delegated to the North Carolina Council for Women ("Council").

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17 .0702 ORGANIZATION

A Coordinator for approval of abuser treatment programs is located within the Council and reports to the Executive Director of the Council. The Coordinator may designate a member of the Council staff approved by the Executive Director of the Council to perform any act or duty on behalf of the coordinator. The Abuser Treatment Program Oversight Committee ("Committee") is established within the Council to approve, review and remove programs from the department's approved list. The Committee shall make recommendations to the Council on the operation of this approval program and shall advise the Council on standards for abuser treatment programs.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17 .0703 ABUSER TREATMENT PROGRAM OVERSIGHT COMMITTEE

(a) The Abuser Treatment Program Oversight Committee shall be appointed by the Executive Director of the Council, subject to the approval of the Secretary of Administration. Each member shall serve a term of two years, which may be renewed.
(b) The committee shall consist of 17 persons as follows:

- (1) The Abuser Treatment Program Coordinator of the Council.
- (2) The Program Coordinator for Domestic Violence & Sexual Assault of the Council.
- (3) The General Counsel of the Department of Administration.
- (4) One of the Council's Region Directors.
- (5) Two representatives of providers of abuser treatment program services.
- (6) Two advocates for victims of domestic violence.
- (7) The Director from the North Carolina Coalition Against Domestic Violence.
- (8) The Executive Director from the Domestic Violence Commission.

- (9) The chair or designee from North Carolina Providers of Abuser Treatment.
- (10) A District Court Judge.
- (11) One representative from the law enforcement community.
- (12) One representative from the Division of Adult Probation and Parole of the Department of Correction.
- (13) One representative from the Governor's Crime Commission.
- (14) One representative from the military community in North Carolina.
- (15) One other representative at large.

- (2) "Provisionally Approved" status is for a program that fully complies with all rules set out in this Section, but has been in operation for less than one calendar year.

A program which receives a "Provisionally Approved" status must reapply after it has completed one full year of operation to request a change to "Approved" status and annually thereafter to maintain that status.

- (h) The Council shall maintain a list of all approved abuser treatment programs and shall notify each District Court judge and each Clerk of Superior Court of those approved programs semi-annually.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17 .0704 ABUSER TREATMENT PROGRAM APPROVAL

- (a) The Council must approve any abuser treatment program that desires to receive referrals from District Court to provide treatment to domestic violence offenders. In addition to initial approval, each abuser treatment program must be reapproved annually by the Council by the same application process as required for initial approval.
- (b) In order to be approved, an abuser treatment program must complete and submit an original and four copies of the approval application to the Council for review. Applications can be obtained by contacting the Council at 1320 Mail Service Center, Raleigh, NC 27699-1320, or by telephone at (919) 733-2455.
- (c) The Council will review applications semi-annually in February and August, and each application must be received by the Council 60 days prior to initial review.
- (d) As part of its application, a program shall demonstrate community support by submitting three letters of support from a local domestic violence victims' program, a local domestic violence task force or coalition, or a local governmental agency which is directly associated with the problem of domestic violence (such as a local department of social services, district attorney's office or law enforcement agency.) Letters of support must not be from agencies organizationally affiliated with the abuser treatment program.
- (e) Every abuser treatment program shall provide documentation and assurances that it, as well as its individual or contracted providers, adhere to all program rules and program structure set out in this Section at the time of the submission of its application to the Council. If a program is not in full compliance with any rule, its application will be returned to the applicant with any rule deficiencies noted. Any deficiencies must be corrected before the application is approved. If any deficiencies are not corrected during the review period for which the application was submitted, the program must reapply in full at the next review period in order to be approved.
- (f) Before approving an abuser treatment program, the Council may perform a site visit.
- (g) Each program submitting an application for approval shall receive a notice from the Council indicating whether or not it has been approved and if so, its approval status. There shall be two categories of approval:

- (1) "Approved" status is for a program that fully complies with all rules set out in this Section, and has been in operation for more than one calendar year; and

01 NCAC 17 .0705 PROGRAM RULES: ABUSER ASSESSMENT

(a) All abuser treatment programs must have written policies to establish abuser assessment procedures. Each participant shall be assessed and those policies will detail how the program shall complete the assessment and document that assessment. Each assessment shall include, but not be limited to, the following for each participant:

- (1) mental health history;
- (2) family and social history;
- (3) relationship history;
- (4) history of violent, abusive, and controlling behavior;
- (5) lethality assessment;
- (6) assessment of past criminal behavior;
- (7) substance abuse screening; and
- (8) assessment of and significant deficits in the participant's cognitive or social skills that would interfere with participation in a group program.

Results of this assessment shall not preclude other recommended interventions except that in no case shall "couples counseling" be allowed as a permissible intervention.

(b) All abuser treatment programs must have written policies that establish evaluation procedures. These policies shall include written outcome measures to evaluate the effectiveness of the program. This evaluation shall include, but not be limited to, the following for each participant:

- (1) recidivism;
- (2) a report from the victim, in addition to a self-report from the participant; and
- (3) an assessment of behavior and attitude changes of the participant.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17 .0706 PROGRAM RULES: SAFETY FOR VICTIMS AND THEIR CHILDREN

All abuser treatment programs must have written policies to establish victim safety procedures. The policies shall include the following points:

- (1) The program shall not accept participants into the program in lieu of the termination of any criminal or civil proceedings pending against the applicant.
- (2) The program shall assess and verify the safety of the victim, which shall include contact with

- (3) The program shall offer the victim referral and assistance information.
- (4) The program shall conduct safety checks, which shall include direct contact with the victim, either directly or in cooperation with the local domestic violence program, in order to keep the victim informed of the program participant's status in the program.
- (5) All information about or from the victim shall be kept confidential from the program participant unless the victim has agreed to disclosure of any such information through a written release. The victim must be advised of the risk associated with such disclosure prior to obtaining the release. Notice of such advice must be documented.
- (6) The program shall not provide "couples counseling" to program participants.
- (7) The program shall not allow victims groups and abuser treatment groups to occur simultaneously at the same facility.
- (8) The abuser treatment program must network with its local domestic violence program and have a current memorandum of understanding regarding cooperation with that program in place.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17.0707 PROGRAM STRUCTURE

- (a) All abuser treatment programs must have written policies and procedures for the establishment and collection of locally determined abuser program fees and to ensure participant responsibility for payment of the fees. All programs shall discourage local judges from waiving abuser program fees.
- (b) All abuser treatment programs must have written policies and procedures regarding required attendance, punctuality, and criteria for absences and participation. All abuser treatment programs must also have written policies that establish criteria to determine non-compliance by the participant and its consequences. These procedures shall establish methods for notifying victims and the judicial system regarding each participant's compliance status.
- (c) All abuser treatment programs must last at least 26 sessions, which shall include any intake, orientation, and psycho-educational group sessions.
- (d) Each abuser treatment program shall have at least two group facilitators per session, preferably male and female, and culturally diverse.
- (e) Each group session held in an abuser treatment program shall last at least one and one-half hours.
- (f) The size of each group in an abuser treatment program's group session shall not exceed 15 members.
- (g) Program participants and persons who have been victimized by those participants may receive direct services from the same agency; however, services shall not be provided to both a participant and that person's victim by the same staff person or volunteer.
- (h) Female participants who are referred to the program shall not attend or be enrolled in groups with male participants.

- (i) Attendance must be taken at each group session.
- (j) Abuser treatment program professional staff must have documented education, training and experience in the domestic violence field. Programs must require that professional staff participate in at least six hours of annual in-service training in domestic violence and document that training on an annual basis.
- (k) All staff, consultants, or volunteers involved in direct services in an abuser treatment program must not have had any criminal convictions related to personal offenses, nor be the subject of or the plaintiff in a protective order action, for a period of 5 years prior to working at the program. Other criminal history, including crimes related to alcohol or drugs shall be evaluated by the program, and decided on a case-by-case basis.
- (l) All abuser treatment programs shall be involved in efforts to provide information and awareness to the community, criminal justice personnel and service agencies, along with local victim programs. In addition to documenting those efforts, abuser treatment programs must have documented participation in local, state or national coalitions that work to prevent and eliminate domestic violence.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17.0708 PROGRAM STRUCTURE: TERMINATION OF PROGRAM PARTICIPANTS

- (a) All abuser treatment programs must have written policies and procedures for terminating participants from further participation in the program. Without limiting a program's ability to make more stringent requirements, termination shall occur:
 - (1) When a participant:
 - (A) Has a recurrence of violence or arrest;
 - (B) Fails to abide by the rules and regulations of the program, including absences and any other matter set forth in these standards;
 - (C) Fails to participate and attend sessions, according to the criteria of the program; or
 - (D) Fails to comply with the alcohol and drug policy of the program and;
 - (2) When the program completes a risk assessment that the safety of the victim is not negatively impacted by the participant's termination.
- (b) If a participant is terminated from the program, the program shall:
 - (1) Document clearly and specifically the reasons for the termination without jeopardizing the safety of the victim;
 - (2) Make specific recommendations to probation or the court, including any alternatives such as weekend incarceration, community service hours, restitution, probation violation or return to the program;
 - (3) Attempt to inform the victim of the participant's termination within two days; and
 - (4) Inform the referring judge (or the chief district court judge in the absence of the referring

judge) of the participant's termination within five days.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17 .0709 ABUSER TREATMENT PROGRAM COMPLAINTS AND INVESTIGATIONS

(a) A person who believes that any program previously approved by the Committee for inclusion in the list of approved abuser treatment programs is in violation of any of the provisions of this Section may file a written complaint with the Coordinator. The Coordinator may also initiate proceedings under this Rule without a third party complaint having been filed. The Coordinator shall produce a document outlining the concerns about the individual program in response to each complaint.

(b) A complaint shall be reviewed initially by the Coordinator, who may dismiss the complaint, after consultation with at least one other Committee member, as unfounded, frivolous or trivial.

(c) Unless the complaint is dismissed pursuant to Paragraph (b) of this Rule, the Coordinator shall notify the program of the complaint in writing. Such notice shall be sent by certified mail, return receipt requested, shall state the alleged facts as contained in the complaint, or may enclose a copy of the complaint, and shall contain a request that the program submit an answer in writing within 20 days from the date the notice of the complaint is received by the program.

(d) If the program acknowledges the violations in the complaint, and if, in the opinion of the Coordinator, the violations do not merit review by the Committee, the Coordinator shall accept the admission in consultation with at least one other Committee member and shall issue a First Notice of Violation and the program shall enter into a probationary period. A program that is not in compliance with the rules will have 60 days to bring its program into compliance. If, after 60 days, the program is still not in compliance, a letter will be sent to District Court judges and Clerks of Superior Court to notify them of the program's status. The Notice shall include a recommended timetable for correcting the violation(s) and shall provide the program with an opportunity for training as approved by the Council.

(e) If the program does not respond to or denies the violations, the Coordinator shall investigate the allegations contained in the complaint. The Coordinator may dismiss the complaint as unfounded, frivolous or trivial, or may refer the complaint, evidence and investigative findings to the Committee for review. A notice of the meeting at which the Committee will review the matter shall be sent by the Coordinator to the program.

(f) The program shall be able to make a presentation of its position at the meeting if it desires, but subject to the control of the Committee chair. The chair shall allow sufficient time to allow the program to present its explanation as to the matter. From such review, the Committee shall make a determination as to the violation. If the Committee finds the program is in violation, the Coordinator shall issue a First Notice of Violation as in Paragraph (d) of this Rule.

(g) The Coordinator shall maintain the complaint, evidence, investigative findings and disposition of each matter. If a First Notice of Violation has been issued, the Coordinator shall determine if the program has come into compliance within the recommended timetable. If the program is still not in compliance as determined by the Coordinator, the Coordinator

shall issue a Second Notice of Violation to the program, setting forth a new timetable for correcting the violations.

(h) If the Coordinator determines that the program is still not in compliance at the end of the time set forth in the Second Notice of Violation, the Coordinator shall refer the matter to the Committee for action. A notice of the meeting at which the Committee will again review the matter shall be sent by the Coordinator to the program.

(i) At the meeting, the same procedure as set out in Paragraph (f) of this Rule shall be followed. From such review, the Committee shall make a determination as to whether the program is still in violation of the provisions of this Section. If the Committee finds the program is still in violation, the Committee shall have the Coordinator remove the program from the list of approved programs effective as of the first day of the next calendar quarter and issue a Letter of Termination to the program. Appropriate court personnel shall be notified immediately of the termination.

(j) All participants in a terminated program shall be remanded back to the court that referred the individuals for referral to another program or other action deemed appropriate by the court. Any program so terminated may reapply to the Council for inclusion on the approval list at the next application period.

(k) When a program is terminated from the approved list the Program Coordinator for Domestic Violence & Sexual Assault shall notify relevant domestic violence and sexual assault agencies and North Carolina Providers of Abuser Treatment.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17 .0710 RIGHT TO ACCESS

The Council or any of its authorized representatives shall have the right of access to any books, documents, papers, participant or other records of any applicant program needed to make a determination during the approval process or anytime thereafter.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17 .0711 REPORTS

(a) Each abuser treatment program shall comply with any reporting requirements and requests for information regarding statistics and other data as may be requested by Council.

(b) Failure to comply with reporting deadlines and requests for information shall result in a program being deemed noncompliant, which shall lead to termination and removal from the approved abuser treatment program list.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17 .0712 EQUAL OPPORTUNITY

The Council shall not discriminate against any program, or its providers, because of age, race, sex, creed, color, national origin or disabling condition. No approved program shall discriminate against any participant, or its providers, because of age, race, sex, creed, color, national origin or disabling condition.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

01 NCAC 17 .0713 TRANSITION

All programs on the Council roster on the effective date of these temporary rules shall remain on the roster until the February, 2001, review of applications. All programs must submit

complete applications with all required documentation and assurances as set out in Rule .0704 of this Section to attain "Approved" or "Provisionally Approved" status at that review. Any program's failure to do so will result in that program being dropped from the roster.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12).

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Secretary of Health and Human Services intends to adopt the rule cited as 10 NCAC 22L .0102 and amend the rules cited as 10 NCAC 22L .0101, .0201-.0204. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: July 15, 2002

Public Hearing:

Date: May 17, 2001

Time: 9:00 a.m. – 11:00 a.m.

Location: NC Division of Aging Conference Room, Dix Campus, Dobbins Building, Raleigh, NC

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

Comment Procedures: *Anyone wishing to comment should contact Heather Burkhardt, NC Division of Aging, 2101 Mail Service Center, Raleigh, NC 27699-2101; phone (919) 733-8400. Verbal comments will be heard during the public hearing. Written comments must be received by Ms. Burkhardt no later than May 30, 2001.*

Fiscal Impact

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

CHAPTER 22 – AGING

SUBCHAPTER 22L – INFORMATION AND CASE ASSISTANCE

SECTION .0100 – SCOPE OF INFORMATION AND CASE ASSISTANCE

10 NCAC 22L .0101 SCOPE OF INFORMATION AND ASSISTANCE

Information and ~~Case~~ Assistance is identified as a critical service which assists older adults, their families and others acting on behalf of older adults, in their efforts to acquire information about programs and services and to obtain appropriate services to meet their needs.

- (1) "Information" includes informing people about programs and services, identifying the types of assistance they need and connecting them to appropriate service providers.
- (2) "~~Case~~ Assistance" is a more intensive service for those persons who require additional ~~assistance~~ help with negotiating the service delivery system. ~~Case~~ Assistance ~~is~~ includes the provision of planning, referral, coordination of services, follow-up and advocacy activities on behalf of the older adult or their family, or both, in an effort to ensure that needed assistance is received and that the assistance provided meets identified needs. ~~Case~~ Assistance may also include a home visit to more clearly identify a client's needs for the purpose of initiating the development of a care plan. ~~plan for clients who do not have health related needs.~~

Authority G.S. 143B-181.1(c); 143B-181.1(a)(11).

10 NCAC 22L .0102 SERVICE PROVISION

Any agency offering Information and Assistance shall have the capacity and capability to provide all of the following functions:

- (1) Assess/Evaluate: Determine the immediate problem or concern of the individual; probe for other problems or concerns.
- (2) Inform: Provide individuals with information related to the assessed problems/concerns on services and opportunities available within the community.
- (3) Refer: Link the individual with the service or provide information on how to access or connect with available services.
- (4) Research: Locate information requested, but not immediately available, relevant to meeting the individual's needs.
- (5) Plan: Assist individual in identifying the desired outcome(s) and method(s) for obtaining what the individuals needs.
- (6) Coordinate: Directly connect the individual to the service desired; monitor on a short-term basis the person's success in making the connection to needed services.
- (7) Follow-up: Re-contact the individual or service provider to determine the outcome of the situation and provide additional services if requested.
- (8) Advocate: Intervene on behalf of an individual or a group of individuals in an effort to obtain a positive change in the availability or delivery of one or more essential services.

Authority G.S. 143B-181.1(c); 143B-181.1(a)(11).

SECTION .0200 – SERVICE PROVISION

10 NCAC 22L .0201 ELIGIBILITY FOR INFORMATION AND ASSISTANCE

Those eligible for Information and ~~Case~~ Assistance Services are persons 60 years of age and older or persons acting on behalf of

persons age 60 and older, or both, who are in need of information or services, or both.

Authority G.S. 143B-181.1(c); 143B-181.1(a)(11).

10 NCAC 22L .0202 RESOURCE FILE

(a) The agency providing Information and ~~Case~~-Assistance shall cooperatively develop, maintain, and use an accurate, up-to-date resource file that contains information on available community resources. The Information and ~~Case~~-Assistance provider shall update the resource file annually by survey or on-site visits.

(b) A profile shall be developed on each service organization and agency that shall include, but is not limited to: the legal name, common name, or acronym; address; telephone number; hours and days of service; services provided; area served; branch offices; known barriers to accessibility and restrictions on facility use.

(c) The resource file shall be accessible to all staff providing Information and Assistance.

Authority G.S.143B-181.1(c); 143B-181.1(a)(11).

10 NCAC 22L .0203 STAFF COMPETENCE

The agency providing Information and ~~Case~~-Assistance shall make orientation and ~~in-service~~-training available to paid and volunteer staff.

(1) Staff shall participate in an orientation program which, at a minimum, reviews the role, purpose, and function of Information and ~~Case~~-Assistance; the role of the agency; and the administrative structure and policies for providing the service.

(2) Agencies shall also provide ~~in-service~~ education on interviewing techniques and communication skills and ~~on-the-job~~ training to staff which focuses on the development of interviewing techniques and communication skills—which enables staff to perform the following functions: assess/evaluate; inform; refer; research; plan; coordinate; follow-up; advocate, as defined in 10 NCAC 22L .0102.

Authority G.S. 143B-181.1(c); 143B-181.1(a)(11).

10 NCAC 22L .0204 DOCUMENTATION

(a) Each agency providing Information and ~~Case~~-Assistance shall maintain a daily log or tracking system indicating contacts made during the course of the day.

(b) For each Information contact, the log shall include the date, ~~and general~~-nature of the ~~call~~-concern and action taken.

(c) For those persons who receive ~~Case~~-Assistance, as defined in 10 NCAC 22L .0101, a client ~~record~~ record/file shall be maintained by the agency and shall include: client identification information; identification of client needs; a client plan showing anticipated outcomes and methods to be used and action taken or a list of agencies to whom the client was referred and dates; necessary coordination of services; and follow-up contacts made to or on behalf of the client and the dates.

(d) The provider agency has written procedures in place to keep client information confidential.

Authority G.S. 143B-181.1(c); 143B-181.1(a)(11).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10 NCAC 41H .0405-.0408. Notice of Rule-making Proceedings was published in the Register on February 1, 2001.

Proposed Effective Date: July 17, 2002

Public Hearing:

Date: June 6, 2001

Time: 10:00 a.m.

Location: Albemarle Building, Room 832, 325 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *The proposed rule changes are to streamline and add clarity to the rules that govern the Adoption Assistance Program. Amendment of 10 NCAC 41H .0405 clearly defines the categories of adoption assistance. In an effort to streamline the rules, 10 NCAC 41H .0406 is proposed for repeal and the language has been added to 10 NCAC 41H .0407. 10 NCAC 41H .0407 encompasses two adoption assistance services eligibility requirements. It also brings the State into federal compliance by requiring annual reviews of adoption assistance agreements rather than annual renewals of adoption assistance agreements. The amendment to 10 NCAC 41H .0408 will eliminate a barrier to the funding of post-adoption support for many families. It will allow for a total vendor payment of \$2400 annually in any of the categories of services, eliminating the division by category. Post-adoption services are critical to the success of adoptive placements of special needs children.*

Comment Procedures: *Anyone wishing to comment should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 325 N. Salisbury St., 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919-733-3055. Verbal comments will be heard during the public hearing. Written comments must be received by Ms. Ransome no later than 8:00 a.m. on June 6, 2001.*

Fiscal Impact

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

CHAPTER 41 – CHILDREN'S SERVICES

SUBCHAPTER 41H – ADOPTION STANDARDS

SECTION .0400 – ADOPTION ASSISTANCE: GENERAL

10 NCAC 41H .0405 ADOPTION ASSISTANCE DEFINED

(a) ~~There are three categories of adoption assistance: Regular monthly cash assistance payments means the graduated rates set by the General Assembly. The payments may be made to certain children who meet the requirements set out in Rule .0407 of this Section.~~

~~(1) ——— monthly cash payments;~~

~~(2) vendor payments to providers of medical services;~~

~~(3) vendor payments to providers of psychological, therapeutic, and remedial services.~~

~~(b) A child may be determined eligible for more than one category of assistance. Vendor payments are made directly to the provider, including adoptive parents, for medical services not covered by Medicaid, therapeutic, psychological, and remedial services for certain children who meet the eligibility criteria set out in 10 NCAC 41H .0407.~~

~~(c) Vendor payments from adoption assistance to providers of medical services not covered by Medicaid or other medical benefits shall not exceed twelve hundred dollars (\$1,200) per year per child. Special Children Adoption Incentive Fund payments may be made to certain children who meet the requirements as set out in 10 NCAC 41H .0409.~~

~~(d) Vendor payments from adoption assistance to providers of psychological, therapeutic, and remedial services shall not exceed twelve hundred dollars (\$1,200) per year per child.~~

Authority G.S. 108A-49; 108A-50; 143B-153.

10 NCAC 41H .0406 ELIGIBILITY REQUIREMENTS FOR MONTHLY CASH PAYMENTS

~~(a) Prior to the child's placement into an adoptive home, the following eligibility factors must be determined:~~

- ~~(1) The child is legally clear for adoption.~~
- ~~(2) The child is the placement responsibility of a North Carolina agency authorized to place children for adoption.~~
- ~~(3) The child has special needs that create a financial barrier to adoption.~~
- ~~(4) Reasonable but unsuccessful efforts have been made to place the child for adoption without the benefits of adoption assistance.~~

~~(b) The child must be under eighteen years of age.~~

~~(c) A child's eligibility for monthly cash payments from adoption assistance must be based on one or more of the following factors:~~

- ~~(1) The child is a member of a sibling group being placed together.~~
- ~~(2) The child could be placed for adoption with a known and approved family, but the circumstances of the family preclude assumption of full financial responsibility for the child.~~
- ~~(3) The child has special needs due to a handicapping condition.~~
- ~~(4) To be eligible to receive monthly cash payments from adoption assistance under Title IV-E of the Social Security Act, entitled "Federal Payments for Foster Children and Adoption Assistance", the child must be one who at the time adoption proceedings were initiated:~~

~~(A) is a dependent child who meets the requirements for aid to families with dependent children (AFDC) but for his removal from the home of a specified relative for placement in a foster care facility; or~~

~~(B) meets the requirements of Title XVI of the Social Security Act with respect to eligibility for supplemental security income benefits.~~

~~(d) For the child to receive monthly cash payments for which he is eligible, the adoptive parents must enter into an agreement with the child's agency prior to entry of the final order of adoption. The agreement shall set forth the respective responsibilities of the agency and the adoptive parents during the time of the child's eligibility for this assistance.~~

~~(e) For the child to receive monthly cash payments from adoption assistance, North Carolina residency is not a requirement for the child and adoptive parents.~~

Authority G.S. 108A-49; 108A-50; 143B-153.

10 NCAC 41H .0407 ELIGIBILITY REQUIREMENTS FOR REGULAR MONTHLY CASH ASSISTANCE PAYMENTS OR VENDOR PAYMENTS

~~(a) Prior to the child's receipt of vendor payment benefits from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services, the following eligibility factors must be determined: The child shall meet the following eligibility criteria:~~

- ~~(1) The child is legally clear for adoption, or must have been legally adopted;~~
- ~~(2) The child is, or was, the placement responsibility of a North Carolina agency authorized to place children for adoption at the time of adoptive placement;~~
- ~~(3) The child has special needs that create a financial barrier to adoption;~~
- ~~(4) Reasonable but unsuccessful efforts have been made to place the child for adoption without the benefits of adoption assistance; or~~
- ~~(5) The child's special needs, though pre-existing, are detected only after his placement into an adoptive home. home;~~
- ~~(6) The child is under eighteen years of age; and~~
- ~~(7) North Carolina residency of the child and adoptive parents is not a requirement for the child to be eligible to receive regular monthly cash assistance payments or vendor payments.~~

~~(b) The child must be under eighteen years of age. The child's eligibility for Regular Monthly Cash Assistance Payments shall further be based on one or more of the following factors:~~

- ~~(1) The child is a member of a sibling group being placed together.~~
- ~~(2) The child could be placed for adoption with a known and approved family, but the circumstances of the family preclude assumption of full financial responsibility for the child.~~
- ~~(3) The child has special needs due to a handicapping condition.~~
- ~~(4) The child at the time adoption proceedings were initiated was eligible to receive regular monthly cash assistance payments under Title IV-E of the Social Security Act as:~~
 - ~~(A) a dependent child who meets the requirements for Temporary Assistance for Needy Families~~

(TANF) but for his removal from the home of a specified relative for placement in a foster care facility; or
(B) meeting the requirements of Title XVI of the Social Security Act with respect to eligibility for supplemental security income benefits.

For the child to receive regular monthly cash assistance payments, the adoptive parents must have entered into an agreement with the child's agency prior to entry of the Decree of Adoption. The agreement shall have set forth the respective responsibilities of the agency and the adoptive parents during the time of the child's eligibility for this assistance.

(c) A child's eligibility for vendor ~~payment benefits from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services payments~~ shall further be determined on the basis of documentation of:

- (1) a known and diagnosed medical, mental, or emotional condition that will require periodic treatment or therapy of a medical or remedial nature; or
- (2) a potential handicap due to hereditary tendency, congenital problem, birth injury, or other documented high risk factor leading to substantial risk of future disability.

~~(d) A child's eligibility for vendor payment benefits from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services payments may be determined at any time during the child's minority if the medical, mental, or emotional condition, congenital problem, birth injury, or other documented problem is determined to have been pre-existing at the time of his placement into an adoptive home.~~

~~(e) Prior to the child's receipt of vendor payments, payment benefits from adoption assistance for which he is eligible, the adoptive parents must enter into an agreement with the child's agency to indicate the extent to which they desire the child to participate in this component of the benefits program. The adoption assistance agreement must be renewed on an annual basis once the child begins to receive benefits so long as the child remains eligible to receive vendor benefits, or as long as the parents wish him to receive these benefits.~~

~~(f) For a child to receive vendor payment benefits from adoption assistance, North Carolina residency is not a requirement for the child and adoptive parents.~~

Authority G.S. 108A-49; 108A-50; 143B-153.

**10 NCAC 41H .0408 PROCEDURES/
REIMBURSEMENT OF ADOPTION ASSISTANCE
BENEFITS**

(a) Adoption assistance benefits for which the child may be eligible will become effective the first month following the month in which the final order of adoption-Decree of Adoption is issued.

(b) Claims from service providers and monthly cash assistance will be reimbursed or provided from adoption assistance funds in accordance with polices established by the Division of Social Services, the Department of Health and Human Services county department of social services reimbursement process, subject to the following limitations:

(1) Vendor payments to adoptive parents, medical providers and to providers of psychological, therapeutic, and remedial services will be made only for treatment or services given to alleviate or correct those special conditions for which the child has been determined eligible to receive benefits.

(2) The total amount for vendor payments for any combination of the following services: medical services not covered by Medicaid, psychological, therapeutic or remedial services for any child shall not exceed two thousand four hundred dollars (\$2400) per State fiscal year.

~~(2)~~(3) Vendor payments will not be made to reimburse providers for the following:

- (A) routine medical examinations;
- (B) illnesses or conditions not related to or resulting from the conditions for which the child was determined eligible for vendor payments;
- (C) services or treatment provided to the child prior to entry of the ~~final order of adoption; Decree of Adoption;~~ and services or treatment that may have been provided on or after the first day of the month following the month in which the child's eligibility ceases.
- (D) services or treatment that may have been provided on or after the first day of the month following the month in which the child's eligibility ceases.

(c) No local match, in terms of dollars, is required for funds for those children certified to receive benefits under the State Fund for Adoptive Children with Special Needs for whom the final order of adoption is entered on or before June 30, 1982, or for children who are the placement responsibility of licensed private child-placing agencies with the exception of monthly cash payments for those children who are eligible for benefits from Title IV-E of the Social Security Act.

Authority G.S. 108A-49; 108A-50; 143B-153.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02D .1416-.1423, amend the rules cited as 15A NCAC 02D .1401-.1404, .1407-.1415 and repeal the rule cited as 15A NCAC 02D .1406. Notice of Rule-making Proceedings was published in the Register on June 15, 1999 and November 15, 2000.

Proposed Effective Date: July 15, 2002

Public Hearing:

Date: May 21, 2001

Time: 7:00 p.m.

Location: Archdale Building, 512 N. Salisbury St., Raleigh, NC

Public Hearing:

Date: June 5, 2001

Time: 7:00 p.m.

Location: Charlotte-Mecklenburg Government Center, Room 267, 600 East 4th St., Charlotte, NC

Reason for Proposed Action: To meet the requirement of 40 CFR 51, Subpart G, to revise the State Implementation Plan to control emissions of nitrogen oxides.

Comment Procedures: All persons interested in these matters are invited to attend the public hearings. Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until July 2, 2001 to receive additional written statements. You are urged to submit your written comments as early as possible. To be included, the statement must be received by the Division by July 2, 2001. In addition to seeking comments on the proposed rules, the Commission also seeks comments on the appropriateness and interpretation of the requirement for using continuous emission monitors that meet the specifications of 40 CFR Part 75 for all sources covered under the NOx SIP call. Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting: Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 733-1489, fax (919) 715-7476, or email Thom.Allen@ncmail.net

Fiscal Impact

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1400 – NITROGEN OXIDES

15A NCAC 02D .1401 DEFINITIONS

For the purpose of this Section, the following definitions apply:

- (1) "Acid rain program" means the federal program for the reduction of acid rain including 40 CFR Parts 72, 75, 76, and 77.
- (2) "Actual emissions" means for Rules .1416 through .1422 of this Section, emissions of nitrogen oxides as measured and calculated according to 40 CFR Part 75, Subpart H.
- (3) "Actual heat input" means for Rules .1416 through .1422 of this Section, heat input as measured and calculated according to 40 CFR Part 75, Subpart H.
- (2)(4) "Averaging set of sources" means all the stationary sources included in an emissions averaging plan according to Rule .1410 of this Section.
- (3)(5) "Averaging source" means a stationary source that is included in an emissions averaging plan in accordance to Rule .1410 of this Section except during start-up and shutdown.

- (6) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.
- (4)(7) "Combined cycle system" means a system consisting of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.
- (5)(8) "Emergency generator" means a stationary internal combustion engine used to generate electricity only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during maintenance when necessary to protect the environment. An emergency generator may be operated periodically to ensure that it will operate.
- (6)(9) "Emergency use internal combustion engines" means stationary internal combustion engines used to drive pumps, aerators, and other equipment only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during maintenance when necessary to protect the environment. An emergency use internal combustion engine may be operated periodically to ensure that it will operate.
- (7)(10) "Excess emissions" means: means (a) any tonnage of nitrogen oxides emitted by a source covered under Rule .1416, .1417, or .1418 of this Section during the ozone season that exceeds allocations for that source as may be adjusted under Rule .1419 of this Section; or (b) an emission rate that exceeds the applicable limitation or standard in Rule .1407 through .1413, or .1418 of this Section, standard, except during startup and shutdown operations.
- (8)(11) "Fossil fuel fired" Fuel" means (a) For sources that began operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or, if a source had no heat input in 1995, during the last year of operation of the unit before 1995; (b) For sources that began operation on or after January 1, 1996 and before January 1, 1997, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1996; or

- (c) For ~~units~~ sources that began operation on or after January 1, 1997:
 - (i) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or
 - (ii) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the ~~unit~~ source begins combusting fossil fuel.
- ~~(9)~~(12) "Lean-burn internal combustion engine" means a spark ignition internal combustion engine originally designed and manufactured to operate with an exhaust oxygen concentration greater than one percent.
- ~~(10)~~(13) "NO_x" means nitrogen oxides.
- ~~(11)~~(14) "Ozone season" means the period beginning May 31 through September 30 for 2004 and May 1 thorough-through September 30 for all other years. ~~30.~~
- ~~(12)~~(15) "Potential emissions" means the quantity of NO_x that would be emitted at the maximum capacity of a stationary source to emit NO_x under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit NO_x shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed.
- ~~(16)~~ "Process heater" means an enclosed device using controlled flame where the device's primary purpose is to transfer heat to a process fluid, a process material that is not a fluid, or a heat transfer material, instead of steam, for use in a process.
- ~~(17)~~ "Projected seasonal energy input" means the maximum design heat input per hour times 3300 hours.
- ~~(18)~~ "Projected seasonal energy output" means the maximum design energy output per hour times 3300 hours.
- ~~(13)~~(19) "Reasonable assurance" means a demonstration to the Director that a method, procedure, or technique is possible and practical for a source or facility under the expected operating conditions.
- ~~(14)~~(20) "Reasonably Available Control Technology" or "RACT" means the lowest emission limitation for NO_x that a particular source can meet by the application of control technology that is reasonably available considering technological and economic feasibility.
- ~~(15)~~(21) "Reasonable effort" means the proper installation of technology designed to meet the requirements of Rule .1407, .1408, or .1409 of this Section and the optimization of this technology, according to the manufacturer's recommendations or other similar guidance for not less than six months, in an effort to meet the applicable limitation for a source.
- ~~(16)~~(22) "Rich-burn internal combustion engine" means a spark ignition internal combustion engine originally designed and manufactured to operate with an exhaust oxygen concentration less than or equal to one percent.
- ~~(17)~~(23) "Seasonal energy input" means the total energy input of a combustion source during the year beginning May 1 through September 30.
- ~~(24)~~ "Seasonal energy output" means the total energy output of a combustion source during the year beginning May 1 through September 30.
- ~~(17)~~(25) "Shutdown" means the cessation of operation of a source or its emission control equipment.
- ~~(26)~~ "Source" means a stationary boiler, combustion turbine, combined cycle system, reciprocating internal combustion engine, or process heater or a stationary article, machine, process equipment, or other contrivance, or combination thereof, from which nitrogen oxides emanate or are emitted.
- ~~(18)~~(27) "Startup" means the commencement of operation of any source that has shutdown or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or pollution control device imbalance that would result in excess emissions.
- ~~(19)~~(28) "Stationary internal combustion engine" means ~~an~~ a reciprocating internal combustion engine that is not self propelled; however, it may be mounted on a vehicle for portability.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1402 APPLICABILITY

- (a) The requirements of this Section shall only apply beginning May 1 through September 30.
- (b) Effective November 1, 2000, Rules .1416 through ~~.1422~~ .1420 of this Section apply statewide.
- (c) Effective November 1, 2000 Rules .1407 through .1414 of this Section apply statewide to sources permitted after October 31, 2000. Rules .1407 through .1414 of this Section shall not apply to sources that were permitted or existed before November 1, 2000, unless they are brought under these Rules by Paragraph (d) of this Section.

(d) With the exceptions stated in Paragraph (h) of this Rule, this Section shall apply to:

- (1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties according to Paragraph (e) of this Rule;
- (2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and the part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River according to Paragraph (f) of this Rule; or
- (3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County according to Paragraph (g) of this Rule.

(e) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River

or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(g) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in according to Rule .1403 of this Section.

(h) This Section does not apply to any:

- (1) source not required to obtain an air permit under 15A NCAC 02Q .0102 or is an insignificant activity as defined at 15A NCAC 02Q .0103(19);
- (2) incinerator or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency generator;
- (4) emergency use internal combustion engine;
- (5) stationary combustion turbine constructed before January 1, 1979, that has a federally enforceable permit that restricts:
 - (A) its potential emissions of nitrogen oxides to no more than 25 tons ~~between—beginning~~ May 1 ~~and through~~ September 30;
 - (B) it to burning only natural gas or oil; ~~and~~
 - (C) its hours of operation as described in 40 CFR 96.4 (b)(ii) and (iii);
- (6) source that is not covered under Rule .1416, .1417, or .1418, that is permitted before November 1, 2000, and that is at a facility with a federally enforceable potential to emit nitrogen oxides of:
 - (A) less than 100 tons per year; and

(B) less than 560 pounds per calendar day beginning May 1 through September 30 of any ~~year~~ year;

(7) stationary reciprocating internal combustion engine less than 2400 brake horsepower that operates no more than the following hours beginning May 1 through September 30:
(A) for diesel engines:

$$t = \frac{833,333}{ES}$$

(B) for gas engines:

$$t = \frac{700,280}{ES}$$

where t equals time in hours and ES equals engine size in horsepower.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1403 COMPLIANCE SCHEDULES

(a) Applicability. This Rule applies to all sources covered by Rule .1416, .1417, or Paragraph ~~or~~(d) of Rule .1402 of this Section.

(b) Contingency plan schedule. The owner or operator of a source subject to this Rule because of the applicability of Paragraphs (e), (f), or (g) of Rule .1402 of this Section, shall adhere to the following increments of progress and schedules:

(1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:

(A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable limitation or standard;

(B) The owner or operator shall perform any required testing within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation according to Rule .1415 of this Section; and

(C) The owner or operator shall implement any required recordkeeping and reporting requirements within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable standard according to Rule .1404 of this Section.

(2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:

(A) The owner or operator shall submit a permit application and a compliance schedule within six months after the

Director's notice in the North Carolina Register.

(B) The compliance schedule shall contain the following increments of progress:

(i) a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;

(ii) a date by which installation of the modification shall begin;

(iii) a date by which installation of the modification shall be completed; and

(iv) if the source is subject to a limitation, a date by which compliance testing shall be completed.

(C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative limitation according to Rule .1412 of this Section. If such a petition is made, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.

(3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:

(A) The owner or operator shall abide by the applicable requirements of Subparagraphs (b)(1) and (b)(2) of this Rule for certification or modification of each source to be included under the averaging plan.

(B) The owner or operator shall submit a plan to implement an emissions averaging plan according to Rule .1410 of this Section within six months after the Director's notice in the North Carolina Register.

(C) Final compliance shall be achieved within one year after the Director's notice in the North Carolina Register unless implementation of the emissions averaging plan requires the modification of one or more of the averaging sources. If modification of one or more of the averaging sources is required, final compliance shall be achieved within three years.

(4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:

- (A) The owner or operator shall make all necessary modifications according to Subparagraph (b)(2) of this Rule.
 - (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
 - (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.
- (c) Increments of progress certification. The owner or operator shall certify to the Director, within five days after the deadline for each increment of progress in Paragraph (b) of this Rule, whether the required increment of progress has been met.
- ~~(d) The owner or operator of a source subject to this Rule because of Rule .1416 of this Section shall submit to the Director before October 1, 2003, a description of how the source will comply. The description shall include an estimate of the number of tons of nitrogen oxides per season, which may be a range, that will be obtained to show compliance if the owner or operator of the source anticipates participating in the nitrogen oxide budget trading program under Rule .1419 of this Section. If a permit is needed for source modifications or control device installation or modification, the owner or operators shall submit the permit application early enough to receive the permit and make the modification or construct and begin operating the control device before the final compliance dates in Rule .1416 of this Section. The source shall be in compliance with Rule .1416 and shall install and implement any required monitoring, recordkeeping, and reporting requirements before May 1, 2004. If a permit application is not submitted pursuant to this Rule, the Director shall modify the source's permit by January 1, 2004, to insert the monitoring, recordkeeping, and reporting requirements necessary to show compliance with this Section.~~
- Schedule for utility companies. The owner or operator of a source subject to this Rule because of Rule .1416 of this Section:
- (1) shall submit to the Director before October 1, 2003, a description of how the source will comply, which shall include an estimate of the number of tons of nitrogen oxides per season, which may be a range, that will be obtained from the nitrogen oxide budget trading program under Rule .1419 of this Section to show compliance;
 - (2) shall submit to the Director a permit application, following the schedules in 15A NCAC 02Q .0312, .0313, .0525, or .0527, as applicable, to receive a permit and make the modification or construct and begin operating the control device before the final compliance dates in Rule .1416 of this Section if a permit is needed for source modifications or control device installation or modification;
 - (3) shall install and implement any required monitoring, recordkeeping, and reporting requirements before May 1, 2004; if a permit application is necessary to install and operate the monitor, the permit application shall be submitted by October 1, 2003; if a permit application is not submitted, the Director shall
- modify the source's permit by January 1, 2004, to insert the monitoring, recordkeeping, and reporting requirements necessary to show compliance with this Section; and
- (4) shall install necessary equipment or make necessary modifications to measure heat input for 2003 ozone season; if a permit application is necessary to install equipment or make modifications, the permit application shall be submitted by October 1, 2002; if a permit application is not submitted, the Director shall modify the source's permit, if necessary, by January 1, 2003, to insert the conditions necessary to require the source to measure heat input and to specify how heat input shall be measured.
- ~~(e) The owner or operator of a source subject to this Rule because of Rule .1417 of this Section shall submit to the Director before October 1, 2003, a description of how the source will comply. The description shall include an estimate of the number of tons of nitrogen oxides per season, which may be a range, that will be obtained to show compliance if the owner or operator of the source anticipates participating in the nitrogen oxide budget trading program under Rule .1419 of this Section. If a permit is needed for source modifications or control device installation or modification, the owner or operators shall submit the permit application early enough to receive the permit and make the modification or construct and begin operating the control device before the final compliance dates in Rule .1417 of this Section. The source shall be in compliance with Rule .1417 and shall install and implement any required monitoring, recordkeeping, and reporting requirements before May 1, 2004. If a permit application is not submitted pursuant to this Rule, the Director shall modify the source's permit by January 1, 2004, to insert the monitoring, recordkeeping, and reporting requirements necessary to show compliance with this Section.~~
- Schedule for large combustion sources. The owner or operator of a source subject to this Rule because of Rule .1417 of this Section:
- (1) shall submit to the Director before October 1, 2003, a description of how the source will comply, which shall include an estimate of the number of tons of nitrogen oxides per season, which may be a range, that will be obtained from the nitrogen oxide budget trading program under Rule .1419 of this Section to show compliance;
 - (2) shall submit to the Director a permit application, following the schedules in 15A NCAC 02Q .0312, .0313, .0525, or .0527, as applicable, to receive a permit and make the modification or construct and begin operating the control device before the final compliance dates in Rule .1417 of this Section if a permit is needed for source modifications or control device installation or modification;
 - (3) shall install and implement any required monitoring, recordkeeping, and reporting requirements before May 1, 2004; if a permit application is necessary to install and operate the monitor, the permit application shall be submitted by October 1, 2003; if a permit application is not submitted, the Director shall

- modify the source's permit by January 1, 2004, to insert the monitoring, recordkeeping, and reporting requirements necessary to show compliance with this Section; and
- (4) shall install necessary equipment or make necessary modifications to measure heat input for 2003 ozone season; if a permit application is necessary to install equipment or make modifications, the permit application shall be submitted by October 1, 2002; if a permit application is not submitted, the Director shall modify the source's permit, if necessary, by January 1, 2003, to insert the conditions necessary to require the source to measure heat input and to specify how heat input shall be measured.

~~(f) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with any applicable requirements for the control of nitrogen oxides until the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, whichever comes first. The Director may allow the following exceptions:~~

- ~~(1) testing of combustion control modifications; or~~
~~(2) adding or testing equipment or methods for the application of a requirement in this Section.~~

~~(g)(f) New sources.~~ The owner or operator of any new source of nitrogen oxides not permitted as of the date the Director notices in the North Carolina Register according to Paragraphs (e), (f), or (g) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source. The owner or operator of any new source covered under Rule .1418 of this Section shall comply with all applicable rules in this Section upon start-up of the source. The owner or operator of any new source covered under Rule .1407, .1408, .1409, or .1413 of this Section shall comply with all applicable rules in this Section upon start-up of the source.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1404 RECORDKEEPING: REPORTING: MONITORING:

(a) General requirements. The owner or operator of any source subject to the requirements of this Section shall comply with the monitoring, recordkeeping and reporting requirements in Section .0600 of this Subchapter and shall maintain all records necessary for determining compliance with all applicable limitations and standards of this Section for at least five years.

(b) Submittal of information to show compliance status. When requested by the Director, the owner or operator of any source subject to the requirements of this Section shall submit to the Director any information necessary to determine the compliance status of an affected source.

(c) Excess emissions reporting. The owner or operator shall report excess emissions following the procedures under Rule .0535 of this Subchapter. This Paragraph does not apply to the ~~allowable seasonal~~ emission ~~allocations rates~~ in Rule .1416, .1417, or .1418 of this Section. Emissions in excess of the ~~allowable seasonal~~ emission ~~allocations rates~~ in Rule .1416, .1417, or .1418 shall be included in the final annual report for the ozone season.

- (d) Continuous emissions monitors.
- (1) The owner or operator ~~of~~ of:
- (A) a source covered under Rule .1416, .1417, or .1418 of this Section except internal combustion engines, and
- (B) any source that opts into that ~~participates in~~ the nitrogen oxide budget trading program under Rule .1419 of this Section, shall install, operate, and maintain a continuous emission monitoring system according to 40 CFR Part 75, Subpart ~~H~~ H, with such exceptions as may be allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96.
- (2) The owner or operator of a source that is subject to the requirements of this Section but not covered under Subparagraph (1) of this Paragraph and that uses a continuous emissions monitoring system to measure emissions of nitrogen oxides shall operate and maintain a continuous emission monitoring system according to 40 CFR Part 60, Appendix B, Specification 2, and Appendix F or Part 75, Subpart H. If diluent monitoring is required, 40 CFR Part 60, Appendix B, Specification 3, shall be used. If flow monitoring is required, 40 CFR Part 60, Appendix B, Specification 6, shall be used.
- (3) The owner or operator of the following sources shall not be required to use continuous emission monitors unless the Director determines that a continuous emission monitor is necessary under Rule .0611 of this Subchapter to show compliance with the rules of this Section:
- (A) a boiler or process heater covered under Rule .1407 of this Section with a maximum heat input less than or equal to 250 million Btu per hour;
- (B) stationary internal combustion engines covered under Rule .1409 of this Section.
- (e) Missing data.
- (1) If data from continuous emission monitoring systems required to meet the requirements of 40 CFR Part 75 are not available at a time that the source is operated, the procedures in 40 CFR Part 75 shall be used to supply the missing data.
- (2) For continuous emissions monitors not covered under Subparagraph (1) of this Paragraph, Data from continuous emissions monitoring systems data shall be available for at least 95 percent of the emission sources operating hours for the applicable averaging period, where four equally spaced readings constitute a valid hour. If data from continuous emission monitoring systems is not available for at least 95 percent of the time that the source is operated, the procedures in 40 CFR 75.33 through 75.37 shall be used to supply the missing data. apply to both

~~monitors meeting the requirements of 40 CFR Part 60, Appendix F and Part 75, Subpart H.~~

(f) Quality assurance for continuous emissions monitors.

(1) The owner or operator of a continuous emission monitor ~~that meets required to meet the requirements of~~ 40 CFR Part 75, Subpart H, shall follow the quality assurance and quality control requirements of 40 CFR Part 75, Subpart H.

(2) For a continuous emissions monitor not covered under Subparagraph (1) of this Paragraph. ~~The~~ the owner or operator of ~~a~~ the continuous emissions monitor ~~that meets the requirements of 40 CFR Part 60, Appendix F,~~ shall follow the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, if the monitor is required to be operated annually under another rule. If ~~a~~ the continuous emissions monitor ~~meeting the requirements of 40 CFR Part 60, Appendix F~~ is being operated only to satisfy the requirements of this Section, then the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, shall apply except that:

(A) A relative accuracy test audit shall be conducted after January 1 and before May 1 of each year;

(B) One of the following shall be conducted at least once between May 1 and September 30 of each year:

(i) a linearity test, according to 40 CFR Part 75, Appendix A, Section 3.2, 6.2, and 7.1;

(ii) a relative accuracy audit, according to 40 CFR Part 60, Appendix F, Section 5 and 6; or

(iii) a cylinder gas audit according to 40 CFR Part 60, Appendix F, Section 5 and 6; and

(C) A daily calibration drift test shall be conducted according to 40 CFR Part 60, Appendix F, Section 4.0.

(g) Reporting-Interim reporting for large sources. The owner or operator of a source covered under Rule .1416, .1417, or .1418 of this Section shall report to the Director no later than July ~~30~~ 31 the tons of nitrogen oxides emitted during the previous May and June. No later than October ~~30, 31,~~ the owner or operator shall report to the Director the tons of nitrogen oxides emitted during the previous ozone season. The Division of Air Quality shall make this information publicly available.

(h) Recordkeeping and reporting requirements for large sources. ~~The owner or operator of a source covered under Rule .1416,~~

.1417, or .1418 of this Section shall comply with the recordkeeping and reporting requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans.

~~(h)(i)~~ Averaging time for continuous emissions monitors. When compliance with a limitation established for a source subject to the requirements of this Section is determined using a continuous emissions monitoring system, a 24-hour block average as described under Rule .0606 of this Subchapter shall be recorded for each day beginning May 1 through September 30 unless a specific rule requires a different averaging time or procedure. Sources covered under Rule .1416, .1417, or .1418 participating in the nitrogen oxide budget trading program under Rule .1419 of this Section shall comply with the averaging time requirements of 40 CFR Part 75.

~~(i)(j)~~ Heat input. Heat input shall be determined:

(1) for sources using a monitoring system meeting the requirements of 40 CFR Part 75, using the procedures in 40 CFR Part 75; or

(2) for sources not using a monitoring system meeting the requirements of 40 CFR Part 75, using using:

(A) a method in 15A NCAC 02D .0501,
or

(B) the best available heat input data.

~~(k)~~ Source testing. When compliance with a limitation established for a source subject to the requirements of this Section is not determined using a continuous emission monitoring system, compliance shall be determined using source testing according to Rule .1415 of this Section. Where source testing is used to determine compliance with a limitation established according to this Section, testing shall be conducted at least annually according to Rule .1415 of this Section. This annual source testing requirement shall not apply to boilers or process heaters less than or equal to 50 million Btu per hour or to stationary reciprocating internal combustion engines permitted to operate no more than 475 hours during the ozone season after the initial source test.

~~(l)~~ Alternative monitoring and reporting procedures. The owner or operator of a source covered under this Rule may request alternative monitoring or reporting procedures under Rule .0612, Alternative Monitoring and Reporting Procedures.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1406 UTILITY BOILERS

~~(a) The owner or operator of an utility boiler shall apply RACT according to Paragraph (b) of this Rule unless the owner or operator chooses the option of:~~

~~(1) emissions averaging under Rule .1410 of this Section, or~~

~~(2) seasonal fuel switching under Rule .1411 of this Section.~~

~~(b) Emissions of NO_x from an utility boiler shall not exceed the following RACT limitations for NO_x:~~

~~— MAXIMUM ALLOWABLE NOX EMISSION RATES FOR UTILITY BOILERS
— (POUNDS PER MILLION BTU)~~

	_____ Firing Method
Fuel/Boiler Type _____ Tangential _____ Wall	

Coal (Dry Bottom)	0.45	0.50
Oil and/or Gas	0.20	0.30

~~(c) If necessary, the owner or operator shall install combustion modification technology or other NO_x control technology in order to comply with the applicable RACT limitation set forth in Paragraph (b) of this Rule. If, after reasonable effort as defined in Rule .1401 of this Section, the emissions from a utility boiler are greater than the applicable RACT limitation, or the requirements of this Rule is not RACT for the particular utility boiler, the owner or operator may petition the Director for an alternative RACT limitation or standard in accordance with Rule .1412 of this Section.~~

~~(d) Compliance with the RACT limitation established for a utility boiler shall be determined using a continuous emissions monitoring system.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .1407 BOILERS AND PROCESS HEATERS

(a) The owner or operator of a ~~non-utility~~ boiler or process heater subject to the requirements of this Section as determined by Rule .1402 of this Section with a maximum heat input rate of less than or equal to 50 million Btu per hour shall ~~apply RACT through an comply with the~~ annual tune-up ~~requirements of performed in accordance with~~ Rule .1414 of this Section. The owner or operator of a ~~non-utility~~ boiler or process heater subject to the requirements of this Paragraph shall maintain records of all tune-ups performed for each source ~~in accordance with according to~~ Rule .1404 of this Section.

MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR ~~NON-UTILITY~~ BOILERS
(POUNDS PER MILLION BTU)
Firing Method

<u>Fuel/Boiler Type</u>	<u>Tangential</u>	<u>Wall</u>	<u>Stoker or Other</u>
Coal (Wet Bottom)	1.0	1.0	N/A
Coal (Dry Bottom)	0.45	0.50	0.40
Wood or Refuse	0.20	0.30	0.20
Oil and/or Gas	0.20	0.30	0.20

~~If necessary, the owner or operator shall install combustion modification technology or other NO_x control technology in an effort to comply with the applicable RACT limitation set forth in this Paragraph.~~

~~(c) If this Rule becomes applicable to a boiler or process heater permitted before November 1, 2000, pursuant to Rule .1402(d), then after reasonable effort as defined in Rule .1401 of this Section, the emissions from the a non-utility boiler or process heater are greater than the applicable RACT limitation, limitation in Paragraph (b) of this Rule, or if the requirements of this Rule is are not RACT for the particular non-utility boiler or process heater, the owner or operator may petition the Director for an alternative RACT limitation or standard in accordance with Rule .1412 of this Section.~~

~~(d) Compliance with the RACT limitation established for a non-utility boiler or process heater under this Rule shall be determined: determined:~~

- (1) using a continuous emissions monitoring system for ~~non-utility~~ boilers or process heaters with a maximum heat input rate greater than 250 million Btu per hour; or

(b) The owner or operator of a ~~non-utility fossil fuel-fired boiler or process heater~~ with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million Btu per ~~hour, hour a boiler with a maximum heat input greater than 50 million Btu per hour that is not a fossil fuel-fired boiler, or a process heater with a maximum heat input greater than 50 million Btu per hour~~ shall ~~apply RACT by comply by:~~ either:

- (1) installation ~~of of, if necessary,~~ combustion modification technology or other NO_x control technology and maintenance, including annual tune-ups and recordkeeping; ~~or and~~
- (2) demonstration through annual source testing ~~to the satisfaction of the Director or continuous emissions monitoring~~ that the source complies with the ~~applicable RACT following applicable limitation: limitation listed in Paragraph (c) of this Rule.~~

~~(c) Unless the owner or operator chooses the option of:~~

- ~~(1) emissions averaging under Rule .1410 of this Section, or~~
- ~~(2) seasonal fuel switching under Rule .1411 of this Section, emissions of NO_x from a non-utility boiler or process heater with a maximum heat input rate greater than 250 million Btu per hour shall not exceed the following RACT limitations:~~

- (2) using annual source testing ~~in accordance with according to~~ Rule .1415 of this Section for ~~non-utility~~ boilers or process heaters with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million BTU per ~~hour, hour that elect to satisfy RACT through Subparagraph (b)(2) of this Rule.~~

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1408 STATIONARY COMBUSTION TURBINES

(a) Unless the owner or operator chooses the option of emission averaging under Rule .1410 of this Section, the owner or operator of a stationary ~~gas-combustion~~ turbine with a heat input rate greater than 100 million ~~Btu per hour Btu/hr~~ but less than or equal to 250 million ~~Btu per hour Btu/hr~~ shall comply with the following limitations:

- (1) Emissions of NO_x shall not exceed 75 ppm by volume corrected to 15 percent oxygen for gas-fired turbines; or
- (2) Emissions of NO_x shall not exceed 95 ppm by volume corrected to 15 percent oxygen for oil-fired turbines.

If necessary, the owner or operator shall install combustion modification technology or other NO_x control technology to comply with the applicable limitation set forth in this Paragraph.

(b) If this Rule becomes applicable to a stationary gas combustion turbine permitted before November 1, 2000, pursuant to Rule .1402(d), then after reasonable effort as defined in Rule .1401 of this Section, the emissions from a stationary gas combustion turbine are greater than the applicable limitation in Paragraph (a) of this Rule, or if the requirements of this Rule are not RACT for the particular stationary gas combustion turbine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

(c) Compliance with the limitation established for a stationary gas combustion turbine under this Rule shall be determined:

- (1) using a continuous emissions monitoring system; or
- (2) using annual source testing according to Rule .1415 of this Section.

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1409 STATIONARY INTERNAL COMBUSTION ENGINES

(a) The owner or operator of a stationary internal combustion engine having a rated capacity of 650 horsepower or more that is not covered under Rule .1417 or .1418 of this Section shall not allow emissions of NO_x from the stationary internal combustion engine to exceed the following limitations:

MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR
STATIONARY INTERNAL COMBUSTION ENGINES
(GRAMS PER HORSEPOWER HOUR)

<u>Engine Type</u>	<u>Fuel Type</u>	<u>Limitation</u>
Rich-burn	Gaseous	2.5
Lean-burn	Gaseous	2.5
Compression Ignition	Liquid	8.0

If necessary, the owner or operator shall install NO_x control technology to comply with the applicable limitation set forth in this Paragraph.

(b) If this Rule becomes applicable to a stationary internal combustion engine permitted before November 1, 2000, pursuant to Rule .1402(d), then after reasonable effort as defined in Rule .1401 of this Section, the emissions from a stationary internal combustion engine are greater than the applicable limitation in Paragraph (a) of this Rule, or if the requirements of this Rule are not RACT for the particular stationary internal combustion engine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

(c) If a stationary internal combustion engine is permitted to operate more than 475 hours during the ozone season, compliance ~~Compliance~~ with the limitation established for a stationary internal combustion engine under Paragraph (a) of this Rule shall be determined using annual source testing according to Rule .1415 of this Section.

(d) If a stationary internal combustion engine is permitted to operate no more than 475 hours during the ozone season, the owner or operator of the stationary internal combustion engine shall show compliance with the limitation under Paragraph (a) of this Rule with source testing during the first ozone season of operation according to Rule .1415 of this Section. Each year after that, the owner or operator of the stationary internal combustion engine shall comply with the annual tune-up requirements of Rule .1414 of this Section.

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1410 EMISSIONS AVERAGING

(a) This Rule shall not apply to sources participating in the nitrogen oxide budget trading program under Rule .1419 covered

under Rule .1416, .1417, or .1418 of this Section. Sources that have obtained an alternative limitation as provided by Rule .1412 of this Section or that apply seasonal fuel switching as provided by Rule .1411 of this Section are not eligible to participate in an emissions averaging plan under this Rule.

(b) With the exceptions in Paragraph ~~(a) (d)~~ of this Rule, the owner or operator of a facility with two or more sources with comparable plume rise and subject to the requirements of this Section for all such sources as determined by Rule .1402 of this Section may elect to apply an emissions averaging plan according to Paragraph (c) of this Rule. An emission averaging plan may be used if the total NO_x emissions from the averaged set of sources based on the total heat input are equal to or less than the NO_x emissions that would have occurred if each source complied with the applicable limitation.

(c) To request approval of an emissions averaging plan to comply with the requirements of this Section, the owner or operator of a facility shall submit a written request to the Director including the following information:

- (1) the name and location of the facility;
- (2) information identifying each source to be included under the averaging plan;
- (3) the maximum heat input rate for each source;
- (4) the fuel or fuels combusted in each source;
- (5) the maximum allowable NO_x emission rate proposed for each averaging source;
- (6) a demonstration that the nitrogen oxide emissions of the sources being averaged when operated together at the maximum daily heat input rate, will be less than or equal to the NO_x emissions if each source complied with the applicable limitation of this Section individually;
- (7) an operational plan to provide reasonable assurance that the sources being averaged will

satisfy Subparagraph (5) of this Paragraph when the combined maximum daily heat input rate is less than the permitted maximum heat input rate; and

- (8) the method to be used to determine the actual NO_x emissions from each source.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1411 SEASONAL FUEL SWITCHING

(a) This Rule shall not apply to ~~facilities-sources~~ covered under Rule .1416, .1417, or .1418 of this Section.

(b) The owner or operator of a coal-fired boiler subject to the requirements of Rule .1407 of this Section may elect to comply by applying seasonal combustion of natural gas according to Paragraph (c) of this Rule. This option is not available to a boiler that used natural gas as its primary fuel in 1990 or has used natural gas as its primary fuel during any year since 1990. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program

(c) The owner or operator electing to comply with the requirements of this Section through the seasonal combustion of natural gas shall establish a NO_x emission limit beginning October 1 through April 30 that will result in annual NO_x emissions of less than or equal to the NO_x that would have been emitted if the source complied with the applicable limitation for the combustion of coal for the entire calendar year. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

(d) To comply with the requirements of this Section through the seasonal combustion of natural gas, the owner or operator shall submit to the Director the following information:

- (1) the name and location of the facility;
- (2) information identifying the source to use seasonal combustion of natural gas for compliance;
- (3) the maximum heat input rate for each source;
- (4) a demonstration that the source will comply with the applicable limitation for the combustion of coal beginning May 1 through September 30;
- (5) a demonstration that the source will comply with the NO_x emission limitation established under Paragraph (c) of this Rule beginning October 1 through April 30; and
- (6) a written statement from the natural gas supplier providing reasonable assurance that the fuel will be available beginning May 1 through September 30.

Authority G.S. 143-215.3(a)(1) 143-215.65; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1412 PETITION FOR ALTERNATIVE LIMITATIONS

(a) If the owner or operator of a source subject to the requirements of Rule .1407, .1408, or .1409 of this Section permitted before October 31, 2000:

- (1) cannot achieve compliance with the applicable limitation after reasonable effort ~~the~~

~~installation and optimization of combustion modification technology or other NO_x control technology~~ to satisfy the requirements of Rules .1407, .1408, or .1409 of this Section or if the requirements of Rules .1407, .1408, or .1409 of this Section are not RACT for the particular source; and

- (2) cannot provide reasonable assurance for overall compliance at a facility through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section; the owner or operator may petition the Director for an alternative limitation according to Paragraph (b) of this Rule.

(b) To petition the Director for an alternative limitation, the owner or operator of the source shall submit;

- (1) the name and location of the facility;
- (2) information identifying the source for which an alternative limitation is being requested;
- (3) the maximum heat input rate for the source;
- (4) the fuel or fuels combusted in the source;
- (5) the maximum allowable NO_x emission rate proposed for the source for each fuel;
- (6) a demonstration that the source has satisfied the requirements to apply for an alternative limitation under Paragraph (a) of this Rule; and
- (7) a demonstration that the proposed alternative limitation is RACT for that source, satisfies the requirements for RACT.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1413 SOURCES NOT OTHERWISE LISTED IN THIS SECTION

(a) The owner or operator of any source of nitrogen oxides at a facility that has the potential to emit 100 tons per year or more nitrogen oxides or 560 pounds per calendar day or more beginning May 1 through September 30 except boilers, process heaters, stationary gas-combustion turbines, or stationary internal combustion engines shall apply RACT according to Paragraph (b) of this Rule.

(b) To submit a proposal to apply RACT to a source of nitrogen oxides covered under this Rule, the owner or operator of the source shall submit;

- (1) the name and location of the facility;
- (2) information identifying the source for which RACT is being proposed;
- (3) a demonstration that shows the proposed limitation is RACT for the source; RACT satisfies the requirements for RACT; and
- (4) a proposal for demonstrating compliance with the proposed RACT.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.65; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1414 TUNE-UP REQUIREMENTS

(a) This Rule applies to boilers and process heaters subject to the requirements of Rule .1407 of this Section or stationary internal combustion engines subject to the requirements of Rule

.1409 of this Section that are complying with Rule .1407 or .1409 of this Section through an annual tune-up.

(b) When a tune-up to a combustion process is required for compliance with this Section, the owner or operator shall:

- (1) inspect each burner and clean or replace any component of the burner as necessary to improve boiler efficiency;
- (2) inspect the flame pattern and make any adjustments to the burner, or burners, necessary to optimize the flame pattern to minimize total emissions of NO_x and carbon monoxide;
- (3) inspect the combustion control system to ensure that the air-to fuel ratio is correctly calibrated and operating properly;
- (4) inspect any other component of the boiler and make adjustments or repairs as necessary to improve boiler efficiency; and
- (5) adjust the air-to-fuel ratio to minimize excess air and maximize boiler efficiency.

The owner or operator shall perform the tune-up according to a unit specific protocol approved by the Director. The Director shall approve the protocol if it meets the requirements of this Rule.

(c) The owner or operator shall maintain records of tune-ups performed to comply with this Section according to Rule .1404 of this Section. The following information shall be included for each source:

- (1) identification of the source;
- (2) the date and time the tune-up started and ended;
- (3) the person responsible for performing the tune-up;
- (4) the checklist for inspection of the burner, flame pattern, combustion control system, and all other components of the boiler identified in the protocol, noting any repairs or replacements made;
- (5) the oxygen or carbon dioxide concentration of the stack gas, the carbon monoxide concentration of the stack gas or smoke spot number, stack gas temperature, and any additional information necessary to specify the operating conditions of the boiler after each adjustment for minimizing excess air; and
- (6) any other information requested by the Director as a condition of approval of a RACT standard.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1415 TEST METHODS AND PROCEDURES

(a) Method 7E or Method 19 at 40 CFR Part 60, Appendix A or other equivalent method approved by Director shall be used when source testing is used to demonstrate compliance with a limitation established according to this Section. For stationary gas-combustion turbines, Method 20 at 40 CFR Part 60, Appendix A or other equivalent method approved by Director shall be used when source testing is used to demonstrate compliance with a limitation established according to this

Section. The procedures specified in Methods 1, 2, 2F, 2G, 3, 3A, 3B, and 4 of 40 CFR Part 60, Appendix A, shall be used to measure velocity, flow rate, and molecular weight and to calculate heat input, as necessary, to determine compliance.

(b) When compliance with a limitation established according to this Section is determined using source testing, such testing shall be conducted according to this Rule. The owner or operator of a source subject to the requirements of this Section shall demonstrate compliance when the Director requests such demonstration. The Director shall explain to the owner or operator the basis for requesting a demonstration of compliance and shall allow reasonable time for testing to be performed.

(c) Before conducting a source test, the owner or operator of the sources to be tested shall submit to the Director a testing protocol describing what is to be tested and the test method or methods that will be used. The Director shall approve or disapprove the protocol within 45 days after receipt.

(d) The owner or operator shall notify the Director and obtain the Director's approval at least 21 days before beginning a test to demonstrate compliance with this Section so that the Division may observe the test. The notification required by this Paragraph shall include:

- (1) a statement of the purpose of the proposed test;
- (2) the location and a description of the facility where the test is to take place;
- (3) the proposed test method and a description of the test procedures, equipment, and sampling points; and
- (4) a schedule setting forth the dates that:
 - (A) the test will be conducted and data collected;
 - (B) the final test report will be submitted.

(e) The final test report shall be submitted to the Director no later than 45 days after the test data have been collected.

(f) The owner or operator shall be responsible for all costs associated with any tests required to demonstrate compliance with this Section.

(g) The owner or operator shall maintain records of tests performed to demonstrate compliance with this Section according to Rule .1404 of this Section.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1416 EMISSION ALLOCATIONS FOR UTILITY COMPANIES

(a) Before the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

- (1) Carolina Power & Light. The total emissions from all the coal-fired boilers and combustion turbines at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:
 - (A) ~~15,863-12,019~~ tons per ozone season for 2004;
 - (B) 15,566 tons per ozone season for 2005;
 - (C) 14,355 tons per ozone season for 2006 and each year thereafter until

- (D) after revising the ~~allowable~~-emission ~~allocations rates~~ according to Rule .1420 of this Section, the ~~allowable sum of the~~ emission ~~allocations rates~~ calculated under Rule .1420 of this Section for boilers and combustion turbines at the Carolina Power & Light Company's facilities named in the Subparagraph. (When a revision is made under Rule .1420 of this Section, each boiler and combustion turbine shall be given a specific ~~allowable~~-emission allocation rate under Rule .1420 of this Section. The ~~allowable~~-emission allocations rates

of these boilers and combustion turbines shall be summed, and this sum shall be the allowable emission rate for the coal-fired boilers and combustion turbines at the Carolina Power & Light ~~Company's Company~~ facilities named in this ~~Subparagraph~~.)~~Paragraph~~.)

Furthermore, the compliance for individual sources at these facilities shall be determined using the nitrogen oxide emission allocations in the following table beginning May 31 through September 30, 2004 and May 1 through September 30, 2005 and each year thereafter until revised according to Rule .1420 of this Section:

<u>FACILITY</u>	<u>SOURCE</u>	<u>EMISSION ALLOCATIONS (tons/season) 2004</u>	<u>EMISSION ALLOCATIONS (tons/season) 2005</u>	<u>EMISSION ALLOCATIONS (tons/season) 2006 and later</u>
<u>Asheville, Buncombe Co</u>	<u>1</u>	<u>551</u>	<u>714</u>	<u>659</u>
	<u>2</u>	<u>538</u>	<u>697</u>	<u>643</u>
<u>Cape Fear Robeson Co</u>	<u>5</u>	<u>286</u>	<u>371</u>	<u>342</u>
	<u>6</u>	<u>406</u>	<u>526</u>	<u>485</u>
<u>Lee Chatham Co</u>	<u>1</u>	<u>145</u>	<u>188</u>	<u>173</u>
	<u>2</u>	<u>159</u>	<u>206</u>	<u>190</u>
	<u>3</u>	<u>465</u>	<u>603</u>	<u>556</u>
<u>Mayo Person Co</u>	<u>1</u>	<u>1987</u>	<u>2572</u>	<u>2373</u>
<u>Roxboro Person Co</u>	<u>1</u>	<u>861</u>	<u>1115</u>	<u>1028</u>
	<u>2</u>	<u>1602</u>	<u>2075</u>	<u>1914</u>
	<u>3</u>	<u>1773</u>	<u>2295</u>	<u>2116</u>
	<u>4</u>	<u>1698</u>	<u>2199</u>	<u>2028</u>
<u>L V Sutton New Hanover Co.</u>	<u>1</u>	<u>182</u>	<u>236</u>	<u>217</u>
	<u>2</u>	<u>198</u>	<u>256</u>	<u>236</u>
	<u>3</u>	<u>806</u>	<u>1044</u>	<u>962</u>
<u>Weatherspoon Wayne Co.</u>	<u>1</u>	<u>85</u>	<u>110</u>	<u>102</u>
	<u>2</u>	<u>97</u>	<u>125</u>	<u>116</u>
	<u>3</u>	<u>180</u>	<u>234</u>	<u>215</u>

- (2) Duke Power. The total emissions from all the coal-fired boilers and combustion turbines at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:
- (A) ~~23,514~~ 17,816 tons per season for 2004;
 - (B) 23,072 tons per season for 2005;
 - (C) 21,278 tons per ozone season for .2006 and each year thereafter until revised according to Rule .1420 of this Section; and
 - (D) after revising the ~~allowable~~-emission ~~allocations rates~~ according to Rule .1420 of this Section, the ~~allowable sum of the~~ emission ~~allocations rates~~ calculated under Rule .1420 of this Section for boilers and combustion turbines at the Duke Power Company's facilities named in the Subparagraph. (When a revision is made under Rule .1420 of this Section, each boiler and combustion turbines shall be given a specific ~~allowable~~-emission allocation rate under Rule .1420 of this Section. The ~~allowable~~-emission ~~allocations rates~~ of these boilers and combustion turbines shall be summed, and this sum shall be the allowable

emission rate for the coal-fired boilers and combustion turbines at the Duke Power Company's ~~Company~~ facilities named in this ~~Subparagraph~~. ~~Paragraph~~.)

Furthermore, the compliance for individual sources at these facilities shall be determined using the nitrogen oxide emission allocations in the following table beginning May 31 through September 30, 2004 and May 1 through September 30, 2005 and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
<u>G G Allen Gaston Co.</u>	<u>1</u>	<u>350</u>	<u>453</u>	<u>418</u>
	<u>2</u>	<u>355</u>	<u>460</u>	<u>424</u>
	<u>3</u>	<u>590</u>	<u>764</u>	<u>705</u>
	<u>4</u>	<u>528</u>	<u>683</u>	<u>630</u>
	<u>5</u>	<u>678</u>	<u>748</u>	<u>690</u>
<u>Belews Creek Stokes Co.</u>	<u>1</u>	<u>2591</u>	<u>3356</u>	<u>3095</u>
	<u>2</u>	<u>3020</u>	<u>3911</u>	<u>3608</u>
	<u>5</u>	<u>66</u>	<u>86</u>	<u>79</u>
	<u>6</u>	<u>73</u>	<u>95</u>	<u>87</u>
	<u>7</u>	<u>78</u>	<u>101</u>	<u>93</u>
<u>Buck Rowan Co.</u>	<u>8</u>	<u>319</u>	<u>413</u>	<u>381</u>
	<u>9</u>	<u>337</u>	<u>437</u>	<u>403</u>
	<u>1</u>	<u>76</u>	<u>98</u>	<u>91</u>
	<u>2</u>	<u>82</u>	<u>106</u>	<u>98</u>
	<u>3</u>	<u>107</u>	<u>138</u>	<u>128</u>
<u>Cliffside Cleveland Co.</u>	<u>4</u>	<u>120</u>	<u>156</u>	<u>144</u>
	<u>5</u>	<u>1326</u>	<u>1717</u>	<u>1584</u>
	<u>1</u>	<u>132</u>	<u>171</u>	<u>157</u>
	<u>2</u>	<u>144</u>	<u>186</u>	<u>172</u>
	<u>3</u>	<u>304</u>	<u>394</u>	<u>363</u>
<u>Marshall Catawba Co.</u>	<u>1</u>	<u>1011</u>	<u>1309</u>	<u>1207</u>
	<u>2</u>	<u>1056</u>	<u>1367</u>	<u>1261</u>
	<u>3</u>	<u>1784</u>	<u>2311</u>	<u>2131</u>
	<u>4</u>	<u>1764</u>	<u>2285</u>	<u>2107</u>
	<u>10</u>	<u>299</u>	<u>387</u>	<u>357</u>
<u>Riverbend Gaston Co.</u>	<u>7</u>	<u>216</u>	<u>280</u>	<u>258</u>
	<u>8</u>	<u>225</u>	<u>291</u>	<u>268</u>
	<u>9</u>	<u>285</u>	<u>369</u>	<u>340</u>

(b) After the EPA promulgates revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

- (1) Carolina Power & Light. The total emissions from all the coal-fired boilers and combustion turbines at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:
 - (A) ~~12,019 tons per ozone season in 2004;~~
 - ~~(A)~~(B) 15,024 tons per ozone season for 2004 and 2005;
 - ~~(B)~~(C) 11,320 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and
 - ~~(C)~~(D) after revising the allowable emission allocations rates according to Rule .1420 of this Section, the allowable sum of the emission allocation of the sources named in this Rule rates-calculated under Rule .1420 of this Section for boilers and combustion turbines at the Carolina Power & Light Company's facilities named in the Subparagraph. (When a revision is made under Rule .1420 of this Section, each boiler and combustion turbine shall be given a specific allowable-emission allocation rate-under Rule .1420 of this Section. The allowable-emission allocations rates of these boilers shall be summed, and this sum shall be the allowable

emission rate for the coal-fired boilers and combustion turbines at the Carolina Power & Light Company's ~~Company~~ facilities named in this Subparagraph ~~Paragraph~~.)
 Furthermore, the compliance for individual sources at these facilities shall be determined using the nitrogen oxide emission allocations in the following table beginning May 31 through September 30 for 2004 and May 1 through September 30 for 2005 and each year thereafter until revised according to Rule .1420 of this Section:

<u>FACILITY</u>	<u>SOURCE</u>	<u>EMISSION ALLOCATIONS</u> (tons/season) 2004	<u>EMISSION ALLOCATIONS</u> (tons/season) 2005	<u>EMISSION ALLOCATIONS</u> (tons/season) 2006 and later
<u>Asheville</u> <u>Buncombe Co</u>	1	551	689	519
	2	538	672	507
<u>Cape Fear</u> <u>Robeson Co</u>	5	286	358	270
	6	406	508	382
<u>Lee</u> <u>Chatham Co</u>	1	145	182	137
	2	159	199	150
	3	465	582	438
<u>Mayo</u> <u>Person Co</u>	1	1987	2483	1872
<u>Roxboro</u> <u>Person Co</u>	1	861	1076	811
	2	1602	2003	1509
	3	1773	2215	1669
	4	1698	2122	1599
<u>L V Sutton</u> <u>New Hanover Co.</u>	1	182	228	171
	2	198	247	186
	3	806	1007	759
<u>Weatherspoon</u> <u>Wayne Co.</u>	1	85	107	80
	2	97	121	91
	3	180	225	170

- (2) Duke Power. The total emissions from all the coal-fired boilers and combustion turbines at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:
- (A) 17,816 tons per season;
 - ~~(A)~~(B) 22,270 tons per season for ~~2004 and~~ 2005;
 - ~~(B)~~(C) 16,780 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and
 - ~~(C)~~(D) after revising the ~~allowable~~ emission ~~allocations~~ ~~rates~~ according to Rule .1420 of this Section, the ~~allowable~~ ~~sum of the emission allocation~~ ~~rates~~ calculated under Rule .1420 of this Section for boilers and combustion turbines at the Duke Power Company's facilities named in the Subparagraph. (When a revision is made under Rule .1420 of this Section, each boiler and combustion turbine shall be given a specific ~~allowable~~ emission ~~allocation~~ ~~rate~~ under Rule .1420 of this Section. The ~~allowable~~ emission ~~allocation~~ ~~rates~~ of these boilers and combustion turbines shall be summed, and this sum shall be the allowable emission rate for the coal-fired boilers and combustion turbines at the Duke Power Company's ~~Company~~ facilities named in this Subparagraph.) ~~Paragraph~~.)

Furthermore, the compliance for individual sources at these facilities shall be determined using the nitrogen oxide emission allocations in the following table beginning May 31 through September 30 for 2004 and May 1 through September 30 for 2005 and each year thereafter until revised according to Rule .1420 of this Section:

<u>FACILITY</u>	<u>SOURCE</u>	<u>EMISSION ALLOCATIONS</u> (tons/season) 2004	<u>EMISSION ALLOCATIONS</u> (tons/season) 2005	<u>EMISSION ALLOCATIONS</u> (tons/season) 2006 and later
<u>G G Allen</u> <u>Gaston Co.</u>	1	350	437	329
	2	355	444	334
	3	590	737	556

FACILITY	SOURCE	EMISSION ALLOCATIONS	EMISSION ALLOCATIONS	EMISSION ALLOCATIONS
		(tons/season) 2004	(tons/season) 2005	(tons/season) 2006 and later
	<u>4</u>	<u>528</u>	<u>660</u>	<u>497</u>
	<u>5</u>	<u>578</u>	<u>722</u>	<u>544</u>
Belews Creek Stokes Co.	<u>1</u>	<u>2591</u>	<u>3239</u>	<u>2441</u>
	<u>2</u>	<u>3020</u>	<u>3775</u>	<u>2846</u>
Buck Rowan Co.	<u>5</u>	<u>66</u>	<u>83</u>	<u>63</u>
	<u>6</u>	<u>73</u>	<u>91</u>	<u>69</u>
	<u>7</u>	<u>78</u>	<u>97</u>	<u>73</u>
	<u>8</u>	<u>319</u>	<u>399</u>	<u>300</u>
	<u>9</u>	<u>337</u>	<u>422</u>	<u>318</u>
Cliffside Cleveland Co.	<u>1</u>	<u>76</u>	<u>95</u>	<u>71</u>
	<u>2</u>	<u>82</u>	<u>102</u>	<u>77</u>
	<u>3</u>	<u>107</u>	<u>134</u>	<u>101</u>
	<u>4</u>	<u>120</u>	<u>150</u>	<u>113</u>
	<u>5</u>	<u>1326</u>	<u>1658</u>	<u>1249</u>
Dan River Rockingham Co.	<u>1</u>	<u>132</u>	<u>165</u>	<u>124</u>
	<u>2</u>	<u>144</u>	<u>180</u>	<u>135</u>
	<u>3</u>	<u>304</u>	<u>380</u>	<u>286</u>
Marshall Catawba Co.	<u>1</u>	<u>1011</u>	<u>1263</u>	<u>952</u>
	<u>2</u>	<u>1056</u>	<u>1320</u>	<u>994</u>
	<u>3</u>	<u>1784</u>	<u>2230</u>	<u>1680</u>
	<u>4</u>	<u>1764</u>	<u>2206</u>	<u>1662</u>
Riverbend Gaston Co.	<u>10</u>	<u>299</u>	<u>374</u>	<u>282</u>
	<u>7</u>	<u>216</u>	<u>270</u>	<u>204</u>
	<u>8</u>	<u>225</u>	<u>281</u>	<u>212</u>
	<u>9</u>	<u>285</u>	<u>356</u>	<u>268</u>

(c) Posting of ~~allowable emissions~~-emission allocation. The Director shall post the ~~allowable emission allocations rates~~ for sources covered under this Rule on the Division's web page.

(d) Trading. Sources may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this ~~Section or obtaining offsets under Rule .1420(f) or (g) of this~~ Section.

(e) Monitoring. The owner or operator of a source subject to this Rule shall ~~use~~ show compliance using a continuous emission monitor that meets the requirements of 40 CFR Part 75, Subpart H, with such exceptions as allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96. ~~Monitors to show compliance.~~

(f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated beginning May 1 through September 30 in the manner in which they are designed and permitted to be operated.

(g) Violations. If, at the end of the ozone season, the owner or operator of ~~a source~~ ~~the company~~ whose actual emissions of nitrogen oxides exceed the ~~limit~~-emission allocation in Paragraph (a) or (b) of this Rule cannot obtain enough credits under Rule .1419 of this Section to offset these excess emissions, then that ~~company~~-source shall be considered in violation for each day that the aggregate emissions of nitrogen oxides exceeded the ~~allowable emissions~~-emission allocations in Paragraph (a) or (b) of this Rule beginning May 1 (~~May 31 for 2004~~) through September 30 of that ozone season. ~~If the~~

~~company complies with the applicable emission limit under Paragraph (a) or (b) of this Rule, then all coal-fired boilers at facilities listed under Paragraph (a) or (b) of this Rule, as applicable, shall be deemed in compliance with this Rule. (If the owner or operator of the source has traded away or otherwise transferred emission allocations of that source, then the emission allocations traded or otherwise transferred shall be subtracted from the source's emission allocations under this Rule before determining compliance.)~~

(h) Modification and reconstruction. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its ~~allowable~~-emission ~~allocations rate~~ under Paragraph (a) or (b) of this Rule.

(i) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

~~(j) Contingency provision. At the time of the adoption of this rule by the Commission on October 12, 2000, challenges have been filed to the requirement (adopted by the United States Environmental Protection Agency and codified in 40 CFR Part 51, Subpart G, hereinafter referred to as the "federal SIP requirements") that North Carolina submit additions or changes~~

~~to the provisions in North Carolina's of a State Implementation Plan ("NC SIP") relating to the control of nitrogen oxide (NO_x) emissions from air emission sources within North Carolina. In addition, certain identified stationary sources are required to implement NO_x controls pursuant to the Section 126 regulations codified in 40 CFR 52.34 and Part 97, which requirements are stayed if the State has adopted a SIP compliant with the 40 CFR Part 51, Subpart G. These Section 126 regulations are also the subject of legal challenge. The Commission recognizes that such challenges could result in some or all of those provisions in the federal SIP or Section 126 requirements being repealed, vacated, reversed, set aside, or remanded by a court of competent jurisdiction, or alternatively withdrawn or otherwise changed by EPA or affected in a way that results in portions of these rules being no longer mandated by the federal SIP or Section 126 requirements and the EPA. Consequently, it is the desire of the Commission to adopt, simultaneously with the adoption of this rule, a second rule (the "NO_x SIP Repeal Rules") that would be made effective only in the event of a such an action by a court or by EPA that repeals, vacates, reverses, sets aside, remands, withdraws or otherwise results in these rules being no longer mandated by the federal SIP or the Section 126 requirements and the EPA. These NO_x SIP Repeal Rules, which were also adopted by the Commission on October 12, 2000, would, if made effective, amend these rules (which will be codified at 15A NCAC 2D .1402 through .1421), in response to the actions by the court and/or the EPA, by deleting the amendments that these rules make in existing rules to meet the supplemental requirements for the 1 hour ozone standard adopted by EPA in the NO_x SIP call regulations. Because of the reliance being placed on these rules by the regulated community and the lead times required to implement the changes mandated by these rules, the Commission finds it both appropriate and beneficial to adopt those NO_x SIP Repeal Rules at the same time as these rules, even though the NO_x SIP Repeal Rules would not be made immediately effective, in order to provide guidance and clarity on what the rules will be should the federal SIP requirements be affected by a court order or EPA action in the manner discussed in this subsection. Consequently, if the federal SIP and the Section 126 requirements are repealed, vacated, reversed, set aside, or remanded by a final order by a court of competent jurisdiction, or alternatively withdrawn or otherwise changed by EPA or affected in a way that results in these rules being no longer mandated by the federal NO_x SIP or Section 126 requirements, the Director shall, within five (5) business days of learning of any such decision, submit to the Codifier of Rules (the "Codifier") at the Office of Administrative Hearings a copy of the NO_x SIP Repeal Rules, in order that the Codifier may conduct the review of those NO_x SIP Repeal Rules as provided under G.S. 150B-21.1(b) prior to entering the rule into the North Carolina Administrative Code, thereby making it effective as a temporary rule. In addition, the Commission understands that, even with this procedure, there may be a time between the time of action by a court or EPA and the entering of the NO_x SIP Repeal Rules into the North Carolina Administrative Code if the Codifier of Rules determines the rules cannot be entered into the Code. In order to provide guidance to the regulated community during this time, the Commission adopts in this rule the following conditional transition provision, to be utilized in the event that the Commission submits the NO_x SIP Repeal Rules to the Codifier:~~

~~for the period of time starting five business days after an action resulting in the determination by the Director to submit the NO_x SIP Repeal Rules to the Codifier and until they become effective as temporary rules, activities regulated by these rules shall be considered in compliance if they conform to the provisions in the NO_x SIP Repeal Rules relating to the control of NO_x emissions. The actions by the Director in filing the NO_x SIP Repeal Rules under the circumstances described herein are solely ministerial and, as such, are subject to a mandamus action to require that they be filed with the Codifier as specified in this rule.~~

~~Alternatively, if the federal SIP requirements are repealed, vacated, reversed, set aside, or remanded by a final order by a court of competent jurisdiction, or alternatively withdrawn or otherwise changed by EPA, in any manner other than that described in the previous sentence, but the Section 126 requirements have not been acted on in this manner, the Director shall, within five (5) business days of learning of any such decision, submit to the Commission a written report regarding such action or actions and the Commission shall act on that recommendation at its next regular meeting.~~

Authority G.S. 143-215.3(a)(1);143-215.107(a)(5), (7), (10).

15A NCAC 02D .1417 EMISSION ALLOCATIONS FOR LARGE COMBUSTION SOURCES

(a) Applicability. This rule applies to the sources listed in Paragraph (b) of this Rule ~~and~~ or to the following types of sources that are permitted before November 1, 2000, and are not covered under Rule .1416 of this Section:

- (1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or
- (2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (1) of this ~~Paragraph~~ Paragraph; ~~and~~
- ~~(3) the following types of reciprocating internal combustion engines:~~
 - ~~(A) rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,~~
 - ~~(B) lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,~~
 - ~~(C) diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower, or~~
 - ~~(D) dual fuel stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,~~
- (b) Initial ~~allowable~~ emission allocations. Rates.
 - (1) Before the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:
 - (A) Sources ~~Except as allowed under Paragraph (d) of this Rule~~, sources

named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission ~~allocations limits~~ in the table beginning ~~May 31~~ through September

30, 2004 and May 1 through September 30, 2005 ~~(the ozone season), 2004~~ and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	EMISSION ALLOCATION S (tons/season) 2004	ALLOWABLE SEASONAL NO _x EMISSIONS EMISSION ALLOCATION S (tons/season) 2004 and 2005	ALLOWABLE SEASONAL NO _x EMISSIONS EMISSION ALLOCATION S (tons/season) 2006 and later
Butler Warner Generating, Cumberland Co.		27	33	49
		27	33	49
		27	33	49
		28	33-35	52
		27	33	49
		27	33	49
		69	86	126
Cogentrix-Rocky Mount, Edgecombe Co.	Boiler	319	398	351
Cogentrix-Elizabethtown, Bladen Co.	Coal boiler	115	143	126
Cogentrix-Kenansville, Duplin Co.	Stoker boiler	103	128	113
Cogentrix-Lumberton, Robeson Co.	Coal boiler	114	142	125
Cogentrix-Roxboro, Person Co.		175	218	192
Cogentrix-Southport, Brunswick Co.		356	443	391
Ed Generators			0.15	0.15
			0.15	0.15
Fayetteville, Cumberland Co.			565	565
Kitty Hawk, Dare Co.			0.5	0.5
			0.4	0.4
Duke Power, Lincoln	Simple Cycle Combustion Turbine	18	19-23	20-23
	Simple Cycle Combustion Turbine	18	19-23	20-23
	Simple Cycle Combustion Turbine	18	19-23	20-23
	Simple Cycle Combustion Turbine	18	19-23	19-23
	Simple Cycle Combustion Turbine	18	19-23	19-23
	Simple Cycle Combustion Turbine	18	19-23	19-23
	Simple Cycle Combustion Turbine	18	19-23	19-23
	Simple Cycle Combustion Turbine	18	19-23	19-23
	Simple Cycle Combustion Turbine	18	19-23	19-23

FACILITY	SOURCE	EMISSION ALLOCATION S (tons/season) <u>2004</u>	ALLOWABLE SEASONAL NO _x EMISSIONS EMISSION ALLOCATION S (tons/season) 2004 and 2005	ALLOWABLE SEASONAL NO _x EMISSIONS EMISSION ALLOCATION S (tons/season) 2006 and later
	Simple-Cycle Combustion Turbine	18	19-23	19-23
	Simple-Cycle Combustion Turbine	18	19-23	19-23
	Simple-Cycle Combustion Turbine	18	19-23	19-23
	Simple-Cycle Combustion Turbine	18	19-23	19-23
	Simple-Cycle Combustion Turbine	18	19-23	19-23
	Simple-Cycle Combustion Turbine	18	19-23	19-23
	Simple-Cycle Combustion Turbine	19	19-24	19-24
Panda-Rosemary, Halifax Co.		<u>35</u>	43	32
		<u>25</u>	31	23
Roanoke Valley, Halifax Co.		<u>447</u>	557	492
		<u>142</u>	178	167
Tobbacoville RJ Reynolds Tobbacoville Facility, Forsyth Co.	Boiler 1	<u>194</u>	243	64
	Boiler 2	<u>218</u>	273	64
	Boiler 3	<u>178</u>	223	64
	Boiler 4	<u>190</u>	238	64
UNC-CH, Orange Co.	boiler no. 5, 6, and 7	<u>116</u>	145	128
	Boiler no. 8	<u>120</u>	150	113
Wiccacon			+	+
	Simple-Cycle Combustion Turbine	<u>25</u>	31	31
CP&L, Lee Plant, Wayne County	Simple-Cycle Combustion Turbine	<u>25</u>	31	31
	Simple-Cycle Combustion Turbine	<u>92</u>	115	115
	Simple-Cycle Combustion Turbine	<u>92</u>	115	115
	Simple-Cycle Combustion Turbine	<u>34</u>	42	42
Dynegy, Rockingham County	Simple-Cycle Combustion Turbine	<u>33</u>	42	42

FACILITY	SOURCE	<u>EMISSION ALLOCATION S (tons/season) 2004</u>	ALLOWABLE SEASONAL NO_x EMISSIONS <u>EMISSION ALLOCATION S (tons/season) 2004 and 2005</u>	ALLOWABLE SEASONAL NO_x EMISSIONS <u>EMISSION ALLOCATION S (tons/season) 2006 and later</u>
	Simple-Cycle <u>Combustion Turbine</u>	<u>33</u>	42	42
	Simple-Cycle <u>Combustion Turbine</u>	<u>33</u>	41	41
	Simple-Cycle <u>Combustion Turbine</u>	<u>33</u>	41	41
CP&L, Woodleaf, Rowan County	Simple-Cycle <u>Combustion Turbine</u>	<u>22</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>22</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>22</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>21</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>22</u>	27	27
CP&L, Mark's Creek, Richmond County	Simple-Cycle <u>Combustion Turbine</u>	<u>22</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>22</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>22</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>22</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>21</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>21</u>	27	27
	Simple-Cycle <u>Combustion Turbine</u>	<u>22</u>	28	28
CP&L, Asheville, Buncombe County	Simple-Cycle <u>Combustion Turbine</u>	<u>60</u>	75	75
	Simple-Cycle <u>Combustion Turbine</u>	<u>60</u>	75	75

(B) ~~Sources~~—Except as allowed under Paragraph (d) of this Rule, sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission ~~allocations limits~~ in the table beginning May 31 through September 30 for 2004 and May 1 through September 30 ~~(the ozone season), 2004 2005~~ and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	ALLOWABLE SEASONAL NO_x EMISSIONS EMISSION ALLOCATIONS (tons/season) 2004	ALLOWABLE SEASONAL NO_x EMISSIONS EMISSION ALLOCATIONS (tons/season) 2005	ALLOWABLE SEASONAL NO_x EMISSIONS EMISSION ALLOCATIONS (tons/season) 2006 and later
Weyerhaeuser Paper Co., Martin Co.	Riley boiler	709-566	709	379
	Package boiler	25-20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler	265-212	265	141
	Pulverized coal dry bottom boiler	234-187	234	125
	Pulverized coal dry bottom boiler	447-358	447	239
	Pulverized coal, wet bottom boiler	456-365	456	244
	Boiler	169-135	169	90
International Paper Corp., Halifax Co.	Wood/bark-fired boiler-no. 6 oil-fired boiler-pulverized coal, dry bottom boiler	648-518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	226-181	226	121
	#2 power boiler	72-58	72	72
International. Paper, Columbus Co.	No. 3 Power Boiler	158-126	158	84
	No. 4 Power Boiler	418-334	418	223
Fieldcrest-Cannon, Plant 1 Cabarrus Co.		217-174	217	116
Transcontinental Gas Pipeline Station 160, Rockingham Co.	Mainline engine #11	127-102	25	25
	Mainline engine #12	127-102	25	25
	Mainline engine #13	152-122	30	30

FACILITY	SOURCE	ALLOWABLE SEASONAL NO_x EMISSIONS EMISSION ALLOCATIONS (tons/season) 2004	ALLOWABLE SEASONAL NO_x EMISSIONS EMISSION ALLOCATIONS (tons/season) 2005	ALLOWABLE SEASONAL NO_x EMISSIONS EMISSION ALLOCATIONS (tons/season) 2006 and later
	Mainline engine #14	155-123	31	31
	Mainline engine #15	187-148	37	37
Transcontinental Gas Pipeline Station 150, Iredell Co.	Mainline engine #12	66-53	13	13
	Mainline engine #13	68-54	13	13
	Mainline engine #14	127-102	25	25
	Mainline engine #15	127-102	25	25
Transcontinental Gas Pipeline Station 155, Davidson Co.	Mainline engine #2	127-102	25	25
	Mainline engine #3	109-87	22	22
	Mainline engine #4	187-148	37	37
	Mainline engine #5	108-86	21	21
	Mainline engine #6	108-86	21	21

(2) After the EPA promulgates revisions after November 1, 2000 to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

(A) ~~Sources~~ Except as allowed under Paragraph (d) of this Rule, sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission ~~allocations~~ ~~limits~~ in the table beginning May 31 through September 30 for 2004 and May 1 through September 30 for 2005 ~~(the ozone season), 2004~~ and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	<u>EMISSION ALLOCATION</u> S (tons/season) 2004	ALLOWABLE SEASONAL NO_x EMISSIONS <u>EMISSION ALLOCATIONS</u> (tons/season) 2004 2005	ALLOWABLE SEASONAL NO_x EMISSIONS <u>EMISSION ALLOCATION</u> S (tons/season) 2005-2006 and later
Butler Warner Generating, Cumberland Co.		<u>27</u>	33	49
		<u>27</u>	33	49
		<u>27</u>	33	49
		<u>28</u>	33-35	52
		<u>27</u>	33	49
		<u>27</u>	33	49
		<u>69</u>	86	126
Cogentrix-Rocky Mount, Edgecombe Co.	Boiler	<u>319</u>	398	351
Cogentrix-Elizabethtown, Bladen	Coal boiler	<u>115</u>	143	126
Cogentrix-Kenansville, Duplin Co.	Stoker boiler	<u>103</u>	128	113
Cogentrix-Lumberton, Robeson Co.	Coal boiler	<u>114</u>	142	125

TABLED RULES

FACILITY	SOURCE	<u>EMISSION ALLOCATION</u> <u>S (tons/season)</u> <u>2004</u>	<u>ALLOWABLE SEASONAL</u> <u>NO_x</u> <u>EMISSIONS</u> <u>EMISSION</u> <u>ALLOCATIONS</u> (tons/season) <u>2004</u> <u>2005</u>	<u>ALLOWABLE SEASONAL</u> <u>NO_x</u> <u>EMISSIONS</u> <u>EMISSIONS</u> <u>ALLOCATION</u> <u>S(tons/season)</u> <u>2005-2006</u> and later
Cogentrix-Roxboro, Person Co.		<u>175</u>	218	192
Cogentrix-Southport, Brunswick Co.		<u>356</u>	443 <u>444</u>	391 <u>392</u>
Ed-Generators			0.15	0.15
			0.15	0.15
Fayetteville, Cumberland Co.			565	565
Kitty Hawk, Dare Co.			0.5	0.5
			0.4	0.4
Duke Power, Lincoln	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	20-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	20-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	20-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26
	Simple- Cycle <u>Combustion</u> <u>Turbine</u>	<u>18</u>	19-23	19-26

PROPOSED RULES

FACILITY	SOURCE	EMISSION ALLOCATION S (tons/season) 2004	ALLOWABLE SEASONAL NO _x EMISSIONS EMISSION ALLOCATIONS (tons/season) 2004 2005	ALLOWABLE SEASONAL NO _x EMISSIONS EMISSIONS ALLOCATION S(tons/season) 2005-2006 and later
	<u>Cycle Combustion Turbine</u>			
	Simple- Cycle Combustion Turbine	<u>18</u>	19-23	19-26
	Simple- Cycle Combustion Turbine	<u>18</u>	19-23	19-26
	Simple- Cycle Combustion Turbine	<u>18</u>	19-23	19-26
	Simple- Cycle Combustion Turbine	<u>19</u>	19-24	19-27
Panda-Rosemary, Halifax Co.		<u>35</u>	43	32
		<u>25</u>	31	23
Roanoke Valley, Halifax Co.		<u>447</u>	557-558	492-493
		<u>142</u>	178	167
Tobbaccovill -RJ Reynolds <u>Tobbaccoville Facility, Forsyth Co.</u>	Boiler 1	<u>194</u>	243	64
	Boiler 2	<u>218</u>	273	64
	Boiler 3	<u>178</u>	223	64
	Boiler 4	<u>190</u>	238	64
UNC-CH, Orange Co.	Boiler no. 5, 6, and 7	<u>116</u>	145	128
	Boiler no.	<u>120</u>	150	113
Wiccacon			4	4
	Simple- Cycle Combustion Turbine	<u>25</u>	31	31
CP&L, Lee Plant, Wayne County		<u>25</u>	31	31
	Simple- Cycle Combustion Turbine	<u>25</u>	31	31
	Simple- Cycle Combustion Turbine	<u>92</u>	115	115
	Simple- Cycle Combustion Turbine	<u>92</u>	115	115
	Simple- Cycle Combustion Turbine	<u>34</u>	42	42
Dynergy, Rockingham County		<u>34</u>	42	42

FACILITY	SOURCE	EMISSION ALLOCATION S (tons/season) 2004	ALLOWABLE SEASONAL NO _x EMISSIONS EMISSION ALLOCATIONS (tons/season) 2004 2005	ALLOWABLE SEASONAL NO _x EMISSIONS EMISSIONS ALLOCATION S(tons/season) 2005-2006 and later
	Simple- Cycle Combustion Turbine	33	42	42
	Simple- Cycle Combustion Turbine	33	42	42
	Simple- Cycle Combustion Turbine	33	41	41
	Simple- Cycle Combustion Turbine	33	41	41
CP&L, Woodleaf, Rowan County	Simple- Cycle Combustion Turbine	22	27	27
	Simple- Cycle Combustion Turbine	22	27	27
	Simple- Cycle Combustion Turbine	22	27	27
	Simple- Cycle Combustion Turbine	21	27	27
	Simple- Cycle Combustion Turbine	22	27-28	27-28
CP&L, Mark's Creek, Richmond County	Simple- Cycle Combustion Turbine	22	27	27
	Simple- Cycle Combustion Turbine	22	27	27
	Simple- Cycle Combustion Turbine	22	27	27
	Simple- Cycle Combustion Turbine	22	27	27

FACILITY	SOURCE	<u>EMISSION ALLOCATION S (tons/season) 2004</u>	ALLOWABLE SEASONAL NO_x EMISSIONS ALLOCATIONS (tons/season) 2004 2005	ALLOWABLE SEASONAL NO_x EMISSIONS ALLOCATION S(tons/season) 2005-2006 and later
	Simple-Cycle Combustion Turbine	21	27	27
	Simple-Cycle Combustion Turbine	21	27	27
	Simple-Cycle Combustion Turbine	22	28	27 28
CP&L, Asheville, Buncombe County	Simple-Cycle Combustion Turbine	60	75	75
	Simple-Cycle Combustion Turbine	60	75	75

(B) ~~Sources~~—Except as allowed under Paragraph (d) of this Rule, sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission ~~allocations~~ ~~limits~~ in the table beginning ~~May 31 through September 30 for 2004 and May 1 through September 30 for 2005 (the ozone season), 2004~~ and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	<u>EMISSION ALLOCATIONS (tons/season) 2004</u>	ALLOWABLE SEASONAL NO_x EMISSIONS ALLOCATIONS (tons/season) 2004 2005	ALLOWABLE SEASONAL NO_x EMISSIONS ALLOCATIONS (tons/season) 2005-2006 and later
Weyerhaeuser Paper Company, Martin Co.	Riley boiler	566	709 708	379
	Package boiler	20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler	212	265	141
	Pulverized coal dry bottom boiler	187	234	125
	Pulverized coal dry bottom boiler	358	447	239
	Pulverized coal, wet bottom boiler	365	456	244
	boiler	135	169	90
International Paper Corp., Halifax Co.	Wood/bark-fired boiler-no. 6 oil-fired boiler-pulverized coal,	518	648	346

FACILITY	SOURCE	<u>EMISSION ALLOCA- TIONS</u> (tons/season) 2004	ALLOWABLE SEASONAL NO_x EMISSIONS <u>EMISSION ALLOCA- TIONS</u> (tons/season) 2004-2005	ALLOWABLE SEASONAL NO_x EMISSIONS <u>EMISSION ALLOCA- TIONS</u> (tons/season) 2005-2006 and later
	dry bottom boiler			
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	<u>181</u>	226	121
	#2 power boiler	<u>58</u>	72	72
International. Paper, Columbus Co.	No. 3 Power Boiler	<u>126</u>	158	84
	No. 4 Power Boiler	<u>334</u>	418	223
Fieldcrest-Cannon, Plant 1, Cabarrus Co.		<u>174</u>	217	116
Transcontinental. Gas Pipeline Station. 160, Rockingham Co.	Mainline engine #11	<u>102</u>	127-62	25
	Mainline engine #12	<u>102</u>	127-62	25
	Mainline engine #13	<u>122</u>	152-75	30
	Mainline engine #14	<u>123</u>	155-76	31
	Mainline engine #15	<u>148</u>	187-92	37-38
Transcontinental. Gas Pipeline Station. 150, Iredell Co.	Mainline engine #12	<u>53</u>	66-32	13
	Mainline engine #13	<u>54</u>	68-33	13
	Mainline engine #14	<u>102</u>	127-62	25
	Mainline engine #15	<u>102</u>	127-62	25
Transcontinental. Gas Pipeline Station 155, Davidson Co.	Mainline engine #2	<u>102</u>	127-62	25
	Mainline engine #3	<u>87</u>	109-54	22
	Mainline engine #4	<u>148</u>	187-92	37-38
	Mainline engine #5	<u>86</u>	108-53	21
	Mainline engine #6	<u>86</u>	108-53	21

(3) Any source covered under this Rule but not listed in Subparagraph (b)(1) or (b)(2) of this Paragraph shall have ~~an allowable~~ a nitrogen oxide ~~seasonal rate~~ emission allocation of zero tons per season beginning May 31 through September 30 for 2004 and May 1 through September 30 for 2005 (the ozone ~~season~~ season), ~~2004~~ and each year thereafter until revised according to Rule .1420 of this Section.

(c) Posting of ~~allowable emissions~~ emission allocations. The Director shall post the ~~allowable emission allocations rates~~ for sources covered under this Rule on the Division's web page.

(d) Trading. ~~Facilities~~ Sources may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this ~~Section or otherwise obtaining offsets under Rule .1420(f) or (g) of this~~ Section. Sources covered under this Rule and Rule .1418 of this

Section shall be considered in compliance with their respective emission allocations if the sum of the actual emissions of nitrogen oxides from the sources at the facility covered under this Rule and Rule .1418 of this Section is less than the sum of the emission allocations of the sources at the facility covered under this Rule and Rule .1418 of this Section. (If the owner or operator of the source has traded away or otherwise transferred emission allocations for that source, then the emission

allocations traded or otherwise transferred shall be subtracted from the source's emission allocations under this Rule before determining compliance.)

(e) Monitoring. The owner or operator of a ~~facility-source~~ subject to this ~~Rule~~ Rule ~~except internal combustion engines,~~ shall ~~use show compliance using a~~ continuous emission monitor that meets the requirements of 40 CFR Part 75, Subpart H, with such exceptions as allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96. monitors to show compliance. The owner or operator of internal combustion engines covered under this Rule shall show compliance using the monitoring procedures in Rule .1423 of this Section. Beginning with the 2003 ozone season, the heat input of a source covered under this Rule shall be determined according to 40 CFR Part 75, Subpart H.

(f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated beginning May 1 through September 30 in the manner in which they are designed and permitted to be operated.

(g) Violations. If at the end of the ozone season, the owner or operator of a source whose actual emissions of nitrogen oxides exceed the ~~limit emission allocation~~ in Paragraph (b) of this Rule cannot obtain enough credits under Rule .1419 of this Section to offset these excess emissions, then that source shall be considered in violation for each day that the aggregate emissions of nitrogen oxides exceeded the ~~allowable emissions emission allocation~~ under Paragraph (b) of this Rule beginning May 1 (May 31 for 2004) through September 30 of that ozone season. (If the owner or operator of the source has traded away or otherwise transferred emission allocations for that source, then the emission allocations traded or otherwise transferred shall be subtracted from the source's emission allocations under this Rule before determining compliance.)

(h) Modification and ~~reconstruction~~ reconstruction, replacement or change of ownership. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its ~~allowable emission allocation rate~~ under Paragraph (b) of this Rule. If one or more sources covered under this Rule is replaced, the new source shall receive the allocation of the source, or sources, that it replaced instead of an allocation under Rule .1421 of this Section. If the owner of a source changes, the emission allocations under this Rule and revised emission allocations made under Rule .1420 of this Section shall remain with the source.

(i) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1418 NEW ELECTRIC GENERATING UNITS, LARGE BOILERS, AND LARGE I/C ENGINES

(a) Electric generating units. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system permitted after October 31, 2000, serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity shall not exceed:

- (1) 0.15 pounds per million Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (2) 0.15 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(b) Large boilers. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system having a maximum design heat input greater than 250 million Btu per hour which is permitted after October 31, 2000, and not covered under Paragraph (a) of this Rule, shall not exceed:

- (1) 0.17 pounds per million Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (2) 0.17 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(c) Internal combustion engines. The following reciprocating internal combustion engines permitted after October 31, 2000, shall comply with the applicable requirements in ~~40 CFR Part 98, Subpart A, Emissions of NO_x from Stationary Reciprocating Internal Combustion Engines~~, Rule .1423 of this Section if the engine is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major source review) of this Subchapter:

- (1) rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,
- (2) lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,
- (3) diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower, or
- (4) dual fuel stationary internal combustion engines rated at equal or greater than ~~2,400~~ 4,400 brake horsepower,

If the engine is covered under Rule .0530 of this Subchapter, it shall comply with the requirements of ~~Subparagraphs (e)(1) through (4) of this Paragraph~~ Rule .1423 of this Section or the best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction. If the engine is covered under Rule .0531 of this Subchapter, it shall comply with lowest available emission rate technology requirements of Rule .0531 of this Subchapter.

(d) Monitoring. The owner or operator of a source subject to this ~~rule~~ Rule except internal combustion engines shall ~~use~~ show compliance using a continuous emission monitor that meets the requirements of 40 CFR Part 75, Subpart H, with such exceptions as allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96. ~~monitors to show compliance.~~ Internal combustion engines shall comply with the monitoring requirements in Rule .1423 of this Section. Monitors shall be installed before the first ozone season in which the source will operate and shall be operated each day during the ozone season that the source operates. Sources covered under this Rule, except internal combustion engines, that begin operating before September 30, 2003, shall be determined heat input for the 2003 ozone season according to 40 CFR Part 75, Subpart H.

(e) Offsets. ~~Except for internal combustion engines covered under Paragraph (c) of this Rule, the owner or operator of a source covered under this Rule shall include in the permit application a demonstration of allocations or offsets adequate to meet the allowable emissions for the source. If the emission allocations are that allocation is~~ not granted under Rule .1421 of this Section or ~~is~~ are insufficient to offset the emissions of the source, the owner or operator of the source shall acquire ~~reductions in emissions~~ emission allocations of nitrogen oxides under Rule .1419 of this Section from other sources sufficient to offset its emissions. Sources may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this ~~Section or obtaining offsets under Rule .1420(f) or (g) of this~~ Section. The owner or operator of internal combustion engines covered under Paragraph (c) of this Rule shall not be required to obtain ~~offsets~~ emission allocations or emission reductions.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1419 NITROGEN OXIDE BUDGET TRADING PROGRAM

(a) Definitions. For the purposes of this Rule, the definitions in 40 CFR Part 96.2 shall apply except that:

- (1) "Permitting agency" means the North Carolina Division of Air Quality.
- (2) "Fossil ~~Fuel~~" fuel fired" means fossil fuel as defined under Rule .1401 of this Section.

(b) Existing sources. ~~Facilities and sources~~ Sources covered under Rule .1416 or .1417 of this Section may comply with the requirements of Rule .1416 or .1417 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans, with the following exceptions:

- (1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 2Q of this Title instead of the procedures and schedules in 40 CFR Part 96; and
- (2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, ~~if a source operates during the ozone season, a source shall not participate in the nitrogen oxide budget trading program under this Rule until it has installed and is operating~~ it shall have installed and begun operating by May 1, 2004, a continuous emissions monitoring system that complies with 40 CFR

Part 96. Sources covered under this Rule, except internal combustion engines, that begin operating before September 30, 2003, shall be determined heat input for the 2003 ozone season according to 40 CFR Part 75, Subpart H.

(c) New sources. Facilities and sources covered under Rule .1418 of this Section may comply with the requirements of Rule .1418 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans, with the following exceptions:

- (1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 2Q of this Title instead of the procedures and schedules in 40 CFR Part 96; and
- (2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, a source shall not ~~operate during the ozone season~~ participate in the nitrogen oxide budget trading program under this Rule until it has installed and is operating a continuous emissions monitoring system that complies with 40 CFR Part 96.

(d) Opt-in provisions. Sources not covered under Rule .1416, .1417, or .1418 of this Section ~~or internal combustion engines~~ may ~~opt-in to~~ opt into the budget trading program of 40 CFR Part 96 by following the procedures and requirements of 40 CFR Part 96, Subpart ~~I~~ I, ~~including using continuous emission monitors that meet the requirements of 40 CFR Part 75, Subpart H.~~

(e) Divisional requirements. The Director and the Division of Air Quality shall follow the procedures of 40 CFR Part 96 in reviewing permit applications and issuing permits for NO_x Budget sources, in approving or disapproving monitoring systems for NO_x Budget sources, and in taking enforcement action against NO_x Budget sources. The Director may issue permits after May 1, 2003, for sources covered under this Section that are participating in the nitrogen oxide budget trading program under this Section. The provisions of 40 CFR Part 96 pertaining to early reduction credits shall not apply.

(f) Submitting ~~allowance~~ emission allocations to the EPA. For ~~sources covered under Rule .1416, .1417, or .1418, facilities participating in the NO_x budget trading program,~~ the Director shall submit to the Administrator of the Environmental Protection Agency NO_x ~~allowance~~ emission allocations according to 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rules .1416, .1417, and .1420 for ~~allowance~~ emission allocations instead of the methodology specified in 40 CFR Part 96. The Environmental Management Commission and the Director shall follow, Rule .1421 of this Section for set-asides and new source allocations instead of the provisions of 40 CFR Part 96. ~~The Environmental Management Commission and the Director shall follow Rule .1422 of this Section for distributing the compliance supplement pool~~ instead of the provisions of 40 CFR Part 96.

(g) EPA to administer. The United States Environmental Protection Agency (EPA) shall administer the budget trading program of 40 CFR Part 96 on behalf of North Carolina. The Director shall provide the EPA the information necessary under

40 CFR Part 96 for the EPA to administer 40 CFR Part 96 on behalf of North Carolina.

(h) Restrictions on trading. ~~NO_x allowances—emission allocations~~ obtained under this Rule shall not be used to meet the emission limits for a source if compliance with that emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality ozone standard. Sources covered under Rule .0531 (nonattainment area major new source review) of this Subchapter shall not use the nitrogen oxide budget trading program to comply with Rule .0531 of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1420 PERIODIC REVIEW AND REALLOCATIONS

(a) Periodic Review. ~~By~~ In 2006 and every five years thereafter, the Environmental Management Commission shall review the ~~allowable tons per season—emission allocations limits~~ of sources covered under Rules .1416, .1417, or .1418 of this Section and decide if any revisions are needed. In making this decision the Environmental Management Commission shall consider the following:

- (1) the size of the allocation pool for new source growth under Rule .1421 of this Section;
- (2) the amount of emissions allocations requested under Rule .1421 of this Section;
- (3) the amount of emissions allocations available through nitrogen oxide budget trading program;
- (4) the impact of reallocation on existing sources;
- (5) the impact of reallocations on sources covered under Rule .1421 of this Section;
- (6) impact on future growth; and
- (7) other relevant information on the impacts of reallocation.

(b) Procedures for making revisions. In making these revisions, the Environmental Management Commission shall decide if the revised ~~allowable—emission allocations rates~~ shall be based on energy input or energy output. Once this decision is made, the Division shall calculate the revised ~~allowable—emission allocations rate~~ of sources covered under this rule using the following procedure:

- (1) The seasonal energy input (or energy output) for each source covered under this Rule is calculated by averaging the two highest seasonal energy inputs (or energy outputs) for the four most recent years. If the source operated only one of these four years, the seasonal energy input (or energy output) for that year is used. If the source did not operate in any of these years, its projected seasonal energy input (or energy output) is used. The seasonal energy inputs (or energy outputs) are in terms of million Btu per season. The season is beginning May 1 through September 30.
- (2) Seasonal ~~emission allocations rates~~ in terms of pounds per season are calculated for each source covered under this Rule as follows:
 - (A) For fossil fuel-fired stationary boilers, combustion turbines, or combined

cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity, the seasonal energy input (or energy output) for each source is multiplied ~~by~~ by:

- (i) ~~0.15 pounds per million Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;~~
- (ii) ~~0.15 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or~~
- (iii) ~~lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.~~

(B) For fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Part (A) of this Subparagraph, the seasonal energy input (or energy output) for each source is multiplied ~~by~~ by:

- (i) ~~0.17 pounds per million Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;~~
- (ii) ~~0.17 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or~~
- (iii) ~~lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.~~

(C) For ~~rich burn~~ stationary internal combustion engines ~~rated at equal or~~

~~greater than 2,400 brake horsepower, lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower, diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower, or dual-fuel stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower~~ covered under Rule .1417 of this Section, the seasonal energy input (or energy output) for each source is multiplied by 0.91 pounds per million Btu.

- (3) The individual ~~seasonal~~ emission allocations rates calculated under Subparagraph (2) of this Paragraph are divided by 2000 pounds per ton.
- (4) The individual source ~~tonnage seasonal~~ emission allocations rates calculated under Subparagraph (3) of this Paragraph are summed.
- (5) Each individual source ~~tonnage seasonal~~ emission allocations rate calculated under Subparagraph (3) of this Paragraph is multiplied by:
 - (A) 40,814 plus 50 percent of any available credits from the inspection/maintenance program if the cumulative ~~tonnage seasonal~~ emission allocations rate calculated in Subparagraph (4) of this Paragraph is greater than 40,814 until the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina; or
 - (B) 34,504 plus 50 percent of any available credits from the inspection/maintenance program if the cumulative ~~tonnage seasonal~~ emission allocations rate calculated in Subparagraph (4) of this Paragraph is greater than 34,504 after the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina.

This product is then divided by the cumulative ~~tonnage seasonal~~ emission allocations rate calculated in Subparagraph (4) of this Paragraph. This calculated emission allocation rate, rounded to the nearest ton, is the revised ~~allowable emission allocation rate~~ for that source.

(c) Adjustments to reallocation. If any source has been permitted for and has complied with an emission rate of 0.10 pounds per million Btu or less, it shall receive the greater of the emission allocations calculated under Paragraph (b) of this Rule and its current emission allocations. The current emission allocations retained shall be summed, and this sum shall be subtracted from the multiplier in Subparagraph (b)(5) of this

Rule. Then the emission allocations shall be revised under Paragraph (d) of this Rule using this new smaller multiplier.

~~(e)(d) Process for adopting revised limits, emission allocations.~~ The Environmental Management Commission may ~~make these revisions~~ revise emission allocations under this Rule without going through rulemaking. The Director shall put the new ~~allowable~~ emission allocations rates in the respective air quality permits after they are approved by the Environmental Management Commission. ~~If the source is participating in the nitrogen oxide budget trading program under Rule .1419, the~~ The Director shall notify the Environmental Protection Agency of the new ~~allowable~~ emission allocation rate.

~~(d)(e) Public hearing.~~ Before approving the ~~allowable emissions emission allocations~~ calculated under Paragraph (b) or (c) of this Rule, the Environmental Management Commission shall hold a public hearing on the determination under Paragraph (b) or (c) of this Rule. The public hearing shall allow at least 45 days for comments from the time that the notice appears in the North Carolina Register.

~~(e)(f) Compliance with new limits.~~ The new ~~allowable~~ emission allocation rates shall become effective at the beginning of the third ozone season following the adoption of the new ~~allowable~~ emission allocation rate (tons per season) by the Environmental Management Commission.

~~(f) Transfer of Allowable Emission Rates.~~ ~~The owner or operator of a source covered under Rule .1416, .1417, or .1418 of this Section may transfer part or all of the allowable emissions of that source to another source covered under Rule .1416, .1417, or .1418 of this Section. Such transfers shall be permanent unless the Director and the involved parties agree to an alternative proposal. The person requesting the transfer shall submit the following information to the Director:~~

- ~~(1) the name, address, and permit number of the source providing the allowable emissions to be transferred and the new allowable emission rate for this source;~~
- ~~(2) the name, address, and permit number of the source receiving the allowable emissions to be transferred and the new allowable emission rate for this source;~~
- ~~(3) the amount of allowable emissions in tons per season being transferred; and~~
- ~~(4) documentation that the owner or operator of the source providing the allowable emissions and the owner or operator receiving the allowable emissions agree to the transfer.~~

~~The Director may approve the transfer if he finds that all the information required by this Paragraph has been submitted and that the amount of allowable emissions being transferred are available to be transferred. If the Director approves the transfer, he shall put the new allowable emission rates in the respective permits and shall notify the Environmental Protection Agency of the new allowable emission rates if one or more of the sources involved in the transfer are participating in the trading program under Rule .1419 of this Section. Any allowable emissions transferred under this Paragraph shall expire when the new allowable emission rates become effective under Paragraph (e) of this Rule.~~

~~(g) Offsets from non-covered sources.~~ ~~The owner or operator of a source covered under Rule .1416, .1417, or .1418 of this Section may offset part or all of the allowable emissions of that source by reducing the emissions of another source in North~~

~~Carolina not covered under Rule .1416, .1417, or .1418 of this Section by an amount equal to or greater than the allowable emissions being offset. Only actual decreased emissions that have not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations can be used to offset the emissions of another source. The person requesting the offset shall submit the following information to the Director:~~

- ~~(1) the name, address, and permit number of the source providing the offset and what the new allowable emission rate for the source will be;~~
- ~~(2) the name, address, and permit number of the source receiving the offset and what the new allowable emission rate for the source will be;~~
- ~~(3) the amount of allowable emissions in tons per season being offset;~~
- ~~(4) a description of the monitoring (which shall be a continuous emissions monitoring system), recordkeeping, and reporting that shall be used to show compliance;~~
- ~~(5) documentation that the offset is an actual decrease in emissions that has not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations and;~~
- ~~(6) documentation that the owner or operator of the source providing the allowable emissions and the owner or operator of the source receiving the allowable emissions agree to the offset.~~

~~The Director may approve the offset if he finds that all the information required by this Paragraph has been submitted and that the offset is an actual decrease in emissions that have not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations. If the Director approves the offset, he shall put the new allowable emission rates in the respective permits and shall notify the Environmental Protection Agency of the new allowable emission rates if one or more of the sources involved in the transfer are participating in the trading program under Rule .1419 of this Section. Any allowable emissions established under this Paragraph shall expire when the new allowable emission rates become effective under Paragraph (e) of this Rule.~~

~~(h)(g) Posting of allowable emissions. emission allocations. The Director shall post the allowable emission allocations rates calculated or transferred under this Rule on the Division's web page.~~

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1421 ALLOCATIONS FOR NEW GROWTH OF MAJOR POINT SOURCES

(a) Purpose. The purpose of this Rule is to establish an allocation pool from which ~~allowable seasonal emissions~~ emission allocations of nitrogen oxides may be allocated to sources permitted after October 31, 2000.

(b) Eligibility. This Rule applies only to the following types of sources covered under Rule .1418 of this Section, and permitted after October 31, 2000:

- (1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a

generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or

- (2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that ~~is~~ are not covered under Subparagraph (1) of this Paragraph;

(c) Requesting allocation. To receive ~~an allocation~~ emission allocations under this Rule, the owner or operator of the ~~facility source~~ facility source shall provide the following written documentation to the ~~Director. Director~~ before January 1 of the year preceding the ozone season for which the emission allocation is sought:

- (1) a description of the combustion source or sources including heat input; the date on which operation began or is planned to begin;
- (2) evidence that the source complies with the emission limit under Rule .1418 of this Section;
- (3) an estimate of the actual emissions of nitrogen oxides in tons per season;
- (4) the expected hours of operation during the ozone season;
- (5) the date on which the source is expected to begin operating if it is not already operating;
- ~~(4)(6)~~ the tons per season of emission allocations allocation—being requested (the amount requested shall be the lesser of the estimated actual emissions under Subparagraph (3) of this Paragraph or the product of the emission limit under Rule .1418 of this Section times the maximum design heat input in millions of Btu per hour times the number of hours that the source is projected to operate not to exceed 3672 hours divided by 2000); requested, not to exceed 500; and
- ~~(5)(7)~~ a description of the monitoring, recordkeeping, and reporting plan that will assure continued compliance.

(d) Approving requests. The Director may approve a request for emissions allocation if he finds that:

- (1) All the information and documentation required under Paragraph (c) of this Rule has been submitted;
- ~~(2)~~ (3) The request was received before January 1;
- ~~(2)(3)~~ (3) The source is eligible for an allocation emission allocations under this Rule;
- ~~(3)(4)~~ (4) The source complies with Rule .1418 of this Section;
- ~~(4)(5)~~ (5) The requested allocation—does—emission allocations do not exceed the estimated actual emissions of nitrogen oxides; and
- ~~(6)~~ (6) The source has or is likely to have an air quality permit before the end of the upcoming ozone season; and
- ~~(7)~~ (7) The source is operating or is scheduled to begin operating before the end of the upcoming ozone season.
- ~~(5)~~ (5) The requested allocation does not exceed 500 tons per season or the amount remaining in the allocation pool under this Rule, whichever is less.

~~The Director shall only approve emissions allocations under this Rule for years in which operation occurs.~~

(e) Preliminary allocations. By March 1 before each ozone season, the Director shall have calculated and posted on the Division's web page preliminary emission allocations for sources whose requests under this Rule he has approved. Preliminary emission allocations shall be determined as follows:

- (1) If the emission allocations requested do not exceed the amount of in the pool, each source shall have a preliminary allocation equal to its request.
- (2) If the emission allocations requested exceed the amount in the pool, each sources emission allocations shall be calculated as follows:
 - (A) For each source, its maximum design heat input in millions of Btu per hour is multiplied by the number of hours that the source is projected to operate not to exceed 3672 hours; this product is the source's seasonal heat input;
 - (B) The seasonal heat inputs calculated under Part (A) of this Subparagraph are summed.
 - (C) For each source, its seasonal heat input calculated under Part (A) of this Subparagraph is multiplied by the tons of emission allocations in the allocation pool and divided by the sum of seasonal heat inputs calculated under Part (B) of this Subparagraph; this amount is the source's preliminary emission allocations.

The preliminary emission allocations computed under this Paragraph may be revised under Paragraph (f) or (g) of this Rule after the ozone season. The emission allocations granted under Paragraph (f) or (g) of this Rule shall be the emission allocations granted the source to offset its emissions.

~~(e)~~(f) Requested emission allocations does not exceed allocation pool. When the requested emission allocations do not exceed the amount in the allocation pool, the Director shall grant emission allocations for each source for which he has approved an allocation from the allocation pool as follows:

- (1) For each individual source, its allowable emission rate under Rule .1418 of this Section is multiplied by its heat input during the ozone season times its hours of operation. This product is divided by 2000.
- (2) The lesser of the source's actual emissions of nitrogen oxides, the value calculated under Subparagraph (1) of this Paragraph, or the preliminary emission allocations determined under Paragraph (e)(1) of this Rule shall be the source's emission allocation from the allocation pool.

~~Adjustments by the Director. The Director shall reduce the amount of emissions allocation requested under this Rule if he determines that the emissions allocation requested exceeds the amount in the allocation pool or exceeds the actual emissions of nitrogen oxides.~~

~~(1) If the emissions allocation requested exceeds the amount in the allocation pool, the Director shall reduce the emission allocation to the amount in the allocation pool.~~

~~(2) If the emissions allocation requested exceeds the actual emissions of nitrogen oxides, the Director shall reduce the emission allocation to the actual emissions.~~

~~(f)~~(g) Requested emission allocations exceed allocation pool. When emission allocations requested exceed the amount in the allocation pool, the Director shall grant emission allocations for each source for which he has approved an allocation from the allocation pool as follows:

- (1) For each individual source, its allowable emission rate under Rule .1418 of this Section is multiplied by its heat input during the ozone season times its hours of operation. This product is divided by 2000.
- (2) The lesser of the source's actual emissions of nitrogen oxides, the value calculated under Subparagraph (1) of this Paragraph, or the preliminary emission allocations determined under Paragraph (e)(2) of this Rule shall be the source's emission allocation from the allocation pool.

(h) Issuance of final allocations. By November 1 following each ozone season, the Director shall issue final allocations and shall notify each source that receives an allocation of the amount of allocation that it has been granted. By November 1 following the ozone season, the Director shall also notify the EPA of allocations issued and to whom they have been issued and the amount issued to each source. The Director shall post the final allocations on the Division's web page.

~~(f)~~(i) Initial allocation pool.

- (1) Before the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:
 - (A) in 2004, ~~1,197~~-599 tons,
 - (B) in 2005, ~~1,197~~-599 tons,
 - (C) in 2006, ~~1,010~~-505 tons,
 - (D) in 2007, ~~2,116~~-1,058 tons, and
 - (E) in 2008 and each year after that, 50 percent of any available credits from the inspection/maintenance ~~program.~~
- (2) After the EPA promulgates revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:
 - (A) in 2004, ~~1,198~~-122 tons,
 - (B) in 2005, ~~1,010~~-78 tons,
 - (C) in 2006, ~~2,233~~-1117 tons,
 - (D) in 2007, ~~3,339~~-1670 tons, and
 - (E) in 2008 and each year after that, 50 percent of any available credits from the inspection/maintenance ~~program.~~

~~(g)~~(j) Changes in the allocation pool. ~~The Director shall revise the allocation pool each time he approves a request for an~~

~~allocation by subtracting the approved amount from the allocation pool.~~ Beginning in 2008, the Director shall add to the allocation pool by ~~May~~ March 1 of each year any available credits from the inspection/maintenance program.

(k) Carryover. Emission allocations remaining in the allocation pool at the end of the year shall be carried over into the next year for use during the next ozone season.

(l) Future requests. Once the owner or operator of a source has made a request under this Rule for emission allocations for the allocation pool, he does not have to request emission allocations under this Rule in future years. The request shall automatically be included in following years as long as the source remains eligible for emission allocations under this Rule.

(m) Lost of eligibility. Once a source receives emission allocations under Rule .1420 of this Section, it shall no longer be eligible for emission allocations under this Rule.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1422 COMPLIANCE SUPPLEMENT POOL CREDITS

(a) Purpose. The purpose of this Rule is to regulate North Carolina's eligibility for and use of the Compliance Supplement Pool under 40 CFR 51.121(e)(3).

(b) Eligibility. Facilities covered under Rule .1416 of this Section may earn Compliance Supplement Pool Credits for those nitrogen oxide emissions reductions required by Rule .1416 of this Section that are achieved after September 30, 1999 and before May 1, 2003, and are beyond the total emission reductions required under 40 CFR Part 76.

(c) Credits. The Compliance Supplement Pool Credits earned under the auspices of this Rule shall be tabulated in terms of tons of nitrogen oxides reduced per ozone season. The control device, modification, or change in operational practice that will enable the combustion source or sources to achieve the emissions reductions shall be permitted. The facility shall provide DAQ with written notification certifying the installation and operation of the control device or the modification or change in operational practice that will enable the combustion source or sources to achieve the emissions reduction. Only emission reductions that are beyond emission reductions required under 40 CFR Part 76 are credible. Compliance Supplement Pool Credits are counted in successive seasons through May 1, 2003. Seasonal credits shall be recorded in a Division of Air Quality database and will accumulate in this database until May 1, 2003. At that point a cumulative total of all the Compliance Supplement Pool Credits earned during the entire period shall be tabulated. These credits will then be available for use by the State of North Carolina to achieve compliance with the State ozone season NOx budget.

(d) Requesting credits. In order to earn Compliance Supplement Pool Credits, the owner or operator of the facility shall provide the following written documentation to the Director before January 1, 2004.

- (1) the combustion source or sources involved in the emissions reduction;
- (2) the start date of the emissions reduction;
- (3) a description of the add-on control device, modification, or change in operational practice that will enable the combustion source or sources to achieve the emissions reduction;

(4) the current, or baseline, emissions of nitrogen oxides of the combustion source or sources involved in this reduction in terms of tons of nitrogen oxides per season;

(5) the amount of reduction of emissions of nitrogen oxides that will be achieved by this action in terms of tons of nitrogen oxides per season per combustion source involved;

(6) the total reduction of nitrogen oxides that will be achieved by this action in terms of tons of nitrogen oxides per season for all the combustion sources involved;

(7) a demonstration that the proposed action will indeed reduce the emissions of nitrogen oxides from the combustion sources involved by the amount specified in Subparagraphs (d)(5) and (d)(6) of this Rule; and

(8) a description of the monitoring, recordkeeping, and reporting plan that will assure continued compliance with the proposed emissions reduction activity; continuous emissions monitors shall be used to monitor emissions.

(e) Approving requests. Before any Compliance Supplement Pool Credits can be allocated, the Director shall have to approve them. The Director may approve credits if he finds that:

(1) early emissions reductions are beyond the reductions required under 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program,

(2) the emission reductions are achieved after September 30, 1999, and before May 1, 2003, and

(3) all the information and documentation required under Paragraph (d) have been submitted.

(f) Supplement pool. The Director shall verify that the Compliance Supplement Pool Credits do not exceed a combined total of 10,737 tons for the ozone seasons of the years 2004 and 2005.

(g) Recording credits. The Division shall record the Compliance Supplement Pool Credits earned under the auspices of this Rule in a central database. The Division of Air Quality shall maintain this database. These credits shall be recorded in terms of tons of emissions of nitrogen oxides reduced per season with the actual start date of the reduction activity. To be counted as emissions reduction credits, the owner or operators of the source shall report by December 1 of each year the emission reductions achieved between May 1 and September 30 of that year.

(h) Use of credits. These Compliance Supplement Pool Credits shall be available for use by the Director of the Division of Air Quality to offset exceedances of the emissions of nitrogen oxides in order to achieve compliance with the North Carolina ozone season NOx budget after May 1, 2004, but no later than May 1, 2006. The credits shall be used on a one for one basis, that is, one ton per season of credit can be used to offset one ton, or less, per season of excess emissions to achieve compliance with the requirements of Rule .1416 or .1417 of this Section. All credits shall expire and will no longer be available for use after May 1, 2006.

(i) Reporting. The Director shall report by December 1, 2004, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2004, and by December 1, 2005, the

Compliance Supplement Pool Credits used beginning May 1 through September 30, 2005.

(j) Failure to receive sufficient credits. If the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. are less than 10,737 tons, the following procedure shall be used to reduce the allocations in Rule .1416 of this Section:

- (1) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, but the Compliance Supplement Pool Credits received by Duke Power Co. are greater than or equal to 6,442 tons, the allocation for Carolina Power & Light Co.'s sources shall be reduced by amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co and Duke Power Co. The allocations of Carolina Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.
- (2) If the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons, but the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are greater than or equal to 4,295 tons, the allocation for Duke Power Co.'s sources shall be reduced by amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co and Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.
- (3) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, and the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons:
 - (A) The allocation for Carolina Power & Light Co.'s sources shall be reduced by amount obtained by subtracting from 4,295 tons the Compliance Supplement Pool Credits received by Carolina Power & Light Co. The allocations of Carolina Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph; and
 - (B) The allocation for Duke Power Co.'s sources shall be reduced by amount obtained by subtracting from 6,442 tons the Compliance Supplement Pool Credits received by Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.
- (4) When the allocations in Rule .1416 of this Section for Carolina Power & Light Co.'s sources or for Duke Power Co.'s sources are

required to be reduced, the following procedure shall be used:

- (A) If the reduction required is less than or equal to 3,523 tons, then following procedure shall be used:
 - (i) The allocation of all sources listed in Rule .1416 of this Section for 2005 for Carolina Power & Light Co. or Duke Power Co. are summed.
 - (ii) The reduction required under Subparagraph (1), (2), or (3) of this Paragraph is subtracted from the sum computed under Subpart (i) of this Part.
 - (iii) The allocation of each source listed in Rule .1416 of this Section for 2005 for Carolina Power & Light Co. or Duke Power Co is multiplied by the value computed under Part (ii) of this Part and divided by the value computed Subpart (i) of this Part. The result is the revised allocation for that source.
- (B) If the reductions required is more than 3,523 tons, then the following procedure shall be used:
 - (i) The reductions for the allocations for 2005 is determined using the procedure under Part (A) of this Subparagraph and substituting 3,523 as the reduction required under Subpart (A)(ii) of this Subparagraph.
 - (ii) The reduction for the allocations for 2004 shall be determined using the following procedure:
 - (I) The reduction require required under Subparagraph (1), (2), or (3) of this Paragraph is subtracted from 3,523.
 - (II) The allocations of all sources listed in Rule .1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co. for 2004 are summed.
 - (III) The allocation of each source listed

in Rule .1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co is multiplied by the value computed under Sub-Subpart (I) of this Subpart and divided by the value computed Sub-Subpart (II) of this Subpart. The result is the revised allocation for that source

(a) Applicability. This Rule applies to the following internal combustion engines subject to Rule .1418 of this Section and permitted after October 30, 2000:

- (1) rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,
- (2) lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,
- (3) diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower, or
- (4) dual fuel stationary internal combustion engines rated at equal or greater than 4,400 brake horsepower.

(b) Emission limitation. The owner or operator of a stationary internal combustion engine shall cause to be emitted into the atmosphere nitrogen oxides in excess of the following applicable limit, expressed as nitrogen dioxide corrected to 15 percent parts per million by volume (ppmv) stack gas oxygen on a dry basis, averaged over a rolling 30-day period, as may be adjusted under Paragraph (c) of this Rule:

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1423 LARGE INTERNAL COMBUSTION ENGINES

MAXIMUM ALLOWABLE EMISSION CONCENTRATION FOR STATIONARY INTERNAL COMBUSTION ENGINES
(parts per million)

<u>Engine Type</u>	<u>Limitation</u>
<u>Rich-burn</u>	<u>110</u>
<u>Lean-burn</u>	<u>125</u>
<u>Diesel</u>	<u>175</u>
<u>Dual fuel</u>	<u>125</u>

(c) Adjustment. Each emission limit expressed in Paragraph (b) of this Rule may be multiplied by X, where X equals the engine efficiency (E) divided by a reference efficiency of 30 percent. Engine efficiency (E) shall be determined using one of the methods specified in Subparagraph (1) or (2) of this Paragraph, whichever provides a higher value. However, engine efficiency (E) shall not be less than 30 percent. An engine with an efficiency lower than 30 percent shall be assigned an efficiency of 30 percent.

(1)

where energy input is determined by a fuel measuring device accurate to plus or minus five percent and is based on

$$E = \frac{(\text{Engine output}) * (100)}{\text{Energy input}}$$

the higher heating value (HHV) of the fuel. Percent efficiency (E) shall be averaged over 15 consecutive minutes and measured at peak load for the applicable engine.

(2)

$$E = \frac{(\text{Manufacture e's Rated Efficiency [continuous] at LHV}) * (\text{LHV})}{(\text{HHV})}$$

where LHV is the lower heating value of the fuel; and HHV is the higher heating value of the fuel.

(d) Compliance determination and monitoring. The owner or operator of an internal combustion engine subject to the requirements of this Rule shall determine compliance using:

- (1) a continuous emissions monitoring system (CEMS) which meets the applicable requirements of Appendices B and F of 40 CFR part 60, excluding data obtained during periods specified in Paragraph (g) of this Rule; or
- (2) an alternate calculated and recordkeeping procedure based on actual emissions testing and correlation with operating parameters.

To use the alternative procedures under Subparagraph (2) of this Paragraph, the owner or operator shall demonstrate to the

Director that the alternative procedure can measure emissions of nitrogen oxides as accurately and precisely as the continuous emission monitoring system required under Subparagraph (1) of this Paragraph. The installation, implementation, and use of this alternate procedure shall be approved by the Director before it may be used. The Director may approve the alternative procedure if he finds that it can measure emissions of nitrogen oxides as accurately and precisely as the continuous emission monitoring system required under Subparagraph (1) of this Paragraph.

(e) Reporting requirements. The owner or operator of a stationary internal combustion engine subject to this Rule submit:

- (1) a report documenting the engine's total nitrogen oxide emissions beginning May 1 through September 30 of each year to the Director by October 31 of each year, beginning with the year of first ozone season that the engine operates.
 - (2) an excess emissions and monitoring systems performance report, according to the requirements of 40 CFR 60.7(c) and 60.13, if a continuous emissions monitoring system is used.
- (f) Recordkeeping requirements. The owner or operator of a stationary internal combustion engine subject to this Rule shall maintain all records necessary to demonstrate compliance with the rule for two calendar years at the facility at which the engine is located. The records shall be made available to the Director upon request. The owner or operator shall maintain records of the following information for each day the engine operates:
- (1) identification and location of the engine;
 - (2) calendar date of record;
 - (3) the number of hours the engine operated during each day, including startups, shutdowns, and malfunctions, and the type and duration of maintenance and repairs;
 - (4) date and results of each emissions inspection;
- (5) a summary of any emissions corrective maintenance taken;
 - (6) the results of all compliance tests;
 - (7) if a unit is equipped with a continuous emission monitoring system:
 - (A) identification of time periods during which nitrogen oxide standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances; and
 - (B) identification of the time periods for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.
- (g) Exemptions. The emission standards of this Rule shall not apply to the following periods of operation:
- (1) start-up and shut-down periods and periods of malfunction, not to exceed 36 consecutive hours;
 - (2) regularly scheduled maintenance activities.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66.

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of February 28, 2001 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	52B	.0201*	14:18 NCR
09	NCAC	06A	.0103*	not required G.S. 150B-21.5(a)(2), Eff. March 1, 2001
09	NCAC	06B	.1008-.1013*	not required G.S. 150B-21.5(a)(2), Eff. March 1, 2001
09	NCAC	06B	.1015*	not required G.S. 150B-21.5(a)(2), Eff. March 1, 2001
09	NCAC	06B	.1017*	not required G.S. 150B-21.5(a)(2), Eff. March 1, 2001
09	NCAC	06B	.1029*	not required G.S. 150B-21.5(a)(2), Eff. March 1, 2001
09	NCAC	06B	.1104*	not required G.S. 150B-21.5(a)(2), Eff. March 1, 2001
11	NCAC	08	.0602	15:13 NCR
11	NCAC	08	.0604	15:13 NCR
11	NCAC	08	.0704	15:13 NCR
11	NCAC	08	.0706*	15:13 NCR
11	NCAC	08	.0708*	15:13 NCR
11	NCAC	08	.0709	15:13 NCR
11	NCAC	08	.0711*	15:13 NCR
11	NCAC	08	.0802	15:13 NCR
11	NCAC	08	.1301-.1302	15:13 NCR
11	NCAC	08	.1304	15:13 NCR
11	NCAC	08	.1305-.1307*	15:13 NCR
11	NCAC	08	.1308	15:13 NCR
11	NCAC	08	.1309-.1311*	15:13 NCR
11	NCAC	08	.1312	15:13 NCR
11	NCAC	08	.1313-.1322*	15:13 NCR
11	NCAC	08	.1323	15:13 NCR
11	NCAC	08	.1324*	15:13 NCR
11	NCAC	08	.1325	15:13 NCR
11	NCAC	08	.1326-.1327*	15:13 NCR
11	NCAC	08	.1328	15:13 NCR
11	NCAC	08	.1329*	15:13 NCR
11	NCAC	08	.1330	15:13 NCR
11	NCAC	08	.1331-.1334*	15:13 NCR
11	NCAC	08	.1335	15:13 NCR
11	NCAC	08	.1336*	15:13 NCR
11	NCAC	08	.1338-.1341	15:13 NCR
11	NCAC	08	.1342-.1343*	15:13 NCR
11	NCAC	08	.1344-.1345	15:13 NCR
11	NCAC	08	.1346-.1347*	15:13 NCR
11	NCAC	08	.1348-.1351	15:13 NCR
11	NCAC	10	.1112	15:13 NCR
11	NCAC	10	.1206	15:13 NCR
11	NCAC	11A	.0514-.0515*	15:13 NCR
11	NCAC	12	.0423	15:13 NCR
12	NCAC	07D	.0102*	not required G.S. 150B-21.5(a)(4), Eff. March 1, 2001
12	NCAC	11	.0102*	not required G.S. 150B-21.5(a)(4), Eff. March 1, 2001
12	NCAC	11	.0501	15:03 NCR
12	NCAC	11	.0503	15:03 NCR
12	NCAC	11	.0504-.0505*	15:03 NCR
12	NCAC	11	.0506	15:03 NCR

15A	NCAC	02E	.0102-.0103	15:02 NCR
15A	NCAC	02E	.0106-.0107	15:02 NCR
15A	NCAC	02E	.0201-.0202	15:02 NCR
15A	NCAC	02E	.0205	15:02 NCR
15A	NCAC	02E	.0501*	15:02 NCR
15A	NCAC	02E	.0503*	15:02 NCR
15A	NCAC	02E	.0504	15:02 NCR
15A	NCAC	02E	.0505*	15:02 NCR
15A	NCAC	02E	.0506	15:02 NCR
15A	NCAC	02E	.0507*	15:02 NCR
15A	NCAC	02L	.0202*	15:06 NCR
15A	NCAC	03I	.0106	15:10 NCR
15A	NCAC	03I	.0111	15:10 NCR
15A	NCAC	03J	.0301*	15:10 NCR
15A	NCAC	03K	.0206	15:10 NCR
15A	NCAC	03K	.0303	15:10 NCR
15A	NCAC	03L	.0207	15:09 NCR
15A	NCAC	03M	.0301	15:10 NCR
15A	NCAC	03O	.0302*	15:10 NCR
15A	NCAC	03O	.0503*	15:10 NCR
15A	NCAC	07H	.0308*	15:09 NCR
15A	NCAC	07H	.1705*	15:09 NCR
15A	NCAC	07J	.0403*	15:12 NCR
19A	NCAC	02D	.0612*	15:11 & 15:12 NCR
19A	NCAC	02D	.0633*	15:11 & 15:12 NCR
19A	NCAC	03D	.0219	15:11 & 15:12 NCR
21	NCAC	30	.0602*	14:22 NCR
25	NCAC	01E	.1605-.1607*	15:08 NCR

TITLE 2 - DEPARTMENT OF AGRICULTURE

02 NCAC 52B .0201 HEALTH REGULATIONS IN GENERAL

(a) No animal, including poultry or birds of any species, that is affected with, or exposed to, within the contagious period of, any infectious, contagious, or communicable disease, or which originates from a quarantine area affecting such animal, shall be transported or in any manner moved into the state until written permission for such importation has been obtained from:

State Veterinarian of North Carolina
North Carolina Department of Agriculture and Consumer Services
Raleigh, North Carolina 27611

Those diseased or exposed animals which are approved by the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture for interstate shipment for immediate slaughter are exempt from this provision; however, any vehicle used to transport such diseased or exposed animals must be cleaned and disinfected immediately after use and prior to transporting other animals.

(b) All livestock (including the American buffalo or bison which for the purpose of this Section shall be considered as beef cattle) transported or otherwise moved into the state shall be accompanied by a health certificate, and permit when required, which shall be attached to the waybill or shall be in the possession of the driver of the vehicle or person in charge of the livestock.

(c) A copy of the health certificate approved by the chief livestock sanitary official of the state of origin shall be forwarded within 30 days of issuance to:
State Veterinarian

472 Agriculture Building

Post Office Box 26026

Raleigh, North Carolina 27611

(d) Livestock entering North Carolina without a proper health certificate, and permit when required, shall be quarantined and held at the owner's risk and expense until released by the State Veterinarian.

History Note: Authority G.S. 106-307.4; 106-307.5; 106-317; 106-348; 106-540; Eff. April 1, 1984; Amended Eff. July 1, 2002; April 1, 1997.

TITLE 9 - OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR

09 NCAC 06A .0103 BENCHMARK

The Chief State Information Officer (CIO) establishes a benchmark of one hundred thousand dollars (\$100,000) (benchmark).

History Note: Authority G.S. 147-33.101(a); 147-33.103(b); Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Amended Eff. March 1, 2001.

09 NCAC 06B .1008 BOARD OF AWARDS

(a) When the dollar value of a contract for the purchase, lease, or lease/purchase of IT goods exceeds the benchmark, the Board of Awards (Board) shall canvass ITS' recommended action. This also includes reporting of emergency and pressing need purchases over the benchmark. The CIO may elect to proceed

with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that the Board is not available. ITS shall submit the Board's recommendation (award, cancellation, approval, negotiation, etc.) to the CIO. The CIO may either concur with the recommendation of the Board by awarding contracts or approving other recommended action or take other action as deemed necessary.

(b) Exemptions: Review by the Board and approval by the CIO is not required for the following purchase actions: exemption by statute, by rule, by special delegation, or where one agency is buying from another agency or through the State Surplus Property Agency or the State Agency for Federal Surplus Property.

*History Note: Authority G.S. 143-52.1; 147-33.95; 147-33.101; 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. March 1, 2001.*

09 NCAC 06B .1009 PROTEST PROCEDURES

(a) To ensure fairness to all offerors and to promote open competition, agencies and ITS shall actively and consistently respond to an offeror's protest over contract awards.

(b) This Rule applies to contracts with an estimated value over twenty-five thousand dollars (\$25,000). Agencies may establish procedures to handle protests by offerors with less value.

(c) When an offeror wants to protest a contract awarded by an agency over twenty-five thousand dollars (\$25,000) in value, the agency and the offeror shall comply with the following:

- (1) The offeror shall submit a written request for a protest meeting to the agency's executive officer or his designee within 15 calendar days from the date of contract award. The executive officer shall furnish a copy of the written request to the ITS Chief Procurement Officer (CPO) within ten calendar days of receipt. The offeror's request shall contain specific reasons and any supporting documentation regarding why there is a concern with the award. If the request does not contain this information or the executive officer determines that a meeting would serve no purpose, then the executive officer, within ten calendar days from the date of receipt, may respond in writing to the offeror and refuse the protest meeting request. A copy of the executive officer's letter shall be forwarded to the CPO.

- (2) If the protest meeting is granted, the agency's executive officer shall attempt to schedule the meeting within 30 calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the executive officer shall respond to the offeror in writing with an agency decision. A copy of the executive officer's letter shall be forwarded to the CPO.

(d) When an offeror wants to protest a contract awarded by ITS or the CIO that is over twenty-five thousand dollars (\$25,000) in value, the CPO and the offeror shall comply with the following:

- (1) The offeror shall submit a written request for a protest meeting to the CPO within 15 calendar days from the date of contract award. The offeror's request shall contain specific reasons and any supportive documentation regarding why there is a concern with the award. If the request does not contain this information or the CPO determines that a meeting would serve no purpose, then the CPO, within ten calendar days from the date of receipt of the letter, may respond in writing to the offeror and refuse the protest meeting request. A copy of the CPO's letter shall be forwarded to the ITS hearing officer.
- (2) If the protest meeting is granted, the CPO shall attempt to schedule the meeting within 30 calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the CPO shall respond to the offeror in writing with a decision. A copy of the decision shall be forwarded to the ITS hearing officer.

(e) If an offeror desires further administrative review after receiving a decision under Paragraph (c) or (d) of this Rule, the protesting party may request a final decision by the CIO in accordance with Article 13A of G.S. 150B. When further administrative review involves a contract awarded by an agency that is over twenty-five thousand dollars (\$25,000) in value, the agency shall be a party in further review processes.

(f) The signature of an attorney or party on a request for protest constitutes a certification by the signer that the signer has read such document; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose such as to harass, cause unnecessary delay or needless increase in the cost of the procurement or of the litigation. If a protest is determined by the hearing officer or any subsequent appellate court proceeding to be frivolous or to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious, the CIO, upon motion or upon his own initiative, may impose upon the person who signed it, a represented party, or both, prohibition upon the party from participation in any IT solicitation or award for a period of one year. Notification to the affected party shall be in writing.

*History Note: Authority G.S. 147-33.103(b); 150B-38;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. March 1, 2001.*

09 NCAC 06B .1010 RIGHT TO HEARING

Whenever the Office of Information Technology Services (ITS) acts in such a way as to affect the rights, duties, or privileges of a party, the party may appeal for a final decision by ITS in accordance with this Section and G.S. 150B, Article 3A.

*History Note: Authority G.S. 150B-38;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;*

Amended Eff. March 1, 2001.

09 NCAC 06B .1011 REQUEST FOR HEARING

(a) A request for an administrative hearing under Rule .1010 of this Section must be in writing and shall contain the following information:

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

(b) The request for hearing shall be filed with: CIO, ATTENTION: ITS Hearing Officer, N.C. Office of Information Technology Services P.O. Box 17209, Raleigh, North Carolina 27619-7209, or if the request is sent registered mail, 3900 Wake Forest Road, Suite 104, Raleigh, North Carolina, 27609.

*History Note: Authority G.S. 150B-38(a);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. March 1, 2001.*

09 NCAC 06B .1012 DEFINITIONS

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

- (1) "File or filing" means to place or the placing of the paper or item to be filed into the care and custody of the hearing officer, and acceptance thereof by him. All documents filed with the hearing officer, except exhibits, shall be in duplicate in letter size 8 1/2" by 11".
- (2) "Hearing officer" means the CIO, a member of the CIO's staff appointed by the CIO under G.S. 150B-40, or an administrative law judge assigned under G.S. 150B-40.
- (3) "Party" means ITS, the offeror, the agency or an intervenor who qualifies under Rule .1024 of this Section.
- (4) "Service or serve" means personal delivery or, unless otherwise provided by law or rule, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the person to be served at his or her last known address. A certificate of service by the person making the service shall be appended to every document requiring service under this Section. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service; or postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

Occupancy

*History Note: Authority G.S. 150B-40;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. March 1, 2001.*

09 NCAC 06B .1013 GENERAL PROVISIONS

The following general provisions apply to this Section:

- (1) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes apply in contested cases before the Hearing Officer unless another specific statute or rule provides otherwise.
- (2) ITS may supply, at the cost for copies, forms for use in contested cases.
- (3) Every document filed with the hearing officer shall be signed by the author of the document, and shall contain his name, address, telephone number, and North Carolina State Bar number if the author is an attorney. An original and one copy of each document shall be filed.
- (4) Hearings shall be conducted, as nearly as practical, in accordance with the practice in the Trial Division of the General Court of Justice.
- (5) This Section and copies of all matter adopted by reference in this Section are available from ITS at cost.
- (6) The rules of statutory construction contained in Chapter 12 of the General Statutes apply in the construction of this Section.
- (7) Unless otherwise provided in a specific statute, time computations in contested cases under this Section are governed by G.S. 1A-1(6).

*History Note: Authority G.S. 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. March 1, 2001.*

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 08 .0706 REQUIRED QUALIFICATIONS: TYPES AND LEVELS

(a) Qualification Levels

- (1) With respect to all types of code enforcement officials other than code administrator, those with Level I, Level II, and Level III certificates shall be qualified to inspect and approve only those types and sizes of buildings specified in the following tables.
- (2) Limitation on maximum number of stories and square feet (sf) of floor area of buildings for Building, Electrical, Mechanical, and Plumbing inspectors, Levels I, II and III:

APPROVED RULES

Classification	Level I	Level II	Level III
Assembly	1 story/7,500 sf	1 story/20,000 sf	Unlimited
Business	1 story/20,000 sf	1 story/60,000 sf Multi-story: 4 stories max/20,000 sf per floor	Unlimited
Education	1 story/7,500 sf	1 story/20,000 sf Multi-story: 2 stories max/20,000 sf per floor	Unlimited
Hazardous	1 story/3,000 sf (See Note)	1 story/20,000 sf Multi-story: 2 stories max/20,000 sf per floor	Unlimited
Industrial	1 story/20,000 sf	1 story/60,000 sf Multi-story: 4 stories max/20,000 sf per floor	Unlimited
Institutional	1 story/7,500 sf	1 story/10,000 sf Multi-story: 3 stories max/10,000 sf per floor	Unlimited
Mercantile	1 story/20,000 sf	1 story/60,000 sf Multi-story: 4 stories max/20,000 sf per floor	Unlimited
Residential			
Multi-unit	1 story /7,500 sf	3 stories max/no restriction on floor area	Unlimited
1 & 2 family dwellings, townhouses	Unlimited	Unlimited	Unlimited
Storage	1 story/20,000 sf	1 story/60,000 sf per floor Multi-story: 4 stories max/20,000 sf per floor	Unlimited

See Volume I of NC State Building Code for Occupancy classifications.

Note: *Electrical Inspector, Level I shall not be authorized to inspect wiring or equipment in hazardous locations as defined by Article 500 of the National Electrical Code with the exception of service stations and service pumps.

(3) Limitation on occupancy classifications of buildings for Fire Inspectors, Levels I, II and III:

CERTIFICATION LEVELS FOR FIRE INSPECTORS

LEVEL I: - OCCUPANCY:

- Business
- Small Assembly
- Mercantile
- Residential
- Storage
- Excluding Highrise *
- No Plan Review

LEVEL II: - OCCUPANCY:

- Everything in Level I
- Large Assembly
- Educational
- Industrial
- Plan Review of all Occupancies in Level II
- Excluding Highrise *

LEVEL III: - OCCUPANCY:

- Everything in Levels I and II
- Hazardous
- Institutional
- Highrise
- Plan Review of all Occupancies
- (Unlimited Occupancies)

* The term "excluding highrise" is listed because some of the acceptable occupancies for the levels could be located in a highrise (defined in Volume I of the State Building Code) building.

(b) Whenever a provision of the Rules in this Section requires a supporting letter (maximum of two per level) from a supervisor, the letter(s) shall be notarized, shall state the supervisor's qualifications (i.e., what type and level of certificate or license the supervisor holds), shall state that the applicant has worked under the supervisor's direct supervision for a specified period of time, and shall recommend certification of the applicant as a specified type and level of inspector upon satisfaction of other required qualifications. The supervisor shall describe the name, floor area, and number of stories of the buildings worked on by the applicant and shall describe the work performed by the applicant.

(c) References in the Rules in this Section to professional engineer or licensed engineer means engineers licensed according to G.S. 89C. References in the Rules in this Section to registered architect means architects licensed according to G.S. 83A. References to licensed building, residential, electrical, heating, plumbing, and fire sprinkler contractors means contractors licensed according to G.S. 87. References to licensed "building" contractors do not include licensed "residential" contractors. Specialty licenses issued by these Boards are not acceptable. Applicants with licenses from other states or countries must provide a copy of their license and documentation that the requirements of the other state are at least equivalent to the statewide licensing requirements of North Carolina licensing boards.

(d) Whenever a provision of the Rules in this Section requires the possession of a license other than those certificates that are issued by the Board, if that license is inactive, the applicant must provide documentation from the appropriate licensing board that the applicant's license is inactive.

(e) Whenever a provision of the Rules in this Section requires inspector experience on a minimum number of buildings or systems, the experience must include all the inspections typically performed by an inspector during construction of the building or system. Inspections do not have to be performed on the same building.

(f) Whenever a provision of the Rules in this Section requires a high school education or other education and experience qualifications, the Board may approve equivalent qualifications. Whenever a provision of the rules in this Section requires the possession of a diploma or degree from an accredited college, university, or trade school, accredited shall mean accreditation from a regional accrediting association, for example, Southern Association of Colleges and Schools.

(g) Every applicant shall:

- (1) provide documentation that the applicant possesses a minimum of a high school education or a high school equivalency certificate (GED); and
- (2) provide notarized certification by a city or county manager, clerk, or director of inspection department that the applicant is the administrative head of or is performing "code enforcement", as defined in G.S. 143-151.8(a)(3), as an employee of that city or county; or provide certification by the head of the Engineering and Building Codes Division of the North Carolina Department of Insurance that the applicant is performing "code

enforcement", as defined in G.S. 143-151.8(a)(3), for a state department or agency; and

- (3) make a grade of at least 70 on courses developed by the Board. Successful completion is defined as attendance of a minimum of 80 percent of the hours taught and achieving a minimum score of 70 percent on the course exam. All applicants must successfully complete a law and administration course. Applicants for certification in building, electrical, fire prevention, mechanical, or plumbing inspection at levels I, II, or III must successfully complete a course in that area and level (or a higher level). For the purpose of entry into the state examination, courses must be completed within five years of the exam in Subparagraph (g)(4) of this Rule. These courses shall be administered and taught in the N.C. Community College System or other educational agencies accredited by a regional accrediting association; for example, Southern Association of Colleges and Schools; and
- (4) achieve a passing grade of 70 percent on the written examination administered by the Board in each level of certification unless exempt by 11 NCAC 08 .0707; and
- (5) meet at least one of the education and experience requirements in Paragraphs (g) through (v) of this Rule for the area and level of certification sought.

(h) Building Inspector, Level I. A standard certificate, building inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a one year diploma in building construction from an accredited college or an equivalent apprenticeship or trade school program in building construction;
- (2) a four-year degree from an accredited college or university;
- (3) at least six months of building inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified building inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (4) at least one year of building design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer, registered architect, or licensed building contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (5) a license as a building contractor;

- (6) at least two years of building construction or inspection experience while working under a licensed building contractor;
 - (7) at least two years of experience with a probationary building inspection certificate inspecting building construction on a minimum of two Level I buildings;
 - (8) at least two years of experience as an active principal in a home building firm and who has a license as a residential contractor and with construction experience on a minimum of two Level I buildings; or
 - (9) at least two years of construction experience as a subcontractor or employee of a residential contractor in the building trades or work in building construction on a minimum of two Level I buildings and under the direct supervision of a licensed residential contractor who at that time had at least three years of experience.
- (i) Building Inspector, Level II. A standard certificate, building inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer or registered architect;
 - (2) a four year degree from an accredited college or university in architecture, civil or architectural engineering, or building construction;
 - (3) a four-year degree from an accredited college or university and at least two years of design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, registered architect, or intermediate or unlimited licensed building contractor;
 - (4) a two year degree from an accredited college or university in architecture, civil or architectural engineering, or building construction and at least two years of building design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, registered architect, or intermediate or unlimited licensed building contractor;
 - (5) an intermediate or unlimited license as a building contractor with building construction experience on a minimum of two Level II buildings;
 - (6) at least three years of building inspection experience including one year of inspection experience with a probationary Level II building certificate on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (7) at least three years of building design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer, registered architect, or licensed intermediate or unlimited building contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
 - (8) at least two years of experience with a probationary Level II building inspection certificate inspecting construction of a minimum of two Level II buildings.
- (j) Building Inspector, Level III. A standard certificate, building inspector, Level III, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer or registered architect with design, construction, or inspection experience on Level III buildings and specialization in architecture, civil or architectural engineering, or fire protection engineering;
 - (2) a four-year degree from an accredited college or university in architecture, civil or architectural engineering, or building construction and at least one year of building design, construction, or inspection experience while working under the direct supervision of a certified building inspector III, licensed engineer, registered architect, or licensed unlimited building contractor, at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;
 - (3) a two-year degree from an accredited college or university in architecture, civil or architectural engineering or building construction and at least three years of building design, construction, or inspection experience while working under the direct supervision of a certified building inspector III, licensed engineer, registered architect, or licensed unlimited building contractor with at least one year at the level of supervisor in responsible charge of a minimum of two Level III buildings;
 - (4) an unlimited license as a building contractor with experience on a minimum of two Level III buildings;
 - (5) at least four years of inspection experience including one year of building inspection experience with a probationary Level III building certificate on a minimum of two Level III buildings while working under the direct supervision of a certified building inspector III, with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;

- (6) at least four years of building design, construction, or inspection experience while working under the direct supervision of a licensed engineer, registered architect, or licensed unlimited building contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
- (7) at least one year of experience with a probationary Level III building inspection certificate inspecting the construction of a minimum of two Level III buildings.

(k) Electrical Inspector, Level I. A standard certificate, electrical inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a one-year diploma in electrical construction from an accredited college or an equivalent apprenticeship or trade school program in electrical construction;
- (2) a four-year degree from an accredited college or university;
- (3) at least six months of electrical inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified electrical inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (4) at least one year of electrical design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer or licensed electrical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (5) a restricted (one family dwelling) license or license as an electrical contractor;
- (6) at least two years of electrical installation or inspection experience while working under a licensed electrical contractor; or
- (7) at least two years of experience with a probationary electrical inspection certificate inspecting electrical installations on a minimum of two Level I buildings.

(l) Electrical Inspector, Level II. A standard certificate, electrical inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as a professional engineer;
- (2) a four-year degree from an accredited college or university in electrical engineering or electrical construction;

- (3) a four-year degree from an accredited college or university and at least two years of electrical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified electrical inspector II or III, licensed engineer, or intermediate or unlimited licensed electrical contractor;
- (4) a two-year degree from an accredited college or university in electrical engineering or electrical construction and at least two years of electrical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified electrical inspector II or III, licensed engineer, or intermediate or unlimited licensed electrical contractor;
- (5) an intermediate or unlimited license as an electrical contractor with experience on a minimum of two Level II buildings;
- (6) at least three years of electrical inspection experience including one year of inspection experience with a probationary Level II electrical inspection certificate on a minimum of two Level II buildings while working under the direct supervision of a certified electrical inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (7) at least three years of electrical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer or licensed intermediate or unlimited electrical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
- (8) at least two years of experience with a probationary Level II electrical inspection certificate inspecting electrical installations on a minimum of two Level II buildings.

(m) Electrical Inspector, Level III. A standard certificate, electrical inspector, Level III, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as a professional engineer with, design, construction, or inspection experience on Level III buildings and specialization in electrical engineering;
- (2) a four year degree from an accredited university in electrical engineering or electrical construction and at least one year of electrical design, installation, or inspection experience while working under the direct supervision of a certified electrical inspector III, licensed engineer, or licensed unlimited electrical contractor at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;

- (3) a two-year degree from an accredited college or university in electrical engineering or electrical construction and at least three years of electrical design, installation, or inspection experience while working under the direct supervision of a certified electrical inspector III, licensed engineer, or licensed unlimited electrical contractor with at least one year at the level of supervisor in responsible charge of a minimum of two Level III buildings;
 - (4) an unlimited license as an electrical contractor with experience on a minimum of two Level III buildings;
 - (5) at least four years of electrical inspection experience including one year of inspection experience with a probationary Level III electrical certificate on a minimum of two Level III buildings while working under the direct supervision of a certified electrical inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (6) at least four years of electrical design, construction, or inspection experience while working under the direct supervision of a licensed engineer or licensed unlimited electrical contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
 - (7) at least one year of experience with a probationary Level III electrical inspection certificate inspecting the electrical installations of a minimum of two Level III buildings.
- (n) Mechanical Inspector, Level I. A standard certificate, mechanical inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a one-year diploma in mechanical construction from an accredited college or an equivalent apprenticeship or trade school program in mechanical construction;
 - (2) a four-year degree from an accredited college or university;
 - (3) at least six months of mechanical inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified mechanical inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (4) at least one year of mechanical design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer or licensed Class I mechanical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (5) an H-1, H-2, or H-3 Class I license as a mechanical contractor;
 - (6) at least two years of mechanical installation or inspection experience while working under a Class I H-1, H-2, or H-3 licensed mechanical contractor; or
 - (7) at least two years of experience with a probationary mechanical inspection certificate inspecting mechanical installations a minimum of two Level I buildings.
- (o) Mechanical Inspector, Level II. A standard certificate, mechanical inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer;
 - (2) a four-year degree from an accredited college or university in mechanical engineering or mechanical construction;
 - (3) a four-year degree from an accredited college or university and at least two years of mechanical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified mechanical inspector II or III, licensed engineer, or licensed Class I mechanical contractor;
 - (4) a two-year degree from an accredited college or university in mechanical engineering or mechanical construction and at least two years of mechanical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified mechanical inspector II or III, licensed engineer, or licensed Class I mechanical contractor;
 - (5) an H-1, H-2, or H-3 Class I license as a mechanical contractor with experience on a minimum of two Level II buildings;
 - (6) at least three years of mechanical inspection experience including one year of inspection experience with a probationary Level II mechanical inspection certificate on a minimum of two Level II buildings while working under the direct supervision of a certified mechanical inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (7) at least three years of mechanical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer or licensed Class I H-1, H-2, or H-3 mechanical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or

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- (8) at least two years of experience with a probationary Level II mechanical inspection certificate inspecting mechanical installations on a minimum of two Level II buildings.
- (p) Mechanical Inspector, Level III. A standard certificate, mechanical inspector, Level III shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer with, design, construction, or inspection experience on Level III buildings and specialization in mechanical engineering;
 - (2) a four-year degree from an accredited university in mechanical engineering or mechanical construction and at least one year of mechanical design, installation, or inspection experience while working under the direct supervision of a certified mechanical inspector III, licensed engineer, or licensed Class I H-1, H-2, and H-3 mechanical contractor at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;
 - (3) a two-year degree from an accredited college or university in mechanical engineering or mechanical construction and at least three years of mechanical design, installation, or inspection experience while working under the direct supervision of a certified mechanical inspector III, licensed engineer, or licensed Class I H-1, H-2, and H-3 mechanical contractor with at least one year at the level of supervisor in responsible charge of a wide variety of types of minimum of two Level III buildings;
 - (4) H-1, H-2, and H-3 Class I licenses as a mechanical contractor with experience on a minimum of two Level III buildings;
 - (5) at least four years of mechanical inspection experience including one year of inspection experience with a probationary Level III mechanical certificate on a minimum of two Level III buildings while working under the direct supervision of a certified mechanical inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (6) at least four years of mechanical design, construction, or inspection experience while working under the direct supervision of a licensed engineer or licensed Class I H-1, H-2, and H-3 mechanical contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
 - (7) at least on year of experience with a probationary Level III mechanical inspection certificate inspecting the mechanical installations of a minimum of two Level III buildings.
- (q) Plumbing Inspector, Level I. A standard certificate, plumbing inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a one-year diploma in plumbing construction from an accredited college or an equivalent apprenticeship or trade school program in plumbing construction;
 - (2) a four-year degree from an accredited college or university;
 - (3) at least six months of plumbing inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified plumbing inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (4) at least one year of plumbing design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer or licensed Class I plumbing contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (5) a Class I license as a plumbing contractor;
 - (6) at least two years of plumbing installation or inspection experience while working under a licensed Class I plumbing contractor; or
 - (7) at least two years of experience with a probationary plumbing inspection certificate inspecting plumbing installations a minimum of two Level I buildings.
- (r) Plumbing Inspector, Level II. A standard certificate, plumbing inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer;
 - (2) a four-year degree from an accredited college or university in mechanical engineering or mechanical or plumbing construction;
 - (3) a four-year degree from an accredited college or university and at least two years of plumbing design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified plumbing inspector II or III, licensed engineer, or licensed Class I plumbing contractor;
 - (4) a two year degree from an accredited college or university in mechanical engineering or mechanical or plumbing construction and at least two years of plumbing design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a

- certified plumbing inspector II or III, licensed engineer, or licensed Class I plumbing contractor;
- (5) a Class I license as a plumbing contractor with experience on a minimum of two Level II buildings;
- (6) at least three years of plumbing inspection experience including one year of inspection experience with a probationary Level II plumbing inspection certificate on a minimum of two Level II buildings while working under the direct supervision of a certified plumbing inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (7) at least three years of plumbing design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer or licensed Class I plumbing contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
- (8) at least two years of experience with a probationary Level II plumbing inspection certificate inspecting plumbing installations on a minimum of two Level II buildings.
- (s) Plumbing Inspector, Level III. A standard certificate, plumbing inspector, Level III shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer with, design, construction, or inspection experience on Level III buildings and specialization in mechanical engineering;
- (2) a four-year degree from an accredited university in mechanical engineering or mechanical or plumbing construction and at least one year of plumbing design, installation, or inspection experience while working under the direct supervision of a certified plumbing inspector III, licensed engineer, or licensed Class I plumbing contractor at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;
- (3) a two-year degree from an accredited college or university in mechanical engineering or plumbing construction and at least three years of plumbing design, installation, or inspection experience while working under the direct supervision of a certified plumbing inspector III, licensed engineer, or licensed Class I plumbing contractor with at least one year at the level of supervisor in responsible charge of a wide variety of types of minimum of two Level III buildings;
- (4) a Class I license as a plumbing contractor with experience on a minimum of two Level III buildings;
- (5) at least four years of plumbing inspection experience including one year of inspection experience with a probationary Level III plumbing certificate on a minimum of two Level III buildings while working under the direct supervision of a certified plumbing inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (6) at least four years of plumbing design, construction, or inspection experience while working under the direct supervision of a licensed engineer or licensed Class I plumbing contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
- (7) at least one year of experience with a probationary Level III plumbing inspection certificate inspecting the plumbing installations of a minimum of two Level III buildings.
- (t) Fire Inspector, Level I. A standard certificate, fire inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a one year diploma in fire science from an accredited college or an equivalent apprenticeship or trade school program in fire science;
- (2) a four-year degree from an accredited college or university;
- (3) at least six months of fire inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified fire inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (4) at least one year of fire protection design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer, registered architect, or licensed building, electrical, or fire sprinkler contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (5) a license as a fire sprinkler contractor;
- (6) at least two years of construction or inspection experience in fire protection systems while working under a licensed building, electrical, or fire sprinkler contractor;
- (7) at least two years of experience with a probationary fire inspection certificate conducting fire inspections in a minimum of two Level I buildings;

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- (8) at least four years of experience in fire suppression activities for a city, county, volunteer, or other governmental fire department; or
- (9) Firefighter Level II certification under the North Carolina State Fire and Rescue Commission with at least one year of fire inspection experience in Level I buildings.
- (u) Fire Inspector, Level II. A standard certificate, fire inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer or registered architect;
 - (2) a four year degree from an accredited college or university in architecture, civil or architectural engineering, building construction, or fire science;
 - (3) a four-year degree from an accredited college or university and at least two years of fire protection design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, registered architect, intermediate or unlimited licensed building contractor, or licensed fire sprinkler contractor;
 - (4) a two-year degree from an accredited college or university in architecture, civil or architectural engineering, building construction, or fire science and at least two years of fire protection design, construction, or inspection experience on a minimum of two Level II building fire protection systems while working under the direct supervision of a certified fire inspector II or III, licensed engineer, registered architect, intermediate or unlimited licensed building contractor, or licensed fire sprinkler contractor;
 - (5) a license as a fire sprinkler contractor with experience on a minimum of two Level II buildings;
 - (6) at least three years of fire inspection experience including one year of inspection experience with a probationary Level II fire certificate on a minimum of two Level II buildings while working under the direct supervision of a certified fire inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (7) at least three years of fire protection system design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer, registered architect, licensed intermediate or unlimited building contractor, or licensed fire sprinkler contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (8) at least two years of experience with a probationary Level II fire inspection certificate conducting fire inspections in a minimum of two Level II buildings; or
- (9) completion of the basic, intermediate, and advanced classes of the North Carolina Fire Prevention School with at least three years of fire inspection experience in Level II buildings.
- (v) Fire Inspector, Level III. A standard certificate, fire inspector, Level III, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer or registered architect with design, construction, or inspection experience on Level III buildings and specialization in architecture, civil or architectural engineering, or fire protection engineering;
 - (2) a four-year degree from an accredited college or university in civil, architectural, or fire protection engineering and at least one year of fire inspection experience while working under a certified fire inspector II, licensed engineer, registered architect, or licensed fire sprinkler contractor on a minimum of two Level III buildings;
 - (3) a two-year degree from an accredited college or university in civil, architectural, or fire protection engineering and at least three years of fire protection design, installation, or inspection experience while working under the direct supervision of a certified fire inspector III, licensed engineer, registered architect, licensed unlimited building contractor, or licensed fire sprinkler contractor with at least one year in responsible charge of a minimum of two Level III buildings;
 - (4) a license as a fire sprinkler contractor with experience on a minimum of two Level III buildings;
 - (5) at least four years of fire inspection experience in fire protection systems including one year of inspection experience with a probationary Level III fire inspection certificate on a minimum of two Level III buildings while working under the direct supervision of a certified fire inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (6) at least four years of fire protection system design, construction, or inspection experience while working under the direct supervision of a licensed engineer, registered architect, licensed intermediate or unlimited building contractor, or licensed fire sprinkler contractor, two years of which have been performed at the level of supervisor in

responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or

- (7) at least one year of experience with a probationary Level III fire inspection certificate conducting fire inspections in a minimum of two Level III buildings.

History Note: Authority G.S. 143-151.12(1); 143-151.13; Eff. January 15, 1980; Amended Eff. July 1, 2002; February 1, 1991; August 1, 1990; July 1, 1983.

11 NCAC 08 .0708 CERTIFICATE

(a) If an application is found to be in order and the applicant qualified for a particular type and level of certificate, upon approval of the Board the Board's staff shall mail a standard certificate of that type and level to the applicant at the address specified on the application. The certificate shall be effective until the renewal date specified in G.S. 143-151.16(b).

(b) If the applicant does not meet the criteria for the certificate for which applied, the applicant shall be given written notice of the criterion that the applicant apparently fails to meet and offered a choice of:

- (1) accepting a certificate for a lower level for which the applicant is qualified;
- (2) submitting additional evidence in support of the application;
- (3) withdrawing the application; or
- (4) appealing the decision to the Board.

If an appeal is filed, the Board shall conduct a hearing and render a decision in accordance with G.S. 150B.

History Note: Authority G.S. 143-151.12; 143-151.13; 143-151.14; 143-151.19; Eff. January 15, 1980; Amended Eff. July 1, 2002; January 1, 1991.

11 NCAC 08 .0711 PRE-QUALIFICATION PROGRAM

The Board may prequalify, as an inspector, an applicant who is not an employee of a city, county, or state inspection department. The Board shall accept applicants who meet the same education, experience, and other requirements listed in Rules .0702 through .0707 of this Section. The Board shall prequalify the applicant at the area and level of certification when the applicant completes these requirements. The Board shall issue a standard inspection certificate when the prequalified applicant is employed by a city, county, or state inspection department.

History Note: Authority G.S. 143-151.12; Eff. July 1, 2002.

11 NCAC 08 .1305 ATTENDANCE REQUIREMENTS

In order to receive any credit for completing a continuing education course, a licensee must attend at least 90 percent of the scheduled credit hours for the course, regardless of the length of the course, and must comply with student participation standards described in Rule .1347 of this Section. No credit

shall be awarded for attending less than 90 percent of the scheduled credit hours.

History Note: Authority G.S. 143-151.49; 143-151.55; Eff. August 1, 1998; Amended Eff. July 1, 2002.

11 NCAC 08 .1306 EXTENSIONS OF TIME

A licensee may request and be granted an extension of time to satisfy the continuing education requirement for a particular license period if the licensee provides evidence to the Board that the licensee was unable to obtain the necessary education because of an incapacitating illness or other circumstance that:

- (1) existed for 75 percent of the license period; and
- (2) constituted a verifiable hardship.

History Note: Authority G.S. 143-151.49; 143-151.55; Eff. August 1, 1998; Amended Eff. July 1, 2002.

11 NCAC 08 .1307 DENIAL OR WITHDRAWAL OF CREDIT

(a) The Board shall deny continuing education credit claimed by a licensee, and shall withdraw continuing education credit previously awarded by the Board to a licensee if:

- (1) The licensee provided incorrect or incomplete information to the Board concerning continuing education or compliance with this Section; or
- (2) The licensee was mistakenly awarded continuing education credit because of an administrative error; or
- (3) The licensee failed to comply with the attendance requirement established by Rule .1305 of this Section.

(b) When continuing education credit is denied or withdrawn by the Board under Subparagraph (a)(1) or (a)(2) of this Rule, the Board shall, upon written request of the licensee, grant the licensee an extension of time of 60 days to satisfy the continuing education requirement. When continuing education credit is denied or withdrawn by the Board under Subparagraph (a)(3) of this Rule, the licensee remains responsible for satisfying the continuing education requirement.

History Note: Authority G.S. 143-151.49; 143-151.55; Eff. August 1, 1998; Amended Eff. July 1, 2002.

11 NCAC 08 .1309 UPDATE COURSE COMPONENT

(a) To keep a license on active status, a licensee shall complete a Board-developed update course within one year preceding license expiration. This course is in addition to the continuing education elective requirement described in Rule .1318 of this Section, and shall consist of four classroom hours of instruction.

(b) The Board shall develop annually an update course which shall be conducted by sponsors approved by the Board under this Section. The subject matter of this course shall be determined by the Board, which shall prepare a completely new course for each one-year period beginning October 1 and ending September 30. Sponsors shall acquire the Board-developed course

materials and utilize such materials to conduct the update course. The course shall be conducted exactly as prescribed by the rules in this Section and the course materials developed by the Board. Sponsors shall provide licensees participating in their classes a copy of the student materials developed by the Board

(c) Approval of a sponsor to conduct an update course authorizes the sponsor to conduct the update course using an instructor who has been approved by the Board as an update course instructor under Rules .1313 through .1317 of this Section. The sponsor may conduct the update course at any location as frequently as is desired during the approval period, provided that no courses may be conducted between September 10 and September 30 of any approval period.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1310 APPLICATION FOR ORIGINAL APPROVAL OF UPDATE COURSES

An entity seeking original approval to sponsor a Board-developed update course shall make application on a form prescribed by the Board. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1311 CRITERIA FOR APPROVAL OF UPDATE COURSE SPONSOR

Approval to sponsor a Board-developed update course shall be granted to an applicant upon showing to the satisfaction of the Board that:

- (1) The applicant has submitted all information required by the rules in this Section;
- (2) The applicant has at least one proposed instructor who has been approved by the Board as an update course instructor under Rules .1313 through .1317 of this Section;
- (3) The applicant satisfies the requirements of Rules .1327 through .1337 of this Section relating to qualifications or eligibility of course sponsors; and
- (4) The applicant is honest. In this regard, the Board may consider the reputation and character of any owner, officer, continuing education coordinator, or director of any corporation, association, or organization applying for sponsor approval.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1313 NATURE AND SCOPE OF APPROVAL OF UPDATE COURSE INSTRUCTORS

Approval of update course instructors shall be accomplished on a calendar year basis separate from the approval of update course sponsors. Approval of an update course instructor authorizes the instructor to teach the update course for any approved update course sponsor; however, an approved update course instructor may not independently conduct an update course unless the

instructor has also obtained approval as an update course sponsor. An instructor shall obtain written approval from the Board before teaching an update course and before representing to any sponsor or other party that he or she is approved or may be approved as an update course instructor.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1314 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL OF UPDATE COURSE INSTRUCTORS

(a) A person seeking original approval as an update course instructor shall make application on a form prescribed by the Board. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications shall be submitted.

(b) The applicant shall be honest in all dealings with the Board and in course instruction.

(c) The applicant shall be qualified under one of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of engineering, construction, or architecture;
- (2) Possession of a current North Carolina home inspector license, three years active full-time experience in performing home inspections for compensation within the previous 10 years, and 30 classroom hours of home inspection education, excluding prelicensing education, within the past three years, such education covering topics that are acceptable under Board rules for continuing education credit.
- (3) Possession of a current North Carolina home inspector license and experience teaching at least 10 home inspector prelicensing courses within the previous five years; or
- (4) Possession of qualifications found by the Board to be equivalent to one or more of the above standards, provided that the requirement for a current North Carolina home inspector license shall be waived only for applicants who qualify under Subparagraph (c)(1) of this Rule.

(d) The applicant shall possess good teaching skills as demonstrated on a video portraying the instructor teaching a live audience. The applicant shall submit the video to the Board for review. The video shall be 45-60 minutes in length and shall depict a continuous block of instruction on home inspections or a directly related topic. The video shall be unedited, shall show at least a portion of the audience, and shall have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The video shall have been made within the previous three years. The video shall demonstrate that the instructor possesses the teaching skills described in Rule .1345 of this Section.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1315 RENEWAL OF APPROVAL OF UPDATE COURSE INSTRUCTORS

Board approval of update course instructors expires on December 31 following issuance of approval. In order to assure continuous approval, approved instructors shall file applications for renewal of approval on a form prescribed by the Board on or before December 1 immediately preceding expiration of their approval. In order to renew approval, applicants shall satisfy the criteria for original approval, with the exception of the requirement stated in Rule .1314(d) of this Section, unless requested by the Board under Rule .1317 of this Section.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1316 DENIAL OR WITHDRAWAL OF APPROVAL OF UPDATE COURSE INSTRUCTORS

(a) The Board may deny or withdraw approval of any update course instructor upon finding that:

- (1) The instructor has made any false statements or presented any false information in connection with an application for approval or renewal of approval;
- (2) The instructor has failed to meet the criteria for approval described in Rule .1314 of this Section or has refused or failed to comply with any other provisions of this Section;
- (3) The instructor has failed to demonstrate, during the teaching of update courses, those effective teaching skills described in Rule .1345 of this Section;
- (4) The instructor has provided false or incorrect information in connection with any reports a course sponsor is required to submit to the Board; or
- (5) The instructor has been disciplined by the Board or any other occupational licensing agency in North Carolina or another jurisdiction.

(b) If a licensee who is an approved update course instructor engages in any dishonest, fraudulent, or conduct lacking moral turpitude in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 143-151.56.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1317 REQUEST FOR VIDEO OF UPDATE COURSE INSTRUCTORS

When concerns about the quality of a course or instructor are made known to the Board, upon the written request of the Board, an approved update course instructor shall submit to the Board a video depicting the instructor teaching the update course. The video shall have been made within 12 months before the date of submittal, shall include a label that clearly identifies the instructor and the date of the video presentation, shall not be the same video that was submitted under Rule .1314(d) of this Section, and shall conform to specifications set forth in Rule .1314(d) of this Section.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1318 ELECTIVE COURSE COMPONENT

(a) Except as provided in Rule .1304 of this Section, to renew a license on active status, a licensee shall complete eight classroom hours of instruction in two or more Board-approved elective courses within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .1309 of this Section.

(b) Approval of an elective course requires approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Board to satisfy the instructor requirements set forth in Rule .1322 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period. However, the sponsor may not conduct any session of an approved course for home inspector continuing education purposes between September 10 and September 30, inclusive, of any approval period.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1319 APPLICATION FOR ORIGINAL APPROVAL OF AN ELECTIVE COURSE

A person seeking original approval of a proposed elective course shall make application on a form prescribed by the Board. The Board shall not accept an application for original approval between July 1 and September 30. This restriction shall not apply when an applicant is seeking approval to conduct a course for which another sponsor has obtained approval. The applicant shall submit a nonrefundable fee of one hundred fifty dollars (\$150.00) per course which may be in the form of a check or money order payable to the Home Inspector Licensure Board. The application shall be accompanied by a copy of the course plan or instructor's guide for the course and a copy of materials that will be provided to students. An applicant that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1320 CRITERIA FOR ELECTIVE COURSE APPROVAL

The following requirements shall be satisfied in order to obtain approval of a proposed elective course:

- (1) The applicant shall submit all information required by the rules in this Section and pay the application fee.
- (2) The applicant shall satisfy the requirements of Rules .1327 through .1337 of this Section relating to the qualifications or eligibility of course sponsors.
- (3) The subject matter of the course shall satisfy the elective course subject matter requirements set forth in Rule .1321 of this Section and all

- information to be presented in the course shall be current and accurate.
- (4) The course shall involve a minimum of two classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time.
 - (5) The applicant is honest. In this regard, the Board may consider the reputation and character of any owner, member, officer, continuing education coordinator, and director of any corporation, association, or organization applying for sponsor approval.
 - (6) The proposed instructor(s) for the course shall possess the qualifications described in Rule .1322 of this Section.
 - (7) The instructional delivery methods to be used in the course shall comply with the requirements described in Rule .1326 of this Section.
 - (8) The applicant shall submit an instructor guide that includes:
 - (a) a detailed course outline;
 - (b) the amount of time to be devoted to each major topic and to breaks;
 - (c) the learning objective(s) for each major topic; and
 - (d) the instructional methods and instructional aids that will be used in the course.

The proposed time allotments shall be appropriate for the proposed subject matter to be taught. Unless the applicant can demonstrate that straight lecture is the most effective instructional method for the course, the instructor guide shall provide for the use of a variety of instructional methods and instructional aids intended to enhance student attentiveness and learning. Examples of instructional methods and instructional aids that may be appropriate include class discussion, role-playing, in-class work assignments, overhead transparencies, and videos.

- (9) The course shall include handout materials for students unless the applicant can demonstrate that such materials are either inappropriate or unnecessary for the course. Such materials shall be current, accurate, grammatically correct, logically organized, and produced in a manner that reflects reasonable quality.
- (10) Either the instructor guide or the student materials shall describe, in narrative form, the details of the substantive information to be presented in the course. The substantive information to be presented must be provided in sufficient detail to demonstrate that the information is current, accurate, and complete.
- (11) If an applicant proposes to use copyrighted materials in the course, such materials must be used in a form approved by the copyright

holder. If any copyrighted material is to be duplicated by the applicant for use in the course, the sponsor shall have the specific permission of the copyright holder.

- (12) Applicants requesting approval of a computer-based instructional program need not comply with the requirements in Subparagraphs (8), (9), and (10) of this Rule; however, such applicants shall submit a written course plan that includes a detailed course outline, the minimum amount of time required for a typical licensee to complete each lesson, and the entire course and the learning objectives for each major topic. Such applicants shall also submit a complete copy of the instructional program on the medium that is to be utilized and shall make available, to the Board and at the sponsor's expense, all hardware and software necessary for review by the Board. The information in the instructional program shall comply with the requirements of Rule .1326 of this Section.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1321 ELECTIVE COURSE SUBJECT MATTER

(a) Elective courses shall directly contribute to accomplishment of the primary purpose of mandatory continuing education, which is to help assure that licensees possess the knowledge, skills, and competence necessary to function in the home inspection profession in a manner that protects and serves the public interest. The knowledge or skills taught in an elective course shall enable licensees to better serve their clients and the subject matter shall be directly related to the home inspection profession. Examples of acceptable subject matter include rules adopted by the Board, including the Standards of Practice and Code of Ethics for home inspectors, which are found in 11 NCAC 08 .1100; G.S. 143, Article 9F; construction techniques; construction materials; residential environmental issues; residential mechanical systems and components; residential structural systems and components; and business administration or management.

(b) If there are unique North Carolina laws, rules, or customary practices that are relevant to a topic being addressed in an elective course, and if the course is to be conducted in North Carolina or primarily for the benefit of North Carolina licensees, then the course shall accurately and completely address such North Carolina laws, rules, or practices.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1322 ELECTIVE COURSE INSTRUCTORS

- (a) The instructor of an elective course shall be honest and shall be qualified under one of the following standards:
- (1) Possession of a baccalaureate or higher degree in a field directly related to the subject matter of the course;

- (2) Three years' full-time experience within the previous 10 years that is directly related to the subject matter of the course;
- (3) Three years' full-time experience within the previous 10 years teaching the subject matter of the course; or
- (4) Education or experience or both found by the Board to be equivalent to one or more of the above standards.

(b) If the subject matter of the course deals directly with conducting a home inspection according to the Standards of Practice and Code of Ethics in 11 NCAC 08, Section 1100, then the instructor shall also possess a current home inspector license issued by the Board.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1324 REQUEST FOR VIDEO OF AN ELECTIVE COURSE

When concerns about the quality of a course or instructor are made known to the Board, upon the written request of the Board, the sponsor of an approved elective course shall submit to the Board a video depicting the course being taught by a particular instructor designated by the Board. The video shall have been made within 12 months before the date of submittal, shall include a label that clearly identifies the instructor and the date of the video presentation, shall not be the same video that was submitted under Rule .1314(d) of this Section, and shall conform to technical specifications set forth in Rule .1314(d) of this Section.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1326 ELECTIVE COURSE INSTRUCTIONAL DELIVERY METHODS

(a) The principal instructional delivery method utilized in elective courses shall be one or more of the following:

- (1) Personal teaching by an instructor in a traditional classroom setting.
- (2) Instruction through an interactive television system or other audio and video system that permits continuous audio and visual communication between the instructor and all students and that provides for monitoring and technical support at each site where the instructor or students are located.
- (3) Instruction through an interactive computer-based instructional program, which program provides for control of student progress through the educational materials by testing to assure student mastery of the subject matter at the end of each lesson, monitoring of time devoted to each lesson by the computer with automatic program shutdown after a period of non-activity by the student, which period shall be determined by the sponsor, and a monitoring system that assures that the student receiving continuing education credit for

- (4) completing the program actually performed all the work required to complete the program. Personal teaching by an instructor in a field setting, such as a house or other structure, a new home construction site, a home renovation site, or other locations outside of a classroom that are appropriate for the subject matter of the course.

(b) The use of passive or non-interactive instructional delivery systems such as video, remote non-interactive television, or similar systems may be employed only in a limited manner to enhance or supplement one of the acceptable instructional delivery methods previously described in this Rule. No portion of a course may consist of correspondence instruction.

(c) A field setting shall have technical support at each site where the instructor and students are located, and have safeguards in place to prevent injury to the students, such as hardhats. A field setting shall not be at the residence of the instructor, course sponsor, or any other person affiliated with the course.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1327 GENERAL SPONSOR ELIGIBILITY REQUIREMENTS

Any person is eligible to seek approval as a sponsor of continuing education courses, provided that the person seeking approval of a continuing education elective course is either the owner of the proprietary rights to the course or has lawfully acquired from the course owner the right to seek course approval from the Board and to conduct the course.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1329 SPONSOR ADVANCE APPROVAL REQUIRED

A prospective sponsor of an update course or elective course shall obtain written approval from the Board to conduct the course before offering or conducting the course and before advertising or otherwise representing that the course is or may be approved for continuing education credit in North Carolina. No retroactive approval to conduct an update course shall be granted for any reason. Retroactive approval of an elective course shall be granted by the Board if the course sponsor can provide evidence to the Board that the course was not offered for purposes of satisfying the home inspector continuing education requirement and that the sponsor could not reasonably have been expected to anticipate that students would want to receive continuing education credit for the course.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1331 COURSE COMPLETION REPORTING

(a) Course sponsors shall prepare and submit to the Board reports verifying completion of a continuing education course for each licensee who satisfactorily completes the course according to the criteria in Rule .1305 of this Section and who

desires continuing education credit for the course. The reports shall be completed on forms prescribed by the Board. Sponsors shall submit these reports to the Board in a manner that will assure receipt by the Board within 15 calendar days following the course, but in no case later than September 10 for courses conducted before that date.

(b) Course sponsors shall provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course on a form prescribed by the Board. Sponsors shall submit the completed evaluation forms to the Board along with the reports that verify completion of a continuing education course.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course according to the criteria in Rule .1305 of this Section a course completion certificate on a form prescribed by the Board. Sponsors shall provide the certificates to licensees within 15 calendar days following the course, but in no case later than September 10 for any course completed before that date. The certificate may be retained by the licensee as proof of having completed the course.

(d) When a licensee does not comply with the participation standards in Rule .1347 of this Section, the course sponsor shall advise the Board of this matter in writing at the time the sponsor submits the reports verifying completion of continuing education for the course. The sponsor who determines that a licensee failed to comply with either the Board's attendance or student participation standards in Rules .1305 and .1347 of this Section 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. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1332 PER STUDENT FEE

Following completion of any approved continuing education update or elective course, the sponsor shall submit to the Board, along with the roster and the items required to be submitted by Rule .1331 of this Section, a fee in the amount of three dollars and fifty cents (\$3.50) per credit hour for each licensee who satisfactorily completes the course according to the criteria in Rule .1305 of this Section. Fees paid by check or money order shall be made payable to the Home Inspector Licensure Board. The sponsor shall make a separate fee payment for each separate class session.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1333 CHANGE IN SPONSOR OWNERSHIP

The approval granted to a course sponsor may be transferred to a new or different person only with the prior approval of the Board. The Board shall approve the transfer if the transferee satisfies the requirements of the rules in this Section. If the ownership of an approved course sponsor is to be sold or otherwise changed, the sponsor shall obtain Board approval of the ownership change. The Board shall approve the ownership change if the proposed new owner satisfies the requirements of the rules in this Section.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1334 SPONSOR CHANGES DURING APPROVAL PERIOD

(a) Course sponsors shall give prior written notice to the Board in writing of any change in business name, continuing education coordinator, address, or business telephone number.

(b) Course sponsors shall obtain prior approval from the Board for any proposed changes in the content or number of hours for elective courses. The Board shall approve the changes if the changes satisfy the requirements of the rules in this Section. Changes in course content that are solely for the purpose of assuring that information provided in a course is current and accurate do not require approval during the approval period, but shall be reported at the time the sponsor requests renewal of course approval. Requests for approval of changes shall be in writing.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1336 RENEWAL OF COURSE AND SPONSOR APPROVAL

(a) Board approval of all continuing education elective courses and of update course sponsors expires on the next September 30 following the date of issuance. In order to assure continuous approval, renewal applications shall be accompanied by the prescribed renewal fee and filed on a form prescribed by the Board on or before July 31 of each year. Any incomplete renewal application received on or before July 30 that is not completed within 10 days after notice of the deficiency, as well as any renewal application received after July 31, shall not be accepted; and the sponsor shall file an application for original approval on or after October 1 in order to be reapproved. Applicants for renewal of approval shall satisfy the criteria for original approval. When the Board issues original course or sponsor approval with an effective date between July 1 and September 10, the deadline for submittal of renewal applications shall be September 10 of the year in which the original approval is issued.

(b) The fee for renewal of Board approval shall be seventy-five dollars (\$75.00) for each elective course. Fees paid by check or money order shall be made payable to the Home Inspector Licensure Board and are nonrefundable.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1342 CLASSES OPEN TO ALL LICENSEES

All class sessions of approved continuing education courses shall be open to all licensees on a first-come, first-served basis. The sponsor of a course that has a bona fide education or experience prerequisite may refuse admission to a licensee who does not satisfy the prerequisite. A sponsor may contract with an organization such as a home inspection firm, franchise, or trade organization to conduct approved continuing education courses for licensees affiliated with the firm, franchise, or organization. The sponsor shall allow licensees not affiliated with the firm,

franchise, or organization to enroll in any class session on a first-come, first-served basis.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1343 CLASSROOM FACILITIES

A classroom in which a course is provided shall:

- (1) accommodate all enrolled students;
- (2) be equipped with student desks, worktables with chairs, or other seating having a surface on which students can write;
- (3) have light, heat, cooling, ventilation, and, as needed, a public address system; and
- (4) be free of distractions that would disrupt class sessions.

Subparagraphs (2) and (3) of this Rule are not required if the course is conducted in a field setting.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1346 MONITORING ATTENDANCE

(a) Sponsors and instructors shall monitor attendance for the duration of each class session to assure that all students reported as satisfactorily completing a course according to the criteria in Rule .1305 of this Section have attended at least 90 percent of the scheduled credit hours. Students shall not be admitted to a class session after 10 percent of the scheduled credit hours have been conducted. A student shall not be allowed to sign a course attendance roster report, shall not be issued a course completion certificate, and shall not be reported to the Board as having completed a course unless the student fully satisfies the attendance requirement. Sponsors and instructors shall not make any exceptions to the attendance requirement for any reason.

(b) Sponsors shall assure that personnel in addition to the instructor are present during all class sessions to assist the instructor in monitoring attendance and performing the necessary administrative tasks associated with conducting a course. Sponsors shall provide one monitor for every 50 students attending a course. If a class size is 20 students or less, requirements for additional personnel are waived.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 08 .1347 STUDENT PARTICIPATION STANDARDS

(a) In addition to requiring student compliance with the attendance requirement, sponsors and instructors shall require that students comply with the following student participation standards:

- (1) A student shall direct his or her attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
- (2) A student shall refrain from engaging in any activities that are distracting to other students or the instructor, or that otherwise disrupt the orderly conduct of a class.

(3) A student shall comply with all instructions provided by the sponsor or instructor related to providing information needed to properly report completion of a course by the student.

(b) Instructors and sponsors may dismiss from a class session any student who fails to comply with the student participation standards prescribed in Paragraph (a) of this Rule.

(c) Sponsors shall not issue a course completion certificate to any student who fails to comply with the student participation standards set forth in Paragraph (a) of this Rule, nor shall a sponsor include the name of that student on a report verifying completion of a continuing education course. A sponsor shall submit to the Board with the report for the class session a written statement that includes the name and license number of the student for whom the sponsor does not report course credit, details concerning the student's failure to comply with the student participation standards, and names of other persons in attendance at the class who witnessed the student's conduct.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.

11 NCAC 11A .0514 SEASONING REQUIREMENTS

No person responsible for rendering an audited financial report may act in that capacity for more than seven consecutive years. Following that period of service the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner shall consider the following factors in determining if the relief shall be granted:

- (1) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
- (2) Premium volume of the insurer; or
- (3) Number of jurisdictions in which the insurer transacts business.

History Note: Authority G.S. 58-2-40; 58-2-205; Temporary Adoption Eff. October 1, 2000; Eff. July 1, 2002.

11 NCAC 11A .0515 NOTES TO FINANCIAL STATEMENTS

The notes to financial statements required in 11 NCAC 11A .0504(b)(6)(A) shall be those required by the appropriate NAIC Annual Statement Instructions and NAIC Accounting Practices and Procedures Manual, including subsequent amendments and editions, which are incorporated into this Rule by reference. These publications are available for inspection in the Financial Evaluation Division of the Department and may be purchased from the National Association of Insurance Commissioners for a cost of two hundred fifteen dollars (\$215.00) and two hundred twenty-five dollars (\$225.00) respectively. The address and telephone number of the NAIC are: NAIC Executive Headquarters, 2301 McGee, Suite 800, Kansas City, MO 64108-2604, (816) 842-3600.

History Note: Authority G.S. 58-2-40; 58-2-205; Temporary Adoption Eff. October 1, 2000;

Eff. July 1, 2002.

History Note: Authority G.S. 74D-2; 74D-5;

Eff. May 1, 1999.

Amended Eff. June 30, 2002.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 07D .0102 LOCATION

The administrative offices of the Private Protective Services Board are located at 1631 Midtown Place, Suite 104, Raleigh, North Carolina 27609, telephone (919) 875-3611.

History Note: Authority G.S. 74C-4; 74C-5;
Eff. June 1, 1984;
Amended Eff. March 1, 2001; December 1, 1993;
December 1, 1987.

12 NCAC 11 .0102 LOCATION

The administrative offices of the Alarm Systems Licensing Board are located 1631 Midtown Place, Suite 104, Raleigh, North Carolina 27609, telephone (919) 875-3611.

History Note: Filed as a Temporary Rule Eff. January 9, 1984 for a Period of 120 Days to Expire on May 7, 1984;
Authority G.S. 74D-4; 74D-5
Eff. May 1, 1984;
Amended Eff. March 1, 2001; December 1, 1993;
August 1, 1988.

12 NCAC 11 .0504 NON-RESIDENT LICENSEE OR REGISTRANT CONTINUING EDUCATION CREDITS

A non-resident licensee or registrant shall obtain the required continuing education credits as set forth in 12 NCAC 11 .0503. If a non-resident licensee or registrant resides in a state that requires continuing education for an alarm systems business license, then the continuing education courses to be offered in the state of residence may be considered by the North Carolina Alarm Systems Licensing Board for sanctioning in North Carolina on an individual course basis. In determining if the course is to be sanctioned, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective.

History Note: Authority G.S. 74D-2; 74D-5;
Eff. May 1, 1999;
Amended Eff. June 30, 2002.

12 NCAC 11 .0505 RECORDING AND REPORTING CONTINUING EDUCATION CREDITS

Each licensee shall be responsible for recording and reporting continuing education credits to the Board at the time of license or registration renewal, and for each course taken such report shall include a certificate of course completion that is signed by at least one course instructor, indicates the name of the licensee or registrant that completed the course, indicates the date of course completion, and indicates the number of hours taken by the licensee or registrant. Credit will not be given if a certificate of course completion is dated more than two years from the license or registration permit renewal date. Each course instructor shall be required to maintain a course roster. Said roster shall be delivered to the Board's office within two weeks of the completion date of the course.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02E .0501 DECLARATION AND DELINEATION OF CENTRAL COASTAL PLAIN CAPACITY USE AREA

The area encompassed by the following 15 North Carolina counties and adjoining creeks, streams, and rivers is hereby declared and delineated as the Central Coastal Plain Capacity Use Area: Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne and Wilson. The Environmental Management Commission finds that the use of ground water requires coordination and limited regulation in this delineated area for protection of the public interest. The intent of this Section is to protect the long term productivity of aquifers within the designated area and to allow the use of ground water for beneficial uses at rates which do not exceed the recharge rate of the aquifers within the designated area.

History Note: Authority G.S. 143-215.13;
Eff. August 1, 2002.

15A NCAC 02E .0503 PRESCRIBED WATER USE REDUCTIONS IN CRETACEOUS AQUIFER ZONES

Cretaceous aquifer water use shall be reduced in prescribed areas over a 16 year period, starting from approved base rates on the effective date of this Rule. The Cretaceous aquifer system zones and the three phases of water use reductions are listed as follows:

- (1) Cretaceous aquifer system zones are regions established in the fresh water portion of the Cretaceous aquifer system that delimit zones of salt water encroachment, dewatering and declining water levels. These zones are designated on the paper and digital map entitled "Central Coastal Plain Capacity Use Area Cretaceous Aquifer Zones" (CCPCUA) on file in the Office of the Secretary of State one week prior to the effective date of these Rules.
- (2) The reductions specified in this Rule do not apply to intermittent users.
- (3) If a permittee implements an aquifer storage and recovery program (ASR), reduction requirements will be based on the total net withdrawals. The reductions specified in this Rule do not apply if the volume of water injected into the aquifer is greater than the withdrawal volume. If the withdrawal volume is greater than the injected volume, reductions specified in this Rule apply to the difference between the withdrawal volume and the injected volume.

- (4) The reductions specified in this Rule shall not reduce permitted water use rates below 100,001 gallons per day.
- (5) Phase definitions:
- (a) Phase I: The six year period extending into the future from the effective date of this Rule.
- (b) Phase II: The five year period extending into the future from six years after the effective date of this Rule to 11 years after the effective date of this Rule.
- (c) Phase III: The five year period extending into the future from 11 years after the effective date of this Rule to 16 years after the effective date of this Rule.
- (6) Phase reductions:
- (a) Phase I:
- (i) At the end of the Phase I, permittees who are located in the dewatering zone shall reduce annual water use from Cretaceous aquifers by 25% from their approved base rate.
- (ii) At the end of the Phase I, permittees who are located in the salt water encroachment zone shall reduce annual water use from Cretaceous aquifers by 25% from their approved base rate.
- (iii) At the end of the Phase I, permittees who are located in the declining water level zone shall reduce annual water use from Cretaceous aquifers by 10% from their approved base rate.
- (b) Phase II:
- (i) At the end of the Phase II, permittees who are located in the dewatering zone shall reduce annual water use from Cretaceous aquifers by 50% from their approved base rate.
- (ii) At the end of the Phase II, permittees who are located in the salt water encroachment zone shall reduce annual water use from Cretaceous aquifers by 50% from their approved base rate.
- (iii) At the end of the Phase II, permittees who are located in the declining water level zone shall reduce annual water use from Cretaceous aquifers by 20% from their approved base rate.
- (c) Phase III:
- (i) At the end of the Phase III, permittees who are located in the dewatering zone shall reduce annual water use from Cretaceous aquifers by 75% from their approved base rate.
- (ii) At the end of the Phase III, permittees who are located in the salt water encroachment zone shall reduce annual water use from Cretaceous aquifers by 75% from their approved base rate.
- (iii) At the end of the Phase III, permittees who are located in the declining water level zone shall reduce annual water use from Cretaceous aquifers by 30% from their approved base rate.
- (7) The CCPCUA Cretaceous Aquifer Zones map shall be updated, if necessary, in the sixth, eleventh, and sixteenth years following the effective date of this Rule to account for aquifer water level responses to phased withdrawal reductions. The map update shall be based on the following conditions:
- (a) Rate of decline in water levels in the aquifers;
- (b) Rate of increase in water levels in the aquifers;
- (c) Stabilization of water levels in the aquifers; and
- (d) Chloride concentrations in the aquifers.
- This aquifer information shall be analyzed on a regional scale and used to develop updated assessments of aquifer conditions in the Central Coastal Plain Capacity Use Area. The Environmental Management Commission (EMC) may adjust the aquifer zones and the water use reduction percentages for each zone based on the assessment of conditions. The EMC shall adopt the updated map and reduction percentage changes after public hearing.
- (8) The reductions specified in this Rule do not apply to wells exclusively screened or open to the Peedee aquifer.
- (9) An applicant may submit documentation supporting the exemption of a well located in the Declining Water Level Zone from the withdrawal reductions specified in this Rule. This documentation must include a record of monthly static water levels from that well over at least a three-year period, ending with the month when the request for exemption is submitted. The Director may exempt a well

from reductions if the water level history shows no pattern of decline during this three-year period. A well previously exempted from the withdrawal reductions shall become subject to the reduction if water levels begin to show a pattern of decline.

History Note: Authority G.S. 143-215.15; Eff. August 1, 2002.

15A NCAC 02E .0505 ACCEPTABLE WITHDRAWAL METHODS THAT DO NOT REQUIRE A PERMIT

(a) As of the effective date of this Rule, any person who is not subject to Rule .0502 of this Section and withdraws more than 10,000 gallons per day from surface or ground water in the Central Coastal Plain Capacity Use Area, shall register such withdrawals on a form supplied by the Division and comply with the following provisions:

- (1) Construct new wells such that the pump intake or intakes are above the top of the uppermost confined aquifer that yields water to the well. Confined aquifer tops are established in the hydrogeological framework;
- (2) Report surface and ground water use to the Division of Water Resources on an annual basis on a form supplied by the Division; and
- (3) Withdraw water in a manner that does not damage the aquifer or cause salt water encroachment or other adverse impacts.

(b) These requirements do not apply to withdrawals to supply an individual domestic dwelling.

(c) Agricultural water users may either register water use with the Division of Water Resources as provided in this Rule or provide the information to the North Carolina Department of Agriculture and Consumer Services.

History Note: Authority G.S. 143-215.14; 143-355(k); Eff. August 1, 2002.

15A NCAC 02E .0507 DEFINITIONS

The following is a list of definitions for terms found in Section .0500 of this Subchapter:

- (1) Approved base rate: The larger of a person's January 1, 1997 through December 31, 1997 or August 1, 1999 through July 31, 2000 annual water use rate from the Cretaceous aquifer system, or an adjusted water use rate determined through negotiation with the Division using documentation provided by the applicant of:
 - (a) water use reductions made since January 1, 1992;
 - (b) use of wells for which funding has been approved or for which plans have been approved by the Division of Environmental Health by the effective date of this Rule;
 - (c) the portion of a plant nursery operation using low volume micro-irrigation; or
 - (d) other relevant information.

- (2) Aquifer: Water-bearing earth materials that are capable of yielding water in usable quantities to a well or spring.
- (3) Aquifer storage and recovery program (ASR): Controlled injection of water into an aquifer with the intent to store water in the aquifer for subsequent withdrawal and use.
- (4) Confining unit: A geologic formation that does not yield economically practical quantities of water to wells or springs. Confining units separate aquifers and slow the movement of ground water.
- (5) Cretaceous aquifer system: A system of aquifers in the North Carolina coastal plain that is comprised of water-bearing earth materials deposited during the Cretaceous period of geologic time. The extent of the Cretaceous Aquifer System is defined in the hydrogeological framework and includes the Peedee, Black Creek, Upper Cape Fear and Lower Cape Fear aquifers.
- (6) Dewatering: Dewatering occurs when aquifer water levels are depressed below the top of a confined aquifer or water table declines adversely affect the resource.
- (7) Flat rates: Unit price remains the same regardless of usage within customer class.
- (8) Fresh water: Water containing chloride concentrations equal to or less than 250 milligrams per liter.
- (9) Gravel pack: Sand or gravel sized material inside the well bore and outside the well screen and casing.
- (10) Ground water: Water in pore spaces or void spaces of subsurface sediments or consolidated rock.
- (11) Hydrogeological framework: A three-dimensional representation of aquifers and confining units that is stored in Division data bases and may be adjusted by applicant supplied information.
- (12) Increasing block rates: Unit price increases with additional usage.
- (13) Intermittent users: Persons who withdraw ground water less than 60 days per calendar year or who withdraw less than 15 million gallons of ground water in a calendar year; or aquaculture operations licensed under the authority of G.S. 106-761 using water for the initial filling of ponds or refilling of ponds no more frequently than every five years.
- (14) Observation well: A non-pumping well screened in a particular aquifer where water levels can be measured and water samples can be obtained.
- (15) Pumping water level: The depth to ground water in a pumping well as measured from a known land surface elevation. Measurements shall be made four hours after pumping begins. Measurements shall be within accuracy limits of plus or minus 0.10 feet.

- (16) Quantity based surcharges: Surcharges billed with usage over a certain determined quantity.
- (17) Salt water: Water containing chloride concentrations in excess of 250 milligrams per liter.
- (18) Salt water encroachment: The lateral or vertical migration of salt water toward areas occupied by fresh water. This may occur in aquifers due to natural or man-made causes.
- (19) Seasonal rates: Unit prices change according to the season.
- (20) Static water level: The depth to ground water in a non-pumping well as measured from a known land surface elevation. Measurements shall be made after pumping has ceased for 12 hours. Measurements shall be within accuracy limits of plus or minus 0.10 feet.
- (21) Unaccounted for water: The difference between the total water entering the system (produced and purchased) and the total metered or otherwise accounted for water usage.
- (22) Water table: The water level in an unconfined aquifer.

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

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

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

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

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

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

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

- (1) acetone: 0.7
- (2) acenaphthene: 0.08

History Note: Authority G.S. 143-215.14; Eff. August 1, 2002.

15A NCAC 02L .0202 GROUNDWATER QUALITY STANDARDS

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

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

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

APPROVED RULES

(3)	acenaphthylene: 0.21	(55)	diethylphthalate (DEP): 5.0
(4)	acrylamide (propenamide): 0.00001	(56)	di(2-ethylhexyl) phthalate (DEHP): 0.003
(5)	anthracene: 2.1	(57)	2,4-dimethylphenol (m-xylene): 0.14
(6)	arsenic: 0.05	(58)	di-n-octyl phthalate: 0.14
(7)	atrazine and chlorotriazine metabolites: 0.0030	(59)	p-dioxane (1,4-diethylene dioxide): 0.007
(8)	barium: 2.0	(60)	dioxin: 2.2×10^{-10}
(9)	benzene: 0.001	(61)	diphenyl (1,1- diphenyl): 0.35
(10)	benzo(a)anthracene (benz(a)anthracene): 0.0000479	(62)	dissolved solids (total): 500
(11)	benzo(b)fluoranthene: 4.79×10^{-5}	(63)	disulfoton: 2.8×10^{-4}
(12)	benzo(k)fluoranthene: 4.79×10^{-4}	(64)	diundecyl phthalate (Santicizer 711): 0.14
(13)	benzo(g,h,i,)perylene: 0.21	(65)	endosulfan II (beta-endosulfan): 0.0420
(14)	benzo(a)pyrene: 4.79×10^{-6}	(66)	endrin: 0.002
(15)	boron: 0.32	(67)	endrin (total endrin: includes endrin, endrin aldehyde, and endrin ketone): 2.1×10^3
(16)	bromodichloromethane: 0.00056	(68)	epichlorohydrin (1-chloro-2,3-epoxypropane): 0.00354
(17)	bromoform (tribromomethane): 0.00019	(69)	ethylbenzene: 0.029
(18)	n-butylbenzene: 0.07	(70)	ethylene dibromide (EDB; 1,2-dibromoethane): 4.0×10^{-7}
(19)	sec-butylbenzene: 0.07	(71)	ethylene glycol: 7.0
(20)	tert-butylbenzene: 0.07	(72)	fluoranthene: 0.28
(21)	butylbenzyl phthalate: 0.10	(73)	fluorene: 0.28
(22)	cadmium: 0.005	(74)	fluoride: 2.0
(23)	caprolactam: 3.5	(75)	foaming agents: 0.5
(24)	carbofuran: 0.036	(76)	gross alpha (adjusted)particle activity (excluding radium-226 and uranium): 15 pCi/l
(25)	carbon disulfide: 0.7	(77)	heptachlor: 8.0×10^{-6}
(26)	carbon tetrachloride: 0.0003	(78)	heptachlor epoxide: 4.0×10^{-6}
(27)	chlordane: 2.7×10^{-5}	(79)	heptane: 2.1
(28)	chloride: 250.0	(80)	hexachlorobenzene (perchlorobenzene): 0.00002
(29)	chlorobenzene: 0.05	(81)	hexachlorocyclohexane isomers (total hexachlorocyclohexane: includes alpha,beta,delta,gamma, and epsilon isomers): 1.9×10^{-5}
(30)	chloroethane: 2.80	(82)	n-hexane: 0.42
(31)	chloroform (trichloromethane): 0.00019	(83)	indeno(1,2,3-cd)pyrene: 4.79×10^5
(32)	chloromethane (methyl chloride): 2.6×10^3	(84)	iron: 0.3
(33)	2-chlorophenol: 0.0001	(85)	isophorone: 0.0368
(34)	2-chlorotoluene: 0.14	(86)	isopropylbenzene: 0.070
(35)	chromium: 0.05	(87)	isopropyl ether (diisopropyl ether): 0.070
(36)	chrysene: 0.00479	(88)	lead: 0.015
(37)	cis -1,2-dichloroethene: 0.07	(89)	lindane: 2.0×10^4
(38)	coliform organisms (total): 1 per 100 milliliters	(90)	manganese: 0.05
(39)	color: 15 color units	(91)	mercury: 0.0011
(40)	copper: 1.0	(92)	metadichlorobenzene (1,3-dichlorobenzene): 0.62
(41)	cyanide: 0.154	(93)	methanol: 3.5
(42)	2, 4-D (2,4-dichlorophenoxy acetic acid): 0.07	(94)	methoxychlor: 0.035
(43)	dibenz(a,h)anthracene: 4.7×10^{-6}	(95)	methylene chloride (dichloromethane): 0.005
(44)	1,2-dibromo -3-chloropropane: 2.5×10^{-5}	(96)	methyl ethyl ketone (MEK; 2-butanone): 0.17
(45)	dichlorodifluoro methane (Freon-12; Halon): 1.4	(97)	2-methylnaphthalene: 0.0140
(46)	p,p'-dichlorodiphenyl dichloroethane (DDD): 1.4×10^{-4}	(98)	3-methylphenol (m-cresol): 0.0350
(47)	p,p'-dichlorodiphenyltrichloroethane (DDT): 1.0×10^{-4}	(99)	4-methylphenol (p-cresol): 3.5×10^{-3}
(48)	1,1-dichloroethane: 0.7	(100)	methyl tert-butyl ether (MTBE): 0.2
(49)	1,2-dichloroethane (ethylene dichloride): 0.00038	(101)	naphthalene: 0.021
(50)	1,1-dichloroethylene (vinylidene chloride): 0.007	(102)	nickel: 0.1
(51)	1,2-dichloropropane: 0.00056	(103)	nitrate: (as N) 10.0
(52)	1,3-dichloropropene (cis and trans isomers): 0.00019	(104)	nitrite: (as N) 1.0
(53)	dieldrin: 2.2×10^{-6}	(105)	N-nitrosodimethylamine: 7.0×10^{-7}
(54)	di-n-butyl (or dibutyl) phthalate (DBP): 0.7		

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| <p>(106) orthodichlorobenzene (1,2-dichlorobenzene): 0.62</p> <p>(107) oxamyl: 0.175</p> <p>(108) paradichlorobenzene (1,4-dichlorobenzene): 0.075</p> <p>(109) pentachlorophenol: 0.0003</p> <p>(110) petroleum aliphatic carbon fraction class C5 - C8: 0.42</p> <p>(111) petroleum aliphatic carbon fraction class C9 - C18: 4.20</p> <p>(112) petroleum aliphatic carbon fraction class C19 - C36: 42.0</p> <p>(113) petroleum aromatics carbon fraction class C9 - C22: 0.210</p> <p>(114) pH: 6.5 - 8.5</p> <p>(115) phenanthrene: 0.21</p> <p>(116) phenol: 0.30</p> <p>(117) phorate: 1.4×10^{-3}</p> <p>(118) n-propylbenzene: 0.070</p> <p>(119) pyrene: 0.21</p> <p>(120) radium-226 and radium-228 (combined): 5 pCi/l</p> <p>(121) selenium: 0.05</p> <p>(122) silver: 0.018</p> <p>(123) simazine: 0.004</p> <p>(124) styrene (ethenylbenzene): 0.1</p> <p>(125) sulfate: 250.0</p> <p>(126) tetrachloroethylene (perchloroethylene; PCE): 0.0007</p> <p>(127) 2,3,4,6-tetrachlorophenol: 0.210</p> <p>(128) toluene (methylbenzene): 1.0</p> <p>(129) toxaphene: 3.1×10^{-5}</p> <p>(130) 2, 4, 5,-TP (Silvex): 0.05</p> <p>(131) trans-1,2-dichloroethene: 0.07</p> <p>(132) 1,1,1-trichloroethane (methyl chloroform): 0.2</p> <p>(133) trichloroethylene (TCE): 0.0028</p> <p>(134) trichlorofluoromethane: 2.1</p> <p>(135) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113): 210.0</p> <p>(136) 1,2,3- trichloropropane: 5.0×10^{-6}</p> <p>(137) 1,2,4-trimethylbenzene: 0.350</p> <p>(138) 1,3,5-trimethylbenzene: 0.350</p> <p>(139) vinyl chloride (chloroethylene): 1.5×10^{-5}</p> <p>(140) xylenes (o-, m-, and p-): 0.53</p> <p>(141) zinc: 2.1</p> <p>(h) Class GSA Standards. The standards for this class shall be the same as those for Class GA except as follows:</p> <p>(1) chloride: allowable increase not to exceed 100 percent of the natural quality concentration.</p> <p>(2) total dissolved solids: 1000 mg/l.</p> <p>(i) Class GC Waters.</p> <p>(1) The concentrations of substances which, at the time of classification exceed the standards applicable to Class GA or GSA groundwaters shall not be caused to increase, nor shall the concentrations of other substances be caused to exceed the GA or GSA standards as a result of further disposal of contaminants to or beneath the surface of the land within the boundary of the area classified GC.</p> | <p>(2) The concentrations of substances which, at the time of classification, exceed the standards applicable to GA or GSA groundwaters shall not be caused to migrate as a result of activities within the boundary of the GC classification, so as to violate the groundwater or surface water quality standards in adjoining waters of a different class.</p> <p>(3) Concentrations of specific substances, which exceed the established standard at the time of classification, shall be listed in Section .0300 of this Subchapter.</p> <p><i>History Note: Authority G.S. 143-214.1; 143B-282(a)(2); Eff. June 10, 1979; Amended Eff. August 1, 2002; November 1, 1994; October 1, 1993; September 1, 1992; August 1, 1989.</i></p> <p>15A NCAC 03J .0301 POTS</p> <p>(a) It is unlawful to use pots except during time periods and in areas specified herein:</p> <p>(1) From November 1 through April 30, except that all pots shall be removed from internal waters from January 24 through February 7. Fish pots upstream of U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 24 through February 7 removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 28 if it is determined that such waters are free of pots.</p> <p>(2) From May 1 through October 31, north and east of the Highway 58 Bridge at Emerald Isle:</p> <p>(A) In areas described in 15A NCAC 3R .0107(a);</p> <p>(B) To allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for or designate the areas described in 15A NCAC 3R .0107(b); or any part thereof, for the use of pots.</p> <p>(3) From May 1 through October 31 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.</p> <p>(b) It is unlawful to use pots:</p> <p>(1) in any navigation channel marked by State or Federal agencies; or</p> <p>(2) in any turning basin maintained and marked by the North Carolina Ferry Division.</p> <p>(c) It is unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow or hot pink. The owner shall always be identified on the attached buoy by</p> |
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using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) gear owner's current motorboat registration number; or
 - (2) gear owner's U.S. vessel documentation name; or
 - (3) gear owner's last name and initials.
- (d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.
- (e) It is unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths inch bar.
- (f) It is unlawful to use eel pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of 1 inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait.
- (g) It is unlawful to use crab pots in coastal waters unless each pot contains no less than two unobstructed escape rings that are at least 2 5/16 inches inside diameter and located in the opposite outside panels of the upper chamber of the pot. Peeler pots with a mesh size less than 1 1/2 inches shall be exempt from the escape ring requirement. The Fisheries Director may, by proclamation, exempt the escape ring requirement in order to allow the harvest of peeler crabs or mature female crabs and may impose any or all of the following restrictions:

- (1) Specify areas, and
- (2) Specify time.

(h) It is unlawful to use more than 150 pots per vessel in Newport River.

(i) It is unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.

(j) User Conflicts:

- (1) The Fisheries Director may, with the prior consent of the Marine Fisheries Commission, by proclamation close any area to the use of pots in order to resolve user conflict. The Fisheries Director shall hold a public meeting in the affected area before issuance of such proclamation.
- (2) Any person(s) desiring to close any area to the use of pots may make such request in writing addressed to the Director of the Division of Marine Fisheries. Such requests shall contain the following information:
 - (A) A map of the proposed closed area including an inset vicinity map showing the location of the proposed closed area with detail sufficient to permit on-site identification and location;
 - (B) Identification of the user conflicts causing a need for closing the area to the use of pots;
 - (C) Recommended method for resolving user conflicts; and
 - (D) Name and address of the person(s) requesting the closed area.

- (3) Person(s) making the requests to close an area shall present their request at the public meeting.
 - (4) The Fisheries Director shall deny the request or submit a proposed proclamation granting the request to the Marine Fisheries Commission for their approval.
 - (5) Proclamations issued closing or opening areas to the use of pots under Paragraph (j) of this Rule shall suspend appropriate rules or portions of rules under 15A NCAC 03R .0107 as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule as of the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under Paragraph (j) of this Rule.
- (k) It is unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

History Note: Authority G S. 113-134; 113-173; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. August 1, 1998; May 1, 1997; March 1, 1996; March 1, 1994; October 1, 1992; September 1, 1991; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. September 1, 2000; Amended Eff. August 1, 2002.

15A NCAC 030 .0302 AUTHORIZED GEAR

(a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:

- (1) One seine 30 feet or over in length but not greater than 100 feet with a mesh length less than 2 ½ inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may only be used to transport the seine;
- (2) One shrimp trawl with a headrope not exceeding 26 feet in length per vessel. Mechanical methods for retrieving the trawl are not authorized for recreational purposes, including but not limited to, hand winches and block and tackle;
- (3) With or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;
- (4) One multiple hook or multiple bait trotline up to 100 feet in length;
- (5) Gill Nets:
 - (A) Not more than 100 yards of gill nets with a mesh length equal to or greater than 2 ½ inches except as provided in (5)(C) of this Rule. Attendance is required at all times;

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- (B) Not more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ inches except as provided in (5)(C) of this Rule. Attendance is required when used from one hour after sunrise through one hour before sunset; and
- (C) Not more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on board, a maximum of 200 yards may be used from a vessel;
- (D) It is unlawful to possess aboard a vessel more than 100 yards of gill nets with a mesh length less than 5 ½ inches and more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on board. It is unlawful to possess aboard a vessel more than 200 yards of gill nets with a mesh length less than 5 ½ inches and more than 200 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on board.

- (6) A hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304.

(b) It is unlawful to use more than the quantity of authorized gear specified in Subparagraphs (a)(1) - (a)(6) of this Rule, regardless of the number of individuals aboard a vessel possessing a valid Recreational Commercial Gear License.

(c) It is unlawful for a person to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.

(d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

History Note: Filed as a Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 113-134; 113-173; Eff. February 1, 1995; Temporary Amendment Eff. August 1, 1999; July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. August 1, 2000; Amended Eff. August 1, 2002.

**15A NCAC 030 .0503 PERMIT CONDITIONS;
SPECIFIC**

(a) Horseshoe Crab Biomedical Use Permit:

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

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

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

- transaction for the fishery for which a dealer is permitted occurred;
- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
- (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area for Striped Bass which is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 35° 55.1602' N – 75° 39.5736' W to Rhodoms Point 36° 00.2146' N – 75° 43.6399' W and east of a line from Eagleton Point 36° 01.3178' N – 75° 43.6585' W; to Long Point 36° 02.4971' N – 75° 44.2261' W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W across to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W;
 - (iii) Central Area which is defined as all internal coastal waters of Carteret, Craven, Beaufort, and Pamlico counties; White Oak and Pungo rivers; and Pamlico Sound south of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W (southern boundary of the Albemarle Sound Management Area for Striped Bass) to the county boundaries;
 - (iv) Southern Area which is defined as all internal coastal waters of Pender, Onslow, New Hanover, and Brunswick counties.
- (B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 35° 55.1602' N – 75° 39.5736' W to Rhodoms Point 36° 00.2146' N – 75° 43.6399' W and east of a line from Eagleton Point 36° 01.3178' N – 75° 43.6585' W to Long Point 36° 02.4971' N – 75° 44.2261' W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48.3693'

N – 75° 43.7232' W, to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W across to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W.

- (4) Atlantic Ocean Flounder Dealer Permit:
 - (A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location must be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
 - (B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (5) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining an Atlantic Ocean American Shad Dealer Permit.
- (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
 - (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7' N latitude) to Rich's Inlet (34° 17.6' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
 - (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
 - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.

- (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
- (5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.
- (e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 03J .0107.
- (f) Aquaculture Operations/Collection Permits:
 - (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
 - (2) It is unlawful:
 - (A) To take marine and estuarine resources from coastal waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
 - (B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
 - (C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.
 - (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and 03K .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
 - (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
 - (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who shall be acting under an Aquaculture Collection Permit at the time of application.
- (g) Scientific or Educational Collection Permit:
 - (1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.

- (2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. Such reports shall be filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.
- (3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
 - (A) without the required license(s) for such sale;
 - (B) to anyone other than a licensed North Carolina fish dealer; and
 - (C) without authorization stated on the permit for such sale.
- (4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who shall be acting under Scientific or Educational Collection Permits at the time of application.
- (5) The permittee or designees utilizing the permit must call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.

bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.

- (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species unless adequate mitigation measures are incorporated into project design, as set forth in Rule .0306(I) of this Section.
- (F) Project construction shall be timed to minimize adverse effects on biological activity.
- (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access to a substantial population on a barrier island; that is vital to public safety; and is imminently threatened by erosion;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to protect an historic site of national significance, which is imminently threatened by shoreline erosion; and
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52; Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000; Eff. April 1, 2001; Amended Eff. August 1, 2002.

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

- (a) Ocean Shoreline Erosion Control Activities:
 - (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include, but are not limited to: bulkheads; seawalls; revetments; jetties; groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) All permitted oceanfront erosion response projects, other than beach

- (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
- (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel; and
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel; and
 - (iv) the structure will not result in substantial adverse impacts to fisheries or other public trust resources; and
 - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (K) Proposed erosion response measures using innovative technology or design will be considered as experimental and will be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure will be considered to be imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
 - (F) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five

years if it is protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project as of October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:

- (i) been issued a CAMA permit, where necessary, approving such project, or
 - (ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary, or
 - (iii) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension; otherwise they must be removed by May 1, 2000 pursuant to Part (N) of this Subparagraph.
- (G) Once the temporary erosion control structure is determined to be

unnecessary due to relocation or removal of the threatened structure, or beach nourishment, it must be removed by the property owner within 30 days.

- (H) Removal of temporary erosion control structures may not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.
- (I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- (K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (L) An imminently threatened structure may be protected only once, regardless of ownership. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
 - (i) a building and septic system shall be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) of this Subparagraph.
- (M) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) of this Subparagraph.
- (N) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in

- place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
 - (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
 - (A) The area on which this activity is being performed must maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
 - (B) The activity must not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
 - (C) Movement of material from seaward of the low water line will require a CAMA Major Development and State Dredge and Fill Permit;
 - (D) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on natural or cultural resources;
 - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:
- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
 - (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.
 - (4) Sand used to establish or strengthen dunes must be of the same general characteristics as the sand in the area in which it is to be placed.
 - (5) No new dunes shall be created in inlet hazard areas.
 - (6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.
 - (7) No disturbance of a dune area will be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.
- (c) Structural Accessways:
- (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner which entails negligible alteration on the primary dune. Structural accessways may not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
 - (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is less than six feet in width; and
 - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
 - (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.
 - (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras

ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.

(d) **Building Construction Standards.** New building construction and substantial improvements (increases of 50 percent or more in value on square footage) to existing building construction shall comply with the following standards:

- (1) In order to avoid unreasonable danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100 year storm. Any building constructed within the ocean hazard area shall comply with the North Carolina Building Code including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume I or Section 39, Volume 1-B and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five feet below mean sea level.
- (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100 year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

History Note: Filed as a Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989;
Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-124;
Eff. June 1, 1979;
Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;
RRC Objection Eff. November 19, 1992 due to ambiguity;
RRC Objection Eff. January 21, 1993 due to ambiguity;
Amended Eff. March 1, 1993; December 28, 1992;
RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. August 1, 2002.

15A NCAC 07H .1705 SPECIFIC CONDITIONS

(a) **Temporary Erosion Control Structures in the Ocean Hazard AEC.**

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure will be considered to be imminently threatened if its foundation, septic system, or, right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is not obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.
- (3) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (4) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (5) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
- (6) The permittee shall be responsible for the removal of remnants of all or portions of any damaged temporary erosion control structure.
- (7) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later, regardless of the size of the structure it is protecting if the community in which it is

located is actively pursuing a beach nourishment project as of October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:

- (A) been issued a CAMA permit, where necessary, approving such project, or
 - (B) an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary, or
 - (C) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (1) through (15) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension: otherwise they must be removed by May 1, 2000 pursuant to Part (15) of this Subparagraph.
- (8) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure or beach nourishment, it must be removed by the permittee within 30 days.
 - (9) Removal of temporary erosion control structures shall not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.
 - (10) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
 - (11) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
 - (12) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
 - (13) An imminently threatened structure may only be protected once regardless of ownership. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (7) shall begin at

the time the initial erosion control structure is installed. For the purpose of this rule:

- (i) a building and septic system will be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (7) of this Rule.
- (14) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (7) of this Rule.
 - (15) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Subparagraphs (7), (8) and (9) of this Paragraph with the pertinent time periods beginning on May 1, 1995.
- (b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:
- (1) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
 - (2) the erosion control structure shall be located no more than 20 feet waterward of the endangered structure;
 - (3) fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.
- (c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.
- (1) Work permitted by this general permit shall be subject to the following limitations:
 - (A) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
 - (B) the erosion control structure shall be located no more than 20 feet waterward of the endangered structure;
 - (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors

- (D) will be considered in accordance with standards in 15A NCAC 7H .0208; all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.

- (2) This permit only authorizes the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

History Note: Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1; Eff. November 1, 1985; Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995; Temporary Amendment Eff. July 3, 2000; May 22, 2000; Amended Eff. August 1, 2002.

15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION

- (a) New dredge and fill permits and CAMA permits, excepting beach bulldozing when authorized through issuance of a CAMA minor permit, shall expire on December 31 of the third year following the year of permit issuance.
- (b) Pursuant to Subparagraph (a) of this Rule, a minor permit authorizing beach bulldozing shall expire 30 days from the date of permit issuance when issued to a property owner(s). Following permit expiration, the applicant is entitled to request an extension in accordance with Rule .0404(a) of this Section.
- (c) Development After Permit Expiration Illegal. Any development done after permit expiration shall be considered unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development to be done after permit expiration shall require either a new permit, or renewal of the original permit according to 15A NCAC 7J .0404 with the exception of Paragraph (e) of this Rule.
- (d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback requirement can be established. When the possessor of a permit or a ruling of exception is ready to begin construction, he shall arrange a meeting with the appropriate permitting authority at the site to determine the oceanfront setback. This setback determination shall replace the one done at the time the permit was processed and approved and construction must begin within a period of 60 days from the date of that meeting. In the case of a major shoreline change within that period a new setback determination will be required before construction begins. Upon completion of the measurement, the permitting authority will issue a written statement to the permittee certifying the same.
- (e) Continuation of Development in the Ocean Hazard AEC. Once development has begun under proper authorization, development in the Ocean Hazard AEC may continue beyond the authorized development period if, in the opinion of the

permitting authority, substantial progress has been made and is continuing according to customary and usual building standards and schedules. In most cases, substantial progress begins with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection.

(f) Any permit that has been suspended pursuant to G.S. 113A-121.1 as a result of a contested case petition or by order of superior court for a period longer than six months shall be extended at the applicant's written request for a period equivalent to the period of permit suspension, but not to exceed the development period authorized under Paragraph (a) of this Rule.

(g) An applicant may voluntarily suspend development under an active permit that is the subject of judicial review by filing a written notice with the Department once the review has started. An applicant shall obtain an extension of said permit if the permitting authority finds:

- (1) That the applicant notified the permitting authority in writing of the voluntary suspension;
- (2) The period during which the permit had been subject to judicial review is greater than six months;
- (3) The applicant filed a written request for an extension of the development period once the judicial review had been completed; and
- (4) The applicant undertook no development after filing the notice of suspension. The period of permit extension shall be equivalent to the length of the judicial review proceeding, but not to exceed the development period authorized under Paragraph (a) of this Rule.

History Note: Authority G.S. 113A-118; Eff. March 15, 1978; Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 02D .0612 PERMITS - HOUSE MOVES

- (a) Application for a permit shall be made by a licensed housemover for 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, restrictions, and limitations on house move permits shall be determined by the Division of Highways.

History Note: Authority G.S. 20-119; 20-360; 136-18(5); Eff. July 1, 1978; Amended Eff. November 1, 1993; October 1, 1991; April 1, 1984; January 1, 1979; Filed as a Temporary Rule Eff. October 1, 2000; Amended Eff. August 1, 2002.

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

(a) An oversize or overweight permit may be revoked and considered void by the State Highway Administrator or his designee upon inspection and written documentation that the permittee violated the terms and conditions of the permit, or state and local laws and ordinances regulating the operation of oversized and overweight vehicles. A permit may also be revoked or considered void if information on the permit application is misrepresented, if the permit is obtained fraudulently, if the permit is altered, or if the permit is used in an unauthorized manner. Permits may be revoked or considered void by the State Highway Administrator or his designee if the vehicle or vehicle combination is found by a law enforcement officer to be operating in violation of the authorized route of travel, time of movement, escort requirements, axle weights, number of axles, or any other special conditions of the permit that may damage North Carolina highway infrastructure or create unsafe travel conditions for the motoring public. A permit that is determined by the State Highway Administrator or his designee to be revoked or void must be surrendered without consideration for refund of fees to the law enforcement officer for delivery to the State Highway Administrator or his designee.

(b) No permit application shall be denied or renewal refused or an issued permit revoked or considered void until a verbal or written notice of the denial of permit request or revocation of the issued permit has been furnished to the permittee. The permittee may 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 shall 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 shall provide a written decision to the permittee within 10 days from the date of the informal hearing.

(c) An oversize or overweight permit application may be denied for a period of up to six months upon written documentation that the applicant operated in violation of any of the rules contained in this Section, or any state and local law or any rule or ordinance regulating the operation of oversize or overweight vehicles. Repeated violations may result in a permanent denial of the right to use the N.C. State Highway System of roads for transportation of oversize or overweight loads or vehicles.

History Note: Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346; 143B-350(f); Eff. July 1, 1978; Amended Eff. November 1, 1993; October 1, 1991; April 1, 1984; April 11, 1980; Filed as a Temporary Rule Eff. October 1, 2000; Amended Eff. August 1, 2002;

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

**CHAPTER 30 - NORTH CAROLINA BOARD OF
MESSAGE AND BODYWORK THERAPY**

21 NCAC 30 .0602 APPROVAL STANDARDS

(a) The following definitions shall apply to this Section:

- (1) Program. -- A course of study or curriculum consisting of a specified number hours of instruction consistent with the standards set forth in Paragraph (m) of this Rule, which is intended to teach adults the skills and knowledge necessary for the professional practice of massage and bodywork therapy, as defined in G.S. 90-622(3). Each program of a specified number of instructional hours shall be considered a separate program for the purposes of Board approval, and shall require a separate application for approval.
 - (2) Massage and bodywork therapy school. -- Any educational institution that conducts a program, as defined in this Rule, for a tuition charge. Such institutions may be organized as proprietary schools, which are privately owned and operated by a sole proprietor, partnership, corporation, association, or other entity; or may be post-secondary colleges or universities, whether publicly or privately owned.
 - (3) Instructor. -- A person who meets the qualifications set forth in Paragraph (e)(1) or (e)(2), of this Rule, who is responsible for delivering course content according to curricula established by the school, and who is responsible for managing the classroom environment.
 - (4) Teaching assistant. -- A person who meets the qualifications set forth in Paragraph (e)(3) or (e)(4), of this Rule, who is in the classroom to support the role of the instructor, and who may only provide instruction to students under the direct supervision of the instructor.
 - (5) One classroom hour of supervised instruction. -- At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of a member of the school's instructional staff.
- (b) Authority to operate.
- (1) A proprietary school shall provide documentation that it is licensed or approved by the educational regulatory authority in the state, territory or country in which it operates; or shall be exempt from licensure or approval by statute.
 - (2) A regionally accredited post-secondary institution within the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval to conduct such program from the State Board of Community Colleges or the University of North Carolina.
 - (3) A regionally accredited post-secondary institution outside the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval from the regulatory authority in the state, territory or country in which it operates.

APPROVED RULES

(c) Program director. One person shall be designated as the program director, and shall be qualified in accordance with the requirements listed in Paragraph (d)(2) of this Rule. This person may be titled as director, or in the case of programs at post-secondary institutions, department chair or program coordinator. The director is the person directly responsible for all facets of the program's operation, including: curriculum, methods of instruction, employment, training and evaluation of administrative and instructional staff, maintenance of proper administrative records, financial management, recruitment of students, and maintenance of school plant and equipment.

(d) Administrative staff and qualifications.

- (1) The school shall have administrative staff to support the number of students enrolled.
- (2) The program director or department chair shall have the following qualifications:
 - (A) Be a graduate of a regionally accredited college or university and hold a baccalaureate degree, or have at least five years of professional experience in the field of massage and bodywork therapy; and
 - (B) Have at least two years experience as an instructor in one or more of the major courses which are presented in the school's curriculum, or have at least two years experience in education administration.

Persons who possess qualifications which are equivalent to the requirements prescribed in Paragraphs (a) and (b) of this Rule may be approved individually by the Board.

- (3) Other administrative staff who oversee such areas as operations, education, admissions, financial aid, or student services, shall have the following qualifications:
 - (A) Be a high school graduate or its equivalent; and
 - (B) Have at least one year of professional experience in their area of their job responsibility, or have received training from the school sufficient to perform their defined job responsibilities.

(e) Instructional staff qualifications. The requirements of this Rule shall apply to instructors and teaching assistants who provide more than six instructional hours in the program. Instruction is provided by persons with appropriate education and experience as follows:

- (1) Instructors who teach courses related to the theory and practice of massage and bodywork therapy shall have the following qualifications:
 - (A) Have a minimum of two years of professional practice experience in, or have received training and certification in the subject area they teach;
 - (B) Have received training in teaching methods, which shall include:
 - (i) Presentation skills;

- (ii) Development and implementation of lesson plans;
- (iii) Dynamics of the teacher/student relationship;
- (iv) Management of the classroom environment;
- (v) Evaluation of student performance; and
- (vi) Orientation to the school's administrative policies and procedures;

(C) Have one of the following credentials:

- (i) Be licensed under the Practice Act; or
- (ii) For schools and instructors outside the State, hold a similar credential in massage and bodywork therapy; if no such credential is available, hold a valid certification from a certifying agency which is approved by the National Commission of Certifying Agencies; or
- (iii) Be a licensed physician, dentist, chiropractor, osteopath, registered nurse, physical therapist, occupational therapist, or acupuncturist.

(2) Instructors in all other courses in the curriculum shall have received training in teaching methods as defined in Subparagraph (b)(1) of this Rule, and shall have one of the following qualifications:

- (A) Have a minimum of two years of professional practice experience in, or have received training and certification in the subject area they teach; or
- (B) Have a minimum of 12 semester credit hours of academic course work in the subject area they teach from a regionally accredited post-secondary institution.

(3) Teaching assistants in courses related to the theory and practice of massage and bodywork therapy shall have one of the credentials listed in Subparagraph (e)(1)(C), of this Rule.

(4) Teaching assistants in all other courses in the curriculum shall have one of the following qualifications:

- (A) Have a minimum of one year of professional practice experience in, or have received training and certification in the subject area they teach; or
- (B) Have a minimum of six semester credit hours of academic course work

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- in the subject area they teach from a regionally accredited post-secondary institution.
- (f) Job descriptions and contracts.
- (1) The school shall have written job descriptions with performance standards for each administrative and instructional position on its staff.
 - (2) The school shall execute an employment agreement with each staff member, whether such staff member works in a full-time or part-time capacity, or is an employee or an independent contractor.
- (g) School plant and equipment.
- (1) The school plant, premises, and facilities shall be safe and sanitary and shall be in compliance with the statutory provisions and the rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation. Classrooms shall have sufficient lighting, ventilation, and temperature control to provide a comfortable environment for students .
 - (2) The equipment, supplies, and instructional materials of the school shall be adequate in type, quality, and amount for each course offered by the school. These shall also meet all requirements of statutory provisions, and rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation.
 - (3) The school shall have an annual inspection from the city or county agencies which determine compliance with requirements for fire, safety, health, and sanitation in its jurisdiction.
 - (4) For classes conducted in the practice of massage and bodywork therapy, the school shall provide a minimum of 70 square feet of classroom space per treatment table, exclusive of fixed items in the classroom. There shall be one therapy treatment table, adjustable in height, for every two students in such classes.
- (h) Financial management systems and economic stability.
- (1) Schools shall maintain financial management systems which assure safety, accountability and effective use of financial resources, and which provide accurate information for assessing the financial condition of the institution. This includes regular profit and loss statements, balance sheets, and an annual budget. The following standards shall be met:
 - (A) Generally accepted accounting principles are followed in the preparation of financial statements; and
 - (B) Accuracy and security of records is maintained.
 - (2) Schools shall be financed to ensure long term stability. The following standards shall be met:
 - (A) Income and reserves are sufficient to complete instruction of currently enrolled students while still meeting all requirements for Board approval;
 - (B) A ratio of assets to liabilities of at least 1:1 is maintained; and
 - (C) An annual independent review or audit of the school's financial statements is conducted by a Certified Public Accountant.
- (3) The Board may request a credit report on a school.
 - (4) The school shall maintain professional liability insurance to guarantee the fiscal viability of the school in the case of a claim of malpractice related to massage and bodywork therapy performed as a part of the school's instructional program.
- (i) Admissions.
- (1) The school shall maintain admission policies and procedures which are fully disclosed and which are administered consistently.
 - (2) Admissions standards are designed to ensure that only those students who have the ability to successfully complete the program will be admitted.
 - (3) The school shall maintain written documentation of the basis for admission of the student. Such records shall include copies of high school diploma or transcripts, proof of age, and other specific admission requirements of the school.
 - (4) Documentation is maintained, for a minimum of three years, of the reasons for the denial of admission of any student.
 - (5) A school is not precluded from enrolling students in individual courses not leading to a credential.
- (j) Tuition, refunds and financial aid.
- (1) The school shall fully and clearly disclose tuition and all related program costs to prospective students.
 - (2) Tuition policies shall be published in the school catalog or bulletin. Such policies shall address adjustment of charges in the case of:
 - (A) Cancellation of enrollment within 72 hours of signing an student enrollment agreement;
 - (B) Student withdrawal before the program start date;
 - (C) Student withdrawal after the program start date;
 - (D) Student dismissal; and
 - (E) Cancellation of program by the school.
 - (3) All students who enroll in the same program shall be charged the same amount for tuition. This does not preclude the school from raising tuition, from granting scholarships, from granting cash discounts to students for advance payment of tuition, or in the case of public institutions, from charging differential rates to residents and non-residents.

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- (4) The school shall maintain a refund policy as follows:
- (A) Proprietary schools shall base refunds on a percentage of the program actually completed by the student. At a minimum, such policy shall grant refunds up to and including the 25% point of the program. Refunds shall be calculated from the last date of attendance and made within 30 days of the date of termination or dismissal.
 - (B) Programs offered by post-secondary colleges or universities shall follow the refund policy set forth by their program's governing body or regulatory agency.
- (5) The school catalog or bulletin shall accurately describe any financial aid programs in which the school participates, and shall distinguish in meaning between the terms "scholarship," "grant," "loan," and "financial aid." Schools which administer Title IV funds shall also include in its catalog and all advertising an eligibility phrase such as, "Financial aid available for those who qualify." Schools that do not administer Title IV funds shall not use the term "financial aid."
- (k) Student records and academic progress.
- (1) The school shall maintain current, complete, and accurate records on each student. Such records shall show attendance, academic progress, grades, date entered, dates attended, courses studied, program completed, and date of graduation.
 - (2) Records shall be maintained in perpetuity, shall be stored in such a manner as to ensure their confidentiality, and shall be safe from theft, fire, or other possible loss.
 - (3) Students and graduates shall be allowed access to their records. Transcripts shall be released upon written request from students and graduates.
 - (4) All school policies, including those relating to satisfactory attendance, academic progress, and conduct shall be enforced. Students shall be notified when completion standards are not being met.
- (l) Educational credential issued to graduates; reporting of graduates' pass rate on national certification examination.
- (1) Upon completion of the program, the student is given a certificate, diploma, or degree stating that the educational requirements have been met and the program has been satisfactorily completed.
 - (2) Such credentials are only granted to students who have completed the entire program for which the student enrolled.
 - (3) The school shall authorize agencies which conduct national certification examinations which are accepted by the Board as meeting
- the requirement of G.S. 90-629(5) to report directly to the Board the pass rate of the school's graduates on such examinations.
- (m) Pursuant to G.S. 90-631(1), programs shall meet the following standards:
- (1) The school shall develop a set of educational objectives which describe the intended skills, knowledge, and attitudes which the program is designed to develop in the student by the completion of such program.
 - (2) The school shall offer a program consisting of a minimum of 500 classroom hours of supervised instruction. Such program shall contain the following hours of specific course work which are consistent with the school's mission and educational objectives:
 - (A) 200 hours in the fundamental theory and practice of massage and bodywork therapy, which shall include a minimum of 100 hours in application of hands-on methods; the balance of such hours shall include client assessment skills, indications and contraindications for treatment, body mechanics, draping procedures, standard practices for hygiene and control of infectious diseases, and the history of massage and bodywork therapy;
 - (B) 100 hours in anatomy and physiology, which shall include the structure and function of the human body and common pathologies;
 - (C) 50 hours in the following areas:
 - (i) 15 hours in professional ethics, and North Carolina laws and rules for the practice of massage and bodywork therapy;
 - (ii) 15 hours in business practices related to the field of massage and bodywork therapy; and
 - (iii) 20 hours in somatic psychology, including dynamics of the therapist/client relationship, communication skills, and boundary functions;
 - (D) 150 hours in other courses related to the practice of massage and bodywork therapy; such courses may include additional hands-on techniques, specific applications, adjunctive modalities, in-depth anatomy and physiology, kinesiology, psychology, movement education, or supervised clinical practice. First Aid or CPR may not be included in this category.

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- (3) For programs which include a student clinic or fieldwork experiential component, such hours do not exceed 100 hours of the minimum requirement set forth in Subparagraph (2)(d) of this Rule. All such work is directly supervised and evaluated by an instructional staff member.
 - (4) For programs which include an externship component, such hours shall not be included in the minimum requirements set forth in Subparagraph (2) of this Rule, and shall not comprise more than 20% of the total program hours. All such work is supervised by a designated person at the externship site, and is evaluated by the school.
 - (5) Programs shall consist of a series of courses which are organized in a logical sequence, and which are consistent with the educational objectives. Sequential organization means that within a course, each class prepares students for the next class; overall, each course gives students the skills and knowledge necessary for the next course. Material is not presented unless students have the necessary skills and knowledge to utilize that material safely and effectively.
 - (6) Course titles match the content of the course; published course descriptions accurately reflect the specific learning objectives of each course; sufficient hours are allotted to each course to allow students to gain competence in the subject areas covered.
 - (7) A course curriculum is developed for each course, which shows the basic content of each individual class in the course, in the sequence presented.
 - (8) Course requirements and competencies are consistent from instructor to instructor. Teaching materials, including detailed lesson plans, are developed and maintained for each course to ensure such consistency. Teaching methods are appropriate to course content, and to diverse learning styles.
 - (9) Programs shall be a minimum of six months in length, with no more than nine instructional hours in one day. There shall be no more than two hours of instruction without a break. There shall be no more than four hours of instruction without a meal break.
 - (10) For a student to receive credit in a course, the school shall require students to attend no less than 75% of the instructional hours, and to make up all missed instructional hours according to the procedures established by the school.
 - (11) A syllabus is developed for each course, and provided to students prior to the beginning of instruction. The syllabus shall include the following elements: course title, course description, learning objectives, total number of instructional hours, meeting dates and class times, assignments, textbooks, evaluation methods, quiz and examination dates, and performance standards.
 - (12) For post-secondary institutions, courses which fulfill the minimum requirements set forth in Subparagraph (2) of this Rule, shall support the program in massage and bodywork therapy. Courses in addition to the minimum requirements may include courses from other departments or programs which are directly relevant to the practice of massage and bodywork therapy.
- (n) Student to instructor ratios.
 - (1) For classes which involve hands-on practice, the student to instructor ratio shall not exceed 16 to 1.
 - (2) Both instructors and teaching assistants, as defined in Paragraph (a) of this Rule, shall be considered in calculating these ratios.
 - (o) Learning resources. The school shall provide sufficient learning resources to students and instructional staff to support the educational objectives of the program as follows:
 - (1) The school shall maintain a library or resource center which contains books, periodicals, and other informational materials in the field of massage and bodywork therapy. As an alternative, the school may have a contractual agreement with another facility to provide access to such resources.
 - (2) All other resources, such as charts, models, or videotapes, shall be maintained in good condition.
 - (p) Standards of professional behavior.
 - (1) Conduct by instructional staff and students shall follow the Standards of Practice set forth by the National Certification Board for Therapeutic Massage and Bodywork, and those standards set forth in Section .0500, of this Chapter.
 - (2) Nudity is not permitted where massage and bodywork therapy is taught or practiced. For the purpose of this section, "nudity" is defined as exposure of the genital or anal area for men or women, or the breast area for women. The only exception shall be for treatment to the breast area while utilizing therapeutic techniques.
 - (3) The school shall provide a private area where persons receiving therapeutic treatments may dress or undress, whether for in-class practice or treatments performed in a student clinic. As an alternative, the school may provide instruction to persons receiving therapeutic treatments in the procedure of undressing while on the treatment table under a full sheet covering.
 - (4) The requirements in Paragraphs (a) through (p) of this Rule shall apply to all classroom settings, as well as any location where instructional staff or students are demonstrating or delivering therapeutic

treatments as a part of course requirements, whether at the school or another location.

(q) Student compensation prohibited. A student enrolled in a Board-approved school shall not receive a fee or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation, whether or not the school charges a fee for services provided in a student clinic.

(r) Transfer of Credit. A school shall not grant transfer credit from another institution unless the following standards are met:

- (1) The school from where credit is being transferred shall be licensed or approved by the educational licensing authority in the state in which it operates, or be exempt by statute;
- (2) The school from where credit is being transferred shall provide an official transcript;
- (3) Courses for which credit is granted shall be parallel in content and intensity to the courses presently offered by the school; and
- (4) Documentation of previous training shall be included in each student's permanent file.

(s) Advanced placement. A school may only grant advanced placement to a student, or exempt the student from curriculum requirements, based on the student's performance on an examination which the school administers to determine competency in that subject area. Such advanced placement or exemption shall not exceed 35% of the total number of hours in the program.

(t) Ethical requirements in advertising. The following requirements pertain to all advertising and promotional activities conducted by, or on behalf of the school, including such media utilized as print, broadcast, verbal presentations, data transfer technologies, videotape, or audiotape:

- (1) Educational programs and services offered shall be the primary emphasis of all advertisements, publications, promotional literature, and recruitment activities, whether distributed to prospective students or the general public.
- (2) All statements and representations made shall be clearly worded, factually accurate, and current. Supporting information shall be kept on file and available for review. All advertising and promotional materials shall include the correct name and location of the school.
- (3) The school shall not falsely represent its facilities in photographs, illustrations, or through other means.
- (4) The school catalog or bulletin shall contain all information required in Paragraph (v) of this Rule.
- (5) All advertising and promotional activities shall clearly indicate that massage and bodywork training and not employment is being offered. No overt or implied claim of individual employment shall be made. No false or deceptive statements regarding employment opportunities or earning potential in the field of massage and bodywork as a result of the

completion of the course of study shall be used to solicit students.

(6) Letters of endorsement, commendation, or recommendation in favor of a school shall be used for advertising or promotion only with the written consent of the author without any offer of financial compensation, and only when such letters portray current conditions or facts. Letters shall contain the date they were received, shall be kept on file and be subject to inspection.

(7) Programs that use placement information in advertisements, catalogs or other printed documentation shall corroborate the data.

(8) School literature and advertisements shall not quote "high top" or "up to" salaries unless they also indicate the normal range or starting salaries for graduates.

(9) Schools offering programs which are not approved by the Board shall clearly identify which programs are Board approved.

(10) Schools shall accurately describe requirements for state licensure.

(11) The school shall not defame competitors by falsely imputing to them dishonorable conduct, inability to perform on contracts, or by the false disparagement of the character, nature, quality, values, or scope of their educational services, or in any other material respect.

(u) The school shall execute a Student Enrollment Agreement for training with every student. A copy of the executed agreement shall be provided to the student. At a minimum, such agreement shall contain the following:

- (1) Name and telephone number of the school; location of where the student will attend classes;
- (2) Student's name, address, telephone number, social security number;
- (3) Name of the program in which student is enrolling; number of clock or credit hours of the program; beginning and ending dates; length of program in weeks or months; expected graduation date;
- (4) Program tuition and all related costs, including application and registration fees, estimated cost of books and supplies;
- (5) Refund and cancellation policies, including buyer's right to cancel;
- (6) Payment methods, including cash, installment payment plans, or financial aid (as applicable); interest charged; methods used to collect delinquent tuition;
- (7) Placement guarantee disclaimer;
- (8) Grounds for dismissal from the school;
- (9) Statement referencing the school catalog and student handbook as a legal part of the enrollment agreement;
- (10) Statement certifying that student has read and understands all terms of the enrollment agreement; and
- (11) Signature lines for school official and student.

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(v) The school shall publish a catalog or bulletin which is certified by an authorized official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:

- (1) School name, location address, phone number;
- (2) Volume number and date of publication;
- (3) Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions;
- (4) Names and titles of all instructional and key administrative staff;
- (5) Statement of school mission, philosophy, and educational program objectives;
- (6) School history and identification of all licenses, approvals or accreditations which the school maintains;
- (7) Definition of measurement of program, whether in clock hours or credit hours;
- (8) Detailed course descriptions, including number of hours for each course;
- (9) Graduation requirements, including type of credential issued upon graduation;
- (10) Requirements for licensure, certification or registration of therapists in the state in which the school operates;
- (11) Standards for admission and description of the school's admissions process;
- (12) School calendar, including beginning and ending dates of all programs, all holidays and days off;
- (13) Length of time required for completion of the program;
- (14) Program tuition and all associated costs, including textbooks, supplies, and other expenses;
- (15) Refund policy;
- (16) Description of facilities and learning resources;
- (17) Student services; and
- (18) Academic policies, including the following:
 - (A) Grading system;
 - (B) Standards of satisfactory academic progress;
 - (C) Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance for students dismissed for unsatisfactory academic progress;
 - (D) Transfer of credit from other institutions;
 - (E) Attendance requirements, make-up work, tardiness, leave of absence;
 - (F) Standards of conduct, including a sexual harassment policy; and
 - (G) Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when

institutional process does not bring resolution.

(w) Notification of changes. An approved school shall notify the Board in writing within 30 days of any changes in administration, facilities, instructional staff, curriculum, or other changes that may effect the programs offered.

(x) Board approval not transferable.

- (1) In the event of the change of ownership of a school, the approval already granted to the original owner or operator thereof shall not be transferable to the new ownership or operators. Provided, however, the Board may issue temporary operating approval for a period of 90 days to a school upon its change of ownership if the school held a valid, current approval prior to the change, and if the Board finds that the school is likely to qualify after the change of ownership for approval under this Section.
- (2) For the purposes of this Paragraph, "change of ownership" is defined as, but not limited to the following situations:
 - (A) Sale of the school;
 - (B) Transfer of controlling interest of stock of the school or its parent corporation;
 - (C) Merger of two or more schools;
 - (D) Transfer of controlling interest of stock to parent corporation;
 - (E) Transfer of assets or liabilities of school to parent corporation or owners; or
 - (F) Change from profit to non-profit status.

(y) Initial application for Board approval. The school shall submit an application for approval on a form provided by the Board, which shall be accompanied by the following:

- (1) A certified check for the application fee set forth in Rule .0606 of this Section, made payable to the Board.
- (2) Completed personnel qualification forms on the school director, administrative staff, instructors, and teaching assistants, with photocopies of academic transcripts, degrees, diplomas, and professional licenses and certifications for each person.
- (3) Job descriptions for school director, administrative staff, instructors, and teaching assistants.
- (4) Examples of contracts for administrative and instructional staff.
- (5) Detail of ownership structure of the school, and organizational chart.
- (6) Facility plan, including detailed floor plans with dimensions and fixtures, uses of each room, specifications on lighting, ventilation, and temperature control.
- (7) Equipment list, including furniture, office equipment, and instructional equipment for classroom.

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- (8) Copy of deed if school owns its facility, or copy of lease if school does not own its facility.
- (9) Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval.
- (10) Statement of Financial Affirmation; copies of the school's financial statements for the previous fiscal year; letter from a Certified Public Accountant affirming that the school is in compliance with the requirements of Paragraph (h) of this Rule.
- (11) Copy of the application for admission which is submitted by prospective students; copies of materials used to document the admission process with applicants.
- (12) Copies of the forms used for documentation of attendance, missed class make-up work, student academic progress, grades earned, notification of unsatisfactory progress and notification of disciplinary action.
- (13) Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.
- (14) Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.
- (15) List of student to instructor ratios for each course offered.
- (16) List of learning resources provided by the school, including numbers of books, periodicals, and other informational materials in the school library.
- (17) Copies of all advertisements and promotional materials from the previous year, including website addresses and tapes of broadcast advertisements.
- (18) Copy of the Student Enrollment Agreement issued by the school.
- (19) Catalog Certification Form; copy of the current school catalog or bulletin, with accompanying student handbook (if applicable).
- (20) As applicable, copy of state license or approval to operate school, or citation of statutory exemption; copy of certificate of accreditation (if applicable).

(z) Application for Board approval of additional programs. An approved school shall submit an application for approval of an additional program on a form provided by the Board, which shall be accompanied by the following:

- (1) A certified check for the application fee set forth in Rule .0606 of this Section, made payable to the Board.
- (2) Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.

- (3) List of student to instructor ratios for each course offered.
- (4) Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.
- (5) Copy of the school catalog or bulletin which describes the additional program.
- (6) Complete documentation of any other requirement set forth in Paragraph (y) of this Rule, which is different than what the school documented in its initial application for approval, or what has been documented in its most recent application for renewal of approval.

*History Note: Authority G.S. 90-631;
Temporary Adoption Effective February 15, 2000;
Eff. August 1, 2002.*

TITLE 25 - OFFICE OF STATE PERSONNEL

25 NCAC 01E .1605 AGENCY POLICY

Each agency shall set forth a policy and procedure that shall be administered consistently and shall include:

- (1) Employees must receive approval from their supervisor to use this leave. The agency may require that the leave be taken at a time other than the one requested, based on the needs of the agency. The agency may require proof to the supervisor that leave taken is within the purpose of this policy.
- (2) If an employee transfers to another State agency, any balance of the community service leave not used shall be transferred to the new agency.
- (3) Leave not taken in a calendar year is forfeited; it shall not be carried over into the next calendar year.
- (4) Employees shall not be paid for this leave upon separation from State government.
- (5) Supervisors who approve community service leave shall maintain records indicating the number of employees involved and the number of hours used.

*History Note: Authority G.S. 126-4;
Eff. July 1, 2002.*

25 NCAC 01E .1606 ADDITIONAL TIME FOR COMMUNITY SERVICE ACTIVITIES

The agency may allow an employee additional time away from regular duties above the 24 hours of paid leave to perform community service activities with provisions for the employee to make up the time.

*History Note: Authority G.S. 126-4;
Eff. July 1, 2002.*

25 NCAC 01E .1607 SPECIAL LEAVE PROVISIONS

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(a) Agency heads are authorized to establish a policy providing time off with pay to employees participating in volunteer emergency and rescue services within a limited area around their workstation. Each agency head shall determine that a bonafide need for such services exists within a given area. A bonafide need is defined as real or eminent danger to life or property.

(b) Each policy shall require proof of the employee's membership in an emergency volunteer organization and that the performance of such emergency services will not unreasonably hinder agency activity for which the employee is responsible.

*History Note: Authority G.S. 126-4;
Eff. July 1, 2002.*

This Section contains the agenda for the next meeting of the Rules Review Commission on Wednesday, May 17, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Tuesday, May 11, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Paul Powell - Chairman
 Robert Saunders
 Laura Devan
 Jim Funderburke
 David Twiddy

Appointed by House

John Arrowood - 1st Vice Chairman
 Jennie J. Hayman 2nd Vice Chairman
 Walter Futch
 Jeffrey P. Gray
 George Robinson

RULES REVIEW COMMISSION MEETING DATES

May 17, 2001	June 14, 2001
July 19, 2001	August 16, 2001

**RULES REVIEW COMMISSION
 APRIL 19, 2001
 MINUTES**

The Rules Review Commission met on Thursday morning, April 19, 2001, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jennie Hayman, Jeffrey Gray, Laura Devan, John Arrowood, David Twiddy, George Robinson, Jim Funderburk, Robert Saunders and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Mike Lopazanski	Division of Coastal Management
Jessica Gill	Division of Coastal Management
W. Timothy Holmes	Department of Revenue
Jim Panton	Division of Medical Assistance
Ellen Sprenkel	Department of Insurance
Harry Wilson	State Board of Education
Emily Lee	Department of Transportation
Beth Leonard McKey	Department of Justice
Steve Varnedue	Department of Transportation
Fred Allen	NC Aggregates Association
Yvonne Bailey	Martin Marietta
Bill Lyke	Skelly & Loy
John Morris	Division of Water Resources
Elsie Roane	DHHS/Department Social Services
Juanita Gaskill	Marine Fisheries Division
George Hurst	Attorney General's Office
Dedra Alston	DENR
Judith Bell	Office of State Personnel
Portia Rochelle	DHHS/Department Medical Assistance
John Rug	Martin Marietta
Jim Hayes	DENR/Commission for Health Services
Kris Horton	Department Social Services

APPROVAL OF MINUTES

The meeting was called to order at 10:02 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the February 28, 2001, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

- 2 NCAC 34 .0502: Department of Agriculture Structural Pest Control Committee – The agency anticipates submitting a rewritten rule at the May meeting. No action was taken.
 - 7 NCAC 4S .0104: Department of Cultural Resources – The agency anticipates submitting a rewritten rule at the July meeting. No action was taken.
 - 11 NCAC 08 .1337: Home Inspector Licensure Board - The rewritten rule submitted by the agency was approved by the Commission.
 - 12 NCAC 11 .0502: NC Alarm Systems Licensing Board – The agency anticipates submitting a rewritten rule at the May meeting. No action was taken.
 - 15A NCAC 2E .0502: DENR/Environmental Management Commission – The Commission objected to this rule based on ambiguity. In (k), it is not clear what standards the Director will use in determining maximum well withdrawal rates, total use limits, and the permissible extent of dewatering or depressurization.
 - 15A NCAC 3J .0107: Marine Fisheries Commission - The rewritten rule submitted by the agency was approved by the Commission.
 - 15A NCAC 3O .0501: Marine Fisheries Commission – The rewritten rule submitted by the agency was approved by the Commission.
 - 15A NCAC 7J .0404: Coastal Resources Commission – The rewritten rule submitted by the agency was approved by the Commission.
 - 17 NCAC 7B .1303: Department of Revenue – The rewritten rule submitted by the agency was approved by the Commission. It contained a technical change that answered the Commission’s question and was originally intended to be made by the agency.
 - 19A NCAC 2D .0601: Department of Transportation – The Commission objected to this rule based on lack of statute authority. There is no authority to require a surety bond in the situation described in the last sentence in (b). Insurance would cover this type damage, not a surety bond. This objection applies to existing language in this rule.
 - 19A NCAC 2D .0607: Department of Transportation – The rewritten rule submitted by the agency was approved by the Commission. The meeting was adjourned at 11:25 a.m. for a short break. At this time we had to relocate meeting to different room in the building due to Assembly Room previously scheduled for another meeting at 12:00.
- The meeting reconvened at 11:35 a.m. in the North Carolina Veterinary Medical Board Conference Room, located in the Methodist Building, Suite 157.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

- 10 NCAC 26H .0506: DHHS/Division of Medical Assistance – The Commission objected to the rule due to ambiguity. In paragraph (b)(1) it is unclear what is to be done with the computation after “determining the estimated salary, fringes, direct supervision, and allowable overhead.” It is also unclear about the selection of the cost reporting period. In addition the following technical changes are needed: In (b)(1) at line 22 add “additional” before “personal care services....” In (c) delete “[t]hese” at the beginning of the paragraph.
- 10 NCAC 41S All Rules: DHHS/Social Services Commission – The Commission extended the period of review on these rules to determine whether there was a need for more consistent use of specified language, especially the use of “child care” and “child-care.”
- 10 NCAC 41S .0612: DHHS/Social Services Commission – The Commission objected to this rule due to ambiguity. In (e) it is unclear what constitutes an “older child.” It is also unclear what constitutes “moving toward self-support....”
- 10 NCAC 41S .0704: DHHS/Social Services Commission – The Commission objected to this rule due to ambiguity. In (g) it is unclear whether the rule applies to a facility with “seven or more residents” or a floor within the facility that has “seven or more residents” on the floor. In (h) it is unclear what constitutes “remotely-located exits.”
- 10 NCAC 41T .0106; .0201: DHHS/Social Services Commission – The Commission extended the period of review on these rules to determine whether there was a need for more consistent use of specified language, especially the use of “child care” and “child-care.”
- 15 NCAC 18A .3307: Commission for Health Services – The Commission objected to this rule due to ambiguity. In (a), it is not clear what utensils are appropriate. In (f), it is not clear what is meant by “regulated food manufacturing plants.” Any plant would be regulated by some agencies to some degree.
- 15 NCAC 18A .3312: DENR/Commission for Health Services - The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received.
- 15A NCAC 18A .3313: Commission for Health Services - The Commission objected this rule due to ambiguity. In (d), it is not clear what is meant by a “suitable testing method or equipment.” In (e), it is not clear what is meant by a “satisfactory operating condition.”
- 15A NCAC 18A .3319: Commission for Health Services - The Commission objected to this rule due to ambiguity. In (c) it is not clear what testing method or kit is “suitable.” It is also not clear what is meant by “properly labeled.”
- 15A NCAC 18A .3323: Commission for Health Services - The Commission objected to this rule due to ambiguity. In (d), it is not clear what is meant by “properly bandage.”

15A NCAC 18A .3324: Commission for Health Services - The Commission objected to this rule due to ambiguity. In (b), it is not clear what is meant by “properly installed” carpeting.

15A NCAC 18A .3327: Commission for Health Services - The Commission objected to this rule due to ambiguity. In (c), it is not clear what other means of separation will be approved by the Environmental Health Specialists.

15A NCAC 18A .3330: Commission for Health Services - The Commission objected to this rule due to lack of statutory authority and ambiguity. These rules will first become effective August 1, 2002. “Approved” is defined in rule .3301 as “procedures...determined by the Department to be in compliance with this section.” It is not clear how the Department is going to approve facilities as being in compliance prior to the rules effective dates and there is no authority for them to do so.

15A NCAC 18A .3331: Commission for Health Services - The Commission objected to this rule due to ambiguity. In (d), it is not clear what federal regulatory agency is considered the “appropriate federal regulatory agency.” In addition, in (c) and (d), the agency was requested to make clear that it means “manufacturer’s” labels.

15A NCAC 18A .3334: Commission for Health Services - The Commission objected to this rule due to lack of statutory authority and ambiguity. In (b), it is not clear how total demerit point scores are determined or what is meant by “6-dermerit-point items.” There is no authority cited to set these criteria by use of a form as this rule apparently does. In (b) (7), it is not clear what standards the Environmental Health Specialist will use in removing or instructing removal of a classification card.

16 NCAC 6E .0301: State Board of Education – The Commission objected to this rule due to ambiguity. In (a)(4), it is not clear what topics were previously listed in the Healthful Living Section of the Teacher Handbook. This is not appropriate material for incorporation by reference. In (a)(10), it is not clear when the State Board of Education previously allowed the program to be provided during the regular instructional day. This objection applies to existing language in the rule.

23 NCAC 2C .0308: State Board of Community Colleges – The Commission objected to the rule due to ambiguity and unnecessary. In (a)(4)(B)(ii), it is not clear what is required and what is only a recommendation. Recommendations are not rules and should not be included in the NC Administrative Code. The Commission also had questions in (a)(4)(B)(i) about whether this applied to local school boards or to local community colleges.

23 NCAC 2D .0202: State Board of Community Colleges – The Commission objected to the rule due to ambiguity. In (a)(7)(C), it is not clear when trainees are to be exempt from Basic Law Enforcement Training class tuition. It is also not clear who is an “appropriate” law enforcement agency. This objection applies to existing language in the rule.

COMMISSION PROCEDURES AND OTHER BUSINESS

Commission Jennie Hayman reminded the Commissioners to consider electronic method of payment for reimbursement of their travel and subsistence. She stated that it worked fine and recommended doing it.

Mr. DeLuca reported that Affordable Care, Inc., et al. refiled its lawsuit against NC State Board of Dental Examiner and NC Rules Review Commission. The only differences appear to be that the allegation about the rule’s effective date has been modified to reflect that the rule is now effective and the claims about federal constitutional violations have been dropped. The attorney general’s office is representing the RRC.

Mr. DeLuca distributed a memo to the commissioners from Thomas Wright concerning proposals to amend NCGS 126, the State Personnel Act. He also distributed the memo he sent to Mr. Wright in response. No further discussion or action was taken.

The next meeting will be on Thursday, May 17, 2001.
The meeting adjourned at 1:05 p.m.

Respectfully submitted,
Lisa Johnson

**Log of Filings (Log #175)
March 21, 2001 through April 20, 2001**

DHHS

Respite Care	10 NCAC 42B .2407	Adopt
Respite Care	10 NCAC 42C .2406	Adopt
Respite Care	10 NCAC 42D .1832	Adopt

DENR/MARINE FISHERIES COMMISSION

Snapper-Grouper	15 NCAC 03M .0506	Amend
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DENR/SOIL AND WATER CONSERVATION COMMISSION

Objectives	15 NCAC 06G .0101	Adopt
Eligibility	15 NCAC 06G .0102	Adopt

Conservation Plan	15 NCAC 06G .0103	Adopt
Approving State Agreements	15 NCAC 06G .0104	Adopt
Payment	15 NCAC 06G .0105	Adopt
Dispute Resolution	15 NCAC 06G .0106	Adopt
DENR/WILDLIFE RESOURCES COMMISSION		
Deer (White-Tailed)	15 NCAC 10B .0203	Amend
Quail	15 NCAC 10B .0208	Amend
Wild Turkey (Breaded Turkeys Only)	15 NCAC 10B .0209	Amend
Public Mountain Trout Waters	15 NCAC 10C .0205	Amend
Possession of Certain Fishes	15 NCAC 10C .0211	Amend
Open Seasons: Creel and Size Limits	15 NCAC 10C .0305	Amend
Manner of Taking Nongame Fishes: Purchase & Sale	15 NCAC 10C .0401	Amend
Taking Nongame Fishes for Bait	15 NCAC 10C .0402	Amend
Taking Nongame Fishes for Bait	15 NCAC 10C .0404	Amend
Permitted Specials Devices & Open Seasons	15 NCAC 10C .0407	Amend
Hunting on Gamelands	15 NCAC 10D .0103	Amend
Fishing on Gamelands	15 NCAC 10D .0104	Amend
McDowell County	15 NCAC 10F .0339	Amend
General Requirements	15 NCAC 10H .0301	Amend
Game Bird Propagation	15 NCAC 10H .0901	Amend
Special Concern Species Listed	15 NCAC 10I .0105	Amend
TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS		
Permits-Issuance and Fees	19 NCAC 02D .0602	Amend
STATE BOARDS/EXAMINERS OF ELECTRICAL CONTRACTORS		
Fees	21 NCAC 18B .0209	Amend
Annual License Fees	21 NCAC 18B .0404	Amend

AGENDA
RULES REVIEW COMMISSION
May 17, 2001

Call to Order and Opening Remarks

Review of minutes of last meeting

Follow Up Matters

- (A) Department of Agriculture Structural Pest Control Committee– 2 NCAC 34 .0502: Objection on 12/21/00 (DeLuca)
- (B) DHHS/Division of Medical Assistance - 10 NCAC 26H .0506: Objection on 04/19/01 (DeLuca)
- (C) DHHS/Social Services Commission - 10 NCAC 41S All Rules: Objected on 04/19/01 (DeLuca)
- (D) DHHS/Social Services Commission – 10 NCAC 41T .0106; .0201: Objected on 04/19/01 (DeLuca)
- (E) NC Alarm Systems Licensing Board – 12 NCAC 11 .0502: Objection on 02/28/01 (DeLuca)
- (F) DENR/Environmental Management Commission – 15A NCAC 2E .0502: Objection on 02/28/01 (Bryan)
- (G) Commission for Health Services – 15A NCAC 18A .3307; .3313; .3319; .3323; .3324; .3327; .3330; .3331; .3334: Objected on 04/19/01 (Bryan)
- (H) State Board of Education – 16 NCAC 6E .0301: Objection on 04/19/01 (Bryan)
- (I) Department of Transportation – 19A NCAC 2D .0601: Objection on 02/28/01 (Bryan)
- (J) State Board of Community Colleges – 23 NCAC 2C .0308: Objection on 04/19/01 (Bryan)
- (K) State Board of Community Colleges – 23 NCAC 2D .0202: Objection on 04/19/01 (Bryan)

Review of rules (Log Report #175)

V. Commission Business

Next meeting: Thursday, June 21, 2001

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.ncoah.com/hearings>.

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
Beryl E. Wade
A.B. (Butch) Elkins*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ALCOHOL BEVERAGE CONTROL COMMISSION				
Dano's, Inc. v. NC ABC Commission	96 ABC 0250	Gray	03/16/01	
NC ABC Commission v Food Lion, Inc. T/A Food Lion Store 540	99 ABC 0366	Mann	05/30/00	
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
Daniel W. Shelton T/A Shelton Broers v.NC ABC Commission	99 ABC 1641	Conner	08/31/00	15:08 NCR 879
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
NC ABC Commission v. Headlights, Inc. T/A Headlights	00 ABC 0302	Gray	08/21/00	
Timothy Lee Hopper v. NC ABC Commission	00 ABC 0326	Lassiter	10/20/00	
NC ABC Commission v. A-1 Stop Food Store, Inc., T/A One Stop Grocery	00 ABC 0410	Gray	01/17/01	
Steven Wilson McCrae v. NC ABC Commission	00 ABC 0598	Wade	08/23/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
NC Beverage Control Commission v. Rhonda Davis Lemons, Ind. T/A	00 ABC 0965	Mann	02/05/01	
NC ABC Commission v. Kevin Scott Heath, Robinhood Grille, LLC t/a Robinhood Grille	00 ABC 1026	Gray	12/19/00	15:14 NCR 1390
NC ABC Commission v. Alliance Corp of Fayetteville, T/A Pavillion	00 ABC 1439	Anderson	04/05/01	
BOARD OF MORTUARY SCIENCE				
NC Board of Mortuary Science v. R.L. Sanders Funeral Home, Hugh Sanders and Demetrice Brewington	99 BMS 1180	Lassiter	11/27/00	
NC Board of Mortuary Science v. John Charles McNeill, McNeill Funerals, Inc.	00 BMS 0564	Wade	10/13/00	
CRIME CONTROL AND PUBLIC SAFETY				
Terry Ramey D/B/A/Ramey's Wrecker Service v. NC Dept. of of Crime Control & Public Safety, NC State Highway Patrol	99 CPS 1160	Morrison	01/26/01	15:17 NCR 1594
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
Pearl J. Conner v. Victim & Justice Services, Dept of Crime Control & Public Safety	00 CPS 0903	Lassiter	11/09/00	
Kenneth E. Brooks v. NC Crime Victims Compensation Commission	00 CPS 1048	Lassiter	12/21/00	
Kathy Oates Parzygnat v. NC Crime Victims Compensation Commission	00 CPS 1054	Conner	01/29/01	
Dowu Thomas v. NC Crime Victims Compensation Commission	00 CPS 1090	Mann	01/17/01	
Derrick Davis v. NC Crime Victims Compensation Commission	00 CPS 1352	Gray	02/01/01	
Lisa D. Richmond (Lee) v. NC Crime Victims Compensation Commission	00 CPS 1489	Mann	03/29/01	
HEALTH AND HUMAN SERVICES				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 ¹	Wade	06/30/00	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
Anthony Clement v. Department of Health & Human Services	00 CRA 1501	Morrison	03/29/01	
Tyrone Banks v. Department of Health & Human Services	00 CRA 1759	Gray	01/16/01	
Terry Weathers v. Department of Health & Human Services	00 CRA 1769	Conner	02/14/01	
Fredrick Gilmore v. Department of Health & Human Services	00 CRA 2125 ¹⁰	Morrison	03/21/01	
Child Support Enforcement Section				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
David R. North v. Department of Health & Human Services	99 CSE 0408	Chess	10/25/00	

CONTESTED CASE DECISIONS

Michael A. Cameron v. Department of Health & Human Services	99 CSE 0424	Mann	09/25/00
Charles Jr. Lotharp v. Department of Health & Human Services	99 CSE 0626	Lassiter	02/09/01
Marcus James Ward v. Department of Health & Human Services	99 CSE 0784	Wade	09/29/00
Omer D. & Marinda A. Potter v. Department of Health & Human Services	99 CSE 0798	Chess	10/25/00
Anthony R. McRae Sr. v. Department of Health & Human Services	99 CSE 0812	Morrison	12/20/00
Richard Cook v. Department of Health & Human Services	99 CSE 0873 ⁴	Chess	10/27/00
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00
Craig D. McLeod v. Department of Health & Human Services	99 CSE 1369	Lassiter	08/29/00
Jermaine L. Covington v. Department of Health & Human Services	99 CSE 1408	Lassiter	11/01/00
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00
Kenneth W. Freeman, Jr. v. Department of Health & Human Services	99 CSE 1455	Wade	10/31/00
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00
David R. McDonald v. Department of Health & Human Services	99 CSE 1486	Lassiter	10/02/00
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00
Tony R. Wood v. Department of Health & Human Services	99 CSE 1501	Gray	01/12/01
Samuel E. Massenberg, Jr. v. Department of Health & Human Services	99 CSE 1513	Morrison	09/27/00
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00
Edward J. Lucero v. Department of Health & Human Services	99 CSE 1542	Mann	10/31/00
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00
Almiron J. Deis v. Department of Health & Human Services	99 CSE 1589	Mann	10/31/00
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00
Richard Cook v. Department of Health & Human Services	00 CSE 0053 ⁴	Chess	10/27/00
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00
Matthew Gibson v. Department of Health & Human Services	00 CSE 0076	Mann	10/31/00
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00
Todd A. Flanders v. Department of Health & Human Services	00 CSE 0152	Mann	03/13/01
Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00
John H. Jones v. Department of Health & Human Services	00 CSE 0181	Morrison	08/25/00
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00
Daryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00
Gregory L. Pinkett v. Department of Health & Human Services	00 CSE 0214	Wade	10/31/00
Joseph D. Turnage v. Department of Health & Human Services	00 CSE 0220	Morrison	11/16/00
Izell Anthony Twigg v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00
Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Timothy Holtzclaw v. Department of Health & Human Services	00 CSE 0245	Gray	09/14/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Darla Judkin v. Department of Health & Human Services	00 CSE 0254	Chess	08/23/00
Robert L. Coffey v. Department of Health & Human Services	00 CSE 0255 ¹²	Gray	03/30/01
Christopher Mark Boyette v. Department of Health & Human Services	00 CSE 0262	Lassiter	11/01/00
Ronald L. Long, Jr. v. Department of Health & Human Services	00 CSE 0265	Mann	08/31/00
David Lee Jones v. Department of Health & Human Services	00 CSE 0269	Conner	09/27/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Pierce Foster Williams, Jr., v. Department of Health & Human Services	00 CSE 0297	Conner	09/26/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Glennie Mae Jones v. Department of Health & Human Services	00 CSE 0349	Mann	10/30/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Robert L. Coffey v. Department of Health & Human Services	00 CSE 0385 ¹²	Gray	03/30/01
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00
Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00

CONTESTED CASE DECISIONS

Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Ronald T. Palmer v. Department of Health & Human Services	00 CSE 0422	Mann	10/31/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00
Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Rodney C LeBlanc v. Department of Health & Human Services	00 CSE 0444	Mann	03/28/01
Ronnie N. Morgan v. Department of Health & Human Services	00 CSE 0446	Gray	01/17/01
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Connor	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00
Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Connor	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 ²	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 ²	Conner	07/28/00
Rickey L. Gullede v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
William T. Hutto v. Department of Health & Human Services	00 CSE 0594	Conner	09/07/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
Tabitha Angley v. Department of Health & Human Services	00 CSE 0614	Conner	07/27/00
Douglas M. Coker v. Department of Health & Human Services	00 CSE 0622	Chess	07/11/00
Mark Christopher Smith v. Department of Health & Human Services	00 CSE 0627	Gray	08/21/00
Rhonda Styers v. Department of Health & Human Services	00 CSE 0639	Mann	10/30/00
Terrence L. Holder v. Department of Health & Human Services	00 CSE 0640	Morrison	08/18/00
Anthony L. Reid v. Department of Health & Human Services	00 CSE 0647	Lassiter	01/16/01
Mikal M. Mua'zzin v. Department of Health & Human Services	00 CSE 0651	Conner	08/28/00
Jose' D. Rivas v. Department of Health & Human Services	00 CSE 0658	Chess	08/07/00
Benny G. Bowen v. Department of Health & Human Services	00 CSE 0666	Mann	12/11/00
Valerie A. Simpson v. Department of Health & Human Services	00 CSE 0673	Morrison	07/07/00
James H. Hopper, Jr. v. Department of Health & Human Services	00 CSE 0677	Lassiter	08/29/00
Joseph I. Woodcock v. Department of Health & Human Services	00 CSE 0684	Lassiter	07/07/00
Kenneth R. Harker v. Department of Health & Human Services	00 CSE 0686	Wade	09/11/00
Justine Roberts v. Department of Health & Human Services	00 CSE 0694	Conner	08/28/00
Dana E. Grice v. Department of Health & Human Services	00 CSE 0709	Morrison	09/08/00
Alfred R. Swain v. Department of Health & Human Services	00 CSE 0718	Mann	06/28/00
Tyrone K. Anthony v. Department of Health & Human Services	00 CSE 0741	Wade	10/31/00
James C. Martin, Jr. v. Department of Health & Human Services	00 CSE 0751	Conner	08/30/00
Wade A. Burgess v. Department of Health & Human Services	00 CSE 0757	Gray	08/22/00
Donald Daniel Harmon v. Department of Health & Human Services	00 CSE 0758	Mann	10/24/00
Parnell Dougloss Sparks v. Department of Health & Human Services	00 CSE 0761	Morrison	06/06/00
Kevin S. Tate v. Department of Health & Human Services	00 CSE 0764	Lassiter	09/11/00
Jeffrey Ottis Hair v. Department of Health & Human Services	00 CSE 0766	Mann	07/17/00
Ricky A. Phillips v. Department of Health & Human Services	00 CSE 0777	Morrison	08/01/00
Catherine A. Odom v. Department of Health & Human Services	00 CSE 0792	Mann	08/31/00
George Franklin Anderson v. Department of Health & Human Services	00 CSE 0793	Morrison	08/09/00
Raymond Thomas Carpenter, Jr. v. Department of Health & Human Svcs	00 CSE 0810	Mann	09/25/00
Darrell Johnson v. Department of Health & Human Services	00 CSE 0811	Wade	09/29/00
Ronald Owen Goodwin v. Department of Health & Human Services	00 CSE 0831	Chess	09/07/00
Jean M. Brown v. Department of Health & Human Services	00 CSE 0848	Wade	08/10/00
Richard B. Malloy v. Department of Health & Human Services	00 CSE 0849	Wade	10/02/00
Ronald R. Lemmons v. Department of Health & Human Services	00 CSE 0865	Gray	08/21/00
Gregory C. Tweed v. Department of Health & Human Services	00 CSE 0876	Conner	01/25/01
St. Clair Staley v. Department of Health & Human Services	00 CSE 0890 ³	Conner	10/06/00
Kenneth Duncan v. Department of Health & Human Services	00 CSE 0896	Gray	09/27/00
Kelvin Hardesty v. Department of Health & Human Services	00 CSE 0901	Lassiter	10/02/00
Michael Anthony Wright v. Department of Health & Human Services	00 CSE 0922	Lassiter	10/17/00
Cyrus V. Perry v. Department of Health & Human Services	00 CSE 0924	Gray	09/29/00
Jamey Johnson v. Department of Health & Human Services	00 CSE 0925	Wade	10/10/00
Marvin A. Smith v. Department of Health & Human Services	00 CSE 0932	Conner	09/21/00
Chris Michael Moore v. Department of Health & Human Services	00 CSE 0945	Gray	10/17/00
James C. Boyce v. Department of Health & Human Services	00 CSE 0946	Wade	12/01/00
Matthew Russell Schmidt v. Department of Health & Human Services	00 CSE 0963	Morrison	10/04/00
Keith Stephenson v. Department of Health & Human Services	00 CSE 0979	Chess	10/25/00
Walter R. Spencer, Jr. v. Department of Health & Human Services	00 CSE 1010	Morrison	10/27/00
Keith D. Meredith v. Department of Health & Human Services	00 CSE 1011	Morrison	09/19/00
Billy Joe Davis v. Department of Health & Human Services	00 CSE 1012	Lassiter	09/08/00
Darwin Dean Graves v. Department of Health & Human Services	00 CSE 1014	Conner	11/28/00

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Norman G. Mitchell v. Department of Health & Human Services	00 CSE 1036	Chess	12/18/00
Mary A. Hines v. Department of Health & Human Services	00 CSE 1047	Gray	10/20/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 1069 ³	Conner	10/06/00
Nancy Moore v. Department of Health & Human Services	00 CSE 1081	Lassiter	11/16/00
Carl V. Greggs, Sr. v. Department of Health & Human Services	00 CSE 1082	Wade	11/16/00
Chester L. Jenkins v. Department of Health & Human Services	00 CSE 1089	Chess	12/13/00
Tacha Hyatt-Crowder v. Department of Health & Human Services	00 CSE 1098	Gray	11/07/00
Stan Valentine v. Department of Health & Human Services	00 CSE 1100	Morrison	11/16/00
Larry D Houston v. Department of Health & Human Services	00 CSE 1155	Gray	02/27/01
Carlos Eugene Jacobs v. Department of Health & Human Services	00 CSE 1259	Mann	11/30/00
Norman Bell v. Department of Health & Human Services	00 CSE 1268	Morrison	11/28/00
Travis Armstrong v. Department of Health & Human Services	00 CSE 1283	Lassiter	02/22/01
Donald Curtin Weatherford v. Department of Health & Human Services	00 CSE 1345	Chess	04/06/01
Daniel J. Sandford v. Department of Health & Human Services	00 CSE 1350	Wade	02/13/01
Victor Ferguson v. Department of Health & Human Services	00 CSE 1396	Mann	06/26/00
Tony E. Plyler v. Department of Health & Human Services	00 CSE 1447	Wade	01/12/01
Terry Isom v. Department of Health & Human Services	00 CSE 1463	Morrison	03/14/01
Teresa A. Ingraham v. Department of Health & Human Services	00 CSE 1464	Chess	12/29/00
Tommy William Carter v. Department of Health & Human Services	00 CSE 1485	Gray	01/31/01
Michael Hudson v. Department of Health & Human Services	00 CSE 1493	Wade	02/02/01
Robert M. Murray v. Department of Health & Human Services	00 CSE 1507	Lassiter	02/09/01
Misha C Mfum v. Department of Health & Human Services	00 CSE 1509	Wade	02/12/01
Kevin R. McCray v. Department of Health & Human Services	00 CSE 1525	Chess	01/30/01
Keith Everett Fick v. Department of Health & Human Services	00 CSE 1531	Lassiter	02/28/01
Jimmy Moore v. Department of Health & Human Services	00 CSE 1535	Conner	02/14/01
Stan Matthire v. Department of Health & Human Services	00 CSE 1536	Chess	01/30/01
Richard McCarson v. Department of Health & Human Services	00 CSE 1543	Mann	01/03/01
Calvin G. Carter v. Department of Health & Human Services	00 CSE 1546	Lassiter	02/09/01
Jesse T Jefferson III v. Department of Health & Human Services	00 CSE 1553	Conner	03/14/01
Mark Andrew Cohn v. Department of Health & Human Services	00 CSE 1560	Gray	02/09/01
Savoy L. Miler v. Department of Health & Human Services	00 CSE 1571	Lassiter	01/31/01
Elmer L. Mosley v. Department of Health & Human Services	00 CSE 1581	Wade	02/02/01
David E. Allen v. Department of Health & Human Services	00 CSE 1589	Lassiter	02/09/01
David W Morris v. Department of Health & Human Services	00 CSE 1591	Wade	02/13/01
Jonathan Gregg Holland v. Department of Health & Human Services	00 CSE 1592	Conner	02/14/01
David Bass Jr v. Department of Health & Human Services	00 CSE 1595	Mann	02/13/01
Clyde Michael Trout v. Department of Health & Human Services	00 CSE 1596	Morrison	01/03/01
Sharon S. Godwin v. Department of Health & Human Services	00 CSE 1598	Morrison	02/09/01
Vincent Ackerman v. Department of Health & Human Services	00 CSE 1599	Wade	02/13/01
Micheal King v. Department of Health & Human Services	00 CSE 1600	Conner	02/22/01
Johnny Drakakides v. Department of Health & Human Services	00 CSE 1608	Morrison	02/28/01
Phyllis A King v. Department of Health & Human Services	00 CSE 1609	Lassiter	02/20/01
Bonita Ann Wilson v. Department of Health & Human Services	00 CSE 1619	Chess	02/27/01
Bernie Mayr Jr v. Department of Health & Human Services	00 CSE 1622	Morrison	01/31/01
Stephen N Powers v. Department of Health & Human Services	00 CSE 1623	Lassiter	02/20/01
Kenneth B Thomas v. Department of Health & Human Services	00 CSE 1624	Mann	02/21/01
Jeffrey Pullum v. Department of Health & Human Services	00 CSE 1625	Mann	03/30/01
Reginald Sanders v. Department of Health & Human Services	00 CSE 1626	Wade	02/20/01
Cleveland J Johnson v. Department of Health & Human Services	00 CSE 1628	Chess	02/27/01
Mark D Kane v. Department of Health & Human Services	00 CSE 1634	Morrison	03/13/01
Charles M Edwards v. Department of Health & Human Services	00 CSE 1635	Lassiter	02/20/01
Samuel E Ray v. Department of Health & Human Services	00 CSE 1636	Gray	03/22/01
Stephen Hiles v. Department of Health & Human Services	00 CSE 1638	Conner	02/22/01
Richard L Hannon v. Department of Health & Human Services	00 CSE 1639	Chess	03/22/01
Ricky L McCartney v. Department of Health & Human Services	00 CSE 1641	Wade	03/05/01
Timothy F Fulbright v. Department of Health & Human Services	00 CSE 1647	Morrison	02/20/01
David E Evans v. Department of Health & Human Services	00 CSE 1648	Lassiter	02/20/01
James David Johnson Jr v. Department of Health & Human Services	00 CSE 1650	Wade	02/20/01
Dale F Green v. Department of Health & Human Services	00 CSE 1651	Conner	03/14/01
Michael Dewayne Hester v. Department of Health & Human Services	00 CSE 1653	Gray	02/20/01
Mark A Pekuri v. Department of Health & Human Services	00 CSE 1658	Lassiter	02/28/01
Ronny S Marth v. Department of Health & Human Services	00 CSE 1661	Conner	03/22/01
Curtis B Blakney v. Department of Health & Human Services	00 CSE 1670	Gray	02/20/01
Richard Bourbon Jr. v. Department of Health & Human Services	00 CSE 1674	Lassiter	03/12/01
James M McCoy v. Department of Health & Human Services	00 CSE 1678	Wade	02/20/01
Michael Wilder Sr v. Department of Health & Human Services	00 CSE 1677	Conner	03/14/01
Carl R Cooper v. Department of Health & Human Services	00 CSE 1682	Lassiter	02/27/01
James Scott Lee v. Department of Health & Human Services	00 CSE 1688	Conner	02/15/01
Osmer Marshall Harris v. Department of Health & Human Services	00 CSE 1692	Gray	03/30/01
Robert E Peterson Jr. v. Department of Health & Human Services	00 CSE 1696	Lassiter	02/27/01
William A Caudle Jr v. Department of Health & Human Services	00 CSE 1699	Conner	03/14/01
Karen R. McLean v. Department of Health & Human Services	00 CSE 1707	Gray	01/12/01
Jonathan B Frazier v. Department of Health & Human Services	00 CSE 1715	Gray	02/27/01
Daniel L. Phillips v. Department of Health & Human Services	00 CSE 1717	Morrison	01/31/01
Mauricio Lopez-Granados v. Department of Health & Human Services	00 CSE 1729	Gray	02/06/01
Emar Ifediora v. Department of Health & Human Services	00 CSE 1731	Morrison	02/27/01
John R Davis v. Department of Health & Human Services	00 CSE 1747	Conner	03/14/01
Martin W Rogers v. Department of Health & Human Services	00 CSE 1748	Wade	03/05/01
Ronald F Channell v. Department of Health & Human Services	00 CSE 1749	Conner	03/14/01
Louis William v. Department of Health & Human Services	00 CSE 1754	Lassiter	02/27/01
Robert Barry Jenkins Jr v. Department of Health & Human Services	00 CSE 1755	Gray	03/13/01
John F McCollum v. Department of Health & Human Services	00 CSE 1760	Wade	02/28/01
Craig S Murphy v. Department of Health & Human Services	00 CSE 1765	Morrison	04/04/01

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Anthony D Hines v. Department of Health & Human Services	00 CSE 1771	Gray	02/27/01
Gary E Nielsen v. Department of Health & Human Services	00 CSE 1772	Mann	02/28/01
James Faison v. Department of Health & Human Services	00 CSE 1774	Lassiter	03/05/01
Charles Junot v. Department of Health & Human Services	00 CSE 1775	Morrison	02/27/01
Richard Cook v. Department of Health & Human Services	00 CSE 1777	Conner	03/14/01
Kenneth E Frost v. Department of Health & Human Services	00 CSE 1783	Conner	03/14/01
George L Hart Jr. v. Department of Health & Human Services	00 CSE 1784	Morrison	02/27/01
Marti M Smith v. Department of Health & Human Services	00 CSE 1788	Lassiter	03/27/01
Tammy L Galdones v. Department of Health & Human Services	00 CSE 1800	Wade	03/08/01
Tarrence U Jackson v. Department of Health & Human Services	00 CSE 1802	Conner	03/14/01
Martin L Wheeler Jr v. Department of Health & Human Services	00 CSE 1803 ¹³	Chess	04/05/01
Clarence McCorkle, Jr v. Department of Health & Human Services	00 CSE 1805	Chess	02/26/01
Joseph P Bell v. Department of Health & Human Services	00 CSE 1807	Morrison	03/12/01
Lionel Cox v. Department of Health & Human Services	00 CSE 1808	Lassiter	03/27/01
Clinton Wilson v. Department of Health & Human Services	00 CSE 1810	Wade	03/08/01
James F Fomey Jr v. Department of Health & Human Services	00 CSE 1811	Conner	03/14/01
Rodney Foster v. Department of Health & Human Services	00 CSE 1813	Gray	03/09/01
Jimmie Lee Nesbitt v. Department of Health & Human Services	00 CSE 1814	Mann	03/21/01
George Smith v. Department of Health & Human Services	00 CSE 1815	Morrison	04/10/01
James S Rollins v. Department of Health & Human Services	00 CSE 1816	Lassiter	03/12/01
Johnny Worth Deaver v. Department of Health & Human Services	00 CSE 1817	Morrison	03/13/01
Shawn T Miller v. Department of Health & Human Services	00 CSE 1818	Wade	03/08/01
Adrian Dixon v. Department of Health & Human Services	00 CSE 1820	Chess	03/19/01
Donna M Ledbetter v. Department of Health & Human Services	00 CSE 1823	Conner	03/14/01
Mark Jeffrey Duncan v. Department of Health & Human Services	00 CSE 1825	Lassiter	02/20/01
Ricky Lee Barrett v. Department of Health & Human Services	00 CSE 1827	Wade	03/08/01
Cynthia W McDaniel v. Department of Health & Human Services	00 CSE 1830	Gray	03/13/01
James T Jarvis IV v. Department of Health & Human Services	00 CSE 1832	Morrison	03/12/01
Michael O'Neal Fletcher v. Department of Health & Human Services	00 CSE 1834	Wade	03/08/01
Manargo V Boykin v. Department of Health & Human Services	00 CSE 1836	Conner	03/14/01
Dexter Leon Scott v. Department of Health & Human Services	00 CSE 1839	Chess	02/27/01
Jacqueline R Graham v. Department of Health & Human Services	00 CSE 1845	Morrison	03/12/01
Rasheed R Owens v. Department of Health & Human Services	00 CSE 1846	Lassiter	03/30/01
Roger H Allred Jr. v. Department of Health & Human Services	00 CSE 1848	Wade	03/08/01
David M Greene v. Department of Health & Human Services	00 CSE 1852	Morrison	03/12/01
Michael T Wilfong v. Department of Health & Human Services	00 CSE 1854	Lassiter	03/12/01
Bobby Grady v. Department of Health & Human Services	00 CSE 1856	Conner	03/14/01
Martin L Wheeler Jr v. Department of Health & Human Services	00 CSE 1858 ¹³	Chess	04/05/01
Dallas Walter Hamlett Jr v. Department of Health & Human Services	00 CSE 1859	Chess	04/02/01
Richard H Burkett v. Department of Health & Human Services	00 CSE 1864	Morrison	03/12/01
Terry L Barnette v. Department of Health & Human Services	00 CSE 1874	Gray	03/06/01
Benton P Welsh v. Department of Health & Human Services	00 CSE 1887	Wade	03/15/01
Kenney Curry v. Department of Health & Human Services	00 CSE 1888	Conner	03/21/01
Clarence McCorkle Jr v. Department of Health & Human Services	00 CSE 1890	Gray	03/15/01
William D Wall v. Department of Health & Human Services	00 CSE 1891	Mann	03/22/01
Cortez L Farrington v. Department of Health & Human Services	00 CSE 1892	Morrison	03/14/01
Lonnie Mathwig v. Department of Health & Human Services	00 CSE 1893	Lassiter	02/28/01
Carl Miller v. Department of Health & Human Services	00 CSE 1894	Morrison	01/31/01
Johnny Sellars v. Department of Health & Human Services	00 CSE 1895	Wade	03/15/01
Cuong Phu Le v. Department of Health & Human Services	00 CSE 1896	Conner	03/21/01
Stephen Budensiek v. Department of Health & Human Services	00 CSE 1898	Gray	03/15/01
Victor S Glass v. Department of Health & Human Services	00 CSE 1902	Morrison	02/28/01
James E Smith v. Department of Health & Human Services	00 CSE 1905	Wade	03/15/01
Isaac L McCoy v. Department of Health & Human Services	00 CSE 1906	Conner	03/21/01
Dan L Puryear v. Department of Health & Human Services	00 CSE 1908	Gray	03/15/01
Chris Flowers v. Department of Health & Human Services	00 CSE 1911	Morrison	04/04/01
Maryann Denise Hardy v. Department of Health & Human Services	00 CSE 1913	Lassiter	04/04/01
Ray A Blackwell v. Department of Health & Human Services	00 CSE 1914	Wade	03/15/01
Jeremy F White v. Department of Health & Human Services	00 CSE 1916	Conner	03/21/01
Douglas C Fitzpatrick v. Department of Health & Human Services	00 CSE 1924	Mann	03/22/01
Johnny R Chance v. Department of Health & Human Services	00 CSE 1925	Wade	03/05/01
Jeffrey Kelly v. Department of Health & Human Services	00 CSE 1926	Conner	03/14/01
Martin Scott Evans v. Department of Health & Human Services	00 CSE 1932	Morrison	03/14/01
Israel Uzoma v. Department of Health & Human Services	00 CSE 1933	Morrison	03/14/01
Kevin Seay v. Department of Health & Human Services	00 CSE 1934	Lassiter	03/30/01
Robin Ramsey Parrott v. Department of Health & Human Services	00 CSE 1935	Conner	03/21/01
Roy Bethel Calhoun III v. Department of Health & Human Services	00 CSE 1939	Wade	03/15/01
Carnel Draughn Sr v. Department of Health & Human Services	00 CSE 1943	Lassiter	04/03/01
Clint Norris Jones v. Department of Health & Human Services	00 CSE 1944	Morrison	03/14/01
Tracy Clark v. Department of Health & Human Services	00 CSE 1961	Conner	03/23/01
Derwin Knight v. Department of Health & Human Services	00 CSE 1962	Chess	03/15/01
Robert L Harrell v. Department of Health & Human Services	00 CSE 1963	Gray	03/15/01
Sherrie Weaver v. Department of Health & Human Services	00 CSE 1964	Mann	03/22/01
Andrea Wilson v. Department of Health & Human Services	00 CSE 1966	Lassiter	03/12/01
Anthony Short v. Department of Health & Human Services	00 CSE 1968	Wade	03/22/01
Mark Steven Harvey v. Department of Health & Human Services	00 CSE 1972	Conner	03/30/01
Kenneth Edison Jones v. Department of Health & Human Services	00 CSE 1976	Wade	03/29/01
Everett McClain Jr v. Department of Health & Human Services	00 CSE 1979	Gray	03/09/01
Rodney Glenn Whicker v. Department of Health & Human Services	00 CSE 1981	Morrison	03/14/01
Joseph J McDowell v. Department of Health & Human Services	00 CSE 1982	Lassiter	02/20/01
Ricky N Coley v. Department of Health & Human Services	00 CSE 1985	Conner	03/21/01
Ronald E Harvey v. Department of Health & Human Services	00 CSE 1987	Gray	04/11/01

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Steven G Williams v. Department of Health & Human Services	00 CSE 1989	Morrison	03/14/01
Alton R Hunt v. Department of Health & Human Services	00 CSE 1990	Lassiter	03/30/01
Terrance Thompson v. Department of Health & Human Services	00 CSE 1991	Mann	03/22/01
Patrick Kevin Swann v. Department of Health & Human Services	00 CSE 1992	Wade	03/15/01
James A Bowditch Sr v. Department of Health & Human Services	00 CSE 1993	Conner	03/14/01
Roger D Mintz v. Department of Health & Human Services	00 CSE 1997	Morrison	01/31/01
Eugene Harris v. Department of Health & Human Services	00 CSE 1998	Lassiter	03/21/01
Jimmy Clark v. Department of Health & Human Services	00 CSE 1999	Conner	02/14/01
Nancy Sells v. Department of Health & Human Services	00 CSE 2001	Conner	02/14/01
Jeffery A Maness v. Department of Health & Human Services	00 CSE 2003	Gray	02/28/01
Jerry L Jones v. Department of Health & Human Services	00 CSE 2005	Morrison	03/14/01
Kenneth D Abner v. Department of Health & Human Services	00 CSE 2008	Conner	03/22/01
Robert W MacDonald Sr. v. Department of Health & Human Services	00 CSE 2015	Wade	03/05/01
Norman Lee Fillers v. Department of Health & Human Services	00 CSE 2016	Conner	02/14/01
Gerald H Lord v. Department of Health & Human Services	00 CSE 2018	Gray	03/15/01
Michael William Smith v. Department of Health & Human Services	00 CSE 2019	Wade	04/04/01
Daniel H Caudill v. Department of Health & Human Services	00 CSE 2022	Chess	03/21/01
William R Payne v. Department of Health & Human Services	00 CSE 2023	Wade	03/15/01
Christopher Evans v. Department of Health & Human Services	00 CSE 2024	Conner	03/30/01
Jimmy D White v. Department of Health & Human Services	00 CSE 2026	Gray	03/22/01
Shawn E Richardson v. Department of Health & Human Services	00 CSE 2027	Mann	03/22/01
Franklin Givens v. Department of Health & Human Services	00 CSE 2028	Morrison	03/14/01
Myron S Pierce v. Department of Health & Human Services	00 CSE 2029	Lassiter	03/21/01
Terrence Dunlap v. Department of Health & Human Services	00 CSE 2030	Gray	03/21/01
Allen E Clyburn v. Department of Health & Human Services	00 CSE 2032	Chess	03/13/01
Sheila C Horne v. Department of Health & Human Services	00 CSE 2033	Wade	03/22/01
Shawn Braxton v. Department of Health & Human Services	00 CSE 2044	Gray	03/15/01
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Philip Ligatti v. Department of Health & Human Services	00 CSE 2058	Lassiter	02/20/01
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Crystal Anne Barton v. Department of Health & Human Services	00 CSE 2064	Morrison	02/27/01
Chris Alexander King v. Department of Health & Human Services	00 CSE 2066	Wade	03/13/01
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Melvin T Green v. Department of Health & Human Services	00 CSE 2069	Chess	03/21/01
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Harold D Overby Jr v. Department of Health & Human Services	00 CSE 2074	Morrison	02/20/01
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Jasper L Goodwin v. Department of Health & Human Services	00 CSE 2083	Gray	03/21/01
Alfredo Gomez v. Department of Health & Human Services	00 CSE 2092	Morrison	03/21/01
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Joseph L Sykes v. Department of Health & Human Services	00 CSE 2095	Conner	03/22/01
Michael R Sweat v. Department of Health & Human Services	00 CSE 2097	Conner	03/14/01
Russell L Brown v. Department of Health & Human Services	00 CSE 2105	Lassiter	03/21/01
Henry Johnson v. Department of Health & Human Services	00 CSE 2106	Gray	03/21/01
Victor L Foster Sr v. Department of Health & Human Services	00 CSE 2110	Morrison	03/05/01
Kimberly Sue Nance v. Department of Health & Human Services	00 CSE 2111	Lassiter	03/21/01
Jonathan P Deese v. Department of Health & Human Services	00 CSE 2112	Wade	02/02/01
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Christopher B Thompson v. Department of Health & Human Services	00 CSE 2123	Mann	03/22/01
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Randy L Galloway v. Department of Health & Human Services	00 CSE 2132	Conner	03/22/01
Joe L Green v. Department of Health & Human Services	00 CSE 2136	Gray	03/30/01
Paul Billiot v. Department of Health & Human Services	00 CSE 2137	Conner	03/30/01
Theodore Rasheed Akins v. Department of Health & Human Services	00 CSE 2142	Morrison	03/30/01
Anita Davis v. Department of Health & Human Services	00 CSE 2145	Lassiter	02/27/01
Marvin Price Jr v. Department of Health & Human Services	00 CSE 2146	Wade	04/04/01
Nathaniel Armstrong v. Department of Health & Human Services	00 CSE 2150	Gray	02/27/01
Samuel Thomas v. Department of Health & Human Services	00 CSE 2151	Morrison	03/30/01
Boulware, Rodney Durand v. Department of Health & Human Services	00 CSE 2154	Wade	03/13/01
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Derrick Link v. Department of Health & Human Services	00 CSE 2166	Mann	03/13/01
Kenneth W Kelly v. Department of Health & Human Services	00 CSE 2169	Wade	04/04/01
Stephen Lake Sargent v. Department of Health & Human Services	00 CSE 2176	Gray	03/30/01
Michael R Whitford v. Department of Health & Human Services	00 CSE 2178	Morrison	03/27/01
Christopher Scott v. Department of Health & Human Services	00 CSE 2182	Morrison	03/05/01
Aaron L Roper Sr v. Department of Health & Human Services	00 CSE 2187	Lassiter	04/03/01
Jimmy K Wallace v. Department of Health & Human Services	00 CSE 2212	Morrison	03/29/01
Guy John Harris v. Department of Health & Human Services	00 CSE 2215	Wade	04/04/01
Rodger E Smith v. Department of Health & Human Services	00 CSE 2217	Morrison	04/03/01
Robert T Crider v. Department of Health & Human Services	00 CSE 2219	Gray	04/03/01
Octavius A Williams v. Department of Health & Human Services	00 CSE 2220	Wade	04/04/01
Timothy Odell Lindsey v. Department of Health & Human Services	00 CSE 2249 ¹⁴	Morrison	04/10/01
Timothy Odell Lindsey v. Department of Health & Human Services	00 CSE 2250 ¹⁴	Morrison	04/10/01
Juan P Thompson v. Department of Health & Human Services	00 CSE 2251	Lassiter	04/10/01
Richard E Chatman v. Department of Health & Human Services	00 CSE 2269	Morrison	04/10/01
Charles Arthur Neal IV v. Department of Health & Human Services	00 CSE 2272	Conner	03/22/01
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Courtney Brown v. Department of Health & Human Services	01 CSE 0059	Lassiter	03/05/01

William L Anderson v. Department of Health & Human Services	00 CSE 0179	Conner	03/30/01	
Evelyn Brindle v. Department of Health & Human Services	01 CSE 0180	Chess	04/02/01	
Gary Russell Chambliss Jr v. Department of Health & Human Services	01 CSE 0241	Conner	03/30/01	
Thomas Mammarelli v. Department of Health & Human Services	01 CSE 0255	Gray	04/11/01	
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Mary Laforet v. Department of Health & Human Services	99 DCS 0372	Lassiter	01/12/01	
Emma Burkes (Edwards v. Department of Health & Human Services	00 DCS 1221	Morrison	08/17/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 DCS 0277 ¹	Wade	06/30/00	
Michael Clay Mitchell v. Department of Health & Human Services	00 DCS 0300	Wade	06/30/00	
Sherry Moorefield v. Department of Health & Human Services	00 DCS 0350	Gray	08/25/00	
Pamela Browning Frazier v. Department of Health & Human Services	00 DCS 0479	Lassiter	06/12/00	
Lisa Lawler v. Department of Health & Human Services	00 DCS 0529	Morrison	08/29/00	
May M. Timmons v. Department of Health & Human Services	00 DCS 0546	Gray	06/22/00	
Starice Jennifer Anderson v. Department of Health & Human Services	00 DCS 0556	Gray	08/10/00	
Beverly Hawking v. Department of Health & Human Services	00 DCS 0600	Mann	06/30/00	
Lisa Hardy v. Department of Health & Human Services	00 DCS 0678	Mann	07/17/00	
Chasity Pipkin v. Department of Health & Human Services	00 DCS 0838	Gray	09/11/00	
Joyce Staley v. Department of Health & Human Services	00 DCS 0842	Conner	09/12/00	
Bessie B. Hampton v. Department of Health & Human Services	00 DCS 0845	Morrison	08/29/00	
Beverly Singleton v. Department of Health & Human Services	00 DCS 0846	Lassiter	08/18/00	
Kerry Lynn Morgan v. Department of Health & Human Services	00 DCS 0850	Conner	09/12/00	
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	
Reta M. Dixon v. Department of Health & Human Services	00 DCS 1381	Conner	12/04/00	
Benita Hopkins v. Department of Health & Human Services	00 DCS 1444	Lassiter	12/18/00	
Mary Springer v. Department of Health & Human Services	00 DCS 1459	Conner	12/20/00	
Tameca Grant v. Department of Health & Human Services	00 DCS 1533	Wade	01/12/01	
Della T Austin for Christopher Moore v. Dept. of Health & Human Svcs.	00 DCS 1740	Lassiter	01/31/01	
Michael Anthony Bowden v. Department of Health & Human Services	00 DCS 2050	Lassiter	01/31/01	
Sanja S Whittington v. Department of Health & Human Services	00 DCS 2084	Morrison	02/12/01	
Fredrick Gilmore v. Department of Health & Human Services	00 DCS 2126 ¹⁰	Morrison	03/21/01	
Benita J Marshall v. Department of Health & Human Services	01 DCS 0141	Morrison	03/30/01	
Albemarle Mental Health Center, Developmental Disabilities: Substance Abuse Services v. NC Dept. of Health & Human Services, Division of Medical Assistance and NC Council of Community Mental Health, Developmental Disabilities and Substance Abuse Programs, Inc.	98 DHR 1598	Reilly	12/15/00	15:15 NCR 1440
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	
Carrie Jenkins, by and through her Guardian, John Jenkins v. NC Dept. of Health & Human Services	00 DHR 0119	Wade	02/14/01	
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	
Lenora M Brewer v Office of Administrative	00 DHR 0943	Conner	03/01/01	
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	
Janie Best v DHHS, NC Medial Examiner's Office	00 DHR 1029	Mann	02/20/01	
Carolyn W. Cooper and Happy Days Child Care v. DHHS, Div of Child Development	00 DHR 1031	Gray	08/31/00	
Mildred Willis v. Avante of Wilson, NC Dept of Health & Human Services	00 DHR 1310	Conner	02/16/01	
Iola Jones v. NC Department of Human Resources	00 DHR 1320	Morrison	02/23/01	
Larnettra D. Noel v. NC Department of Human Services	00 DHR 1327	Chess	10/06/00	
Chawona Lynn Emanuel v. Department of Health & Human Services	00 DHR 1360	Gray	01/31/01	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1371 ⁵	Gray	01/09/01	
Tracy McLeod v. First Health Richmond Cty Home Health, DHR-DOFS	00 DHR 1382	Gray	11/21/00	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1383 ⁵	Gray	01/09/01	

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Penny Jean Leary for Hyailey Okanoto v. Div. of Medical Assistance	00 DHR 1400	Gray	01/11/01	
Sylvia Davis v. Homeplace of Burlington Nurse Aide Registry	00 DHR 1488	Mann	02/26/01	
Reshea Devon Pierce v. Department of Health & Human Services	00 DHR 1516	Morrison	12/18/00	
William C Wetmore v. DHHS, Health Care Personnel Registry Invstgns.	00 DHR 1744	Mann	02/08/01	
Barbara Hayes v. Sampson Co Dept of Social Services, Sarah W. Bradshaw, Director & NC DHHS	00 DHR 2040	Gray	02/21/01	
Beatrice Harper v. NC Human & Health Services	00 DHR 2048	Gray	02/06/01	
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James Crosland and wife, Carolyn Crosland v. Polk County Dept. of Social Services	00 DHR 2130	Gray	01/04/01	
Brandi Joanna Padgett v. NC Department of Human Resources	00 DHR 2277	Gray	02/26/01	
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Kyna Z Robinson v. DHHS, Division of Child Development	01 DHR 0294	Lassiter	04/04/01	

Division of Facility Services

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	
Sharon J. Saxe v. DHHS, Division of Facility Services	99 DHR 1169	Lassiter	11/16/00	15:14 NCR 1396
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00	
Rhonda Gail Andrew v. DHHS, Division of Facility Services	00 DHR 0282	Chess	09/21/00	
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	
Nancy Yarbrough Allen v. DHHS, Division of Facility Services	00 DHR 0356	Gray	06/23/00	
Greensboro Heart Center, LLC v. NC DHHS, Division of Facility Services, Certificate of Need Section & The Moses H. Cone Memorial Hospital & The Moses H. Cone Memorial Hospital Operating Corporation	00 DHR 0375	Lassiter	12/19/00	
Lester Lee Huskins v. DHHS, Division of Facility Services	00 DHR 0391	Lassiter	08/29/00	
Charlene Jenkins v. DHHS, Div. of Facility Svcs., Health Care Personnel, Registry Section	00 DHR 0531	Wade	11/27/00	
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Anthony Alan Bennett v. DHHS, Division of Facility Services	00 DHR 0664	Conner	03/06/01	
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Charlotte A Withers v. DHHS, Division of Facility Services	00 DHR 0754 ¹¹	Gray	03/15/01	
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	
Faleisha Cassandra Worsley v. DHHS, Division of Facility Services	00 DHR 1013	Chess	02/22/01	
Hartis Stallings v. DHHS, Division of Facility Services	00 DHR 1037	Lassiter	08/29/00	
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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	
Charlotte A Withers v. DHHS, Division of Facility Services	00 DHR 1127 ¹¹	Gray	03/15/01	
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	
Sherie Moran Hinson Edwards v. DHHS, Division of Facility Services	00 DHR 1299	Morrison	12/18/00	
Mary Carmon Williams v. DHHS, Division of Facility Services	00 DHR 1308	Conner	02/01/01	
Ruby L. Laughter v. DHHS, Division of Facility Services	00 DHR 1346	Lassiter	01/31/01	
Lakiya S Mewborn v. DHHS, Division of Facility Services	00 DHR 1437	Gray	02/19/01	
Jonathan L. Merrell & Judith A. Merrell, and Eyring Realty, Inc. v. DHHS, Division of Facility Services & S & R Healthcare, Inc.	00 DHR 1461	Mann	01/31/01	
Ms Erman M Patterson v. DHHS, Division of Facility Services	00 DHR 1465	Gray	02/16/01	
Elois Little v. DHHS, Division of Facility Services	00 DHR 1790	Morrison	02/15/01	
Janet Stephens v. DHHS, Division of Facility Services	01 DHR 0008	Mann	02/08/01	
Octavia L Hill v. WisperPines Nursing Home of Fayetteville and DHHS, Division of Facility Services	01 DHR 0009	Mann	02/08/01	
Stephanie Mc Knight v. DHHS, Division of Facility Services	01 DHR 0235	Chess	04/02/01	

DEPARTMENT OF AGRICULTURE

Norman Dudgeon dba Mountain Vista Growers v. NC Department of Agriculture	00 DAG 0676	Gray	02/16/01	
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ENVIRONMENT AND NATURAL RESOURCES

Ronnie L. Sturdivant v. Dept. of Environment & Natural Resources	98 EHR 1222	Lassiter	05/11/00	15:04 NCR 501
Willie Setzer, individually and as President of Setzer Brothers Well Boring & Drilling Co v. Dept of Environment & Natural Resources	98 EHR 1260 ¹⁵	Chess	12/03/00	
Willie Setzer, individually and as President of Setzer Brothers Well Boring & Drilling Co v. Dept of Environment & Natural Resources	98 EHR 1261 ¹⁵	Chess	12/03/00	
Willie Setzer, individually and as President of Setzer Brothers Well Boring & Drilling Co v. Dept of Environment & Natural Resources	98 EHR 1262 ¹⁵	Chess	12/03/00	
Dan M. Eichenbaum v. DENR & Harrison Construction Division of APAC-Tennessee, Inc.	99 EHR 0191	Lassiter	11/21/00	
Dixie Lumber Company of Cherryville, Inc. v. Department of Environment & Natural Resources	99 EHR 0395	Wade	05/04/00	
Thomas Tilley, Trustee v. Dept. of Environment & Natural Resources	99 EHR 1136 ⁷	Lassiter	01/01/00	
Shuttle Cleaning Service, Inc., Phillip Allen (Owner) v. Dept. of	99 EHR 1167	Reilly	05/19/00	15:06 NCR 696

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Sarah Robbins Collins v. Dept. of Environment & Natural Resources	99 EHR 1265	Wade	11/28/00	
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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	
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Gregory Marc Edwards v. Department of Environment & Natural Resources	99 EHR 1635	Wade	09/29/00	
Leonard F. Sutton v. Division of Forest Resources	00 EHR 0072	Morrison	12/18/00	15:15 NCR 1435
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	
Samuel A. Perrella v. Div. of Environmental Health, New Bern, NC	00 EHR 0219	Gray	11/16/01	
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Turnbull Company LLC v. NC Dept of Environment & Natural Resources	00 EHR 0881	Wade	02/02/01	
Carolina Mountain Construction, Inc. v. Dept. of Env. & Natural Resources	00 EHR 0902	Chess	09/07/00	
Dudley A. Dawson v. NC DENR, (Person County Health Department)	00 EHR 0920	Lassiter	02/15/01	
Mark Oil Company, Inc. v. Department of Environment & Natural Resources	00 EHR 0926	Gray	12/29/00	
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	
William A. Sergeant Lot 9 v. Dept. of Environment & Natural Resources	00 EHR 1210	Gray	12/12/00	
Scotty's Mobile Village, Larry G. Scott v. Dept. of Env. & Natural Resources	00 EHR 1266	Morrison	12/12/00	
Arland Community Development v. Dept. of Env. & Natural Resources	00 EHR 1300	Mann	03/08/01	
Randy Graham v. Environmental Health of Alamance County	00 EHR 1393	Gray	12/29/00	
Chris & Senja Shumater v. Dept. of Environment & Natural Resources	00 EHR 1584	Morrison	12/18/00	
Lisa King v. Brunswick County Health Department	00 EHR 1778	Lassiter	01/19/01	
Robert H. Bilbro v. DENR/Division of Coastal Management	00 EHR 1843	Chess	01/19/01	
Levi Moore, Jr. v. Brunswick County Health Department	00 EHR 1883	Lassiter	02/13/01	
Kelly Jones v. Office of Administrative Hearings	01 EHR 0007	Chess	02/22/01	
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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	
MW Clearing and Grading, Inc. v. DENR, Div. of Air Quality	00 EHR 0286	Wade	11/28/00	
Guy M Long III v. NC DENR, Division of Air Quality	00 EHR 0975	Chess	01/19/01	
Billy V. Cain v. NC DENR, Division of Air Quality	00 EHR 1351	Lassiter	01/11/01	
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Division of Water Quality				
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Frederick Holland, Hervie S. Honeycut, and Mary Jane P. Osborne v. NCDENR, Division of Water Quality	00 EHR 0332	Conner	09/18/00	
J.C. Faw v. NC DENR, Division of Water Quality	00 EHR 0825	Wade	04/04/01	
John P. Hendrix v. NC DENR, Div. of Water Quality	00 EHR 0966	Wade	03/09/01	
Johnny Barrier, Jonas Ridge Nursing Home v. NC DENR, Division of Water Quality	00 EHR 2155	Conner	02/26/01	
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JUSTICE				
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Edwin Moore Stevens v. Alarm Systems Licensing Board	00 DOJ 1413	Lassiter	11/02/00	
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Jody Durell Stancil v. Alarm Systems Licensing Board	00 DOJ 2054	Conner	02/22/01	
James Eric Rollings v. Alarm Systems Licensing Board	01 DOJ 0014	Mann	03/15/01	
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Emmit O'Neal Thomas v. Sheriffs' Educ. & Training Stds. Commission	99 DOJ 0845	Lassiter	04/06/01	
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00	
Leonard Karle Mapp v. NC Criminal Justice Educ & Trng Stds Comm	99 DOJ 1555	Gray	01/16/01	
Juan Montez Jones v. N.C. Criminal Justice Education & Training Standards Commission	99 DOJ 1716	Conner	07/05/00	
Larry G. McClain v. Sherriffs' Education & Training Standards Comm.	99 DOJ 1721	Morrison	06/28/00	

Ersal Overton, III v. Sherriffs' Education & Training Standards Comm.	99 DOJ 0791	Mann	08/23/00	15:08 NCR	883
Keith Allen Murchison v. Sheriffs' Education & Training Stds Comm.	00 DOJ 0006	Lassiter	06/26/00		
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		
Larry Kevin Dean v. NC Criminal Justice Education & Training Standards Commission	00 DOJ 0610	Wade	02/06/01		
Pierre Deberry Debnam v. NC Criminal Justice Education and Training Standards Commission	00 DOJ 0719	Morrison	08/15/00		
Herbert Wilson Stubbs v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0907	Lassiter	11/02/00		
Andrew Newsom v. Sheriffs' Education & Training Standards Comm.	00 DOJ 0909	Conner	03/05/01		
Gary J Watts v. Sheriffs' Education & Training Standards Commission	00 DOJ 0910	Lassiter	03/02/01		
Charles L. Garner, Jr. v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0993	Morrison	01/05/01		
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William J. Sciacca v. Sheriffs' Education & Training Stds. Comm	00 DOJ 1555	Mann	01/17/01		
Rosamel T. Gresham v. Sherriffs' Education & Training Standards Comm.	00 DOJ 1557	Lassiter	12/20/00		
Private Protective Services Board					
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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		
Tammy Goforth Nichols v Private Protective Services Board	00 DOJ 2051	Gray	02/09/01		
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		
Donna Rena Reynolds v. Private Protective Services Board	01 DOJ 0011	Mann	03/27/01		
Richard Asiedu v Private Protective Services Board	01 DOJ 0012	Gray	02/07/01		
Derrick Jaie Wiser v. Private Protective Services Board	01 DOJ 0013	Mann	03/27/01		
David Heath Manning v. Private Protective Services Board	01 DOJ 0127	Mann	03/09/01		
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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
Ray N. Anderson v. NC Department of Public Instruction	00 EDC 1226	Gray	03/16/01		
James William Stockstill v. Orange County Board of Education, Orange County Schools and Randy Bridges	00 EDC 1261	Conner	09/28/00		
Christopher Paul Thompson v. Polk County School System	00 EDC 1291	Conner	12/28/00		
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Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan	98 INS 1662	Gray	05/25/00		
DEPARTMENT OF LABOR					
Secret Spot Surf Shop, Inc. v. NC Department of Labor	00 DOL 1213	Gray	03/26/01		
GTF, Inc. D/b/a Creekside Restaurant & Bar v. NC Dept. of Labor	01 DOL 0226	Morrison	04/06/01		
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Shane C. Balance v. Watauga County District Attorney and Watauga County Superior Court	00 MIS 1685	Mann	01/31/01		
STATE PERSONNEL					
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		
Sheila Harris	96 OSP 0686	Mann	02/12/01		
Michele Smith v. Cumberland Co. Dept. of Social Services	97 OSP 1344	Morgan	07/11/00		
Roosevelt Wilkerson, Jr. v. NC Department of Correction	98 OSP 1198 ⁸	Gray	01/30/01		
Marshe Morgan v. Black Mount Center, NC DHHS	98 OSP 1302	Gray	07/11/00	15:05 NCR	624
Pat Hovis v. Lincoln County Department of Social Services	98 OSP 1348	Conner	11/15/00		
Roosevelt Wilkerson, Jr. v. NC Department of Correction	99 OSP 0084 ⁸	Gray	01/30/01		
Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR	47

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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
Ronald Dennis Long v. Western Carolina University	99 OSP 0870 ⁹	Chess	02/01/01	
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	
Michael Duane Maxwell v. Dept. of Health & Human Services	99 OSP 1068	Reilly	08/03/00	15:09 NCR 924
Mary Brown-Barbee v. Dept. of Environment & Natural Resources	99 OSP 1087	Morrison	12/11/01	
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	
Ronald Dennis Long v. Western Carolina University	99 OSP 1347 ⁹	Chess	02/01/01	
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
Thelma T. Uteley v. NC State University	99 OSP 1708	Conner	12/08/00	
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	
Brenda Parker v. NC Div. of Motor Vehicles	00 OSP 0021	Gray	01/19/01	15:16 NCR 1545
Forrest Travis Coston v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0022	Conner	01/24/01	
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	
Larry Campbell v. Wildlife Resources Commission	00 OSP 0117 ⁵	Reilly	09/28/00	
Larry Campbell v. Wildlife Resources Commission	00 OSP 0118 ⁵	Reilly	09/28/00	
Eldee L Brown Jr v. NC Department of Commerce	00 OSP 0180	Morrison	12/19/00	
Vicky Ruffin-Jenkins v. Sparc Academy	00 OSP 0207	Connor	06/26/00	
Robert L. Swinney v. NC Department of Transportation	00 OSP 0281	Morrison	12/20/00	15:14 NCR 1392
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	
Ronald Dennis Long v. Western Carolina University	00 OSP 0413 ⁹	Chess	02/01/01	
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	
Mary D. Eurquhart v. NC DOT, Division of Motor Vehicles	00 OSP 0470	Wade	03/09/01	
George W. Baysden, Jr. v. NC Department of Corrections	00 OSP 0483	Chess	12/20/00	
Addie M. Williams v. Pender Correctional Inst., Dept. of Correction	00 OSP 0562	Conner	09/12/00	
Paula M Wilson v. NC Department of Correction	00 OSP 0581	Morrison	12/15/00	
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	
Pathe S. Vivek v. NC Dept. of Environment & Natural Resources	00 OSP 0631	Smith	01/12/01	
Linda O. Leder v. NC Department of Correction	00 OSP 0632	Conner	09/29/00	
James F. Pridgen, Jr. v. A&T State University, Millicent Hopkins	00 OSP 0652	Mann	07/27/00	
Robert L. Moore v. Pitt County Mental Health Dev Disabilities/SA	00 OSP 0708	Wade	02/05/01	
Warren Carlos Moore v. Pitt County Menatl Health Dev Disabilities/SA	00 OSP 0713	Wade	02/05/01	
Ronald Dennis Long v. Western Carolina University	00 OSP 0745 ⁹	Chess	02/01/01	
Cheryl R Prather v. NC Department of Correction	00 OSP 0756	Chess	03/22/01	
Guy M Murrell v. Neuse Center for Mental Health	00 OSP 0790	Gray	12/12/00	
Mark Esposito v. NCDOT/Aviation, Bill Williams, Director	00 OSP 0791	Lassiter	07/24/00	
Ronald Dennis Long v. Western Carolina University	00 OSP 0821 ⁹	Chess	02/01/01	
Ronald Dennis Long v. Western Carolina University	00 OSP 0822 ⁹	Chess	02/01/01	
Marilyn R. Horton v. Gaston-Lincoln Mental Health	00 OSP 0912	Morrison	10/19/00	
Maurice Alson v. NC Department of Insurance	00 OSP 0953	Lassiter	04/03/01	
Jeffrey L. Teague v. NC Department of Correction	00 OSP 0978	Chess	10/27/00	
Ronald Dennis Long v. Western Carolina University	00 OSP 1094 ⁹	Chess	02/01/01	
Bernadine Johnson v. Department of Correction	00 OSP 1118	Morrison	11/20/00	
Robert C. Adams v. NC Department of Labor	00 OSP 1185	Conner	11/28/00	
Pamela DeVose v. Durham County DSS	00 OSP 1189	Conner	12/28/00	
Billy Anderson v. NC Department of Correction	00 OSP 1196	Gray	03/08/01	
Steven Allen Slocum v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol	00 OSP 1203	Conner	12/28/00	
Robert J. Lane v. Jim Webb, NC Special Care Center (DHR)	00 OSP 1241	Gray	01/23/01	
Pamela R. Smith v. NC Department of Public Instruction	00 OSP 1229	Conner	11/09/00	
Linda Sharp Brady v. Halifax Co. Department of Social Services	00 OSP 1263	Gray	02/23/01	
Wayne M. Wise v. NCCU-WNCU	00 OSP 1269	Gray	01/09/01	
Dora P. Pettiford v. NC Department of Health & Human Services	00 OSP 1279	Lassiter	09/25/00	
David A. Greats v. NC Department of Correction	00 OSP 1282	Conner	11/09/00	
Ronald Dennis "Butch" Long v. Western Carolina University	00 OSP 1307	Chess	02/02/01	
Richard A Patterson v. Currituck Co. EMS, Currituck County, NC 27929	00 OSP 1330	Conner	02/21/01	
Jacqueline G Williams v. Kathryn Flora, Director of Currituck County	00 OSP 1331	Conner	03/27/01	
Wayne Davis v. Shelby City Schools	00 OSP 1402	Lassiter	12/20/00	
Larry Joel Williams v. Durham Co. Gov't, The Durham Center	00 OSP 1417	Gray	01/24/01	
Michael T. Winbush v. Winston-Salem State University	00 OSP 1429	Overby	04/03/01	15:21 NCR 1846
Treana S. Greene v. NC DOC, Pamlico Correctional Institution	00 OSP 1647	Chess	02/28/01	
Susan Mote Smith v. NC DHHS/Murdoch Center	00 OSP 1662	Mann	02/23/01	
Thomas Michael Chamberlain v. Alamance Community College	00 OSP 1799	Chess	03/22/01	
Danielle Hannon-Fox v. Nash Community College	00 OSP 1872	Mann	03/14/01	
Mary Ann Suprenant v Randolph County Mental Health	00 OSP 2089	Morrison	02/14/01	
Billy Wayne Lacy v. Sandhills Center for Mental Health DD & SAS	00 OSP 2127	Morrison	02/28/01	
Erthel Hines v. NC Agricultural & Technical State University	00 OSP 2139	Morrison	12/21/00	
Johnny Lee Brown v. Harnett Correctional Institute	00 OSP 0146	Chess	03/06/01	

CONTESTED CASE DECISIONS

Harvey L Justice Jr v. North Carolina Central University	01 OSP 0287	Lassiter	04/04/01	
STATE TREASURER				
Jean C. Burkhardt v. NC Dept. of State Treasurer, Retirement Systems Division	99 DST 1475	Mann	05/30/00	15:05 NCR 633
DEPARTMENT OF REVENUE				
Eddie B. Thomas v. NC Department of Revenue	00 REV 0530	Gray	08/24/00	
Samuel W. Hinshaw v. NC Department of Revenue	00 REV 1008	Gray	12/20/00	
SECRETARY OF STATE				
Pamela J. Rollefson v. Secretary of State (Notary Division)	00 SOS 1470	Conner	01/26/01	
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	
Ande West v. UNC Hospitals	00 UNC 1267	Conner	12/14/00	
Lisa Morelli v. SODCA Representative, UNC Hospitals	00 UNC 1328	Gray	12/28/00	
Felicia Higgins v. UNC Hospitals at Chapel Hill	00 UNC 1486	Mann	02/23/01	
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	

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
00 OSP 1429

MICHAEL T. WINBUSH
Petitioner,

v.

WINSTON-SALEM STATE UNIVERSITY
Respondent.

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RECOMMENDED DECISION

This contested case came on for hearing before Temporary Administrative Law Judge Donald W. Overby on March 12,13, 2001, in Winston-Salem, North Carolina.

APPEARANCES

For Petitioner: Ms. Rachel Esposito
Elliot, Phisko, Gelbin & Morgan
P. O. Box 20545
Winston-Salem, N.C. 27120-0545

For Respondent: Thomas O. Lawton III
Assistant Attorney General
N. C. Department of Justice
P. O. Box 629
Raleigh, N. C. 27602-0629

ISSUE

Whether the State Personnel Commission and the Office of Administrative Hearings have jurisdiction; and, if so, was the Petitioner wrongfully demoted or terminated without just cause or justification, and was there procedural error in the demotion or termination.

FINDINGS OF FACT

1. The Petitioner, Michael Winbush, was relieved of his duties as Assistant Football and Head Women’s Softball Coach on June 30, 2000.
2. Mr. Winbush was hired by the Respondent Winston-Salem State University in 1993, by then Director of Athletics Albert Roseboro. Mr. Roseboro prepared a document outlining the requirements of the position for which Mr. Winbush was being hired. (Pet Exh #1) That document states that the primary purpose of the position is as coordinator of intramural sports as well as assistant coach. Although the document attributes 110% to the breakdown of the assigned duties, it is obvious that the primary responsibility of the position is to coach football and women’s softball.
3. Petitioner’s Exhibit #1 , II. B. 5., page 3, states in particularity that the work performance of the individual hired for this position “will be evaluated as required by the Office of State Personnel.” Although Mr. Winbush’s name does not appear on this document, Mr. Roseboro testified that this document was prepared particularly and specifically for Michael Winbush.
4. Mr. Roseboro testified that Mr. Winbush was being hired through the Student Affairs Department but that his primary responsibility would be to coach. Mr. Roseboro explained that it is a common practice at Winston-Salem State University as well as all universities within the North Carolina University System to hire coaches through other departments on campus because of economic constraints within the athletics departments. The hiring practice was confirmed by Ms. Anne Little, current Director of Athletics.
5. Mr. Roseboro was especially interested in employing Mr. Winbush because of his special expertise in coaching football. Mr. Winbush was a graduate of Winston-Salem State and was Captain of its football team in 1983 and 1984. Mr. Roseboro stated that with the hiring of Mr. Winbush, he would have on staff the two greatest quarterbacks to have ever played at Winston-Salem State, the other being Head Football Coach Kermit Blount. Mr. Winbush is also a talented athlete in baseball, having competed as a professional baseball player.

6. Mr. Roseboro believed and understood that Mr. Winbush was being hired into a "position" as Recreation Worker II which determined his status to be SPA, but that he was being hired as a coach primarily.

7. Mr. Winbush's employment was confirmed in a letter to dated April 14, 1994. (Pet Exh #2) The letter states that his employment is "Student Center Program Director " and does not speak of coaching duties. It states that his employment is in the "Athletic/Student Activities Departments" at the University. He is informed in the correspondence that his status is probationary and that if he successfully completes the probationary period that he may become a permanent employee. As a permanent employee, he would, among other things, be entitled to participate in the grievance procedure for State Personnel Act (hereinafter SPA) employees.

8. In 1995, Mr. Winbush was given notice that he had satisfactorily completed his probationary status with the university and that he was a permanent employee effective 12/01/1994. (Pet Exh #3) Mr. Winbush's position for this purpose was Recreation Worker II, and the form does not mention any coaching duties explicitly.

9. Mr. Winbush signed three documents called Athletic Director's Letter of Appointment. (Resp Exh # 1, 2, 3.) These documents purport to establish a contractual basis for the signing coach, in this case Mr. Winbush, which makes the coach an "exempt employee," as that term is defined by the State Personnel Act. Each further purports to cancel and replace any other contract or agreement with the University. Respondent's Exhibit number 1 is effective from July 1, 1994 through, June 30, 1995, and Respondent's Exhibit number 2, is effective from July 1, 1995 through June 30, 1996. Respondent's Exhibit number 3 has July 1, 1999 through June 30, 2000 as the effective dates, but it was not executed. There is no evidence that other such agreements were entered in any other years, although Mr. Winbush continued to serve as a coach at the university.

10. Mr. Roseboro testified that he did not remember signing the letters of appointment pertaining to Mr. Winbush, with the possible exception of one year. He further testified that his understanding was that the letters of appointment did not affect the employee's status as to whether he or she may be an exempt employee or subject to SPA, but rather that he or she were merely "coming on as coaches."

11. No significance is placed on the fact that Respondent's Exhibit 3 has a blue ink line across the front page since it was never executed.

12. If, in fact, Mr. Winbush's athletic duties were controlled by the letters of appointment, then there would not have been any need for Ms. Little to have taken any action. She would merely not renew his contract to coach. However, there was no known letter of appointment in existence at the time of the alleged incident under consideration.

13. Despite the language of Respondent's Exhibits 1, 2, and 3, the University continued to treat Mr. Winbush as subject to SPA for all purposes. Mr. Winbush was disciplined in 1998, and the University followed all procedures for SPA employees in that disciplinary action, which was ultimately over-turned by the Chancellor in Mr. Winbush's favor. Ms. Little acknowledged that she was upset by the reversal of Mr. Winbush's disciplinary action.

14. The University, through Ms. Little, the Director of Athletics, attempted to follow procedure for SPA employees in the handling of this current matter, including but not limited to, informing him that he was being terminated from his coaching duties for insubordination. (Pet Exh # 9)

15. In a memorandum to Mr. Otis Chilton, dated June 27, 2000, Ms. Little sought advice and assistance in relieving Mr. Winbush from his athletic responsibilities in accordance with SPA, based on the factual allegations now being considered. (Pet Exh # 15) This memorandum pre-dates Ms. Little's letter dated June 30, 2000, informing Mr. Winbush that he is relieved of athletic duties.

16. Ms. Little completed a performance evaluation of Mr. Winbush which acknowledges his status as SPA. This evaluation was performed at the direction of the Chancellor of the University and after Mr. Winbush was relieved of his athletic duties, the evaluation having been signed on July 14, 2000. (Pet Exh # 16)

17. Ms. Little acknowledges that Mr. Winbush held, at the very least, a "dual status" as both an exempt employee and one subject to SPA, and that no one else on the coaching staff held such a status.

18. Ms. Delores Turner was called as an adverse witness by Mr. Winbush. Ms. Turner is the Director of Human Resources for Winston-Salem State University, with responsibility for SPA hirings, benefits, employee relations among her duties. Her duties also include disciplinary questions. In testifying concerning Petitioner's Exhibit #16, Ms. Turner stated that Mr. Winbush was employed through Athletics and the Student Affairs, and that everything to do with his employment qualifies him for SPA status. She further testified that Mr. Winbush was treated as SPA for purposes of this grievance.

19. Mr. Winbush's dual status as both exempt and SPA employee may not comply with National Collegiate Athletic Association (hereinafter NCAA) guidelines for Division II schools such as Winston-Salem State University. It is recognized that individual

schools need control over the coaching staff for intercollegiate athletics so that the school does not become contractually bound to an individual coach who may not be performing to the expectations of the university, for whatever reasons. For that and other reasons, coaches are as a practical matter and as a general rule “exempt” employees.

20. While recognizing the above, and the perhaps untenable position in which Mr. Winbush’s employment places the University, the University employed Mr. Winbush and granted him permanent SPA status being expressly mindful of NCAA and Central Intercollegiate Athletic Association (hereinafter CIAA) requirements. (Pets Exh #1, page 3, II. B. 2.) The status of Mr. Winbush’s employment was created by the University, not by Mr. Winbush.

21. As stated above, Mr. Winbush was hired by the University primarily as a coach, although his duties also included intramural activities.

22. Mr. Winbush has dedicated his life to athletics. This was acknowledged by Mr. Roseboro in hiring Mr. Winbush to coach at his Alma Mater, Winston-Salem State University. Mr. Winbush has a long personal history of individual accomplishment as an athlete. While serving on the coaching staff at the University, he continued to excel. Teams he coached achieved numerous trophies and awards, including but not limited to, Division Champions and CIAA champions. His women’s softball team had won the CIAA championship in the season concluding just prior to the matter at controversy herein. Mr. Winbush likewise won numerous trophies and awards as a result of his coaching, including but not limited to CIAA coach of the year and the “Big House” Gaines Award, a prestigious award named for one of North Carolina’s most well-known coaches.

23. Mr. Winbush is still employed at the university as a recreation worker, and his pay grade has not changed. Mr. Winbush was hired as a coach, has excelled as a coach and has developed a reputation as an excellent coach; however, he is not allowed to coach at Winston-Salem State University.

24. Mr. Winbush was given a 10% raise in 1999. The request for the increase on his behalf notes that “employee has experience beyond requirements” and “Michael has . . . significant experience for the position.” (Pet Exh # 13) This document refers to his job title as Recreation Worker and the department as Student Affairs; however, the Head Football Coach signed as his supervisor, and the Director of Athletics signed as Department Manager, neither of whom are in the “chain-of-command” for the Student Affairs Department.

25. Mr. Winbush was promised in April 2000, an additional 10% raise in salary as a result of the Women’s Softball team’s accomplishment and Mr. Winbush’s awards for coaching. As a result of the disciplinary action herein, Mr. Winbush did not receive the additional raise in salary.

26. In a memorandum from Delores Turner, dated July 28,2000, Mr. Winbush was informed of two legislatively created salary increases, a 2.2% cost of living award and a 2% Career Growth Recognition Award. (Pet Exh # 14) Mr. Winbush received an increase of \$572, which is just slightly below 2%. It is not clear from the evidence whether the increase is based on the 2% career growth award. It is clear the increase does not amount to the 2.2% cost of living increase.

27. Mr. Winbush was informed that he was relieved of coaching duties at the University June 30,2000, by letter from Ms. Little, Director of Athletics. (Pet Exh #9)

28. Ms Little was concerned that Mr. Winbush was conducting a football camp in his home-town of Goldsboro, North Carolina, which she had not approved and which could potentially cause NCAA problems for the University. Ms. Little was aware that he had conducted such a camp on Father’s Day weekend 1999, and that he planned another camp for Father’s Day weekend 2000.

29. A conflict arose over the scheduling of the camp. Ms. Little was aware that the camp was scheduled for June 16 and 17, 2000, the same dates as a retreat for the Athletic Department of the University. She asked Mr. Winbush to, among other things, select alternative dates, which he did not do. The camp was held as scheduled. Mr. Winbush did not attend the camp, and instead, attended the retreat for the Athletic department.

30. Ms. Little made no attempt to raise any issue concerning insubordination, nor any other employee related issue, with Mr. Winbush between June 17 and June 30, 2000. She did contact Mr. Otis Chilton by memo dated June 27, 2000 seeking his assistance and indicating that she wanted to go forward with relieving Mr. Winbush in accord with SPA procedure. She also notes in this memorandum that a letter will be composed giving, among other things, “rights/process for appeal.” (Pet Exh #15)

31. Delores Turner, Director of Human Resources for the University, responded to the memorandum by telephone and made notation of the conversation on the bottom of the memo. She told Ms. Little that the paperwork was not processed because the disciplinary action form was blank and that the act of insubordination was not clear. Ms. Turner testified that she is still not clear what the act of insubordination is.

32. Ms. Turner testified that this was not properly a “disciplinary procedure” because Ms. Little had not prepared the paperwork

in proper form nor filed it in a timely manner.

33. Petitioner's Exhibit 9 states that the reason for relieving Mr. Winbush of athletic duties is "insubordination" because of his "failure to follow the instructions of the director of athletics." There is no indication of what specific act or acts of insubordination occurred, nor what instructions he failed to follow. This document gives no notice of his rights of appeal.

34. On receiving Petitioner's 9, Mr. Winbush went to Ms. Turner's Office. As Director of Human Resources, Ms. Turner deals with disciplinary questions. She asked Mr. Winbush to remain in her office so that she could contact other officials concerning his situation. She also told Mr. Winbush that she did not think he should be dismissed, and, further, that she thought another type of action might be appropriate from her discussions with Ms. Little and the Chancellor.

35. Mr. Winbush did not receive any notification of any rights he might have under SPA until he received them from the Grievance Committee. David Motley, former chair of the SPA Grievance Committee, testified that the committee was improperly convened in that "the Chancellor did not give (him) the case." The committee was instead convened by Personnel which is not within the guidelines and regulations of the University grievance procedure, according to Mr. Motley. There is no evidence that Mr. Winbush has ever received any notification of appeal rights in writing, although Ms. Turner did testify that Mr. Winbush received his "rights" after he filed a grievance. It is not clear whether these "rights" included his right to appeal and the procedure for such appeal.

36. There is ample evidence that there were several procedural errors within the framework of the internal grievance procedure of the University. Mr. Winbush has never been given a copy of his appeal rights in writing, nor has he been apprised with sufficient particularity of what he is accused.

37. It is not necessary to reach the issue of whether or not Mr. Winbush's reduction in duties were a result of insubordination based on just cause since he was denied constitutional and statutory due process as stated above.

CONCLUSIONS OF LAW

1. This office has jurisdiction over this contested matter and Mr. Winbush has the burden of proof on all issues. *Peace v. Employment Security Commission*, 349 N.C. 315, 328, 508 S.E.2d 272, 281 (1998).

2. N.C.Gen. Stat. sec 126-35 provides that "no career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted . . ." The burden is on Mr. Winbush to establish that he is subject to the State Personnel Act.

3. The position for which Mr. Winbush was hired was established subject to "be evaluated as required by Office of State Personnel," and the position as defined was primarily as a coach.

4. Mr. Roseboro, who was the Director of Athletics that hired Mr. Winbush, stated that he hired Mr. Winbush primarily as a coach and that his status was SPA. Mr. Winbush was hired and given notice of "probationary" status for SPA purposes and under what conditions his status could become permanent. Mr. Winbush was notified that he was given permanent status for SPA purposes.

5. Mr. Winbush was disciplined by the Director of Athletics in 1998, following SPA procedure. Winston-Salem State University attempted to follow SPA procedure in this matter, with the Director of Athletics seeking advice from Human Resources on SPA procedures.

6. The Director of Human Resources for Winston-Salem State University testified that Mr. Winbush has SPA status for all purposes of his employment.

7. After this disciplinary action began, the Director of Athletics prepared an evaluation acknowledging Mr. Winbush's status as SPA.

8. Mr. Winbush has met his burden and is a permanent employee subject to the State Personnel Act.

9. In order for Mr. Winbush to prevail, he must prove there has been a reduction in pay or position. Mr. Winbush was hired primarily as a coach, with coaching duties comprising the majority of his duties. He is a coach by profession and reputation, and he is denied those responsibilities by Winston-Salem State University as a result of this disciplinary action, and not as a matter or any internal reorganization or restructuring.

10. Mr. Winbush's pay grade has not been affected by this action; however, he was denied a full legislatively created pay increase, and he was denied a 10% pay raise which was completely related to his coaching duties.

11. Mr. Winbush has been demoted without just cause.

12. N.C. Gen. Stat. Sec. 126-35 provides that the employee shall be given in writing a statement of the specific acts or omissions for the disciplinary action AND (emphasis added) the employee's appeal rights. The employee may be terminated without warning under some circumstances "pending the giving of written reasons." The statute places an affirmative duty on agencies of the State to describe the incidents "with sufficient particularity so that the discharged employee will know precisely what acts or omissions were the basis of the discharge." *Employment Security Commission v. Wells*, 50 N.C. App 389, 274 S.E.2d 256 (1981). Mr. Winbush was not given written notice with sufficient particularity of the reason for which he was being relieved of coaching duties.

13. "Due Process under the United States and North Carolina Constitutions requires that an employee be provided with a statement in writing setting forth his rights of appeal before the 15-day and 30-day time limits contained in N.C.G.S. 126-35 and 126-38 commence to run." *Luck v. Employment Security Commission* 50 N.C. App 192,272 S.E.2d 607 (1980) Winston-Salem State University did not provide Mr. Winbush with his rights to appeal in writing as required.

RECOMMENDED DECISION

For the foregoing reasons, it is recommended that the dismissal of Michael Winbush be set aside, and that he be reinstated to his duties as Assistant Football coach and head women's softball coach, and, further, that he receive compensation for wages not paid in full for the 2.2% cost of living raise, as well as the 10% increase he was promised based on his softball coaching performance. It is further recommended that attorney's fees be awarded on behalf of Mr. Winbush.

ORDER

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

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 3rd day of April, 2001.

Donald W. Overby
Temporary Administrative Law Judge