



REGISTER

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
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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
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/16/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02
16:01	07/02/01	06/11/01	09/04/01	07/17/01	08/01/01	08/20/01	05/00/02	08/31/01	09/20/01	05/00/02	03/29/02
16:02	07/16/01	06/22/01	09/17/01	07/31/01	08/15/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
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16:04	08/15/01	07/25/01	10/15/01	08/30/01	09/14/01	09/20/01	05/00/02	10/15/01	10/22/01	05/00/02	05/12/02
16:05	09/04/01	08/13/01	11/15/01	09/19/01	10/04/01	10/22/01	05/00/02	11/05/01	11/20/01	05/00/02	06/01/02
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16:08	10/15/01	09/24/01	12/17/01	10/30/01	11/14/01	11/20/01	05/00/02	12/14/01	12/20/01	05/00/02	07/12/02
16:09	11/01/01	10/11/01	01/02/02	11/16/01	12/03/01	12/20/01	05/00/02	12/31/01	01/21/02	05/00/02	07/29/02
16:10	11/15/01	10/24/01	01/15/02	11/30/01	12/17/01	12/20/01	05/00/02	01/14/02	01/21/02	05/00/02	08/12/02
16:11	12/03/01	11/07/01	02/01/02	12/18/01	01/02/02	01/22/02	05/00/02	02/01/02	02/20/02	05/00/02	08/30/02
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.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

JDR:MSR:NT:par
DJ 166-012-3
2001-1904

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

August 3, 2001

Don Wright, Esq.
General Counsel, State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Wright:

This refers to Session Law 2001-235, which eliminates the need to notarize but requires certification of campaign finance reports; and Session Law 2001-169, which prohibits an employer from dismissing or demoting employees due to their appointment as precinct officials for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 2, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:DHH:HCL:nj
DJ 166-012-3
2001-2318

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

September 18, 2001

Don Wright, Esq.
General Counsel, State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Wright:

This refers to Session Law 2001-317, which revises the required format for disclosure statements in political advertisements for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 3, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:CKD:BFH:TGL:nj
DJ 166-012-3
2001-2347

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

September 28, 2001

Mr. Gary O. Bartlett
Executive Director
North Carolina State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2001-310, which prohibits the use of punch card ballots after January 1, 2006, and the use of butterfly ballots immediately; and Session Law 2001-314, which allows registered voters to report change of addresses by facsimile for the Section 5 covered counties in the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 6, 2001.

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

Session Law 2001-310 includes provisions that are enabling in nature. Therefore, local jurisdictions are not relieved of their responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., the adoption of a new method of voting). See 28 C.F.R. 51.15.

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:DHH:SLL:nj
DJ 166-012-3
2001-2275

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

September 28, 2001

Mr. Gary O. Bartlett
Executive Director
North Carolina State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Act No. 2001-315, which allows voter registration via facsimile transmission; and Act No. 200-316, which clarifies that an individual who leaves that individual's permanent home to serve state government does not give up that individual's residency, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Acts, 42 U.S.C. 1973c. We received your submission on August 6, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:JR:DCM:nj

DJ 166-012-3
2001-2346

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

October 2, 2001

Mr. Gary O. Bartlett
Executive Director
North Carolina State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2001-292, which permits minor children to accompany voters into voting enclosures; and Session Law 2001-319, which shortens the one-stop early voting period from three weeks to two, with mandatory opening on the last Saturday prior to an election; permits early voting on evenings and weekends and the use of locations other than county board of election offices, with approval from the state board of elections; permits assignment of permanent numbers to registered voters; requires county boards of election to send a confirmation mailing to every registrant after each congressional election absent other registration confirmation; provides for the electronic transfer of voter registration applications from DMV offices and the extension of registration hours on the final day of registration; establishes a mandatory certification program for county directors of election and a voluntary certification terminating appointed county directors of election; applies partisan candidate qualification procedures to nonpartisan candidates for superior court judge; permits the use of two polling places in a precinct and the use of polling places outside of a precinct; and, with certain exceptions, requires precinct boundaries to be coterminous with Census block boundaries for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 6, 2001; supplemental information was received on August 27 and September 14, 2001.

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

We note that neither the change in the title of the Executive Director of the State Board of Elections nor the change in location of deposit of forfeited illegal campaign contributions affects voting and therefore are not subject to the preclearance requirement of Section 5. Accordingly, no determination by the Attorney General is required or appropriate under Section 5. See 28 C.F.R. 51.2, 51.12, 51.13 and 51.35.

Session Law 2001-319 includes provisions that are enabling in nature. Therefore, local jurisdictions are not relieved of their responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., changes in early voting locations or hours, precincts, polling places, etc.) See 28 C.F.R. 51.15.

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:MSR:HCL:jdh
DJ 166-012-3
2001-2348

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

October 2, 2001

Mr. Gary O. Bartlett
Executive Director
North Carolina State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2001-288, which requires ballots and their instructions to be provided in Spanish for counties and municipalities having Hispanic populations of six percent or greater; and Session Law 289, which adopts procedures for the selection of North Carolina presidential electors, if the election results have not been proclaimed by at least the sixth day before electors must meet, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received submission on August 6, 2001; supplemental information was received on August 27, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

Charlotte-Mecklenburg Utilities Proposed Increase in Interbasin Transfer

NOTICE OF PUBLIC HEARING

December 11, 2001, 5:00 PM

The North Carolina Environmental Management Commission (EMC) will hold a public hearing to receive comments on the petition for an increase in interbasin transfer from the Catawba River Basin to the Rocky River Basin. Charlotte-Mecklenburg Utilities (CMUD) is requesting an increase from the grandfathered Interbasin Transfer (IBT) of 16.1 million gallons per day (mgd) to 33 mgd (maximum day basis). The proposed IBT is based on additional water withdrawals from Lake Norman and Mountain Island Lake in the source basin (Catawba River Basin). The IBT will increase due to transfer of the water to the receiving basin (Rocky River Basin) via consumptive use in eastern Mecklenburg County and existing discharges at Mallard Creek Wastewater Treatment Plant [WWTP] and Water and Sewer Authority of Cabarrus County's [WSACC] Rocky River Regional (RRR) WWTP. CMUD is requesting a permitted IBT increase to 33 mgd, which will allow CMUD to meet projected water supply demands through the year 2030 in eastern Mecklenburg County. *This IBT does not include transfers associated with water or wastewater service provided to the Goose Creek watershed in the Town of Mint Hill in Mecklenburg County.* Notice of these hearings is given in accordance N.C. General Statute 143-215.221(d).

The public hearing will start at 5:00 PM on December 11, 2001 at the North Mecklenburg Water Treatment Plant, 7980 Babe Stillwell Road, Huntersville, NC. In addition, Division of Water Resources staff will be available to answer questions from 4:00 PM to 5:00 PM at the hearing location. The public may inspect the staff's recommendation report, the interbasin transfer petition, and the final Environmental Assessment (EA) during normal business hours at the offices of the Division of Water Resources, 512 N. Salisbury Street, Room 1106, Archdale Building, Raleigh. These documents may also be viewed at the Division's web site: http://www.ncwater.org/Permits_and_Registration/Interbasin_Transfer/Status/Cmud/.

The purpose of this announcement is to encourage those interested in this matter to provide comments and to comply with the public participation requirements regarding this matter. You may attend the public hearing and make relevant oral comments and/or submit written comments, data, or other relevant information. Written submissions of oral comments at the hearing are requested. The hearing officer may limit the length of oral presentations if many people want to speak. If you are unable to attend, written comments can be mailed to Tom Fransen, Division of Water Resources, DENR, 1611 Mail Service Center, Raleigh, NC 27699-1611. Comments may also be submitted electronically to Tom.Fransen@ncmail.net. All comments must be received before 5:00 PM, December 14, 2001.

Under the Regulation of Surface Water Transfers Act (G.S. 143-215.221), persons intending to transfer 2.0 mgd or more, or increase an existing transfer by 25 percent or more, must first obtain a certificate from the Environmental Management Commission. As part of the petition process, the applicants completed an environmental assessment. Review of the environmental assessment by the Department of Environment and Natural Resources has been completed in accordance with the State Environmental Policy Act.

North Carolina G.S. 143-215.221(e) requires the notice of public hearing include *a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins.*

The proposed transfer is an increase of 16.9 mgd, an increase from the grandfathered transfer of 16.1 mgd to 33 mgd (maximum day basis). The proposed IBT is based on additional water withdrawals from Lake Norman and Mountain Island Lake in the source basin (Catawba River Basin). IBT will increase due to transfer of the water to the receiving basin (Rocky River Basin) via consumptive use in eastern Mecklenburg County and existing discharges at Mallard Creek WWTP and Water and Sewer Authority of Cabarrus County's Rocky River Regional WWTP.

In the source basin, storage in and flow through the Catawba-Wateree Project reservoirs, lost electrical generation, and reduced flow in the Catawba River immediately below the Wylie development would be the major resources directly affected. The indirect and cumulative impacts on fisheries and aquatic resources, water quality, threatened and endangered species and other resources would result primarily from changes in flow or lake levels. Operations of the Catawba-Wateree Project reservoirs were modeled using Duke Power's reservoir operations model during average, dry, and drought year conditions.

The model results indicated that there will be no changes in the surface water elevations of Lake Norman, Mountain Island Lake, or Lake Wylie due to the proposed increased IBT. Under normal and drought inflow conditions, Duke Power would manage the lakes and its power generation to offset increased water withdrawals to maintain the minimum release requirements and operating lake surface elevations. Direct impacts on water supply, water quality, wastewater assimilation,

fish and wildlife resources, navigation, or recreation are not expected since there will be no significant changes in the hydrology of the system due to the increased withdrawal. The IBT will not require any increase in the currently permitted levels of wastewater discharges or any construction in either the source or receiving basins.

There are no secondary impacts related to growth in the source basin due to the transfer of water. However, the IBT will provide additional water supply to support growth and development in the receiving basin. Mitigation measures presented in this IBT Petition are expected to mitigate secondary impacts related to growth and development in the receiving basin. The proposed IBT will not result in significant cumulative impacts in either the source or receiving basins.

The public is invited to comment on the applicants' petition and supporting environmental documentation. The Commission is considering and seeking comments on three options with regard to the interbasin transfer request. The options, in no particular order, are: (a) grant the certificate for the 33.0 mgd interbasin transfer request; (b) deny the 33.0 mgd interbasin transfer request; or (c) grant the certificate including any conditions necessary to achieve the purposes of the statute or to provide mitigation measures. The public is invited to comment on the following possible conditions and to suggest any other appropriate conditions, including other limitations on the amount of the transfer.

1. Require Mecklenburg County to summarize progress in implementation of watershed management approaches of the Surface Water Improvement and Management Program (SWIM) on an annual basis. The Division of Water Resources shall have the authority to approve modifications to and need for continued reporting as necessary.
2. Require Mecklenburg County and the City of Charlotte to continue the stakeholder process to investigate water quantity control from single-family development and water quality control for all development until completed. To accomplish this end, the stakeholder group should consider evaluating the feasibility of single-family detention and recommending ordinance revisions based on technical, political, long-term maintenance, cost, and benefits related to the proposed ordinance changes.
3. The Goose Creek subbasin in Mecklenburg County is removed from the area to be served by the IBT. A moratorium on the installation of new IBT water lines (water lines crossing the ridgeline) into Goose Creek subbasin is in effect until the impacts of additional growth urban growth on the endangered species are fully evaluated. This moratorium will not impact Charlotte-Mecklenburg Utility's ability to fully utilize existing water lines.
4. Require applicants to develop a compliance and monitoring plan for reporting maximum daily transfer amounts, compliance with certificate conditions, progress on mitigation measures, and drought management activities. The Division of Water Resources shall have the authority to approve modifications to the compliance and monitoring plan and drought management plan as necessary.

For more information, visit the Division of Water Resources' website at: http://www.ncwater.org/Permits_and_Registration/Interbasin_Transfer/Status/Cmud/. You may also contact Tom Fransen in the Division of Water Resources at 919-715-0381, or email: tom.fransen@ncmail.net.

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 03 – FACILITY SERVICES

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

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 03R .1125-.1126 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 131E-175; S.L. 2001, c. 234

Statement of the Subject Matter: The Division of Facility Services, NC DHHS, proposes to adopt temporary amendments to 10 NCAC 03R .1125 and 10 NCAC 03R .1126. These Rules pertain to the Certificate of Need process. The purpose of this action is to respond to a recent action of the NC General Assembly.

Reason for Proposed Action: The NC General Assembly recently ratified Senate Bill 937 (Session Law 2001-234). This legislation amends G.S. 131E-175 and G.S. 131E-176 to add Adult Care Homes (with 7 or more beds) to the Certificate of Need (CON) review. The Division is proposing to adopt temporary amendments to 10 NCAC 03R .1125 and 10 NCAC 03R .1126 to meet this legislative mandate.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Mark Benton, Rule-making Coordinator or Lee Hoffman, Chief, Certificate of Need Section, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by DENR – 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 .0202, .0933, .2200; 02Q .0102, .0702, .0900. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.107(a)(1), (1a), (1b), (1d), (a)(4), (5); 143-215.108; 143-215.110; 143-215.65; 150B-21.6

Statement of the Subject Matter:

15A NCAC 02D and 02Q – To make rules in Subchapter 15A NCAC 02D and 02Q with reporting requirements conform with reporting requirements in General Statutes.

15A NCAC 02D .2200 or 02Q .0900 – To adopt procedures for special orders of consent specifically for the Division of Air Quality.

15A NCAC 02D .0202 – To add a definition for significant and minor modification for permit fees purposes.

15A NCAC 02D .0933 – To clarify the requirements for tanks with shoe-mounted secondary seals.

15A NCAC 02Q .0102 – To allow dry cleaners covered under new source performance standards (NSPS) to qualify for exemption from permitting.

15A NCAC 02Q .0702 – To exempt air curtain burners from the air toxic rules.

Reason for Proposed Action:

15A NCAC 02D and 02Q – Rules in Subchapters 15A NCAC 02D, Air Pollution Control Requirements, and 02Q, Air Quality Permit Procedures, with reporting requirements need to be reviewed to ensure that they conform with the General Statute requirements. G.S. 143-215.65 specifies reporting requirements including frequency of reporting. The air quality reporting rules need to conform with the requirements of this General Statute.

15A NCAC 02D .2200 or 02Q .0900 – Currently, special orders of consent are issued under the procedures in 15A NCAC 02H .1200, Special Order by Consent. This Section was written for the old Division of Environmental Management and covers both air and water quality. The proposed change would be to create a new Section of rules that would describe the procedures that the Division of Air Quality would use in issuing special orders by consent. These procedures would be similar to those in the current rules.

15A NCAC 02D .0202 – Rule 15A NCAC 02Q .0203, Permit and Application Fees, charges different fees for significant modifications and minor modifications. However, neither significant modifications nor minor modifications are defined. A definition may be added to 15A NCAC 02Q .0202, Definition, for significant modification and minor modification.

15A NCAC 02D .0933 – Under Rule 15A NCAC 02D .0933, Petroleum Liquid Storage in External Floating Roof Tanks, the requirements for shoe-mounted secondary seals are ambiguous

and confusing. The ambiguity and confusion results from the construction of the Rule. This Rule needs to be amended to remove the ambiguity and confusion.

15A NCAC 02Q .0102 – Rule 15A NCAC 02Q .0102, Activities Exempted from Permitting Requirements, may be amended to make dry cleaners covered under NSPS eligible for exemption. Currently, any source covered under a NSPS is required to have a permit unless the Rule specifically makes such source eligible for exemption. Under the current rule all dry cleaners covered under NSPS are required to have a permit, yet almost no existing dry cleaner is required to have a permit. The Rule exempts from permitting dry cleaners that emit less than 13,000 pounds of perchloroethylene per year. The amendment would make this exemption available for new dry cleaners.

15A NCAC 02Q .0702 – Air curtain burners that are required to have a permit are currently subject to the air toxic rules. Being subject to the air toxic rules may discourage the use of air curtain burners, which are generally preferable to open burning. On the other hand, because air curtain burners that are permitted are in the same location for an extended time, it may be desirable to continue to require these air curtain burners to be covered under the air toxic rules. To exempt air curtain burners from the air toxic rules would require amending 15A NCAC 02Q .0702, Exemptions.

Comment Procedures: Comments will be accepted by Thomas Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, (919) 733-1489; Fax (919) 715-7476; e-mail thom.allen@ncmail.net.

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by DENR – 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 02R .0402. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-214.11(e)

Statement of the Subject Matter: To adjust the amount of payment into the Wetlands Trust Fund necessary to achieve compliance with compensatory mitigation requirements associated with impacts to classified surface waters to reflect the actual cost of restoration projects implemented by the Wetlands Restoration Program as required by G.S. 143-214.11(e).

Reason for Proposed Action: As required by G.S. 143-214.11(e), the Environmental Management Commission has adopted a Schedule of Fees (15A NCAC 02R .0402) that specifies the amount of payment into the Wetlands Trust Fund necessary to achieve compliance with compensatory mitigation requirements associated with impacts to classified surface waters and wetlands. The Schedule of Fees is reviewed annually

and adjustments are proposed based on the comparison of the actual costs of projects implemented by the Wetlands Restoration Program with the Schedule of Fees. Based on this review it is recommended that the fee for compensatory mitigation requirements associated with impacts to classified surface waters (streams) be increased from \$125 per linear foot to \$180 per linear foot. The Environmental Management Commission intends to utilize the temporary rule-making process to adjust this fee during the time the permanent rule-making process is being conducted. It is anticipated that the Environmental Management Commission will adopt the temporary rule at the February 14, 2002 meeting with an effective date on or after March 15, 2002.

Comment Procedures: Written comments may be submitted to the Environmental Commission in writing for 60 days after the date of publication of this issue of the NC Register. Written comments should be submitted to Crystal Braswell, Wetlands Restoration Program, 1619 Mail Services Center, Raleigh, NC 27699-1619. Additional information concerning this proposal can be obtained by contacting Crystal Braswell at 919-733-5208, or at the above address.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 33 – MIDWIFERY JOINT COMMITTEE

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

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 33 .0105. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90-178.6

Statement of the Subject Matter: Due process for the certified nurse midwife applicant.

Reason for Proposed Action: Describes the process that the Midwifery Joint Committee can take in denying, revoking, suspending or taking disciplinary actions against a certified nurse midwife.

Comment Procedures: Written comments should be submitted to Jean H. Stanley, APA Coordinator, Midwifery Joint Committee, Post Office Box 2129, Raleigh, NC 27602-2129.

CHAPTER 36 – BOARD OF NURSING

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

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 36 .0109, .0112-.0113, .0224-.0225. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90-171.21; 90-171.21(c); 90-171-21(d); 90-171.23(b)

Statement of the Subject Matter:
21 NCAC 36 .0109 - Describes the minimum requirements for any licensed nurse seeking election to and maintaining membership on the Board of Nursing.

21 NCAC 36 .0112 – Sets criteria for continuing eligibility as a Board member.

21 NCAC 36 .0113 – Sets forth factors to be considered when determining whether or not a potential candidate for a Board position meets employment qualifications.

21 NCAC 36 .0224 - .0225 – Describes the components of nursing practice for the registered nurse and the licensed practical nurse.

Reason for Proposed Action:

21 NCAC 36 .0109 - Minimum requirements have not been updated since 1982. The proposed requirements will clarify employments criteria plus state of residence requirements consistent with the Nurse Licensure Compact and expand eligibility for Board member position to any advanced practice registered nurse who meets the criteria outlined in G.S. 90-171.21(d).

21 NCAC 36 .0112 – Clarifies employment criteria that must be met by an elected registered nurse or licensed practical nurse in order to retain his/her tenure of membership on the Board.

21 NCAC 36 .0113 – To clarify the employment criteria for any registered nurse or licensed practical nurse seeking election as a nurse member of the Board of Nursing.

21 NCAC 36 .0224 - .0225 – To bring these Rules in compliance with the recent changes in the Nursing Practice Act regarding the legal scope of practice of the registered nurse and the licensed practical nurse.

Comment Procedures: Written comments should be submitted to Jean H. Stanley, APA Coordinator, Post Office Box 2129, Raleigh, NC 27602-2129.

CHAPTER 68 - CERTIFICATION BOARD FOR SUBSTANCE ABUSE PROFESSIONALS

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

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

Authority for the Rule-making: G.S. 90, Article 5C; 122-142.1(b); S.L. 2001-370

Statement of the Subject Matter: Rules that govern certification, registration, supervision, setting standards and providing for the enforcement of those standards for Substance Abuse Professionals.

Reason for Proposed Action: New legislation added definitions, clarified Board powers, set maximum amounts for certain fees, requirement for registration, approved supervision, clarified grounds and enforcement for disciplinary actions. Legislation also added clarification of procedure for substance abuse assessments. The Board is considering rules further governing education, standards, discipline and ethics. The Board will file temporary rules relating to new legislation effective April 1, 2002.

Comment Procedures: Comments should be mailed to Jim Scarborough, Board Administrator, PO Box 10126, Raleigh, NC 27605.

TITLE 25 – OFFICE OF STATE PERSONNEL

CHAPTER 01 – OFFICE OF STATE PERSONNEL

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

Citation to Existing Rule Affected by this Rule-making: 25 NCAC 01E .0802-.0804, .0807-.0808, .0812, .0814-.0815, .0817-.0819; 01N .0206. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 126-4; 127A-116

Statement of the Subject Matter:
25 NCAC 01E .0802-.0804, .0807-.0808, .0812, .0814-.0815, .0817-.0819 - These Rules offer guidance and clarification to state agencies and universities in implementing their military leave policies.

25 NCAC 01N .0206 – This Rule sets out the personal safety protective equipment which state agencies and universities will provide for their employees.

Reason for Proposed Action:
25 NCAC 01E .0802-.0804, .0807-.0808, .0812, .0814-.0815, .0817-.0819 - These Rules, except 25 NCAC 01E .0819, to be repealed, are proposed to be amended in order to comply with the change of the uniformed services employment and reemployment rights act.

25 NCAC 01N .0206 – This Rule is proposed to be amended in order to comply with the provisions of the Occupational Safety and Health Standards of North Carolina and to provide cost efficient modifications for safety footwear in coordination with State Budget and Management.

RULE-MAKING PROCEEDINGS

Comment Procedures: *Written comments concerning this rulemaking action must be submitted to Delores A. Joyner, Rulemaking Coordinator, State Personnel Commission, 1331 Mail Service Center, Raleigh, NC 27699-1331.*

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 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Ferry Division intends to amend the rule cited as 19A NCAC 02D .0532. Notice of Rule-making Proceedings was published in the Register on September 4, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: December 4, 5, 11, 2001

Time: 7:00 p.m.

Location: December 4, 2001-Ocracoke Comm. Center, 999 Irvin Garrish Highway, Ocracoke; December 5, 2001- Hyde Co. Courthouse, 20 Oyster Court, Swan Quarter; and December 11, 2001 – Southport City Hall, 201 E. Moore Street, Southport

Reason for Proposed Action: This Rule is proposed for amendment to increase ferry tolls which have remained at the present level since 1983. Toll revenues are returned to the Ferry Division to fund the ferry operating expenses such as employee salaries, fuel, maintenance, and new vessels.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, NC DOT, 1 501 Mail Service Center, Raleigh, NC 27699-1501 by December 17, 2001.

Fiscal Impact

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

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02D – HIGHWAY OPERATIONS

SECTION .0500 – FERRY OPERATIONS

19A NCAC 02D .0532 TOLL OPERATIONS

The Cedar Island-Ocracoke, Swan Quarter-Ocracoke and Southport-Ft. Fisher ferry operations are toll operations. Fares and rates applicable to each operation are as listed in this Rule:

- | | | |
|-----|---|----------------------------|
| (1) | Cedar Island-Ocracoke and Swan Quarter-Ocracoke | |
| | (a) pedestrian | \$ 1.00 |
| | (b) bicycle and rider | \$ 2.00 \$3.00 |
| | (c) single vehicle or combination 20'; or less in length
(minimum fare for licensed vehicle) | \$10.00 \$15.00 |
| | (d) vehicle or combination from 20' up to and including 40' | \$20.00 \$30.00 |
| | (e) vehicle or combination up to 65' 41' to 60'
(maximum length) | \$30.00 \$45.00 |
| | (f) vehicle or combination 61' or greater | \$60.00 |
| (2) | Southport-Ft. Fisher | |
| | (a) pedestrian | \$ 0.50 \$1.00 |
| | (b) bicycle and rider | \$ 1.00 \$2.00 |
| | (c) single vehicle or combination 20' or less in length
(minimum fare for licensed vehicle) | \$ 3.00 \$5.00 |
| | (d) vehicle or combination from 20' up to and including 65' (maximum length) | \$ 6.00 |
| | (d) single vehicle or combination 20' or less in length | \$5.00 |

PROPOSED RULES

	(minimum fare for licensed vehicle)		
(e)	vehicle or combination from 20' up to and including 40'	\$10.00	
(f)	vehicle or combination 41' to 60' (maximum length)	\$15.00	
(g)	vehicle or combination 61' or greater	\$20.00	
(3)	Commuter Passes are valid for one year from date of purchases. Passes are available to anyone.		
	Type	System-Wide Pass	Site Specific Pass
	Vehicles up to 20'	\$150.00	\$100.00
	Vehicles over 20' to 40'	\$200.00	\$125.00
	Vehicles over 40' to 65'	\$250.00	\$150.00

Authority G.S. 136-82; 136-84; 143B-10(j).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16Y .0101-.0105 and amend the rules cited as 21 NCAC 16B .0305, .0315; 16C .0305, .0310; 16D .0102, .0105; 16E .0104; 16F .0103; 16I .0104, .0107; 16Q .0202-.0205, .0302-.0303, .0401; 16R .0103. Notice of Rule-making Proceedings was published in the Register on August 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: November 30, 2001

Time: 8:30 a.m.

Location: 15100 Weston Parkway, Suite 101, Cary, NC

Reason for Proposed Action: To amend procedures for application for dental licensure examination; to set out requirements addressing situation when applicant for dental license passes clinical portion of examination but fails written portion of examination three times, fails both written and clinical portion of the examination three times, or fails clinical portion of examination three times; to adopt rule addressing situation when applicant for dental hygiene license passes clinical portion of examination but fails written portion of examination three times, fails both written and clinical portion of the examination three times, or fails clinical portion of examination three times; to amend procedures for application for dental hygienist licensure examination; to define supervision of dentists holding provisional licenses and to specify practice restrictions for dentists holding provisional licenses; to require completion of certain requirements prior to issuance of a provisional dental license; to require completion of certain requirements prior to issuance of a provisional dental hygiene license; to amend requirements for corporate or limited liability company names; to revise requirements on the renewal application form for dental hygiene license; to clarify that dental hygienist license must be reinstated if it becomes void for failure to renew; to require that a dentist administering general anesthesia or sedation shall ensure that the facility is staffed with auxiliary personnel who shall document annual successful completion of basic life support training and be capable of assisting with incidents that may occur; to set out requirements for temporary approval and to specify that temporary approval

to administer general anesthesia or sedation shall not be granted to a provisional licensee; to amend evaluator requirements for general anesthesia evaluation and inspection and to address satellite office evaluations; to require an applicant for a permit to administer general anesthesia who receives notification of failure of an inspection to receive additional training prior to reevaluation; to require a dentist renewing a general anesthesia or sedation permit to document completion of specific training; to amend continuing education requirements for dentists; to revise requirements on the renewal application form for a dental license; and to adopt requirements governing intern permits.

Comment Procedures: Any person desiring to present oral data, views, or arguments on the proposed rules at the hearing may file a notice with the Board. Comments should be limited to five minutes. Any person permitted to make an oral presentation is directed to submit a written statement of such presentation to the Board prior to or at the time of such hearing. Any person may file written submission of comments or arguments at any time through December 17, 2001. Written comments and notices may be submitted to Elizabeth L. Thompson, North Carolina State Board of Dental Examiner, 15100 Weston Parkway, Suite 101, Cary, NC 27513.

Fiscal Impact

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

SUBCHAPTER 16B - LICENSURE EXAMINATION: DENTISTS

SECTION .0300 – APPLICATION

21 NCAC 16B .0305 TIME FOR FILING

The completed application, fee, photographs, and undergraduate college and dental college school transcripts must be received in the Board's office at least 60 90 days prior to the date of examination. Dental college school transcripts may be incomplete may be incomplete for those still in college dental school but must be sent in upon graduation and before the examination date. All data received by the Board concerning the applicant will be part of the application and will be retained as part of the record.

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

21 NCAC 16B .0315 REEXAMINATION

(a) A complete application, except for school ~~transcripts, transcripts and~~ National Board ~~score score, and letters of recommendation,~~ is required in case of reexamination.

(b) Any applicant who has failed both the written and clinical portions of the examination three times or who has failed the clinical portion of the examination three times, regardless of having passed the written portion of the examination, after adoption of this Rule must successfully complete an additional course of study in clinical dentistry encompassing at least one academic year, such course to be approved by the Board. Such applicant must send evidence of additional study, along with the application, before being admitted for reexamination.

(c) Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination three times will be required to successfully complete an additional Board approved course of study in the area or areas found to be deficient before being admitted for reexamination. Such applicant must send evidence of additional study, along with the application, before being admitted for reexamination.

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

**SUBCHAPTER 16C - LICENSURE EXAMINATION:
DENTAL HYGIENIST**

SECTION .0300 – APPLICATION

21 NCAC 16C .0305 TIME FOR FILING

The completed application, fee, photographs, and high school and college transcripts, and two letters of recommendation, and two letters of recommendation must be received in the Board's office at least 60-90 days prior to the date of the examination. College Dental hygiene school transcripts may be incomplete for those still in college dental hygiene school but must be sent in before the examination date. All data received by the Board concerning the applicant becomes a part of the required application and will be retained as part of the record.

Authority G.S. 90-223; 90-224.

21 NCAC 16C .0310 REEXAMINATION

(a) A complete application except for school ~~transcripts, transcripts and~~ National Board ~~score score, and letters of recommendation,~~ is required in case of reexamination.

(b) ~~It is recommended that any~~ Any applicant who has failed both the written and clinical portions of the examination three times or who has failed the clinical portion of the examination three times, regardless of having passed the written portion of the examination, must successfully complete an additional course of study at an approved approved school of dental hygiene study in clinical dental hygiene, such course to be approved by the Board. Such applicant should send evidence of additional study to the Board office along with the application for reexamination.

(c) Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination three times will be required to successfully complete an additional Board approved course of study in the area or areas found to be deficient before being admitted for reexamination.

Such applicant must send evidence of additional study, along with the application, before being admitted for reexamination.

Authority G.S. 90-223; 90-224.

**SUBCHAPTER 16D - PROVISIONAL LICENSURE:
DENTISTS**

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 16D .0102 RESTRICTIONS ON PRACTICE

(a) Any provisional license issued to a member of the faculty of an educational institution shall limit the practice of such provisional licensee to the confines of the facilities provided by the educational institution of which he is a faculty member.

(b) ~~In those instances in which the Board deems such restriction appropriate, the~~ The dental practice of a provisional licensee may shall be restricted to a specific facility, to a geographic location or location, to a specialized field of dentistry, or both to all three. Supervision by a dentist licensed in North Carolina shall also be required. Such supervising dentist shall provide direction over the functions performed by the licensee and shall be personally and professionally responsible and liable for any and all consequences or results arising from the licensee's practice of dentistry.

Authority G.S. 90-29.3.

21 NCAC 16D .0105 EXAMINATION

As a condition precedent to issuing a provisional license, the Board in its discretion may require an applicant ~~therefor~~ to appear before the Board for oral ~~examination or examination,~~ written examinations, clinical evaluation or ~~both any combination thereof~~ and satisfy the Board ~~of his as to the applicant's~~ professional competency.

Authority G.S. 90-29.3.

**SUBCHAPTER 16E - PROVISIONAL LICENSURE:
DENTAL HYGIENIST**

SECTION .0100 – ELIGIBILITY REQUIREMENTS

21 NCAC 16E .0104 EXAMINATION

As a condition precedent to issuing a provisional license, the Board in its discretion may require an applicant ~~therefor~~ to appear before the Board for oral ~~examination or examination,~~ written examinations, clinical evaluation or ~~both any combination thereof~~ and satisfy the Board ~~of his as to the applicant's~~ professional competency.

Authority G.S. 90-226.

SUBCHAPTER 16F - PROFESSIONAL CORPORATIONS

SECTION .0100 – SCOPE

21 NCAC 16F .0103 CORPORATE OR LIMITED LIABILITY COMPANY NAME

Corporation or limited liability company designations shall consist only of the use of the words "Professional Association,"

or "P.A.", for professional corporations and "Professional Limited Liability Company", or "P.L.L.C." for professional limited liability companies. All names shall also contain only the name or surname of one or more of the shareholders or members. members and may include the word "Associate(s)."

Authority G.S. 55B-5; 57C-2-01; 57C-2-30; 90-48.

SUBCHAPTER 16I - ANNUAL RENEWAL OF DENTAL HYGIENIST LICENSE

SECTION .0100 – ANNUAL RENEWAL

21 NCAC 16I .0104 REPORTING CONTINUING EDUCATION

(a) The number of hours completed to satisfy the continuing education requirement shall be indicated on the renewal application form submitted to the Board and confirmed by the hygienist's signature. signature, unless the renewal application is submitted on-line whereby no signature would be required. Upon request by the Board or its authorized agent, the hygienist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

- (1) the title;
- (2) the number of hours of instruction;
- (3) the date of the course attended;
- (4) the name(s) of the course instructor(s); and
- (5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education hours must be maintained by the licensee for at least two years and shall be produced upon request of the Board or its authorized agent.

(c) Dental hygienists shall receive four hours credit per year for continuing education when engaged in the following:

- (1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
- (2) affiliation with a federal, state or county government agency whose operation is directly related to dentistry or dental auxiliaries. Verification of credit hours shall be maintained in the manner specified in this Rule.

(d) Evidence of service or affiliation with an agency as specified in Paragraph (c) of this Rule shall be in the form of verification of affiliation or employment which is documented by a director or an official acting in a supervisory capacity.

Authority G.S. 90-225.1.

21 NCAC 16I .0107 LICENSE VOID UPON FAILURE TO RENEW

If such application. application for a renewal certificate accompanied by the renewal fee, plus the additional late filing fee, is not received by the Board before March 31 of each year, the license becomes void. Should the license become void due

to failure to timely renew, applicant must reapply for reinstatement.

Authority G.S. 90-277.

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0200 - GENERAL ANESTHESIA

21 NCAC 16Q .0202 EQUIPMENT

A dentist administering general anesthesia is solely responsible for providing that the environment in which the general anesthesia is to be administered meets the requirements established by the Board and provided to each permit holder. A dentist administering general anesthesia shall ensure that the facility is staffed with auxiliary personnel who are capable of administering shall document annual successful completion of basic life support training and have the capacity to effectively manage the procedure as well as any problems or be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the general anesthetic or secondary to an unexpected medical complication.

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

21 NCAC 16Q .0203 TEMPORARY APPROVAL PRIOR TO SITE EVALUATION

(a) If a dentist meets the requirements of Rule .0201 of this Section, he shall be granted temporary approval to continue to administer general anesthesia until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed ~~42~~ three months. An on-site evaluation of the facilities, equipment, procedures and personnel will be required prior to the issuance of a permit.

(b) An evaluation may be made any time it is deemed necessary by the Board.

(c) Temporary approval shall not be granted to a provisional licensee.

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

21 NCAC 16Q .0204 PROCEDURE FOR EVALUATION OR INSPECTION

(a) When an evaluation or on-site inspection is required, the Board will designate two or more persons, each of whom is qualified to administer general anesthesia and has so administered such for a minimum of three years preceding the inspection, exclusive of his training in general anesthesia. ~~At least one of the evaluators must have had experience in the evaluation of dentists using general anesthesia. At least one of the evaluators must have had experience in the evaluation of dentists using general anesthesia.~~—When an on-site inspection involves only a facility and equipment check and not an evaluation of the dentist, such inspection may be accomplished by one or more evaluators.

(b) Any dentist-member of the Board may observe or consult in any evaluation.

(c) The inspection team shall determine compliance with the requirements of these rules, as applicable, by assigning a grade of "pass" or "fail".

(d) Each evaluator shall report his recommendation to the Board, setting forth the details supporting his conclusion. The Board is not bound by these recommendations. The Board will make the final determination as to whether or not the applicant has passed the evaluation/inspection and will so notify the applicant, in writing.

(e) At least a 15-day notice will be given prior to an evaluation or inspection. The entire inspection fee of two hundred seventy-five dollars (\$275.00) will be due ten days from the date of receipt of such notice. A fee of one hundred seventy-five dollars (\$175.00) shall be due 10 days from the date of receipt of notice prior to an evaluation or inspection of any additional locations in which the same dentist also administers general anesthesia.

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

21 NCAC 16Q .0205 RESULTS OF SITE EVALUATION AND REEVALUATION

(a) An applicant who fails an inspection or evaluation is not entitled to receive a permit to administer general anesthesia, or if the holder of a permit, shall not have it renewed. An applicant who has obtained temporary approval from the Board and fails an inspection or evaluation will no longer be approved.

(b) An applicant who receives notification of failure of an inspection may, within 15 days after receiving the notice, request a reevaluation. Such request must state specific grounds supporting it. The Board shall require the applicant to receive additional training prior to the reevaluation.

(c) If the reevaluation is granted, it will be conducted by different persons, qualified as evaluators, in the manner prescribed in Rule .0204 of this Section.

(d) No applicant who has received a failing notice from the Board may request more than one reevaluation within any 12 month period.

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

SECTION .0300 – SEDATION

21 NCAC 16Q .0302 EQUIPMENT

(a) A dentist administering sedation is solely responsible for providing that the environment in which the sedation is to be administered meets the requirements established by the Board and provided to each permit holder. A dentist administering sedation shall ensure that the facility is staffed with auxiliary personnel who ~~are capable of administering~~ shall document annual successful completion of basic life support training and have the capacity to effectively manage the procedure as well as any problems or be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(b) Upon request, the holder of an anesthesia or sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide sedation services for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the office in which the sedation is administered meets the requirements established

by the Board, that the required drugs and equipment are present, and that the permit holder utilizes auxiliary personnel who ~~have the capacity to effectively manage the procedure and handle any problems or~~ shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

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

21 NCAC 16Q .0303 TEMPORARY APPROVAL PRIOR TO SITE EVALUATION

(a) If a dentist meets the requirements of Rule .0301 of this Section, he shall be granted temporary approval to continue to administer sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed ~~12~~ three months. An on-site evaluation of the facilities, equipment, procedures and personnel will be required. The evaluation will be conducted in accordance with Rules .0202-.0205 of this Subchapter, except that evaluations of dentists applying for sedation permits may be conducted by dentists who have been issued sedation permits by the Board and who have administered sedation for at least three years. Fees required by Rules .0202-.0205 of this Subchapter will apply.

(b) An evaluation may be made any time it is deemed necessary by the Board.

(c) Temporary approval shall not be granted to a provisional licensee.

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

SECTION .0400 – RENEWAL OF PERMITS

21 NCAC 16Q .0401 ANNUAL RENEWAL REQUIRED

(a) Both general anesthesia and sedation permits shall be renewed by the Board on an annual basis. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses.

(b) Anesthesia and sedation permits are subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of anesthesia or sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0600 of this Subchapter.

(c) As a condition for renewal of the general anesthesia permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0202 are met and document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

(d) As a condition for renewal of the sedation permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0302 are met and also meet one of the following criteria:

(1) document current, successful completion of advanced cardiac life support (ACLS) training

- or its age-specific equivalent, or other equivalent course; or
- (2) document annual, successful completion of basic life support (BLS) training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:
 - (A) sedation;
 - (B) medical emergencies;
 - (C) monitoring IV sedation and the use of monitoring equipment;
 - (D) pharmacology of drugs and agents used in IV sedation;
 - (E) physical evaluation, risk assessment, or behavioral management; or
 - (F) audit ACLS/PALS courses.

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

SUBCHAPTER 16R - CONTINUING EDUCATION REQUIREMENTS: DENTISTS

SECTION .0100 – CONTINUING EDUCATION

21 NCAC 16R .0103 REPORTING OF CONTINUING EDUCATION

(a) The number of hours completed shall be indicated on the renewal application form submitted to the Board and confirmed by the dentist's ~~signature and confirmed by the dentist's signature~~ signature, unless the renewal application is submitted on-line whereby no signature would be required. Upon request by the Board or its authorized agent, the dentist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

- (1) the title;
- (2) the number of hours of instruction;
- (3) the date of the course attended;
- (4) the name(s) of the course instructor(s); and
- (5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education hours must be maintained by the licensee for at least two years and shall be produced upon request of the Board or its authorized agent. Evidence of service or affiliation with an agency or institution as specified in 21 NCAC 16R .0104 shall be in the form of verification of affiliation or employment which is documented by a director or an official acting in a supervisory capacity.

Authority G.S. 90-31.1.

SUBCHAPTER 16Y – INTERN PERMITTING: DENTISTS

SECTION .0100 – GENERAL

21 NCAC 16Y .0101 ELIGIBILITY REQUIREMENTS

Persons shall be eligible for an intern permit under the provisions of G.S. 90-29.4 if they are:

- (1) not licensed to practice dentistry in North Carolina, but are a graduate of and have a diploma from a dental school of a reputable university or college accredited by the Commission on Dental Accreditation of the American Dental Association; or
- (2) a graduate of a recognized dental program other than a program accredited by the Commission on Dental Accreditation of the American Dental Association who has been accepted into a graduate, intern, fellowship, or residency program at a North Carolina dental school or Board approved facility.

Authority G.S. 90-28; 90-29.4.

21 NCAC 16Y .0102 APPLICATION

(a) Applicants for intern permit who are graduates of dental schools or programs as set out in Rule .0101(1) must:

- (1) complete the Application for Intern Permit as furnished by the Board, and no application shall be deemed complete which does not set forth all the information required by said Board relative to the applicant;
- (2) submit an official copy of dental school transcripts;
- (3) forward a letter from prospective employer; and
- (4) pay the one hundred dollar (\$100.00) permit fee.

(b) Applicants for intern permit who are graduates of a recognized dental program as set out in Rule .0101(2) must:

- (1) submit written confirmation that the applicant has qualified for and is currently enrolled in a graduate, intern, fellowship, or residency program in the North Carolina Dental School or Board approved facility;
- (2) submit written confirmation that an ad hoc committee (consisting of three associate or full professors, only one of whom represents the department in question) has evaluated the applicant's didactic and clinical performance with the point of observation being not less than three months from the applicant's start of the program, and has verified that the applicant is functioning at a professional standard consistent with a dental graduate from an ADA-accredited dental school;
- (3) successfully complete a simulated clinical examination;
- (4) submit written confirmation that the applicant has undergone a program of study and has:
 - (A) a thorough knowledge of clinical pharmacology;
 - (B) appropriate familiarity with prescription writing; and
 - (C) a full knowledge of relevant laws and administrative procedures pertaining to the DEA;
- (5) submit a written statement of the total time required to complete the graduate, intern,

fellowship, or residency program, and the date that the applicant is scheduled to complete said program; and

(6) pay the one hundred dollar (\$100.00) permit fee.

(c) In making application, the applicant authorizes the Board to verify the information contained in the application or documents submitted or to seek such further information pertinent to the applicant's qualifications or character as the Board may deem proper. The applicant consents that his character and reputation may be inquired into, and waives any right he may have to recover damages against the Board, any member thereof or its agents, or any person who answers a Board inquiry in good faith and without malicious intent.

(d) The application for renewal of intern permit shall include all information in the original application as set out.

Authority G.S. 90-28; 90-29.4.

21 NCAC 16Y .0103 EMPLOYMENT

(a) The practice of dentistry under an intern permit is limited to the confines and registered patients of the approved employment site.

(b) A listing of said approved sites may be obtained from the Board office.

(c) A request for change in practice location must be submitted in writing to the Board and is subject to Board approval.

(d) The holder of an intern permit shall not receive any compensation in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered or engage in any other transaction with the employer which results in a diversion of income from the employer.

Authority G.S. 90-28; 90-29.4.

21 NCAC 16Y .0104 SUPERVISION

(a) Holders of a valid intern permit who are currently licensed in Canada, a U.S. territory or state may practice under direction of one or more dentists with a current and valid North Carolina license. Such supervising dentist shall be personally and professionally responsible and liable for any and all consequences or results arising from the permittee's practice of dentistry.

(b) Holders of a valid intern permit who are not currently licensed in Canada, a U.S. territory or state may work only under supervision of one or more dentists with a current and valid North Carolina license. Such supervising dentist shall be personally and professionally responsible and liable for any and all consequences or results arising from the permittee's practice of dentistry.

(c) For purposes of this Section, "supervision" shall mean that the acts are deemed to be under the supervision of a licensed dentist when performed in a locale where a licensed dentist is physically present during the performance of such acts and such acts are being performed pursuant to the dentist's order, control, and approval.

Authority G.S. 90-28; 90-29.4.

21 NCAC 16Y .0105 COMPLIANCE

A permit holder shall comply with limitations delineated in this Subchapter and placed on the permit and shall comply with rules and regulations of the Board. Failure to comply with the provisions of this Subchapter may result in suspension or revocation of the intern permit to practice dentistry in accordance with G.S. 90-41.

Authority G.S. 90-28; 90-29.4.

CHAPTER 18 – BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Electrical Contractors intends to amend the rules cited as 21 NCAC 18B .0204, .0206-.0210, .0404-.0405. Notice of Rule-making Proceedings was published in the Register on September 4, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: December 5, 2001

Time: 1:30 p.m.

Location: 1200 Front Street, Suite 105, Raleigh, NC 27619

Reason for Proposed Action: *The North Carolina General Assembly enacted Senate Bill 396, which was ratified May 21, 2001 and became Chapter 159 of the 2001 Session Laws. The General Assembly has mandated changes in fees for license renewal, application and examination fees and has authorized computer-based examinations, eliminating the need to limit applicants to semi-annual examinations. The legislature also authorized conversion to staggered annual license renewals rather than renewal of all licenses at the end of each fiscal year. The proposed rules will implement legislative action.*

Comment Procedures: *Comments may be provided to the Board in writing if delivered by 5:00 p.m. December 17, 2001. Address all comments to Rulemaking Coordinator, P.O. Box 18727, Raleigh, NC 27619.*

Fiscal Impact

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

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

SECTION .0200 - EXAMINATIONS

21 NCAC 18B .0204 EXAMINATIONS

All qualifying examinations administered by the Board for each license classification shall be written or computer-based examinations and must be taken personally by the respective approved applicant applicant, in his own handwriting. Approved applicants shall be provided a notice of examination eligibility

that shall be valid for a period of six months and for a single administration of the qualifying examination. Upon receipt of a notice of examination eligibility from the Board, the applicant shall schedule the examination by contacting the Board or the authorized testing service in accordance with procedures established by the Board. The applicant will be scheduled for the examination and will be notified of the date, time and place.

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

21 NCAC 18B .0206 REGULAR EXAMINATIONS

The executive director is authorized to arrange for regular ~~semi-annual~~ examinations to be ~~held during the months of March and September of each year administered by the Board or the Board's authorized computer testing service. The Board may establish such other dates as it deems necessary.~~

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

21 NCAC 18B .0207 APPLICATION FOR REGULAR EXAMINATIONS

(a) To be eligible for consideration, applications for regular ~~semi-annual~~ examinations must be filed with the Board ~~not later than January 1 for the March semi-annual examination and not later than July 1 for the September semi-annual examination on a form furnished by the Board.~~

(b) The Board's staff shall determine whether or not applications are duly filed in accordance with Rule .0210 of this Section, ~~to~~ process all duly filed applications, and ~~to~~ return all applications not duly filed.

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

21 NCAC 18B .0208 SPECIALLY ARRANGED EXAMINATIONS

(a) Specially-arranged examinations are examinations given in the Board's office or elsewhere at a time other than during a regular ~~semi-annual~~ examination period.

(b) Provided the conditions of this Rule are met, the Board's staff may accept applications for specially-arranged examinations, to expedite verification of references and qualifications of applicants, and to arrange for such applicants to take a specially-arranged examination if the staff finds that a specially-arranged examination is justified. The Board shall consider and act on applications at the request of the application review committee or on written appeal of an applicant.

(c) An out-of-state electrical contractor shall mean a person, partnership, firm or corporation currently operating an electrical contracting business in accordance with the laws of his or its home state, outside the State of North Carolina. The Board shall give specially-arranged examinations on a reciprocal basis for out-of-state electrical contractors whose circumstances require that they be licensed prior to the time when a regular examination is scheduled and when such contractors are not eligible for a license pursuant to G.S. 87-50 because no reciprocal licensing agreement exists. An out-of-state electrical contractor's need to bid or otherwise offer to engage in a specific North Carolina project, the time-table for which will not permit waiting until the next ~~semi-annual~~ examination period, may constitute circumstances reasonably justifying the scheduling of

a specially-arranged examination for the individual representing such out-of-state electrical contractor.

- (1) To be eligible to take a specially-arranged examination, the individual applying to become qualified must file with the Board an application, together with the following:
 - (A) Information satisfactorily verifying that the out-of-state electrical contractor which the individual represents is engaged in a lawful electrical contracting business in its home state. If the out-of-state electrical contractor is required to be, and is, licensed in its home state as an electrical contractor, this information must include written verification that the licensing agency of such state will grant the same specially-arranged privilege to North Carolina electrical contractors.
 - (B) Information satisfactorily verifying the need for a North Carolina license prior to the next ~~semi-annual~~ examination period.
 - (C) The specially-arranged application-examination fee as prescribed in Rule .0209 of this Section.
 - (D) Information satisfactorily verifying that the applicant for the examination has met all the minimum requirements applicable to the classification involved as prescribed in Rules .0201, .0202 and .0210 of this Section.
- (2) The Board's staff shall approve the application if the out-of-state electrical contractor is required to be, and is, licensed in its home state as an electrical contractor and if the licensing agency in that state has committed itself in writing to grant to electrical contractors licensed by North Carolina the same privilege which the applicant is requesting from the Board.
- (3) The applicant shall take the examination for the classification of license involved, and at such special time and place as mutually agreed upon by the Board's staff and the applicant.
- (4) Specially-arranged examinations shall be graded promptly, and immediately thereafter the applicant shall be notified of the results. If the applicant passes, the out-of-state electrical contractor which he represents will be eligible to apply for a license based upon his qualifications and, upon meeting all of the other license requirements applicable to the license classification involved, as prescribed in Section .0400 of this Subchapter, a license shall be issued to the out-of-state electrical contractor with him indicated thereon as the qualified individual. If the applicant fails the examination, he will be required to wait the

normally-required six-month waiting period between examinations before being eligible to take another specially-arranged examination. However, if he meets all of the other requirements and wishes to apply to take another specially-arranged examination in a classification lower than the classification of his failed examination, or to apply to take a regular examination during the next ~~semi-annual~~ examination period, the normally-required six-month waiting period shall not apply.

(d) A North Carolina electrical contractor shall mean a person, partnership, firm or corporation licensed by the Board to engage or offer to engage in the business of electrical contracting within the state of North Carolina. The Board shall give a specially-arranged examination for a North Carolina electrical contractor whose circumstances require that it be licensed in a classification higher than its current license prior to the time when a regular examination is scheduled. A North Carolina electrical contractor's need to bid or otherwise offer to engage in a specific electrical contracting project having a value exceeding the limitations of such contractor's current license, the time-table for which will not permit waiting until the next regular ~~semi-annual~~ examination period, may constitute circumstances reasonably justifying the scheduling of a specially-arranged examination for the individual representing such North Carolina electrical contractor.

- (1) To be eligible to take a specially-arranged examination, the individual applying to become qualified must file with the Board an application, together with the following:
 - (A) Information satisfactorily verifying the need to have the license upgraded prior to the next regular ~~semi-annual~~ examination period.
 - (B) The specially-arranged application-examination fee as prescribed in Rule .0209 of this Section.
 - (C) Information satisfactorily verifying that the applicant for the examination has met all the minimum requirements applicable to the classification involved as prescribed in Rules .0201, .0202 and .0210 of this Section.
- (2) When an application for a specially-arranged examination is received, the Board's staff shall determine if the applicant is the duly authorized representative of an electrical contractor licensed by the Board and, if so, shall approve the application.
- (3) The applicant shall take the examination for the classification of license involved, at such

time and place as mutually agreed upon by the Board's staff and the applicant.

- (4) Specially-arranged examinations shall be graded promptly, and immediately thereafter the applicant shall be notified of the results. If the applicant passes, the electrical contractor which he represents will be eligible to apply to have its license upgraded based upon the passing applicant's qualification and, upon meeting all of the other license requirements applicable to the license classification involved, as prescribed in Section .0400 of this Subchapter, a new license shall be issued to the electrical contractor with him indicated thereon as the qualified individual. If the applicant fails the examination, he will be required to wait the normally-required six-month waiting period between examinations before being eligible to take another specially-arranged examination. However, if he meets all of the other requirements and wishes to apply to take another specially-arranged examination in a classification lower than the classification of his failed examination, or to apply to take a regular examination during the next ~~semi-annual~~ examination period, the normally-required six-month waiting period shall not apply.

(e) For the purposes of this Subsection, the loss of a listed qualified individual shall mean a currently-licensed electrical contractor being left without a listed qualified individual regularly on active duty in its electrical contracting principal or separate place of business. The Board shall give a specially-arranged examination for an electrical contractor which has lost its listed qualified individual to have another representative take a specially-arranged examination for the purposes of maintaining continuity of such electrical contractor's business. To be eligible to take a specially-arranged examination, the individual applying to become qualified must file with the Board an application, together with the following:

- (1) Information satisfactorily verifying the electrical contractor's need for a representative to take a specially-arranged examination before the next regular examination period.
- (2) The specially-arranged application-examination fee as prescribed in Rule .0209 of this Section.
- (3) Information satisfactorily verifying that the applicant for the examination has met all the minimum requirements applicable to the classification involved as prescribed in Rules .0201, .0202 and .0210 of this Section.

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

21 NCAC 18B .0209 FEES

(a) The ~~combined application and examination fees-fee~~ for the regular qualifying examinations is seventy-five dollars (\$75.00) for all classifications. in the various license classifications are as follows:

APPLICATION AND EXAMINATION FEE SCHEDULE:REGULAR

PROPOSED RULES

CLASSIFICATION	APPLICATION FEE	EXAMINATION FEE	TOTAL COMBINED FEE
Limited	\$15.00	\$15.00	\$30.00
Intermediate	\$30.00	\$45.00	\$75.00
Unlimited	\$65.00	\$85.00	\$150.00
SP-SFD	\$15.00	\$1500	\$30.00
Special Restricted	\$15.00	\$1500	\$30.00

(b) The ~~combined application and examination fees~~ fee for a specially-arranged qualifying examination is two-hundred dollars (\$200.00) for all classifications, in the various license classifications are as follows:

**APPLICATION AND EXAMINATION FEE SCHEDULE:
SPECIALLY-ARRANGED**

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

(c) The fee for a supervised review of a failed examination with the Board or staff assistance is ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00) for all classifications.

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

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

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

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

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

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

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

21 NCAC 18B .0210 APPLICATIONS DULY FILED

Examinations applications shall be considered as duly filed when the applicant ~~has, on or before the filing cut-off date,~~ filed an application with the Board, on a form provided by the Board, together with the ~~combined application-examination fee for the classification involved~~ as prescribed in Rule .0209 of this Section and information sufficient to establish satisfactorily verifying that he meets all of the minimum examination requirements applicable to the classification involved. By filing his application with the Board an applicant authorizes the Board or the Board's staff to verify, in any manner the Board or staff deems necessary and appropriate, the information submitted on or in support of his application.

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

SECTION .0400 – LICENSING REQUIREMENTS

21 NCAC 18B .0404 ANNUAL LICENSE FEES

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

LICENSE FEE SCHEDULE

CLASSIFICATION	LICENSE FEE
Limited	\$30.00; <u>60.00</u>
Intermediate	\$75.00; <u>100.00</u>
Unlimited	\$150.00
SP-SFD	\$30.00; <u>60.00</u>
Special Restricted	\$30.00; <u>60.00</u>

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

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

21 NCAC 18B .0405 LICENSE RENEWAL DUE DATE

PROPOSED RULES

(a) License renewal applications and fees are due ~~on June 1, 30~~ days prior to the license expiration date. ~~and a penalty~~ An administrative fee of twenty-five dollars (\$25.00) shall be imposed upon applications received after ~~June 30~~ the expiration date. Applications filed with the Board by mail shall be considered filed on the date such mail is postmarked.

(b) The Board will implement a system of staggered license renewals beginning July 1, 2002. Renewal applications for the year beginning July 1, 2002 will be mailed in the spring of 2002. Some licenses will be renewed for a 13-month period and the fee for such licenses will be the license fee set forth in Rule .0404 of this Section together with a one-twelfth (1/12) pro rata part of the license fee. Other renewals will be for varying monthly terms up to 23 months and pro rata portions of the license fee for that classification will be added. Beginning July 1, 2003 all licenses will be renewed for 12 month periods as the renewal date is reached.

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

CHAPTER 19 - BOARD OF ELECTROLYSIS EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Electrolysis Examiners intends to amend the rules cited as 21 NCAC 19 .0201, 0622. Notice of Rule-making Proceedings was published in the Register on September 17, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:
Date: December 18, 2001

Time: 10:00 a.m.

Location: NCBEE Office, 300 E. Wendover Ave., Greensboro, NC

Reason for Proposed Action: HB436 became effective July 1, 2001 allowing us to make fee structure changes. The last change in the Board rate structure occurred at the beginning of 1992, and was sufficient for our needs for a number of years. However due to the increase in cost of doing business over the years, the present fee structure is inadequate to serve our needs. At present, we have expenditures averaging around \$18,300 a year but we are only collecting approximately \$13,300 in receipts to support those operating expenses. In order to cover the continual shortfall in receipts, the Board has been forced to tap into its available cash balance over the last couple of years. At our present use of the cash balance, the board will be completely out of available cash balance within the next five years. We have curtailed our spending to the minimum possible, with board members not even seeking allowable reimbursement for travel expenses to our board meetings. In order for our board to continue its mission, we desperately need to generate additional income to continue to support our basic operations.

Comment Procedures: Comments should be submitted to Shelton P. Dixon, LE, CPE, 6080 Blue Bonnet Lane, Winston Salem, NC 27103. Comments will be accepted through December 18, 2001.

Fiscal Impact

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

SECTION .0200 – APPLICATION PROCEDURES

21 NCAC 19 .0201 FEES

(a) The following fees shall be payable to the Board:

Table with 2 columns: Fee Description and Amount. Includes items like Application for licensure, Initial license, Examination or reexamination, Renewal of electrologist's license, etc.

(b) All fees shall be paid by check or money order, made payable to "The North Carolina Board of Electrolysis Examiners".

Authority G.S. 88A-9.

SECTION .0600 – SCHOOLS

PROPOSED RULES

21 NCAC 19 .0622 CERTIFICATION OF SCHOOLS IN OTHER STATES OR JURISDICTIONS

(a) The Board will certify a school in another state or jurisdiction for purposes of G.S. 88A-10 provided that:

- (1) The school applies for certification, submits the information required by G.S. 88A-19(a)(1)-(6), and meets the requirements of 21 NCAC 19 .0602, .0606, .0607, .0608, and .0609;
- (2) If the school is in a state or jurisdiction that approves electrolysis schools, the school is approved by the proper agency for that state or jurisdiction; and
- (3) The school has a curriculum of at least 600 hours.

(b) A school located in another state or jurisdiction shall pay an application fee of ~~fifty dollars (\$50.00)~~ seventy five dollars (\$75.00) and a yearly certification fee of ~~twenty five dollars (\$25.00)~~ fifty dollars (\$50.00).

(c) The Board will revoke the certification of a school in another state or jurisdiction upon a proof that the school in a jurisdiction that licenses electrologists has lost its approval in that state.

(d) The school must agree to teach North Carolina's sanitation standards to any student who states to the school an intention of taking North Carolina's licensing examination.

Authority G.S. 88A-6; 88A-9; 88A-19; 88A-21.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rule cited as 25 NCAC 01B .0438. Notice of Rule-making Proceedings was published in the Register on June 1, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: November 30, 2001

Time: 10:00 a.m.

Location: Third Floor Conference Room, Administration Building, 116 W. Jones Street, Raleigh, NC

Reason for Proposed Action: *This Rule is proposed to be amended due to the Superior Court Order issued by the Honorable Howard Manning on December 19, 2000. Judge Manning concluded that the Commission's award of \$125.00 per hour for attorney's fees in this case was not reasonable and customary due to several different factors as stated in Judge Manning's order. Therefore, Judge Manning ordered that the Commission award additional attorney's fees in this contested*

case. The Commission awarded the original amount based on Rule 25 NCAC 01B .0438.

Comment Procedures: *Written comments may be submitted to Delores A. Joyner, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. Oral comments will be received at the public hearing. Written comments must be received no later than December 17, 2001.*

Fiscal Impact

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

CHAPTER 01 – OFFICE OF STATE PERSONNEL

SUBCHAPTER 01B – STATE PERSONNEL COMMISSION

SECTION .0400 – APPEAL TO COMMISSION

25 NCAC 01B .0438 ESTABLISHMENT OF REASONABLE ATTORNEY FEES BY THE COMMISSION

The ~~Commission's established rates for~~ Commission shall award the reimbursement of legal fees and costs are as follows:

- (1) Attorney fees incurred in connection with the contested case proceeding before the Commission and with any successful appeal of a Commission decision in the General Courts of Justice ~~at a maximum rate of one hundred twenty five dollars (\$ 125.00) per hour; at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;~~
- (2) Law Clerk, Paralegal, or Legal Assistant fees ~~at a maximum rate of fifty five dollars (\$ 55.00) per hour; at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;~~
- (3) Travel time at a maximum rate of one-half the applicable hourly attorney or legal supportstaff fee rate;
- (4) Costs at the actual cost.

Fees shall not be awarded unless requested by an attorney or the Petitioner and documented by an itemized, per activity, accounting of the hours expended, in addition to a copy of the fee agreement between the parties and any relevant receipts or other documentation of prior payment.

Authority G.S. 126-4(11).

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 13 – DEPARTMENT OF LABOR

Rule-making Agency: North Carolina Department of Labor

Rule Citation: 13 NCAC 15 .0701 - .0704

Effective Date: October 17, 2001

Findings Reviewed and Approved by: Julian Mann, III

Authority for the rulemaking: G.S. 95-107; 95-110; 95-110.5; 95-111.4

Reason for Proposed Action: Effective October 1, 2001, G.S. 95-95-110.5(20) and 95-111.4(19) authorize the Commissioner of Labor to set fees for inspection of Elevator and Amusement Devices. This legislation was not passed by the North Carolina General Assembly until September 20, 2001 and was not signed by the Governor until the 29th or 30th of September, thereby making the holding of public hearings in advance of adoption of a temporary rule essentially impossible. In an effort to notify the public, the North Carolina Department of Labor is publishing the proposed changes on its website, which may be found at http://www.dol.state.nc.us/. The promulgation of 13 NCAC 15 .0701 et seq. complies with this new mandate from the North Carolina General Assembly. With the repeal of G.S. 95-105 and G.S. 95-106, also effective October 1, 2001, the Department of Labor no longer has authorization to collect any fees for elevator and amusement device inspections absent the attached rules. Therefore, any delay in the effective date of the rules would result in a serious revenue shortfall to the Elevator and Amusement Device Bureau and negate the General Assembly’s intent in delegating fee-setting authority to the Commissioner of Labor.

Comment Procedures: Written comments may be submitted to Ms. Barbara A. Jackson, General Counsel, NC Department of Labor, 4 W. Edenton St., Raleigh, NC 27601.

CHAPTER 15 – ELEVATOR AND AMUSEMENT DEVICE DIVISION

SECTION .0700 – FEES

13 NCAC 15 .0701 ELEVATOR, ESCALATOR, DUMBWAITER, AND SPECIAL EQUIPMENT INSTALLATION AND ALTERATION FEES SCHEDULE

Inspection fees for installation or alteration of elevators, escalators, dumbwaiters, and special equipment shall be two hundred dollars (\$200.00) per unit. In the event that the installation or alteration inspection cannot be completed on the initial visit, all follow up visits shall be charged at two hundred dollars (\$200.00) per visit per unit.

History Note: Authority G.S. 95-107; 95-95-110.5(20); Temporary Adoption Eff. October 17, 2001.

13 NCAC 15 .0702 ELEVATOR, ESCALATOR, DUMBWAITER, AND SPECIAL EQUIPMENT ANNUAL INSPECTION FEES SCHEDULE

Annual inspection fees for elevator, escalator, dumbwaiter, and special equipment shall be as follows:

Equipment	Unit Fee
(1) All dumbwaiters and handicapped lifts	\$35.00
(2) All hydraulic elevators, belt man lifts, escalators, plus all elevators not identified as either hydraulic or traction and special lifting devices	\$118.00
(3) Traction Elevators	
(a) 1-10 Floors	\$155.00
(b) Over 10 Floors	\$200.00

History Note: Authority G.S. 95-107; 95-95-110.5(20); Temporary Adoption Eff. October 17, 2001.

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13 NCAC 15 .0703 AMUSEMENT DEVICE INSPECTION FEE SCHEDULE

Inspection fees for amusement devices shall be as follows:

	<u>Equipment</u>	<u>Unit Fee</u>	<u>Inspection Required</u>
(1)	<u>Inflatables</u>	<u>\$100.00</u>	<u>Annually</u>
(2)	<u>Kiddie Rides (48" maximum height restriction) or Go Karts</u>	<u>\$ 30.00</u>	<u>Every setup, except in permanent parks, which shall be inspected annually</u>
(3)	<u>Major Rides (including water slides)</u>	<u>\$ 60.00</u>	<u>Every setup, except permanent parks, which shall be inspected annually</u>
(4)	<u>Roller Coasters, other than mobile or portable roller coasters</u>	<u>\$250.00</u>	<u>Annually</u>

History Note: Authority G.S. 95-107; 95-111.4(19)
Temporary Adoption Eff. October 17, 2001.

13 NCAC 15 .0704 AMUSEMENT DEVICE INSPECTION FEE SCHEDULE

In the event that an inspection is scheduled and the amusement device operator or owner fails to have all amusement devices scheduled for inspection ready for inspection, any follow up inspection visits requested by the operator or owner shall be charged at two hundred fifty dollars (\$250.00) per amusement device, notwithstanding the provisions of 13 NCAC 15 .0703.

History Note: Authority G.S. 95-107; 95-111.4(19);
Temporary Adoption Eff. October 17, 2001.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 04 – COMMISSION FOR AUCTIONEERS

Rule-making Agency: *North Carolina Auctioneers Commission*

Rule Citation: *21 NCAC 04B .0202*

Effective Date: *October 19, 2001*

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

Authority for the rulemaking: *G.S. 85B-3.2(g)*

Reason for Proposed Action: *Effective June 13, 2001, the General Assembly amended Chapter 85B of the General Statutes, the enabling legislation for the North Carolina Auctioneers Commission. The amendments included three major changes requiring the adoption of administrative rules: collection of fees required by the Department of Justice associated with conducting the criminal history record check; establishment of continuing education requirements; and authority to acquire real property and obtain liability insurance.*

Comment Procedures: *Written comments concerning this rule-making action should be submitted to Robert A. Hamilton, Executive Director, NC Auctioneer Licensing Board, 1001 Navaho Drive, Suite 105, Raleigh, NC 27609-7318.*

SUBCHAPTER 04B – AUCTIONEER LICENSING BOARDS

SECTION .0200 – APPLICATION FOR LICENSE

21 NCAC 04B .0202 FILING AND FEES

(a) Properly completed applications must be filed (received, not postmarked) in the Board office at least seven days prior to an established Board meeting date, or in the case of an application for auctioneer examination, at least 10 days prior to a scheduled examination and must be accompanied by all required documents.

(b) License fees are as follows:

(1)	New auctioneer license for an applicant who did not serve an apprenticeship This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.	\$250.00
(2)	New auctioneer license for an apprentice auctioneer	\$200.00

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	This includes a \$150.00 annual license fee; and \$50.00 examination fee.	
(3)	Renewal of auctioneer license	\$150.00
(4)	New apprentice auctioneer license	\$150.00
	This includes a \$100.00 license fee and a \$50.00 application fee.	
(5)	Renewal of apprentice auctioneer license	\$100.00
(6)	New auction firm license (no examination)	\$200.00
	This includes a \$150.00 annual license fee; and \$50.00 application fee.	
(7)	New auction firm license (examination)	\$250.00
	This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.	
(8)	Renewal of an auction firm license	\$150.00
(9)	Application and processing fee for conversion of non-resident reciprocal license to in state license	\$ 50.00
(10)	Reinstatement of lapsed license or late fee	\$ 50.00
(11)	<u>Resident fingerprint card background check fee</u>	<u>\$ 14.00</u>
	<u>Applicants who have been continuous residents of North Carolina for the five years preceding the date of application shall only be required to have a State background check.</u>	
(12)	<u>Non-resident fingerprint card background check fee</u>	<u>\$ 38.00</u>
	<u>Applicants who have not been continuous residents of North Carolina for the five years preceding the date of application shall be required to have both a State and Federal background check.</u>	

(c) The renewal fee for a non-resident reciprocal licensee under G.S. 85B-5 shall be calculated in the same manner as the initial application fee pursuant to G.S. 85B-6.

(d) Fees may be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Auctioneer Licensing Board. Checks drawn on escrow or trust accounts shall not be accepted. Personal checks may be accepted for payment of renewal fees.

History Note: Authority G.S. 85B-4.1; 85B-6;
 Eff. November 1, 1984;
 Amended Eff. April 1, 2001; January 1, 2000; April 1, 1996; January 1, 1995; April 1, 1989;
Temporary Amendment Eff. October 19, 2001.

CHAPTER 36 – BOARD OF NURSING

Rule-making Agency: North Carolina Board of Nursing

Rule Citation: 21 NCAC 36 .0224-.0225

Effective Date: October 24, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 90-171.20(7); 90-171.23(b); 90-171.43(4)

Reason for Proposed Action: To bring these Rules in compliance with the recent changes in the Nursing Practice Act regarding the legal scope of practice of the registered nurse and the licensed practice nurse.

Comment Procedures: Written comments should be submitted to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129.

SECTION .0200 – LICENSURE

21 NCAC 36 .0224 COMPONENTS OF NURSING PRACTICE FOR THE REGISTERED NURSE

(a) The responsibilities which any registered nurse can safely accept are determined by the variables in each nursing practice setting. These variables include:

- (1) the nurse's own qualifications including:
 - (A) basic educational preparation; and
 - (B) knowledge and skills subsequently acquired through continuing education and practice;
- (2) the complexity and frequency of nursing care needed by a given client population;
- (3) the proximity of clients to personnel;
- (4) the qualifications and number of staff;
- (5) the accessible resources; and
- (6) established policies, procedures, practices, and channels of communication which lend support to the types of nursing services offered.

(b) Assessment is an ~~ongoing-on-going~~ process and consists of the determination of nursing care needs based upon collection and interpretation of data relevant to the health status of a ~~client~~. client, group or community.

- (1) Collection of data includes:
 - (A) obtaining data from relevant sources regarding the ~~biological, biophysical,~~ psychological, social and cultural factors of the client's life and the influence these factors have on health status, including:
 - (i) subjective reporting;
 - (ii)(i) observations of appearance and behavior;
 - (iii)(ii) measurements of physical structure and physiological functions;

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- (iv)(iii) information regarding available resources; and
- (B) verifying data collected.
- (2) Interpretation of data includes:
 - (A) analyzing the nature and inter-relationships of collected data; and
 - (B) determining the significance of data to client's health status, ability to care for self, and treatment regimen.
- (3) Formulation of a nursing diagnosis includes:
 - (A) describing actual or potential responses to health conditions. Such responses are those for which nursing care is indicated, and/or for which referral to medical or community resources is appropriate; and
 - (B) developing a statement of a client problem identified through interpretation of collected data.
- (c) Planning nursing care activities includes identifying the client's needs and selecting or modifying nursing interventions related to the findings of the nursing assessment. Components of planning include:
 - (1) prioritizing nursing diagnoses and needs;
 - (2) setting realistic, measurable goals and outcome criteria;
 - (3) initiating or participating in multidisciplinary planning;
 - (4) developing a plan of care which includes determining and prioritizing nursing interventions; and
 - (5) identifying resources based on necessity and availability.
- (d) Implementation of nursing activities is the initiating and delivering of nursing care according to an established plan, which includes, but is not limited to:
 - (1) procuring resources;
 - (2) implementing nursing interventions and medical orders consistent with 21 NCAC ~~36 .0221(e);~~ 36 .0221(c) and within an environment conducive to client safety;
 - (3) prioritizing and performing nursing interventions;
 - (4) analyzing responses to nursing interventions;
 - (5) modifying nursing interventions; and
 - (6) assigning, delegating ~~to~~ and supervising nursing activities of other licensed and unlicensed personnel consistent with Paragraphs (a) and (i) of this Rule, G.S. 90-171.20 (7) d and i, and 21 NCAC 36 .0401.
- (e) Evaluation consists of determining the extent to which desired outcomes of nursing care are met and planning for subsequent care. Components of evaluation include:
 - (1) collecting evaluative data from relevant sources;
 - (2) analyzing the effectiveness of nursing interventions; and
 - (3) modifying the plan of care based upon newly collected data, new problem identification,

- change in the client's ~~status,—status~~ and expected outcomes.
- (f) Reporting and Recording by the registered nurse are those communications required in relation to all aspects of nursing care.
 - (1) Reporting means the communication of significant information to other persons responsible for, or involved in, the care of the client. The registered nurse is accountable for:
 - (A) directing the communication to the appropriate person(s) and consistent with established policies, procedures, practices and channels of communication which lend support to types of nursing services offered;
 - (B) communicating within a time period which is consistent with the client's need for care;
 - (C) evaluating the responses to information reported; and
 - (D) determining whether further communication is indicated.
 - (2) Recording means the documentation of all significant information on the appropriate client record, nursing care plan or other documents. This documentation must:
 - (A) be pertinent to the client's health care;
 - (B) accurately describe all aspects of nursing care including assessment, planning, implementation and evaluation;
 - (C) be completed within a time period consistent with the client's need for care;
 - (D) reflect the communication of significant information to other persons; and
 - (E) verify the proper administration and disposal of controlled substances.
- (g) Collaborating involves communicating and working cooperatively with individuals whose services may have a direct or indirect effect upon the client's health care and includes:
 - (1) initiating, coordinating, ~~planning,—planning~~ and implementing nursing or multidisciplinary approaches for the client's care;
 - (2) participating in decision-making and in cooperative goal-directed efforts;
 - (3) seeking and utilizing appropriate resources in the referral process; and
 - (4) safeguarding confidentiality.
- (h) Teaching and Counseling clients is the responsibility of the registered nurse, consistent with G.S. 90-171.20(7)g.
 - (1) teaching and counseling consist of providing accurate and consistent information, demonstrations and guidance to clients, their families or significant others regarding the client's health status and health care for the purpose of:
 - (A) increasing knowledge;

- (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
 - (C) promoting the client's ability to make informed decisions.
- (2) teaching and counseling include, but are not limited to:
- (A) assessing the client's ~~needs and abilities;~~ needs, abilities and knowledge level;
 - (B) adapting teaching content and methods to the identified ~~needs and~~ needs, abilities of the ~~client(s);~~ client(s) and knowledge level;
 - (C) evaluating effectiveness of teaching and counseling; and
 - (D) making referrals to appropriate resources.

(i) Managing the delivery of nursing care through the on-going supervision, teaching and evaluation of nursing personnel is the responsibility of the registered nurse as specified in the legal definition of the practice of nursing and includes, but is not limited to:

- (1) continuous availability for direct participation in nursing care, onsite when necessary, as indicated by client's status and by the variables cited in Paragraph (a) of this Rule;
- (2) assessing capabilities of personnel in relation to client status and plan of nursing care;
- (3) delegating responsibility or assigning nursing care functions to personnel qualified to assume such responsibility and to perform such functions;
- (4) accountability for nursing care given by all personnel to whom that care is assigned and delegated; and
- (5) direct observation of clients and evaluation of nursing care given.

(j) Administering nursing services is the responsibility of the registered nurse as specified in the legal definition of the practice of nursing in G.S. 90-171.20 (7) i, and includes, but is not limited to:

- (1) ~~identification~~ identification, development and updating of standards, policies and procedures related to the delivery of nursing care;
- ~~(2)~~ implementation of the identified standards, policies and procedures to promote safe and effective nursing care for clients;
- ~~(3)(2)~~ planning for and evaluation of the nursing care delivery system; and
- ~~(4)(3)~~ management of licensed and unlicensed personnel who provide nursing care consistent with Paragraphs (a) and (i) of this Rule and which includes:
 - (A) appropriate allocation of human resources to promote safe and effective nursing care;
 - ~~(B)(A)~~ defined levels of accountability and responsibility within the nursing organization;

- ~~(C)(B)~~ a mechanism to validate qualifications, ~~knowledge,~~ knowledge and skills of nursing personnel;
- ~~(D)(C)~~ provision of educational opportunities related to expected nursing performance; and
- ~~(E)(D)~~ validation of the implementation of a system for periodic performance evaluation.

(k) Accepting responsibility for self for individual nursing actions, competence and behavior which includes:

- (1) having knowledge and understanding of the statutes and rules governing nursing;
- (2) functioning within the legal boundaries or registered nurse practice; and
- (3) respecting client rights and property, and the rights of property of others.

History Note: Authority G.S. 90-171.20(7); 90-171.23(b); 90-171.43(4);
 Eff. January 1, 1991.
Temporary Amendment Eff. October 24, 2001.

21 NCAC 36 .0225 COMPONENTS OF NURSING PRACTICE FOR THE LICENSED PRACTICAL NURSE

(a) The licensed practical nurse shall accept only those ~~delegated~~ assigned nursing activities and responsibilities, as defined in Paragraphs (b) through (h) of this Rule, which the licensee can safely perform. That acceptance shall be based upon the variables in each practice setting which include:

- (1) the nurse's own qualifications in relation to client need and plan of nursing care, including:
 - (A) basic educational preparation; and
 - (B) knowledge and skills subsequently acquired through continuing education and practice;
- (2) the degree of supervision by the registered nurse consistent with Paragraph (d)(3) of this Rule;
- (3) the stability of each client's clinical condition;
- (4) the complexity and frequency of nursing care needed by each client or client group;
- (5) the accessible resources; and
- (6) established policies, procedures, practices, and channels of communication which lend support to the types of nursing services offered.

(b) Assessment is an ~~ongoing~~ on-going process and consists of participation in the determination of nursing care needs based upon collection and interpretation of data relevant to the health status of a client.

- (1) collection of data consists of obtaining data from relevant sources regarding the ~~biological,~~ biological, biophysical, psychological, social and cultural factors of the client's life and the influence these factors have on health status, according to structured written guidelines, policies and forms, and includes:
 - (A) subjective reporting;
 - ~~(B)(A)~~ observations of appearance and behavior;

- (C)(B) measurements of physical structure and physiologic function; and
(D)(C) information regarding available resources.
- (2) interpretation of data is limited to:
- (A) participation in the analysis of collected data by recognizing existing relationships between data gathered and a client's health status and treatment regimen; and
- (B) determining a client's need for immediate nursing interventions based upon data gathered regarding the client's health status, ability to care for self, and treatment regimen consistent with Paragraph (a)(6) of this Rule.
- (c) Planning nursing care activities includes participation in the identification of client's needs related to the findings of the nursing assessment. Components of planning include:
- (1) participation in making decisions regarding implementation of nursing intervention and medical orders and plan of care through the utilization of assessment data;
- (2) participation in multidisciplinary planning by providing resource data; and
- (3) identification of nursing interventions and goals for review by the registered nurse.
- (d) Implementation of nursing activities consists of delivering nursing care according to an established health care plan and as delegated-assigned by the registered nurse or other person(s) authorized by law as specified in G.S. 90-171.20 (8) (c).
- (1) Nursing activities and responsibilities which may be delegated-assigned to the licensed practical nurse include:
- (A) procuring resources;
- (B) implementing nursing interventions and medical orders consistent with Paragraph (b) of this Rule and Paragraph (c) of 21 NCAC 36 .0221; 36 .0221 and within an environment conducive to client safety;
- (C) prioritizing and performing nursing interventions;
- (D) recognizing responses to nursing interventions;
- (E) modifying immediate nursing interventions based on changes in a client's status; and
- (F) delegating specific nursing tasks as outlined in the plan of care and consistent with Paragraph (d)(2) of this Rule, and 21 NCAC 36 .0401.
- (2) The licensed practical nurse may participate, consistent with 21 NCAC 36 .0224(d)(6), in implementing the health care plan by delegating-assigning nursing care activities to other licensed practical nurses and delegating nursing care activities to unlicensed personnel qualified and competent to perform such activities and providing all of the following criteria are met:
- (A) validation of qualifications of personnel to whom nursing activities may be assigned or delegated;
- (B) continuous availability of a registered nurse for supervision consistent with 21 NCAC 36 .0224(i) and Paragraph (d)(3) of this Rule;
- (C) accountability maintained by the licensed practical nurse for responsibilities accepted, including nursing care given by self and by all other personnel to whom such care is assigned or delegated;
- (D) participation by the licensed practical nurse in on-going observations of clients and evaluation of clients' responses to nursing actions; and
- (E) provision of supervision limited to the validation that tasks have been performed as assigned or delegated and according to established standards of practice.
- (3) The degree of supervision required for the performance of any assigned or delegated nursing activity by the licensed practical nurse when implementing nursing care is determined by variables which include, but are not limited to:
- (A) educational preparation of the licensed practical nurse, including both the basic educational program and the knowledge and skills subsequently acquired by the nurse through continuing education and practice;
- (B) stability of the client's clinical condition, which involves both the predictability and rate of change. When a client's condition is one in which change is highly predictable and would be expected to occur over a period of days or weeks rather than minutes or hours, the licensed practical nurse participates in care with minimal supervision. When the client's condition is unpredictable or unstable, the licensed practical nurse participates in the performance of the task under close supervision of the registered nurse or other person(s) authorized by law to provide such supervision;
- (C) complexity of the nursing task which is determined by depth of scientific body of knowledge upon which the action is based and by the task's potential threat to the client's well-being. When a task is complex, the licensed practical nurse

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- participates in the performance of the task under close supervision of the registered nurse or other person(s) authorized by law to provide such supervision;
- (D) the complexity and frequency of nursing care needed by a given client population;
- (E) the proximity of clients to personnel;
- (F) the qualifications and number of staff;
- (G) the accessible resources; and
- (H) established policies, procedures, practices and channels of communication which lend support to the types of nursing services offered.
- (e) Evaluation, a component of implementing the health care plan, consists of participation in determining the extent to which desired outcomes of nursing care are met and in planning for subsequent care. Components of evaluation by the licensed practical nurse include:
- (1) collecting evaluative data from relevant sources according to written guidelines, policies and forms;
 - (2) recognizing the effectiveness of nursing interventions; and
 - (3) proposing modifications to the plan of care for review by the registered nurse or other person(s) authorized by law to prescribe such a plan.
- (f) Reporting and recording are those communications required in relation to the aspects of nursing care for which the licensed practical nurse has been delegated responsibility.
- (1) reporting means the communication of significant information to other persons responsible for or involved in the care of the client. The licensed practical nurse is accountable for:
 - (A) directing the communication to the appropriate person(s) and consistent with established policies, procedures, practices and channels of communication which lend support to types of nursing services offered;
 - (B) communicating within a time period which is consistent with the client's need for care;
 - (C) evaluating the nature of responses to information reported; and
 - (D) determining whether further communication is indicated.
 - (2) recording means the documentation of all significant information on the appropriate client record, nursing care plan or other documents. This documentation must:
 - (A) be pertinent to the client's health care including client's response to care provided;
 - (B) accurately describe all aspects of nursing care provided by the licensed practical nurse;
 - (C) be completed within a time period consistent with the client's need for care;
 - (D) reflect the communication of significant information to other persons; and
 - (E) verify the proper administration and disposal of controlled substances.
- (g) Collaborating involves communicating and working cooperatively in implementing the health care plan with individuals whose services may have a direct or indirect effect upon the client's health care. As delegated by the registered nurse or other person(s) authorized by law, the licensed practical nurse's role in collaborating in client care includes:
- (1) participating in planning and implementing nursing or multidisciplinary approaches for the client's care;
 - (2) seeking and utilizing appropriate resources in the referral process; and
 - (3) safeguarding confidentiality.
- (h) ~~"Reinforcing-Participating in the teaching and counseling" as used in G.S. 90-171.20(8)(d) means participating in those activities for of clients as planned-assigned by the registered nurse-nurse, physician or other qualified professional licensed to practice in North Carolina person(s) authorized by law.~~ Participation includes:
- (1) providing accurate and consistent information, demonstrations, and guidance to clients, their families or significant others regarding the client's health status and health care ~~according to structured written guidelines, policies and forms, and~~ for the purpose of:
 - (A) increasing knowledge;
 - (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
 - (C) promoting the client's ability to make informed decisions.
 - (2) collecting evaluative data consistent with Paragraph (e) of this Rule.
- (i) Accepting responsibility for self for individual nursing actions, competence and behavior which includes:
- (1) having knowledge and understanding of the statutes and rules governing nursing;
 - (2) functioning within the legal boundaries of licensed practical nurse practice; and
 - (3) respecting client rights and property, and the rights and property of others.
- History Note: Authority G.S. 90-171.20(7),(8); 90-171.23(b); 90-171.43(4); Eff. January 1, 1991; Amended Eff. January 1, 1996; Temporary Amendment Eff. October 24, 2001.*

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of September 20, 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
10	NCAC	22L	.0201-.0204*	15:21 NCR
12	NCAC	09B	.0107	16:02 NCR
12	NCAC	09B	.0109-.0110	16:02 NCR
12	NCAC	09B	.0112-.0113	16:02 NCR
12	NCAC	09B	.0115	16:02 NCR
12	NCAC	09B	.0206	16:02 NCR
12	NCAC	09B	.0208	16:02 NCR
12	NCAC	09B	.0216	16:02 NCR
12	NCAC	09B	.0223	16:02 NCR
12	NCAC	09B	.0229-.0231	16:02 NCR
12	NCAC	09B	.0304*	16:02 NCR
12	NCAC	09C	.0205	16:02 NCR
12	NCAC	09C	.0207-.0208	16:02 NCR
12	NCAC	09G	.0101*	16:02 NCR
12	NCAC	09G	.0103*	16:02 NCR
12	NCAC	09G	.0201-.0203	16:02 NCR
12	NCAC	09G	.0205	16:02 NCR
12	NCAC	09G	.0206*	16:02 NCR
12	NCAC	09G	.0301-.0303*	16:02 NCR
12	NCAC	09G	.0308*	16:02 NCR
12	NCAC	09G	.0310*	16:02 NCR
12	NCAC	09G	.0312-.0314	16:02 NCR
12	NCAC	09G	.0315*	16:02 NCR
12	NCAC	09G	.0410-.0413	16:02 NCR
12	NCAC	09G	.0414*	16:02 NCR
12	NCAC	09G	.0501-.0503	16:02 NCR
12	NCAC	09G	.0504-.0506*	16:02 NCR
12	NCAC	09G	.0601-.0603	16:02 NCR
12	NCAC	09G	.0604-.0605*	16:02 NCR
12	NCAC	09G	.0606	16:02 NCR
12	NCAC	09G	.0701	16:02 NCR
15A	NCAC	02D	.1401-.1404*	15:11 NCR
15A	NCAC	02D	.1406	15:21 NCR
15A	NCAC	02D	.1407-.1411*	15:11 NCR
15A	NCAC	02D	.1413-.1414*	15:11 NCR
15A	NCAC	02D	.1418-.1419*	15:11 NCR
15A	NCAC	02D	.1422-.1423*	15:11 NCR
15A	NCAC	18A	.3334*	15:13 NCR
19A	NCAC	03D	.0801*	15:23 NCR
19A	NCAC	03J	.0306*	15:23 NCR
21	NCAC	16V	.0101-.0102*	not required (G.S. 150B-21.5(a)(2)), Eff. October 1, 2001
21	NCAC	32T	.0101*	not required (G.S. 150B-21.5(a)(2)), Eff. October 1, 2001
21	NCAC	46	.3101*	not required (G.S. 150B-21.5(a)(2)), Eff. October 1, 2001
25	NCAC	01C	.0214*	15:22 NCR
25	NCAC	01J	.0603*	15:22 NCR

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10 NCAC 22L .0201 ELIGIBILITY FOR INFORMATION AND ASSISTANCE

Those eligible for Information and Assistance Services are persons 60 years of age and older or persons acting on behalf of persons age 60 and older and, who are in need of information or services.

History Note: Authority G.S. 143B-181.1(c); 143B-181.1(a)(11); Eff. November 1, 1991; Amended Eff. July 15, 2002.

10 NCAC 22L .0202 RESOURCE FILE

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

(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.

History Note: Authority G.S.143B-181.1(c); 143B-181.1(a)(11); Eff. November 1, 1991; Amended Eff. July 15, 2002.

10 NCAC 22L .0203 STAFF COMPETENCE

The agency providing Information and Assistance shall make orientation and 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 Assistance; the role of the agency; and the administrative structure and policies for providing the service.
- (2) Agencies shall also provide education and to enable staff to perform the functions defined in 10 NCAC 22L .0102. At a minimum, this shall include the development of interviewing techniques and communication.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); Eff. November 1, 1991; Amended Eff. July 15, 2002.

10 NCAC 22L .0204 DOCUMENTATION

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

(b) For those persons who receive Information, as defined in 10 NCAC 22L .0101, the log shall include the date, nature of the concern and action taken.

(c) For those persons who receive Assistance, as defined in 10 NCAC 22L .0101, a client record or 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 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 shall have written procedures in place to keep client information confidential.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); Eff. November 1, 1991; Amended Eff. July 15, 2002.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09B .0304 SPECIALIZED INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specialized Instructor Certification to an applicant who has developed specific motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Subject Control Arrest Techniques
- (2) First Responder
- (3) Firearms
- (4) Law Enforcement Driver Training
- (5) Physical Fitness
- (6) Unarmed Self-Defense (DJJDP)
- (7) Medical Emergencies (DJJDP)
- (8) Electrical and Hazardous Materials Emergencies

(b) To qualify for Specialized Instructor Certification, with the exception of the First Responder, Physical Fitness, Department of Juvenile Justice and Delinquency Prevention Medical Emergencies, and Electrical and Hazardous Materials Emergencies topical areas as outlined in Rule .0304 (d), (e), (f), and (g) of this Section, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (2) successfully complete the pertinent commission-approved specialized instructor training course; and
- (3) obtain the recommendation of a Commission-certified school director.

(c) To qualify for and maintain any Specialized Instructor Certification, an applicant must possess a valid CPR Certification that included cognitive and skills testing.

(d) To qualify for Specialized Instructor Certification in the First Responder topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but must qualify through one of the following two options:

- (1) The first option is:
 - (A) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
 - (B) hold current basic Emergency Medical Technician certification; and
 - (C) have successfully completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a current North Carolina teaching certificate.
- (2) The second option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (B) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
 - (C) hold current basic EMT certification.

(e) To qualify for Specialized Instructor Certification in the Physical Fitness topical area, an applicant may become certified through one of the following two methods:

- (1) The first method is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (B) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (C) obtain the recommendation of a Commission-certified School Director.
- (2) The second method is:
 - (A) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (B) obtain the recommendation of a Commission-certified School Director; and
 - (C) meet one of the following qualifications:
 - (i) hold a current and valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be actively teaching in physical education topics; or

(ii) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education.

(f) To qualify for Specialized Instructor Certification in the Electrical and Hazardous Materials Emergencies topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but must qualify through one of the following two options:

- (1) The first option is:
 - (A) hold current instructor certification as a First Responder Awareness Level Hazardous Materials instructor; and
 - (B) have successfully completed the Fire Service Instructor Methodology Course or the equivalent utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.
- (2) The second option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in 12 NCAC 09B .0303 of this Section; and
 - (B) have successfully completed a First Responder Awareness Level Hazardous Materials course.

(g) To qualify for Specialized Instructor Certification in the Department of Juvenile Justice and Delinquency Prevention Medical Emergencies topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but must qualify in the following manner:

- (1) have successfully completed a commission-accredited basic instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, within the 12 month period preceding application; and
- (2) hold current instructor certification in CPR and First Aid by fulfillment of the American Red Cross Instructor requirements.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2000; July 1, 1991; March 1, 1990; July 1, 1989; December 1, 1987; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

12 NCAC 09G .0101 SCOPE AND APPLICABILITY OF SUBCHAPTER

This Subchapter governs the implementation of minimum standards for employment, training, and certification of three classes of corrections officers: correctional officers,

probation/parole officers, and probation/parole officers-surveillance as well as the standards for corrections schools and the state corrections certificate program. Definitions and procedures contained within 12 NCAC 09A through 09F do not apply to these classes of corrections officers, unless specifically referenced; only rules specifically included in Subchapter 09G apply to these employees of the North Carolina Department of Correction.

History Note: Authority G.S. 17C-1; 17C-6; S.L. 2000-67, s. 17.3(c); Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0103 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) In addition to the procedures set out in G.S. 150B-20, Petitions for Rule-Making shall be submitted to the Commission and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) a draft of the proposed rule or rule change;
- (3) the reason for its proposal;
- (4) the effect of the proposal on existing rules or decisions;
- (5) data supporting the proposal;
- (6) practices likely to be affected by the proposal; and
- (7) a list or description of persons likely to be affected by the proposed rule.

(b) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in G.S. 150B, Article 3;
- (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A -1;
- (3) insofar as relevant, 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.

(c) The rules establishing procedures for contested cases incorporated by the Office of Administrative Hearings as contained in 26 NCAC 03 are hereby incorporated by reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). All such incorporations by reference shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in 26 NCAC 03 and that 26 NCAC 03 .0101(2); .0102(a)(1) and .0103(b) shall not apply.

(d) An applicant for certification or a certified officer shall have 60 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

History Note: Authority G.S. 17C-6; 150B-20; 150B-21.6; 150B-38(h); 150B-40; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0206 MORAL CHARACTER

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-surveillance by the North Carolina Department of Correction shall demonstrate good moral character as evidenced by, but not limited to:

- (1) not having been convicted of a felony for 10 years or the completion of any corrections supervision imposed by the courts whichever is later;
- (2) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(10) for three years or the completion of any corrections supervision imposed by the courts whichever is later;
- (3) having submitted to and produced a negative result on a drug test which meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs, copies of which may be obtained from National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost, to detect the illegal use of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
- (4) submitting to a background investigation consisting of:
 - (a) verification of age;
 - (b) verification of education;
 - (c) criminal history check of local, state, and national files;
- (5) being truthful in providing all required information as prescribed by the application process.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0301 CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-surveillance shall be certified as prescribed by the Rules of this Section. The Commission shall certify an officer as either a probationary officer or general officer based on the officer's qualifications and experience.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0302 NOTIFICATION OF CRIMINAL CHARGES/CONVICTIONS

(a) Every person employed and certified as a correctional officer, probation/parole officer, or probation/parole officer-surveillance shall notify the Standards Division of all criminal

offenses for which the officer is charged, arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. Criminal offenses shall include all felony offenses and shall specifically include those misdemeanor offenses delineated in 12 NCAC 09G .0102.

(b) The notifications required under this Subparagraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of arrest or criminal charge, the final disposition and the date thereof. The notifications required under this Subparagraph must be received by the Standards Division within 30 days of the date the case was disposed of in court.

(c) The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applicants for certification.

(d) Officers required to notify the Standards Division under this Rule shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's arrest(s), or criminal charge(s), and final disposition(s), shall also notify the Standards Division of all arrests or criminal convictions within 30 days of the date of the arrest and within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, is sufficient notice for compliance with this Rule.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0303 PROBATIONARY CERTIFICATION

(a) A prospective employee may commence active service as a correctional officer, probation/parole officer, or probation/parole officer-surveillance at the time of employment.

(b) Within 90 days of appointment, the North Carolina Department of Correction shall submit a completed Report of Appointment/Application for Certification to the Standards Division.

(c) The Commission shall certify as a probationary officer a person meeting the minimum standards for certification when the North Carolina Department of Correction submits a completed Report of Appointment/Application for Certification to the Standards Division.

(d) The Standards Division shall issue the person's Probationary Certification to the North Carolina Department of Correction.

(e) The officer's Probationary Certification shall remain valid for one year from the date the certification is issued by the Standards Division unless sooner suspended or revoked pursuant to Rule .0503 of this Subchapter or the officer has attained General Certification.

(f) Documentation of Probationary Certification shall be maintained with the officer's personnel records with the North Carolina Department of Correction and the Commission,

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0308 GENERAL INSTRUCTOR CERTIFICATION

General Instructor Certification after December 31, 1984 shall be limited to those topics which are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in 12 NCAC 09G .0310, entitled "Specialized Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in corrections and proficiency in the instructional process to the satisfaction of the Commission. At a minimum, the applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
 - (a) is a high school graduate, or has passed the General Education Development Test (GED) indicating high school equivalency, and has acquired four years of practical experience as a corrections officer or as an administrator or specialist in a field directly related to the criminal justice system;
 - (b) has been awarded an associate degree and has acquired three years of practical experience as a corrections officer or as an administrator or specialist in a field directly related to the criminal justice system;
 - (c) has been awarded a baccalaureate degree and has acquired two years of practical experience as a corrections officer or as an administrator or specialist in a field directly related to the criminal justice system; or
 - (d) has been awarded a graduate/professional degree and has acquired one year of practical experience as a corrections officer or as an administrator or specialist in a field directly related to the criminal justice system.
- (2) Present evidence showing successful completion of a Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.
 - (a) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant successfully passed the State Comprehensive Examination administered at the conclusion of the Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an

international model with applications in education, military training, and private enterprise.

- (b) Persons having completed a Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course, shall complete a subsequent Commission-accredited instructor training course in its entirety.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0310 SPECIALIZED INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specialized Instructor Certification to an applicant who has developed specific motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Firearms (DOC);
- (2) Unarmed Self-Defense (DOC).

(b) To qualify for Specialized Instructor Certification, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in 12 NCAC 09G .0309 of this Section;
- (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
- (3) obtain the recommendation of a Commission-certified School Director.

(c) To qualify for and maintain any Specialized Instructor Certification, an applicant must possess a valid CPR Certification that included cognitive and skills testing.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0315 COMPREHENSIVE WRITTEN EXAM - SPECIALIZED INSTRUCTOR TRAINING

(a) At the conclusion of a school's offering of the "Specialized Firearms Instructor Training" and "Specialized Unarmed Self-Defense Instructor Training" course in its entirety, the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the required course work. A trainee shall not be administered the comprehensive written examination until such time as all of the pertinent course work is completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the accredited course curriculum.

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

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 75 percent correct answers.

(e) A trainee who fails to achieve the minimum score of 75 percent on the Commission's comprehensive written examination shall not be given successful course completion and shall enroll and successfully complete a subsequent offering of the specialized instructor training course in its entirety before further examination may be permitted.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0414 INSTRUCTOR TRAINING

(a) The instructor training course required for general instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include, as a minimum, the following identified topic areas:

- (1) Orientation and Pretest;
- (2) Curriculum Development: ISD Model;
- (3) Civil Liability for Law Enforcement Trainers;
- (4) Interpersonal Communication in Instruction;
- (5) Lesson Plan Preparation: Professional Resources;
- (6) Lesson Plan Preparation: Format and Objectives;
- (7) Teaching Adults;
- (8) Principles of Instruction: Demonstration Methods and Practical Exercise;
- (9) Methods and Strategies of Instruction;
- (10) The Evaluation Process;
- (11) Principles of Instruction: Audio-Visual Aids;
- (12) Student 10-Minute Talk and Video Critique;
- (13) Student Performance:
 - First 30-Minute Presentation;
 - Second 30-Minute Presentation;
 - Final 80-Minute Presentation; and
- (14) Examination.

(d) The "Basic Instructor Training Manual" as published by the North Carolina Justice Academy is to be applied as the basic curriculum for delivery of basic instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be purchased at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

**12 NCAC 09G .0504 SUSPENSION: REVOCATION:
OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke the certification of a correctional officer, probation/parole officer, or probation/parole officer-surveillance when the Commission finds that the officer has committed or been convicted of a felony offense.

(b) The Commission may suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;
- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Correction for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) commission or conviction of any other offense involving moral turpitude;
- (5) has been discharged by the North Carolina Department of Correction because the officer lacks the mental or physical capabilities to properly fulfill the responsibilities of a corrections officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another person in obtaining or

- (9) attempting to obtain credit, training, or certification from the Commission;
- (10) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;
- (11) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (12) has refused to submit to an applicant drug screen as required by the Rules in this Subchapter;
- (13) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206(c), where the positive result cannot be explained to the Commission's satisfaction; or
- (14) has been denied certification or had such certification suspended or revoked by the North Carolina Sheriffs' Education and Training Standards Commission if such certification was denied, suspended or revoked based on grounds that would constitute a violation of Subchapter 09G.

(c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a corrections officer and the person may not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

*History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

**12 NCAC 09G .0505 PERIOD OF SUSPENSION:
REVOCATION: OR DENIAL**

(a) When the Commission revokes or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of the sanction shall be 10 years where the cause of sanction is:

- (1) commission or conviction of a felony offense; or
- (2) the second suspension of an officer's certification for any of the causes requiring a three year period of suspension; or
- (3) revocation or denial of certification by the North Carolina Sheriffs' Education and Training Standards Commission based on grounds that would constitute a violation of Section 09G of these Rules.

(b) When the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a misdemeanor as defined in 12 NCAC 09G .0102;

- (2) discharge by the North Carolina Department of Correction pursuant to 12 NCAC 09G .0504(b)(4) and (b)(5) of this Section;
- (3) refusal to submit to the applicant drug screen required by the Rules in this Subchapter;
- (4) production of a positive result on a drug screen reported to the Commission under 12 NCAC 09G .0206(c), where the positive result cannot be explained to the Commission's satisfaction;
- (5) material misrepresentation of any information required for certification or accreditation;
- (6) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempt to obtain credit, training or certification by any means of false pretense, deception, defraudation, misrepresentation or cheating;
- (7) failure to make either of the notifications as required by 12 NCAC 09G .0302;
- (8) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
- (9) certification revoked or denied by the North Carolina Sheriffs' Education and Training Standards Commission, if such certification was revoked or denied based on grounds that would constitute a violation of Section 09G of these Rules.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0506 SUMMARY SUSPENSIONS

(a) The Commission, by and through the Standards Committee, may summarily suspend the certification of a corrections officer or instructor before the commencement of proceedings for suspension or revocation of the certification when, in the opinion of the Standards Committee, the public health, safety, or welfare requires this emergency action of summary suspension. The Commission has determined that the following condition specifically affects the public health, safety, or welfare and therefore it, by and through the Standards Committee, may utilize summary suspension: when the person has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification.

(b) For the purpose of considering a summary suspension of certification, the Standards Committee may meet upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting.

(c) A summary suspension shall be effective on the date specified in the order of summary suspension or on service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain effective during the proceedings.

(d) Upon verbal notification by the Director that the certification of an officer or instructor is being summarily suspended by written order, the North Carolina Department of Correction shall take such steps as are necessary to ensure that the officer or instructor does not perform duties requiring certification by the Commission.

History Note: Authority G.S. 17C-6; 17C-10; 150B-3; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

(c) When the Commission suspends or denies the certification of a corrections officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy relevant basic training requirements; or
- (2) failure to meet or maintain the minimum standards for certification; or
- (3) discharge from the North Carolina Department of Correction for impairment of physical or mental capabilities.

12 NCAC 09G .0604 INTERMEDIATE STATE CORRECTIONS CERTIFICATE

(a) In addition to the qualifications set forth in 12 NCAC 09G .0602(a) of this Section, an applicant for the Intermediate State Corrections Certificate shall possess or be eligible to possess the Basic State Corrections Certificate and shall have acquired the following combination of educational points or degrees, corrections training points and years of corrections experience:

Educational Degrees				AA/AS	AB/BS
Years of Corrections Experience	8	6	4	4	2
Minimum Corrections Training Points	-	-	-	15	10
Minimum Total Education and Training Points	30	60	90	15	10

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college, or university accredited as such by the Department of Education of the state in which the institution is located, the appropriate regional accrediting body, or the state university of the state in which the institution is located.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001;

Eff. August 1, 2002.

12 NCAC 09G .0605 ADVANCED STATE CORRECTIONS CERTIFICATE

(a) In addition to the qualifications set forth in 12 NCAC 09G .0602(a) of this Section, an applicant for the Advanced State Corrections Certificate shall possess or be eligible to possess the Intermediate State Corrections Certificate and shall have acquired the following combinations of educational points or degrees, corrections training points and years of corrections experience:

Educational Degrees			AA/AS	AB/BS	GRAD./PRO.
Years of Corrections Experience	12	9	9	6	4
Minimum Corrections Training Points	-	-	25	15	10
Minimum Total Education and Training Points	60	90	25	15	10

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college, or university accredited as such by the Department of Education of the state in which the institution is located, the regional national accrediting body, or the state university of the state in which the institution is located.

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

TITLE 15A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

15A NCAC 02D .1401 DEFINITIONS

(a) For the purpose of this Section, the definitions at G.S. 143-212 and G.S. 143-213, and 15A NCAC 02D .0101 shall apply, and in addition the following definitions apply. If a term in this Rule is also defined at 15A NCAC 02D .0101, then the definition in this Rule controls.

- (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.
- (4) "Averaging set of sources" means all the stationary sources included in an emissions averaging plan according to Rule .1410 of this Section.
- (5) "Averaging source" means a stationary source that is included in an emissions averaging plan in accordance to Rule .1410 of this Section.
- (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.
- (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

- (8) efficiency of electricity generation or steam production.
- (8) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.
- (9) "Diesel engine" means a compression ignited two- or four-stroke engine in which liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.
- (10) "Dual fuel engine" means a compression ignited stationary internal combustion engine that is burning liquid fuel and gaseous fuel simultaneously.
- (11) "Emergency generator" means a stationary internal combustion engine used to generate electricity only during:
 - (A) the loss of primary power at the facility that is beyond the control of the owner or operator of the facility; or
 - (B) maintenance when maintenance is being performed on the power supply to equipment that is essential in protecting the environment or to such equipment itself.

An emergency generator may be operated periodically to ensure that it will operate.
- (12) "Emergency use internal combustion engines" means stationary internal combustion engines used to drive pumps, aerators, and other equipment only during:
 - (A) the loss of primary power at the facility that is beyond the control of

- the owner or operator of the facility;
or
- (B) maintenance when maintenance is being performed on the power supply to equipment that is essential in protecting the environment or to such equipment itself.
- An emergency use internal combustion engine may be operated periodically to ensure that it will operate.
- (13) "Excess emissions" means an emission rate that exceeds the applicable limitation or standard; for the purposes of this definition, nitrogen oxides emitted by a source covered under Rules .1416, .1417, or .1418 of this Section during the ozone season above its allocation, as may be adjusted under Rule .1419 of this Section, are not considered excess emissions.
- (14) "Fossil fuel fired" means:
- (A) For sources that began operation before January 1, 1996, where fossil fuel actually combusted either alone or in combination with any other fuel, 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, where fossil fuel actually combusted either alone or in combination with any other fuel, comprises more than 50 percent of the annual heat input on a Btu basis during 1996; or
- (C) For sources that began operation on or after January 1, 1997:
- (i) Where fossil fuel actually combusted either alone or in combination with any other fuel, comprises more than 50 percent of the annual heat input on a Btu basis during any year; or
- (ii) Where fossil fuel combusted either alone or in combination with any other 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 source begins combusting fossil fuel.
- (15) "Indirect-fired process heater" means an enclosed device using controlled flame where the device's primary purpose is to transfer heat by indirect heat exchange 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.
- (16) "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.
- (17) "NO_x" means nitrogen oxides.
- (18) "Ozone season" means the period beginning May 31 and ending September 30 for 2004 and beginning May 1 and ending September 30 for all other years.
- (19) "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.
- (20) "Projected seasonal energy input" means the maximum design heat input per hour times 3300 hours.
- (21) "Projected seasonal energy output" means the maximum design energy output per hour times 3300 hours.
- (22) "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.
- (23) "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.
- (24) "Reasonable effort" means the proper installation of technology designed to meet the requirements of Rules .1407, .1408, or .1409 of this Section and the utilization 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.
- (25) "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.
- (26) "Seasonal energy input" means the total energy input of a combustion source during the period beginning May 1 and ending September 30.

- (27) "Seasonal energy output" means the total energy output of a combustion source during the period beginning May 1 and ending September 30.
- (28) "Shutdown" means the cessation of operation of a source or its emission control equipment.
- (29) "Source" means a stationary boiler, combustion turbine, combined cycle system, reciprocating internal combustion engine, indirect-fired process heater, or a stationary article, machine, process equipment, or other contrivance, or combination thereof, from which nitrogen oxides emanate or are emitted.
- (30) "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.
- (31) "Stationary internal combustion engine" means a reciprocating internal combustion engine that is not self propelled; however, it may be mounted on a vehicle for portability.

(b) Whenever reference is made to the Code of Federal Regulations in this Section, the definitions in the Code of Federal Regulations shall apply unless specifically stated otherwise in a particular rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. July 15, 2002.

15A NCAC 02D .1402 APPLICABILITY

- (a) The requirements of this Section shall apply to all sources May 1 through September 30 of each year.
- (b) Rules .1409(b) and .1416 through .1423 of this Section apply statewide.
- (c) Rules .1407, .1408, .1409(a), and .1413 of this Section apply to sources identified according to Paragraph (d) of this Rule.
- (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) source that is not covered under Rules .1416, .1417, or .1418, 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.
- (6) stationary internal combustion engine less than 2400 brake horsepower that operates no more than the following hours between May 1 and September 30:
 - (A) for diesel engines:

$$t = \frac{833,333}{ES}$$
 - (B) for natural gas-fired engines:

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

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

This exemption shall not apply to any of the sources listed in Rules .1417(a)(1) or (2) or .1417(b) of this Section except that it shall apply to:

- (7) 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 May 1 and 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) (1)(ii) and (iii).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1997; July 1, 1995; April 1, 1995; Temporary Amended Eff.; November 1, 2000; Amended Eff. April 1, 2001; Temporary Amended Eff. August 1, 2001; Amended Eff. July 15, 2002.

15A NCAC 02D .1403 COMPLIANCE SCHEDULES

(a) Applicability. This Rule applies to sources as set out in the Rule.

(b) Maintenance areas. 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:

- (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, according to Rule .1415 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation; and
 - (C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation.
- (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

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- 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) or (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.
- (5) 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 this Paragraph, whether the required increment of progress has been met.
- (c) Schedule for utility companies. The owner or operator of a source subject to this Rule because of Rule .1416 of this Section shall:
- (1) 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 ozone 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) 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; and
 - (3) 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.
- (d) Schedule for large combustion sources. The owner or operator of a source subject to this Rule because of Rules .1409(b) or .1417 of this Section shall:
- (1) 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 ozone 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) 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 Rules .1409(b) or .1417 of this Section if a

- (3) permit is needed for source modifications or control device installation or modification; 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.

(e) 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 Rules .1407, .1408, .1409, .1413, or .1418 of this Section shall comply with all applicable rules in this Section upon start-up of the source.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1997; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

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

- (a) General requirements. The owner or operator of any source 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 five years.
- (b) Submittal of information to show compliance status. The owner or operator of any source shall maintain and, when requested by the Director, submit 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.
- (d) Continuous emissions monitors.
- (1) The owner or operator of:
 - (A) a source covered under Rules .1416, .1417, or .1418 of this Section except internal combustion engines; and
 - (B) any source that opts into 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, 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 the 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 indirect-fired 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 except for engines covered under Rules .1409(b) and .1418 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 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 are 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.
- (f) Quality assurance for continuous emissions monitors.
 - (1) The owner or operator of a continuous emission monitor required to meet 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 owner or operator of the continuous emissions monitor shall follow the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, if the monitor is required to be operated

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annually under another rule. If the continuous emissions monitor 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) Interim reporting for large sources. The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section shall report to the Director no later than July 30 the tons of nitrogen oxides emitted during the previous May and June. No later than October 30, 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 Rules .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.

(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 Rules .1416, .1417, or .1418 of this Section shall comply with the averaging time requirements of 40 CFR Part 75. A 24-hour block average described in Rule .0606 of this Subchapter shall be used when a continuous emissions monitoring system is used to determine compliance with a short-term pounds-per-million-Btu standard in Rule .1418 of this Section.

(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:
(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 determined using source testing, the source testing shall follow the procedures of Rule .1415 of this Section.

(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.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1999; Temporary Amendment Eff.; November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

15A NCAC 02D .1407 BOILERS AND INDIRECT-FIRED PROCESS HEATERS

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

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

- (1) installation of, if necessary, combustion modification technology or other NOx control technology and maintenance, including annual tune-ups and recordkeeping; and
(2) demonstration through source testing or continuous emission monitoring that the source complies with the following applicable limitation:

MAXIMUM ALLOWABLE NOx EMISSION RATES FOR BOILERS AND INDIRECT PROCESS HEATERS

(POUNDS PER MILLION BTU)

Table with 3 columns: Fuel/Boiler Type, Tangential, Wall, Stoker or Other. Row 1: Firing Method.

APPROVED RULES

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	0.30	0.30	0.30
Gas	0.20	0.20	0.20

(c) If this Rule becomes applicable to a boiler or indirect-fired process heater pursuant to Rule .1402(d), and the emissions are greater than the applicable limitation in Paragraph (b) of this Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT, the owner or operator may petition the Director for an alternative limitation or standard in accordance with Rule .1412 of this Section.

(d) Compliance with the limitation established for a boiler or indirect-fired process heater under this Rule shall be determined:

- (1) using a continuous emissions monitoring system for boilers or indirect-fired process heaters with a maximum heat input rate greater than 250 million Btu per hour;
- (2) using a continuous emission monitoring system if the boiler or indirect-fired process heater is required to use a continuous emissions monitoring system under Rule .0524 of this Section or 40 CFR Part 60 to measure emissions of nitrogen oxides; or
- (3) using annual source testing according to Rule .1415 of this Section for boilers or indirect-fired 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 with the exception allowed under Paragraph (e) of this Rule.

(e) If a source covered under this Rule can burn more than one fuel, the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the sources testing required under Subparagraph (d)(3) this Rule shall not be required for that fuel.

(f) If two consecutive annual source tests show compliance, the Director may reduce the frequency of testing up to once every five years. In years that a source test is not done, the boiler or indirect-fired process heater shall comply with the annual tune-up requirements of Rule .1414 of this Section. If after the Director reduces the frequency of testing, a source test shows that the emission limit under this Rule is exceeded, the Director shall require the boiler or indirect-fired process heater to be tested annually until two consecutive annual tests show compliance. Then the Director may again reduce the frequency of testing.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Amendment Eff. November 1, 2000; Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

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 combustion turbine with a heat input rate greater than 100 million Btu per hour but less than or equal to 250 million Btu per hour 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 combustion turbine pursuant to Rule .1402(d), and the emissions are greater than the applicable limitation in Paragraph (a) of this Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT for the particular stationary 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 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.

(d) If a source covered under this Rule can burn more than one fuel, the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the sources testing required under this Rule shall not be required for that fuel.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. July 15, 2002.

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 Paragraph (b) of this Rule or Rule .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

APPROVED RULES

(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

restrictions on emissions of nitrogen oxides from these engines under this Rule.

(b) Engines identified in the table in this Paragraph shall not exceed the emission limit in the table during the ozone season for the 2002 and 2003 ozone season, there shall not be any

SUM OF MAXIMUM ALLOWABLE OZONE SEASON NO_x EMISSIONS
(tons per ozone season)

FACILITY	REGULATED SOURCES	ALLOWABLE	ALLOWABLE	ALLOWABLE
		EMISSIONS 2004	EMISSIONS 2005	EMISSIONS 2006 and later
Transcontinental Gas Pipeline Station 150	Mainline engines #12, 13, 14, and 15	311	189	76
Transcontinental Gas Pipeline Station 155	Mainline engines #2, 3, 4, 5, and 6	509	314	127
Transcontinental Gas Pipeline Station 160	Mainline engines #11, 12, 13, 14, and 15	597	367	149

Compliance shall be determined by summing the actual emissions from the engines listed in the table at each facility for the ozone season and comparing those sums to the limits in the table. Compliance may be achieved through trading under Paragraph (g) of this Rule if the trades are approved before the ozone season.

(c) If this Rule becomes applicable to a stationary internal combustion engine pursuant to Rule .1402(d), then, if after reasonable effort as defined in Rule .1401 of this Section, the emissions from that 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.

(d) For the engines identified in Paragraph (b) of this Rule and any engine involved in emissions trading with one or more of the engines identified in Paragraph (b) of this Rule, the owner or operator shall determine compliance using:

- (1) a continuous emissions monitoring system which meets the applicable requirements of Appendices B and F of 40 CFR part 60 and Rule .1404 of this Section; or
- (2) an alternate monitoring and recordkeeping procedure based on actual emissions testing and correlation with operating parameters.

The installation, implementation, and use of this alternate procedure allowed under Subparagraph (d) of this Paragraph shall be approved by the Director before it may be used. The Director may approve the alternative procedure if he finds that it can show the compliance status of the engine.

(e) If a stationary internal combustion engine is permitted to operate more than 475 hours during the ozone season, 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. If a source covered under this Rule can burn more than one fuel, then the owner or operator of the

source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the source testing required under this Rule shall not be required for that fuel.

(f) 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.

(g) The owner or operator of a source covered under Paragraph (b) of this Rule may offset part or all of the emissions of that source by reducing the emissions of another source at that facility by an amount equal to or greater than the emissions being offset. Only actual decreased emissions that have not previously been relied on to comply with Subchapter 02D or 02Q 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) identification of the source, including permit number, providing the offset and what the new allowable emission rate for the source will be;
- (2) identification of the source, including permit number, receiving the offset and what the new allowable emission rate for the source will be;
- (3) the amount of allowable emissions in tons per ozone season being offset;
- (4) a description of the monitoring, recordkeeping, and reporting that shall be used to show compliance; and
- (5) documentation that the offset is an actual decrease in emissions that has not previously been relied on to comply with Subchapter 02D

or 02Q of this Title or Title 40 of the Code of Federal Regulations.

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 02D or 02Q 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.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Amendment Eff. November 1, 2000; Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

15A NCAC 02D .1410 EMISSIONS AVERAGING

(a) This Rule shall not apply to sources covered under Rules .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) 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 total 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.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. July 15, 2002.

15A NCAC 02D .1411 SEASONAL FUEL SWITCHING

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

(b) The owner or operator of a coal-fired or oil-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 or 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 and ending 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 during the ozone season;
- (5) a demonstration that the source will comply with the NO_x emission limitation established under Paragraph (c) of this Rule beginning October 1 and ending April 30; and
- (6) a written statement from the natural gas supplier providing reasonable assurance that the fuel will be available beginning during the ozone season.

History Note: Authority G.S. 143-215.3(a)(1) 143-215.65; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

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

(a) The owner or operator of any source of nitrogen oxides, except boilers, indirect-fired process heaters, stationary combustion turbines, or stationary internal combustion engines, at a facility that has the potential to emit 100 tons per year or more of nitrogen oxides or 560 pounds per calendar day or more

from May 1 through September 30 shall apply RACT according to Paragraph (b) of this Rule.

(b) 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; and
- (4) a proposal for demonstrating compliance with the proposed RACT.

(c) The Director shall approve the proposed limitation if he finds that:

- (1) the owner or operator of the source has submitted all the information required under Paragraph (b) of this Rule;
- (2) the sources is covered under this Rule; and
- (3) the proposed limitation is RACT for this source.

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

Eff. April 1, 1995;

Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. July 15, 2002.

15A NCAC 02D .1414 TUNE-UP REQUIREMENTS

(a) This Rule applies to boilers and indirect-fired 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 Rules .1407 or .1409 of this Section through an annual tune-up.

(b) When a tune-up to a boiler or indirect-fired process heater is required for compliance with this Section, the owner or operator shall at least annually and according to the manufacturer's recommendations:

- (1) inspect each burner and clean or replace any component of the burner as required;
- (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 proper operation and correct calibration of components that control the air to fuel ratio and adjust components to meet the manufacturer's established operating parameters; and
- (4) inspect any other component of the boiler or indirect-fired process heater and make adjustments or repairs as necessary to improve combustion 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) When a tune-up to a stationary internal combustion engine is required for compliance with this Section, the owner or operator shall at least annually inspect, adjust, and repair or replace

according to the manufacturer's recommendation, the following, as equipped:

- (1) engine air cleaners, fuel filters, and water traps;
- (2) turbochargers and superchargers;
- (3) spark plugs;
- (4) valve lash;
- (5) ignition systems, including ignition coils and wiring;
- (6) aftercooler cores;
- (7) any other component of the engine as necessary to improve engine efficiency; and
- (8) emission control systems.

The owner or operator shall perform the tune-up according to a unit specific protocol, including inspection, maintenance, and performance procedures as recommended by the manufacturer, approved by the Director. The Director shall approve the protocol if it meets the requirements of this Rule.

(d) 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) for boilers and indirect-fired process heaters, the checklist for inspection of the burner, flame pattern, combustion control system, and all other components of the boiler or indirect-fired process heater identified in the protocol, noting any repairs or replacements made;
- (5) for stationary internal combustion engines, the checklist for engine air cleaners, turbochargers, sparkplugs, valve lash, ignition coils and wiring, aftercooler cores, and all other components of the engine identified in the protocol, noting any repairs or replacements made;
- (6) any stack gas analyses performed after the completion of all adjustments to show that the operating parameters of the boiler, indirect-fired process heater, or stationary internal combustion engine have been optimized with respect to fuel consumption and output; at a minimum these parameters shall be within the range established by the equipment manufacturer to ensure that the emission limitation for nitrogen oxides has not been exceeded; and
- (7) any other information requested by the Director to show that the boiler, indirect-fired process heater, or stationary internal combustion engine is being operated and maintained in a manner to minimize the emissions of nitrogen oxides.

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

Eff. April 1, 1995;

*Temporary Amendment Eff. August 1, 2001; November 1, 2000;
Amended Eff. July 15, 2002.*

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 for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels 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 for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels 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 for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels 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 for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels 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 Rule .1423 of this Section if the engine is not covered under Rule .0530 (prevention of significant deterioration) or Rule .0531 (nonattainment area major source review) of this Subchapter:

- (1) rich burn stationary internal combustion engines rated at equal to or greater than 2,400 brake horsepower,

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

If the engine is covered under Rule .0530 of this Subchapter, it shall comply with the requirements of 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 except internal combustion engines shall show compliance using a continuous emission monitor that meets the requirements of Rule .1404(d) of this Section. 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.

(e) Offsets. If emission allocations are not granted under Rule .1421 of this Section or are insufficient to offset the emissions of the source, the owner or operator of the source shall acquire 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. The owner or operator of internal combustion engines covered under Paragraph (c) of this Rule shall not be required to obtain emission allocations or emission reductions.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);
Temporary Adoption Eff. November 1, 2000;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. July 15, 2002.*

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

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

- (1) "Permitting agency" means the North Carolina Division of Air Quality.
- (2) "Fossil fuel fired" means fossil fuel fired as defined under Rule .1401 of this Section instead of the definition in 40 CFR 96.2.

(b) Existing 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 02Q 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, it shall have installed and begun operating by May 1, 2004, a continuous emissions monitoring system that complies with 40 CFR Part 96.

(c) New sources. Except for internal combustion engines, 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 02Q 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 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 into the budget trading program of 40 CFR Part 96 by following the procedures and requirements of 40 CFR Part 96, Subpart 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 emission allocations to the EPA. For sources covered under Rules .1416, .1417, or .1418, the Director shall submit to the Administrator of the Environmental Protection Agency NO_x emission allocations according to 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rules .1416, .1417, and .1420 for 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. The owner or operator of each source covered under Rules .1416, .1417, or .1418, except internal combustion engines, of this Section shall establish an account, designate an authorized account representative, and comply with the other requirements of 40 CFR Part 96 as necessary for the EPA to administer the nitrogen oxide budget trading program on behalf of North Carolina.

(h) Restrictions on trading. NO_x 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.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

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 this Rule shall be tabulated in tons of nitrogen oxides reduced per ozone season. The control device, modification, or change in operational practice that enables the combustion source or sources to achieve the emissions reductions shall be permitted. The facility shall provide the Division of Air Quality with written notification certifying the installation and operation of the control device or the modification or change in operational practice that enables 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 creditable 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 NO_x 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, 2003:

- (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 enables 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 achieved by this action in f tons of nitrogen oxides per season per combustion source involved;
- (6) the total reduction of nitrogen oxides achieved by this action in tons of nitrogen oxides per season for all the combustion sources involved;
- (7) a demonstration that the proposed action has reduced 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 used to ensure 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 shall 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) of this Rule have been submitted.

The Director shall notify the owner or operator of the source and EPA of his approval or disapproval of a request and of the amount of Compliance Supplement Pool Credits approved. If the Director disapproves a request or part of a request, he shall explain in writing to the owner or operator of the source the reasons for disapproval.

(f) Compliance supplement pool. The Director shall verify that the Compliance Supplement Pool Credits do not exceed a statewide total of 10,737 tons for all the ozone seasons of the years 2003, 2004, and 2005.

(g) Interim report. The owner or operators of the facility shall submit to the Director by January 1, 2001 and January 1, 2002 an interim report that contains the information in Paragraph (d) of this Rule for the previous ozone season.

(h) Recording credits. Based on the interim reports submitted under Paragraph (g) of this Rule, the Division shall record the Compliance Supplement Pool Credits earned under this Rule in a central database. The Division of Air Quality shall maintain this database. These credits shall be recorded in tons of emissions of nitrogen oxides reduced per season with the actual start date of the reduction activity. Based on the final formal request submitted under Paragraph (d) of this Rule as approved under

Paragraph (e) of this Rule, the Director shall finalize the Compliance Supplement Pool Credits earned and record the final earned credits in the Division's database.

(i) Use of credits. Compliance Supplement Pool Credits shall be available for Carolina Power & Light Co. and Duke Power Co. to use in 2003. The allocations of Carolina Power & Light Co.'s sources and Duke Power Co.'s sources in Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in 2003 using the procedures in Paragraph (k) of this Rule. Compliance Supplement Pool Credits not used in 2003 shall be available for use by the Director of the Division of Air Quality to offset excess 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 September 30, 2005. 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 April 30, 2006.

(j) Reporting. The Director shall report:

- (1) to the EPA, Carolina Power & Light Co. and Duke Power Co. by:
 - (A) March 1, 2003 the Compliance Supplement Pool Credits earned by Carolina Power & Light Co. and by Duke Power Co.; and
 - (B) March 1, 2004 the reductions in allocations calculated under Paragraphs (k) and (l) of this Rule; and
- (2) to the EPA by:
 - (A) December 1, 2003, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2003;
 - (B) December 1, 2004, the Compliance Supplement Pool Credits used beginning May 31 through September 30, 2004; and
 - (C) December 1, 2005, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2005.

(k) Using Compliance Supplement Pool Credits in 2003. Carolina Power & Light Co. and Duke Power Co. may use Compliance Supplement Pool Credits in 2003. If they do use Compliance Supplement Pool Credits in 2003, then the allocations for their sources in Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in 2003. Before the Director approves the use of Compliance Supplement Pool Credits in 2003, the company shall identify the sources whose allocations are to be reduced to offset the Compliance Supplement Pool Credits requested for 2003 and the year (2004 or 2005) in which the allocation is reduced. The Director shall approve no more than 4,295 tons for Carolina Power & Light Co. and no more than 6,442 tons for Duke Power Co. The Director shall approve no more than 5,771 tons being offset by reductions in allocations in 2004 and no more than 4,966 tons being offset by reductions in allocations in 2005.

(l) 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, and 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 the 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, and 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 the 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 the 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 the 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 4,966 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 Subpart (ii) of this Part and divided by the value computed under Subpart (i) of this Part. The result is the revised allocation for that source.
- (B) If the reduction required is more than 4,966 tons, then the following procedure shall be used:
 - (i) The reduction for the allocations for 2005 is determined using the procedure under Part (A) of this Subparagraph and substituting 4,966 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 required under Subparagraph (1), (2), or (3) of this Paragraph is subtracted from 4,966.
 - (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

(m) If allocations are reduced in 2004 or 2005 for Carolina Power & Light Co. or Duke Power Co. under Paragraph (k) or (l) of this Rule, the company whose allocations are reduced shall reduce its allocations by returning allowances through the use of allowance transfers to the State following the procedures in 40 CFR Part 96. These allowances shall be retired.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. August 1, 2001; Eff. July 15, 2002.

15A NCAC 02D .1423 LARGE INTERNAL COMBUSTION ENGINES

(a) Applicability. This Rule applies to the following internal combustion engines permitted after October 30, 2000 that are subject to Rule .1418 of this Section but are not subject to Rules .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new 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 4,400 brake horsepower.

(b) Emission limitation. The owner or operator of a stationary internal combustion engine shall not 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:

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

Engine Type	Limitation
Rich-burn	110
Lean-burn	125
Diesel	175
Dual fuel	125

(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 Subparagraphs (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)

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

where energy input is determined by a fuel measuring device accurate to plus or minus 5 percent and is based on 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)

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

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 and Rule .1404 of this Section; or
- (2) an alternate calculated and recordkeeping procedure based on actual emissions testing and correlation with operating parameters. 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 show the compliance status of the engine.

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

- (1) a report documenting the engine's total nitrogen oxide emissions beginning May 1 and ending 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; and
- (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 excess emissions, and action taken to correct the excess emissions and to prevent similar future excess emissions; 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.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. August 1, 2001;

Eff. July 15, 2002.

15A NCAC 18A .3334 COMPLIANCE

(a) The Environmental Health Specialist shall indicate on the Sanitation Inspection of Adult Day Service Facility Form whether the adult day service facility is superior, approved, provisional, or disapproved based on compliance with the rules of this Section. The classification shall be posted in the facility in a conspicuous place designated by the Environmental Health Specialist.

(b) The degree of compliance is indicated by the total demerit-point score which is shown on the Sanitation Inspection of Adult Day Service Facility Form that the Environmental Health Specialist completes.

- (1) For the purpose of issuing a license or certificate to a new operator, a Sanitation Inspection of Adult Day Service Facility Form, shall be forwarded to the licensing or certifying agency only when the facility can be granted a superior classification;
- (2) An adult day service facility shall be classified as superior if the total demerit score is not more than 15 and no 6-demerit-point item is violated;
- (3) An adult day service facility shall be classified as approved if the total demerit score is more than 15 and not more than 30, and no 6-demerit-point item is violated;
- (4) An adult day service facility shall be classified as provisional if any 6-demerit-point item is violated, or if the total demerit-point score is more than 30 but not more than 45. This provisional period shall not exceed seven days unless construction or renovation is necessary to correct any violation, in which case the Environmental Health Specialist may allow a longer provisional period;
- (5) An adult day service facility shall be classified as disapproved if the demerit score is 46 or more, or if conditions which resulted in a provisional classification have not been corrected in the time period specified by the Environmental Health Specialist;
- (6) If the provisional status period exceeds seven days, or the adult day service facility is disapproved, the licensing or certifying agency shall be notified immediately by forwarding a copy of the inspection report to the Licensing or certifying agency. The Environmental Health Specialist shall notify the licensing or certifying agency in accordance with Rule .3303 of this Section;
- (7) The classification card shall not be removed except by or upon the instruction of the Environmental Health Specialist for the purpose of changing classification cards or establishing another conspicuous location.

(c) The Sanitation Inspection of Adult Day Service Facility Form shall be used to document demerits assessed for violation of the rules of this Section as follows:

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| <p>(1) Violation of Rules .3304(a),(b),(c), or (f), or Rule .3303(g)(3) of this Section related to food from approved sources, free of spoilage and adulteration shall be assessed 6 demerits.</p> <p>(2) Violation of Rules .3304(e),(f); .3305(a); .3306(g)(2);(h)(2), or .3307(d),(f) of this Section related to potentially hazardous food temperatures shall be assessed 5 demerits.</p> <p>(3) Violation of Rules .3304(d),(g),(e); .3306(b); .3307(a),(b),(c),(d),(e),(f),(h), or .3308(a) of this Section regarding food properly handled, packaged and identified shall be assessed four demerits.</p> <p>(4) Violation of Rules .3304(e), or .3308(d) of this Section related to not re-serving food shall be assessed four demerits.</p> <p>(5) Violation of Rules .3305(a); .3306(c),(d),(e),(f); or .3308(b),(e),(f) of this Section regarding protection of and access to food shall be assessed five demerits.</p> <p>(6) Violation of Rules .3306(g)(1),(h)(1); .3307(g), or .3310(a)(2) of this Section regarding refrigerators and hot holding units with thermometers and product thermometers shall be assessed three demerits.</p> <p>(7) Violation of Rules .3306; .3307(f); .3310(a),(b); .3312(a),(b),(c),(g), or .3313 of this Section related to food service equipment and utensils meeting specifications for refrigeration, sinks, and dishwashing equipment according to type of service shall be assessed 6 demerits.</p> <p>(8) Violation of Rules .3310(a), or (b)(4) of this Section regarding requirements for food service handwash lavatories shall be assessed five demerits.</p> <p>(9) Violation of Rules .3309(a) or (b) of this Section regarding other food service equipment and utensils materials of construction and repair shall be assessed four demerits.</p> <p>(10) Violation of Rules .3304(e); .3306(a), or (b); .3311(a), or (b); .3312(d),(e),(f), or (i); .3313(c), or (f), or .3316(c) of this Section regarding washing, rinsing and sanitizing food-contact surfaces, equipment and utensils shall be assessed six demerits.</p> <p>(11) Violation of Rule .3309(a)(8) of this Section regarding reuse of single-service articles shall be assessed six demerits.</p> <p>(12) Violation of Rule .3309(a)(7) of this Section regarding reuse of single-use articles shall be assessed two demerits.</p> <p>(13) Violation of Rules .3309(b)(5), or (b)(6), or .3311(c) of this Section regarding cleaning of non-food contact surfaces shall be assessed four demerits.</p> <p>(14) Violation of Rules .3314, or .3316(c) of this Section regarding protection of equipment and utensils from contamination shall be assessed four demerits.</p> | <p>(15) Violation of Rules .3312(f), or (h), or .3313(d) of this Section regarding provision of sanitizing solution and testing equipment used to test sanitizer strength shall be assessed three demerits.</p> <p>(16) Violation of Rules .3315(a), or (b) of this Section regarding approval of water supplies shall be assessed six demerits.</p> <p>(17) Violation of Rules .3315(d), or (e) of this Section regarding supply and maintenance of hot water shall be assessed six demerits.</p> <p>(18) Violation of Rule .3315(c) of this Section regarding cross connections and backflow prevention devices shall be assessed four demerits.</p> <p>(19) Violation of Rule .3316 of this Section regarding drinking fountains and drinking utensils shall be assessed four demerits.</p> <p>(20) Violation of Rules .3310(a)(3), or (b)(2)(C)(4); .3317(a); .3318(a); or .3319(d) of this Section regarding provision and location of toilets and lavatories shall be assessed five demerits.</p> <p>(21) Violation of Rules .3317(b) or .3318(c) of this Section regarding location, sizing, cleaning and sanitizing toilet, lavatory, clothing changing and bathing facilities and availability of cleaning and sanitizing supplies shall be assessed four demerits.</p> <p>(22) Violation of Rule .3317(c) of this Section regarding location, cleaning and disinfection of potty chairs, bedpans and urinals shall be assessed four demerits.</p> <p>(23) Violation of Rule .3318(d) of this Section regarding lavatories being free of storage and provided with soap and disposable towels or heated-air hand drying devices shall be assessed four demerits.</p> <p>(24) Violations of Rules .3319(a),(b), or (d) of this Section regarding clothing changing facilities shall be assessed four demerits.</p> <p>(25) Violation of Rules .3318(f) or .3319(c) of this Section regarding cleaning and sanitizing clothing changing facilities and provision of cleaning and sanitizing solutions shall be assessed four demerits.</p> <p>(26) Violation of Rules .3319(e),(f),(g),(h),(i), or (j) of this Section regarding clothing changing methods shall be assessed five demerits.</p> <p>(27) Violation of Rules .3319(c) or .3320(c) of this Section regarding labeling sanitizers and providing test kits for sanitizers shall be assessed three demerits.</p> <p>(28) Violation of Rule .3319(c) of this Section regarding clothing changing surfaces being clean and free of storage shall be assessed two demerits.</p> <p>(29) Violation of Rule .3318(e) of this Section regarding posting of handwashing signs shall be assessed two demerits.</p> <p>(30) Violation of Rule .3317(a) of this Section regarding storage of medications and other</p> |
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- hazardous products shall be assessed six demerits.
- (31) Violation of Rule .3320 of this Section regarding provision and cleaning of storage facilities shall be assessed three demerits.
- (32) Violation of Rule .3321(a) of this Section regarding cleaning, repair and storage of beds, chairs, cots and mats shall be assessed five demerits.
- (33) Violation of Rule .3321(b) of this Section regarding provision of mattress covers and linen shall be assessed five demerits.
- (34) Violation of Rules .3321(c),(d), or (e) of this Section regarding cleaning, repair, handling and storage of linen, blankets, throws and covers shall be assessed four demerits.
- (35) Violation of Rule .3322 of this Section regarding furniture, equipment and activity supplies shall be assessed four demerits.
- (36) Violation of Rules .3323(a) or (b) of this Section regarding hygienic practices, clean clothing and hair restraints for personnel shall be assessed three demerits.
- (37) Violation of Rule .3323(c) of this Section regarding tobacco use shall be assessed five demerits.
- (38) Violation of Rule .3323(d) of this Section regarding exclusion of persons with communicable diseases or conditions shall be assessed six demerits.
- (39) Violations of Rule .3323(d) of this Section regarding bandaging wounds or lesions shall be assessed six demerits.
- (40) Violation of Rules .3324 or .3325 of this Section regarding floors, walls and ceilings shall be assessed four demerits.
- (41) Violation of Rule .3326 of this Section regarding maintenance of lighting and thermal environment shall be assessed four demerits.
- (42) Violation of Rule .3326 of this Section regarding cleaning and repair of lighting, heating, ventilation and cooling equipment shall be assessed two demerits.
- (43) Violation of Rule .3327 of this Section related to providing a designated area for sick participants shall be assessed five demerits.
- (44) Violation of Rule .3327 of this Section related to treatment rooms for adult day health facilities shall be assessed five demerits.
- (45) Violation of Rules .3308(c); .3319(i), or (j); or .3328 of this Section related to handwashing shall be assessed five demerits.
- (46) Violation of Rule .3329 of this Section regarding wastewater disposal shall be assessed six demerits.
- (47) Violation of Rule .3330 of this Section regarding solid waste handling, storage and disposal shall be assessed two demerits.
- (48) Violation of Rule .3330(c) of this Section regarding facilities for cleaning solid waste containers shall be assessed two demerits.
- (49) Violation of Rules .3331(c), or (d) of this Section regarding use of pesticides shall be assessed six demerits.
- (50) Violation of Rule .3331(b), or (c) of this Section regarding control of rodents, insects and other vermin shall be assessed four demerits.
- (51) Violation of Rule .3331(a) of this Section regarding presence of animals shall be assessed four demerits.
- (52) Violation of Rules .3331(b), or .3332 of this Section regarding keeping premises clean, drained, and free of hazards, vermin harborages or breeding areas shall be assessed four demerits.
- (53) Violation of Rule .3333 of this Section regarding swimming pools, wading pools and spas shall be assessed six demerits.
- (54) The sum of all demerits assessed on the Sanitation Inspection of Adult Day Service Facility Form shall be the total demerit score for the facility.
- (d) In filling out the inspection form, demerits may be assessed only once for a single occurrence or condition existing within or outside the adult day service facility. Demerits shall be assessed based on actual violations of the Rules of this Section observed during the inspection.

History Note: Authority G.S. 130A-235; Eff. August 1, 2002.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 03D .0801 SAFETY OF OPERATION AND EQUIPMENT

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carriers and all for hire motor carrier vehicles, and all private motor carriers and all private motor carrier vehicles engaged in interstate commerce over the highways of the State of North Carolina if such vehicles are commercial motor vehicles as defined in 49 CFR Part 390.5.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carriers and all for hire motor carrier vehicles, and all private motor carriers and all for hire motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 26,000 pounds; or are designed to transport 16 or more passengers, including the driver; or transport hazardous materials required to be placarded pursuant to 49 CFR 170-185. Provided, the following exceptions shall also apply to all intrastate motor carriers:

- (1) An intrastate motor carrier driver may not drive more than 12 hours following eight consecutive hours off duty; or for any period after having been on duty 16 hours following eight consecutive hours off duty; or after

having been on duty 70 hours in seven consecutive days; or more than 80 hours in eight consecutive days. An intrastate driver shall be determined by his previous seven days of operation.

- (2) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina shall be exempt from the provisions of Part 391.11(b)(1) and may be exempt from provisions of Part 391.41(b)(1) through (11) where applicable and therefore shall be authorized for intrastate operation if approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles. These drivers shall continue to be exempt upon completion of a medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer. After a medical review by the Exemption Review Officer, a driver may be granted a waiver not to exceed a period of two years based on the type and severity of the condition. The Exemption Review Officer shall follow the guidelines established for variances from the Federal Motor Carrier Safety Regulations for intrastate commerce found in 49 CFR, Part 350.341.

(c) The rules and regulations adopted by the U. S. Department of Transportation relating to inspection, repair and maintenance of motor vehicles (49 CFR Part 396.17 through 396.23 and including Appendix G, and amendments thereto) shall apply to all for-hire motor carrier vehicles, and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 10,000 pounds. Provided, any farm vehicle shall be exempt from the requirements of this Paragraph if:

- (1) It is being operated by a farmer (or a person under the direct control of the farmer) as a private motor carrier of property;
- (2) It is being used to transport either:
 - (A) agricultural products, or
 - (B) farm machinery, farm supplies, or both, to and from a farm;
- (3) It is being operated solely within this State and within 150 air-miles of the farmer's farm;
- (4) It is not being used in the operation of a for-hire motor carrier; and
- (5) It is not carrying hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with 49 CFR 177.823.

(d) Every motor vehicle registered or required to be registered in North Carolina and subject to the inspection requirements of the Federal Motor Carrier Safety Regulations (49 CFR Part 396) which does not display a current approved State inspection certificate as provided in N.C. Gen. Stat. 20-183.2 must display a current approved federal inspection certificate when operated on the streets and highways of this State. On self-propelled vehicles the federal inspection certificate shall be displayed on

the outside of the vehicle in a readily visible location on, or in the immediate vicinity of, the driver's door exclusive of the window or rear view mirror. On trailers and semitrailers, the federal inspection certificate shall be located on the left side as near as possible to the outside lower front of the vehicle. The inspection certificate shall contain at least the following legible information:

- (1) The date of inspection;
- (2) Name and address of the motor carrier or other entity where the inspection report required by 49CFR 396.21(a) is maintained;
- (3) Information uniquely identifying the vehicle-inspected; and
- (4) A certification that the vehicle has passed an inspection in accordance with 49 CFR 396.17.

(e) The Commissioner may adopt fines for out-of-service criteria. Such fines, as allowed by G.S. 20-17.7, may not exceed the fines adopted by the Commercial Motor Vehicle Safety Alliance that are in effect on the date of the violations. The commercial motor vehicle out-of-service maximum civil fine schedule shall be maintained in the Office of the Commissioner of the Division of Motor Vehicles, be available for public inspection, and be updated annually on the first day of April. The out-of-service maximum civil fine schedule shall not apply to educational contacts or North American Standard Level-V inspections approved by the Director of the DMV Enforcement Section and the Commissioner of Motor Vehicles. An educational contact for the purpose of this code shall mean a pre-planned, public safety inspection activity, focusing on commercial motor vehicle safety awareness and compliance.

(f) Any fines assessed for violation of an out-of-service criteria shall be assessed against the motor carrier of the commercial motor vehicle.

(g) Whenever a motor carrier of a commercial motor vehicle shall have a valid defense to the enforcement of the collection of fines for violation of out-of-service criteria, such motor carrier shall pay such fine to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Motor Vehicles.

(h) All Code of Federal Regulations (CFR) Parts cited in this Section are incorporated herein by reference including any subsequent amendments. A copy of the CFR is available from the Office of Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at a cost set by that office.

History Note: Filed as a Temporary Amendment Eff. March 30, 1992 for a Period of 180 Days to Expire on September 26, 1992;
Filed as a Temporary Amendment Eff. February 1, 1992 for a Period of 180 Days to Expire on July 30, 1992;
Filed as a Temporary Amendment Eff. December 1, 1999;
Authority G.S. 20-17.7; 20-2; 20-37.22; 20-96; 20-183.2(a); 20-381;
Eff. December 1, 1983;
Amended Eff. August 1, 2002; April 1, 2001; August 3, 1992;
July 1, 1992; November 1, 1991; October 1, 1991.

19A NCAC 03J .0306 COURSE OF INSTRUCTION

(a) The commercial driving course to be taken by licensed persons who are 18 years old or older must meet the following requirements:

- (1) Minimum hours of instruction:
 - (A) classroom instruction, including testing 50 hours
 - (B) field instruction 50 hours
 - (C) highway behind-the-wheel training 20 hours
 - (D) observation (highway behind-the-wheel) 40 hours
- Total - 160 hours

The hours of instruction may be expressed in credit hours provided the school is accredited by an accrediting agency recognized by the United States Department of Education and the conversion ratio of that accrediting agency is properly used.

- (2) Content of classroom and behind-the-wheel instruction:
 - (A) laws relating to interstate and intrastate operations;
 - (B) pre-trip inspection;
 - (C) coupling and uncoupling of combination units, if the equipment to be driven includes such units;
 - (D) placing the vehicle in operation;
 - (E) use of the vehicle's controls and emergency equipment;
 - (F) operation in inner-city and interstate highway traffic and passing;
 - (G) turning the vehicle;
 - (H) braking and slowing the vehicle by means other than applying the brakes;
 - (I) backing and parking the vehicle;
 - (J) experience operating property hauling vehicles with a minimum gross vehicle weight of 49,000 pounds or experience operating passenger motor coach vehicles having a minimum capacity of 46 persons; and
 - (K) completing Driver's Daily Log books.

- (3) Other requirements:
 - (A) the 160 hours of instructions required by this Rule shall be completed in no less than four calendar weeks;
 - (B) three hours of the 20 hours of behind-the-wheel highway training must be completed by each student between dusk and dawn;
 - (C) one vehicle must be provided for each three students during highway training. Four students per vehicle are permitted if the vehicle has been inspected and approved by the Division. The Division shall approve the vehicle if it determines the vehicle will seat four people. No more than four students per vehicle and no more than four vehicles per instructor shall be allowed for field training; and

(D) a Driver's Daily Log must be kept for each student to reflect the 160 hours of instruction.

(b) Credit for Prior Instruction. Credit for prior instruction or training given by another agency or school may be granted. Such credit may be granted by the school to which the candidate is applying if the prior instruction or training is equivalent to the corresponding part or parts of the course required by North Carolina law and if such credit is confirmed and authorized as equivalent by the Enforcement Section of the Division.

(c) In addition to the course requirements of Paragraph (a) of this Rule, schools may offer a "Refresher Course" which shall meet the following requirements:

- (1) Minimum hours of instruction shall total 80 hours as follows:
 - (A) Classroom instruction, labs, and testing 25 hours
 - (B) Field instruction 25 hours
 - (C) Highway behind the wheel training 10 hours
 - (D) Observation (highway behind the wheel) 20 hours

Total - 80 hours

The hours of instruction may be expressed in credit hours provided the school is accredited by an accrediting agency recognized by the United States Department of Education and the conversion ratio of that accrediting agency is properly used.

- (2) Content of Classroom and behind the wheel instruction shall be as follows:
 - (A) Laws relating to interstate and intrastate operations;
 - (B) Pre-trip inspection;
 - (C) Coupling and uncoupling of combination units, if the equipment to be driven includes such units;
 - (D) Placing the vehicle in operation;
 - (E) Use of the vehicle's controls and emergency equipment;
 - (F) Operation in inner-city and interstate highway traffic and passing;
 - (G) Turning the vehicle;
 - (H) Braking and slowing the vehicle by means other than applying the brakes;
 - (I) Backing and parking the vehicle;
 - (J) Experience operating property hauling vehicles with a minimum gross weight of 49,000 pounds or experience operating passenger motor

- (K) coach vehicles having a minimum capacity of 46 passengers; and
- (K) Completing Drivers Daily Log books.
- (3) Other requirements are as follows:
 - (A) The 80 hours of instruction required by this Rule shall be completed in no less than two calendar weeks;
 - (B) Two hours of the 10 hours behind the wheel highway training shall be completed by each student between dusk and dawn;
 - (C) One vehicle must be provided for each three students during highway training. Four students per vehicle are permitted if the vehicle has been inspected and approved for such use by the Division. The Division shall approve the vehicle if it determines the vehicle will seat four people. No more than four students shall be allowed per vehicle for field training; and;
 - (D) A drivers log must be kept for each student to reflect the 80 hours of instruction.

- (5) Conspiring with any person to commit an act, or committing an act which would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the Board during any investigation under the Dental Practice or Dental Hygiene Acts;
- (6) Failing to identify to a patient, patient's guardian or the Board the name of an employee, employer, contractor, or agent who renders dental treatment or services upon request;
- (7) Prescribing, procuring, dispensing, or administering any controlled substance for personal use except those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;
- (8) Pre-signing blank prescription forms or using pre-printed or rubber stamped prescription forms containing the dentist's signature or the name of any controlled substance;
- (9) Forgiving the co-payment provisions of any insurance policy, insurance contract, health prepayment contract, health care plan, or nonprofit health service plan contract by accepting the payment received from a third party as full payment, unless the dentist discloses to the third party that the patient's payment portion will not be collected;
- (10) Failing to provide radiation safeguards required by the Radiation Protection Section of the State Department of Environment, Health, and Natural Resources;
- (11) Having professional connection with or lending one's name to the unlawful practice of dentistry;
- (12) Using the name of any deceased or retired and licensed dentist on any office door, directory, stationery, bill heading, or any other means of communication any time after one year following the death or retirement from practice of said dentist; and
- (13) Failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program.

History Note: Authority G.S. 20-321; 20-322; 20-323; Eff. May 1, 1987; Amended Eff. August 1, 2002; August 1, 1998; April 1, 1997; January 1, 1994; May 1, 1990.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

**21 NCAC 16V .0101 DEFINITION:
UNPROFESSIONAL CONDUCT BY A DENTIST**

Unprofessional conduct by a dentist shall include, but not be limited to, the following:

- (1) Having a license to practice dentistry revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country; (For purposes of this Section, the surrender of a license under threat of disciplinary action shall be considered the same as if the licensee had been disciplined.)
- (2) Intentionally presenting false or misleading testimony, statements, or records to the Board or the Board's investigator or employees during the scope of any investigation, or at any hearing of the Board;
- (3) Committing any act which would constitute sexual assault or battery in connection with the provision of dental services;
- (4) Violating any lawful order of the Board previously entered in a disciplinary hearing, or failing to comply with a lawfully-issued subpoena of the Board;

History Note: Authority G.S. 90-28; 90-41; 90-48' Eff. August 1, 1998; Amended Eff. October 1, 2001; August 1, 2000.

**21 NCAC 16V .0102 DEFINITION:
UNPROFESSIONAL CONDUCT BY A DENTAL
HYGIENIST**

Unprofessional conduct by a dental hygienist shall include, but not be limited to, the following:

- (1) Having a license to practice dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state,

- (2) Presenting false or misleading testimony, statements, or records to the Board or a Board employee during the scope of any investigation or at any hearing of the Board;
- (3) Committing any act which would constitute sexual assault or battery in connection with the provision of dental hygiene services;
- (4) Violating a lawful order of the Board previously entered in a disciplinary hearing or failing to comply with a lawfully-issued subpoena of the Board;
- (5) Conspiring with any person to commit an act, or committing an act which would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any person who testifies or cooperates with the Board during any investigation of any licensee;
- (6) Failing to identify to a patient, patient's guardian, or the Board the name of any person or agent who renders dental treatment or services upon request;
- (7) Procuring, dispensing, or administering any controlled substance for personal use except those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;
- (8) Acquiring any controlled substance from any pharmacy or other source by misrepresentation, fraud or deception;
- (9) Having professional connection with or lending one's name to the illegal practice of dental hygiene; and
- (10) Failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program.

- (4) Clinical Pharmacist Practitioner in North Carolina.
"Clinical Pharmacist Practitioner or CPP" means a licensed pharmacist in good standing who is approved to provide drug therapy management under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.
- (5) "Supervising Physician" means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written agreement. Only a physician approved by the Medical Board may legally identify himself or herself as a supervising physician.
- (6) "Approval" means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.
- (7) "Continuing Education or CE" is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.
- (8) "Clinical Experience approved by the Boards" means work in a pharmacy practice setting which includes experience consistent with the following components as listed in Parts (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Parts (b)(1)(B) of this Rule.

History Note: Authority G.S. 90-223; 90-229; Eff. August 1, 1998; Amended Eff. October 1, 2001; August 1, 2000; September 1, 1998.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

21 NCAC 32T .0101 CLINICAL PHARMACIST PRACTITIONER

(a) Definitions:

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

(b) CPP application for approval.

- (1) The requirements for application for CPP approval include that the pharmacist:
 - (A) has an unrestricted and current license to practice as a pharmacist in North Carolina;
 - (B) meets one of the following qualifications:
 - (i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Pharmacist, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two

- (ii) years of clinical experience approved by the Boards;
- (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement; or
- (iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement;
- (C) submits the required application, a written endorsement from the Pharmacy Board and the fee to the Medical Board;
- (D) submits any information deemed necessary by the Medical Board in order to evaluate the application; and
- (E) has a signed supervising physician agreement.
- (D) individualized therapeutic plans and intended therapeutic outcomes;
- (E) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and /or laboratory tests in accordance with established standards of practice;
- (F) referring patients to other health professionals as appropriate;
- (G) administering medications;
- (H) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics of their medication and related therapy;
- (I) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
- (J) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;
- (K) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;
- (L) ordering of and educating patients regarding proper usage of devices, and durable medical equipment;
- (M) providing emergency first care;
- (N) retrieving, evaluating, utilizing, and managing data and professional resources;
- (O) using clinical data to optimize therapeutic drug regimens;
- (P) collaborating with other health professionals;
- (Q) documenting interventions and evaluating pharmaceutical care outcomes;
- (R) integrating pharmacy practice within healthcare environments;
- (S) integrating national standards for the quality of healthcare; and
- (S) conducting outcomes and other research.

If for any reason a CPP discontinues working in the approved physician arrangement, both Boards shall be notified in writing within ten days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.

(2) All certificate programs referred to in Subpart (b)(1)(B)(i) of this Rule must contain a core curriculum including at a minimum the following components:

- (A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
- (B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
- (C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of

(3) The completed application for approval to practice as a CPP shall be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.

- (A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
- (B) the application shall be denied; or
- (C) the application shall be approved with restrictions.

(c) Annual Renewal.

- (1) Each CPP shall register annually on the anniversary of his or her birth date by:

- (A) verifying a current Pharmacist license;
 - (B) submitting the renewal fee as specified in Subparagraph (j)(2) of this Rule;
 - (C) completing the Medical Board's renewal form; and
 - (D) reporting continuing education credits as specified by the Medical Board.
- (2) If the CPP has not renewed within 30 days of the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.
- (d) Continuing Education.
- (1) Each CPP shall earn 35 hours of practice relevant CE each year approved by the Pharmacy Board.
 - (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.
- (e) The supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP; and shall review and countersign each order written by the CPP within seven days.
- (f) The written CPP agreement shall:
- (1) be approved and signed by both the supervising physician and the CPP and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
 - (2) be specific in regards to the physician, the pharmacist, the patient and the disease;
 - (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
 - (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
 - (5) include a pre-determined plan for emergency services;
 - (6) include a plan and schedule for weekly quality control, review and countersignature of all orders written by the CPP in a face-to-face conference between the physician and CPP;
 - (7) require that the patient be notified of the collaborative relationship; and
 - (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.
- (g) The supervising physician of the CPP shall:
- (1) be fully licensed, engaged in clinical practice, and in good standing with the Medical Board;
 - (2) not be serving in a postgraduate medical training program;
 - (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
 - (4) supervise no more than three pharmacists.
- (h) The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner".
- (i) The approval of a CPP may be restricted, denied or terminated by the Medical Board and the pharmacist's license may be restricted, denied, or terminated by the Pharmacy Board, in accordance with provisions of G.S. 150B if the appropriate Board finds one or more of the following:
- (1) the CPP has held himself or herself out or permitted another to represent the CPP as a licensed physician;
 - (2) the CPP has engaged or attempted to engage in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
 - (3) the CPP has performed or attempted to provide medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
 - (4) the CPP is adjudicated mentally incompetent;
 - (5) the CPP's mental or physical condition renders the CPP unable to safely function as a CPP; or
 - (6) the CPP has failed to comply with any of the provisions of this Rule.
- Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.
- (j) Fees:
- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
 - (2) The fee for annual renewal of approval, due on the CPP's anniversary of birth date is fifty dollars (\$50.00).
 - (3) No portion of any fee in this Rule is refundable.

History Note Authority G.S. 90-6(c); 90-18(c)3a; 90-18.4; Eff. April 1, 2001; Amended Eff. October 1, 2001.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .3101 CLINICAL PHARMACIST PRACTITIONER

- (a) Definitions:
- (1) "Medical Board" means the North Carolina Medical Board.
 - (2) "Pharmacy Board" means the North Carolina Board of Pharmacy.
 - (3) "Joint Subcommittee" means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given

by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.

- (4) "Clinical Pharmacist Practitioner or CPP" means a licensed pharmacist in good standing who is approved to provide drug therapy management under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.
- (5) "Supervising Physician" means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written agreement. Only a physician approved by the Medical Board may legally identify himself or herself as a supervising physician.
- (6) "Approval" means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.
- (7) "Continuing Education or CE" is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.
- (8) "Clinical Experience approved by the Boards" means work in a clinical pharmacy practice setting which includes experience consistent with the following components as listed in Parts (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Parts (b)(1)(B) of this Rule.

- of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards; or
- (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement; or
- (iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement;
- (C) submits the required application, a written endorsement from the Pharmacy Board and the fee to the Medical Board;
- (D) submits any information deemed necessary by the Medical Board in order to evaluate the application; and
- (E) has a signed supervising physician agreement.

(b) CPP application for approval.

- (1) The requirements for application for CPP approval include that the pharmacist:
 - (A) has an unrestricted and current license to practice as a pharmacist in North Carolina;
 - (B) meets one of the following qualifications:
 - (i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Pharmacist or has completed an American Society

If for any reason a CPP discontinues working in the approved physician arrangement, both Boards shall be notified in writing

within 10 days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.

(2) All certificate programs referred to in Part (2)(a)(ii) of the Rule must contain a core curriculum including at a minimum the following components:

- (A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
- (B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
- (C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;
- (D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and laboratory tests in accordance with established standards of practice;
- (E) referring patients to other health professionals as appropriate;
- (F) administering medications;
- (G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics of their medication and related therapy;
- (H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
- (I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;
- (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;
- (K) using, ordering, and instructing on the use of devices, and durable medical equipment;
- (L) providing emergency first care;
- (M) retrieving, evaluating, utilizing, and managing data and professional resources;
- (N) using clinical data to optimize therapeutic drug regimens;
- (O) collaborating with other health professionals;
- (P) documenting interventions and evaluating pharmaceutical care outcomes;
- (Q) integrating pharmacy practice within healthcare environments;

- (R) integrating national standards for the quality of healthcare; and
- (S) conducting outcomes and other research.

(3) The completed application for approval to practice as a CPP shall be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.

- (A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
- (B) The application shall be denied; or
- (C) The application shall be approved with restrictions.

(c) Annual Renewal.

(1) Each CPP shall register annually on the anniversary of his or her birth date by:

- (A) verifying a current Pharmacist license;
- (B) submitting the renewal fee as specified in Subparagraph (j)(2) of this Rule;
- (C) completing the Medical Board's renewal form; and
- (D) reporting continuing education credits as specified by the Medical Board.

(2) If the CPP has not renewed within 30 days of the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.

(d) Continuing Education.

(1) Each CPP shall earn 35 hours of practice relevant CE each year approved by the Pharmacy Board.

(2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.

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

(f) The written CPP agreement shall:

- (1) be approved and signed by both the supervising physician and the CPP and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
- (2) be specific in regard to the physician, the pharmacist, the patient and the disease;
- (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
- (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without

- first obtaining written consent of the physician;
 - (5) include a pre-determined plan for emergency services;
 - (6) include a plan and schedule for weekly quality control, review and countersignature of all orders written by the CPP in a face-to-face conference between the physician and CPP;
 - (7) require that the patient be notified of the collaborative relationship; and
 - (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.
- (g) The supervising physician of the CPP shall:
- (1) be fully licensed, engaged in clinical practice, and in good standing with the Medical Board;
 - (2) not be serving in a postgraduate medical training program;
 - (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
 - (4) supervise no more than three pharmacists.
- (h) The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner".
- (i) The approval of a CPP may be restricted, denied or terminated by the Medical Board or the Pharmacy Board and the pharmacist's license may be restricted, denied, or terminated by the Pharmacy Board, in accordance with provisions of G.S. 150B if the appropriate Board finds one or more of the following:
- (1) the CPP has held himself or herself out, or permitted another, to represent the CPP as a licensed physician;
 - (2) the CPP has engaged, or attempted to engage, in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
 - (3) the CPP has performed, or attempted to provide, medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
 - (4) the CPP is adjudicated mentally incompetent;
 - (5) the CPP's mental or physical condition renders the CPP unable to safely function as a CPP; or
 - (6) the CPP has failed to comply with any of the provisions of this Rule.
- Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.
- (j) Fees:
- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
 - (2) The fee for annual renewal of approval, due on the CPP's anniversary of birth date is fifty dollars (\$50.00).

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

History Note: Authority G.S. 90-6; 90-18; 90-18.4; 90-85.3; 90-85.18; 90-85.26A; Eff. April 1, 2001; Amended Eff. October 1, 2001.

TITLE 25 - OFFICE OF STATE PERSONNEL

25 NCAC 01C .0214 UNLAWFUL WORKPLACE HARASSMENT

(a) Purpose. The purpose of this policy is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment of state employees or applicants, and to require that every agency subject to the State Personnel Act establishes policies and programs to ensure that work sites are free of unlawful workplace harassment.

(b) Unlawful workplace harassment is defined as unsolicited, and unwelcome speech or conduct based upon race, sex, creed, religion, national origin, age, color, or disabling condition as defined by G.S. 168A-3 that creates a hostile work environment or circumstances involving quid pro quo.

- (1) Hostile Work Environment is one that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance.
- (2) Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:
 - (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
 - (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- (3) Retaliation is adverse action taken because of opposition to unlawful workplace harassment.

(c) Policy. The policy of the State of North Carolina is that no state employee may engage in conduct that falls under the definition of unlawful workplace harassment indicated in Paragraph (b) of this Rule. No personnel decisions shall be made on the basis of race, sex, creed, religion, national origin, age, color, or disabling condition as defined by G.S. 168A-3.

(d) All employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation. Unlawful workplace harassment shall henceforth be deemed a form of discrimination prohibited by G.S. 126-16 and G.S. 126-36.

(e) Grievances. Any current or former state employee who feels he/she has been the victim of unlawful workplace harassment in violation of this policy and G.S. 126-16 and G.S. 126-36 may file a grievance through the departmental grievance procedure. Filing such a written complaint shall be a prerequisite to any further appeal to the State Personnel Commission regarding unlawful workplace harassment. After the employee's written complaint is submitted to the department or agency, the department or agency shall have 60 days within which to consider the complaint and take any remedial action, unless the department or agency has waived the 60-day period, and the employee has acknowledged such waiver. The waiver and acknowledgement shall be in writing. Consistent with G.S. 126-34, G.S. 126-34.1, G.S. 126-36 and G.S. 126-36.1, any current or former state employee who feels that he/she has been subjected to unlawful workplace harassment may appeal directly to the State Personnel Commission (such appeal consisting of a contested case hearing under G.S. 150B and a decision by the State Personnel Commission) only after submitting a written complaint and after receiving notification of remedial action, if any, by the department or agency.

(f) Departmental Plans. Each department head or university chancellor shall include as a supplement to the Affirmative Action Plan a plan setting for the steps to be taken to prevent and correct unlawful workplace harassment. Each department or university shall submit such a plan to the Office of State Personnel for review, technical assistance, and approval by the Director of State Personnel. Each plan on unlawful workplace harassment shall, at the minimum, include:

- (1) publishing and disseminating a policy statement establishing that unlawful workplace harassment of employees and applicants is prohibited;
- (2) establishment of internal procedure to handle complaints of unlawful workplace harassment. This procedure shall provide prompt investigation and resolution of complaints within the department or university and shall offer the employee recourse other than through the immediate supervisor;
- (3) utilization of training and other methods to prevent unlawful workplace harassment;
- (4) stating that the department will, in allegations of unlawful workplace harassment, review the entire record and the totality of the circumstances, to determine whether the alleged conduct constitutes unlawful workplace harassment;
- (5) development of disciplinary actions for conduct determined to constitute unlawful workplace harassment, to be implemented on a case by case basis on the facts of each complaint;
- (6) prohibition of internal interference, coercion, restraint or reprisal against any person complaining of alleged unlawful workplace harassment;
- (7) notification to all employees that a complaint or allegation of unlawful workplace harassment must be filed within the department or agency and that the agency or

department has 60 days (or less, if waived by agency or department and acknowledged by employee) to take action, if any, in response to the complaint prior to the filing of a complaint of unlawful workplace harassment with the State Personnel Commission.

History Note: Authority G.S. 126-4; 126-16; 126-17; 126-36; 126-36.1; Eff. December 1, 1980; Amended Eff. November 1, 1988; April 1, 1983; Temporary Amendment Eff. February 18, 1999; Amended Eff. July 1, 2002.

25 NCAC 01J .0603 APPEALS

(a) A career employee who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his department/university grievance procedure. Grievances which do not allege discrimination, a violation of G.S. 126-7.1(a) or (c), a violation of G.S. 126-82, or that do not allege a denial of employment or promotion in violation of G.S. 126-14.2 must follow the department or university grievance procedure. An appeal to the State Personnel Commission of a final departmental or university decision must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to the agency or department, within 30 calendar days of the alleged harassing action, and the agency or department must be given 60 calendar days in which to take remedial action, if any, unless the department or agency has waived the 60-day period, and the employee has acknowledged such waiver. The acknowledgement and waiver shall be in writing. An appeal to the State Personnel Commission of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of notification of the remedial action, if any, taken by the agency.

(b) Grievances which allege discrimination not including unlawful workplace harassment may, at the election of the employee, proceed through the department or university procedure or proceed directly to the State Personnel Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.

(c) Grievances which allege a violation of G.S. 126-14.2 must be filed with the Civil Rights Division of the OAH within 30 calendar days after the employee or applicant receives written notice that the position in question has been filled. The employee or applicant must file a petition for a contested case hearing pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B within 15 days of the initial determination by the OAH Civil Rights Division that there has been a violation of G.S. 126-14.2.

(d) Grievances filed on an untimely basis (see G.S. 126-14.4, 126-35, 126-36 and 126-38) must be dismissed. Allegations of

discrimination raised more than 30 calendar days after receipt of notice of the occurrence of the alleged discriminatory act must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after notification of the remedial action, if any, taken by the agency must be dismissed.

History Note: Authority G.S. 126-1A; 126-35; 126-36; 126-38; 150B, Article 3; 150B-23; Eff. February 1, 1976; Amended Eff. March 1, 1994; April 1, 1989; December 1, 1984; October 1, 1984; Temporary Amendment Eff. February 18, 1999; Amended Eff. July 1, 2002.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, November 15, 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 Friday, November 9, 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

November 15, 2001
December 20, 2001

January 17, 2002
February 21, 2002

RULES REVIEW COMMISSION

Commission Review/Administrative Rules

Log of Filings (Log #181)

September 20, 2001 through October 22, 2001

DHHS/DIVISION OF FACILITY SERVICES

Definitions	10 NCAC 03R .1613	Amend
Required Performance Standards	10 NCAC 03R .1615	Amend
Required Support Services	10 NCAC 03R .1616	Amend
Definitions	10 NCAC 03R .2502	Amend
Definitions	10 NCAC 03R .2713	Amend
Required Performance Standards	10 NCAC 03R .2715	Amend
Definitions	10 NCAC 03R .3701	Amend
Required Performance Standards	10 NCAC 03R .3703	Amend
Applicability of Rules Related to the 2001 State	10 NCAC 03R .6301	Adopt
Certificate of Need Review Schedule	10 NCAC 03R .6302	Adopt
Multi-County Groupings	10 NCAC 03R .6303	Adopt
Service Areas and Planning Areas	10 NCAC 03R .6304	Adopt
Reallocations and Adjustments	10 NCAC 03R .6305	Adopt
Acute Care Bed Need Determination	10 NCAC 03R .6306	Adopt
Rehabilitation Bed Need Determination	10 NCAC 03R .6307	Adopt
Ambulatory Surgical Facilities Need Determination	10 NCAC 03R .6308	Repeal
Open Heart Surgery Services Need Determinations	10 NCAC 03R .6309	Adopt
Heart-Lung Bypass Machines Need Determination	10 NCAC 03R .6310	Adopt
Fixed Cardiac Catheterization Equipment and Fixed	10 NCAC 03R .6311	Adopt
Shared Fixed Cardiac Catheterization Equipment	10 NCAC 03R .6312	Adopt
Burn Intensive Care Services Need Determination	10 NCAC 03R .6313	Adopt
Positron Emission Tomography Scanners Need Determi	10 NCAC 03R .6314	Adopt
Bone Marrow Transplantation Need Determination	10 NCAC 03R .6315	Adopt
Solid Organ Transplantation Services Need Determin	10 NCAC 03R .6316	Adopt
Gamma Knife Unit Need Determination	10 NCAC 03R .6317	Adopt
Lithotripter Need Determination	10 NCAC 03R .6318	Adopt
Radiation Oncology Treatment Centers Need Determin	10 NCAC 03R .6319	Adopt
Magnetic Resonance Imaging Scanners Need Determina	10 NCAC 30R .6320	Adopt
Magnetic Resonance Imaging Scanners Need Determin	10 NCAC 03R .6321	Adopt
Nursing Care Bed Need Determination	10 NCAC 03R .6322	Adopt

RULES REVIEW COMMISSION

Medicare-Certified Home Health Agency Office Need	10 NCAC 03R .6323	Adopt
Dialysis Station Need Determination Methodology	10 NCAC 03R .6324	Adopt
Dialysis Station Need Determination Methodology	10 NCAC 03R .6325	Adopt
Hospice Home Care Need Determination	10 NCAC 03R .6326	Adopt
Hospice Inpatient Facility Bed Need Determination	10 NCAC 03R .6327	Adopt
Psychiatric bed Need Determination	10 NCAC 03R .6328	Adopt
Psychiatric Bed Need Determination	10 NCAC 03R .6328	Adopt
Chemical Dependency (Substance Abuse) Treatment	10 NCAC 03R .6329	Adopt
Chemical Dependency (Substance Abuse) Adult	10 NCAC 03R .6330	Adopt
Intermediate Care Beds for the Mentally Retarded	10 NCAC 03R .6331	Adopt
Policies for General Acute Care Hospitals	10 NCAC 03R .6332	Adopt
Policies for Cardiac Catheterization Equipment	10 NCAC 03R .6333	Adopt
Policies for Transplantation Services	10 NCAC 03R .6334	Adopt
Policy for MRI Scanners	10 NCAC 03R .6335	Adopt
Policy for Provision of Hospital-Based Long-Term	10 NCAC 03R .6336	Adopt
Policy for Plan Exemption for Continuing Care Ret	10 NCAC 03R .6337	Adopt
Policy for Determination of Need for Additional Nu	10 NCAC 03R .6338	Adopt
Policy for Relocation of Certain Nursing Facility	10 NCAC 03R .6339	Adopt
Policy for Transfer of Beds from State Psychiatric	10 NCAC 03R .6340	Adopt
Policy for Relocation of Nursing Facility Beds	10 NCAC 03R .6341	Adopt
Policy for Medicare-Certified Home Health Services	10 NCAC 03R .6342	Adopt
Policy for Relocation of Dialysis Stations	10 NCAC 03R .6343	Adopt
Policies for Psychiatric In Patient Facilities	10 NCAC 03R .6344	Adopt
Policy for Chemical Dependency Treatment Facilities	10 NCAC 03R .6345	Adopt
Policy for Intermediate Care Facilities for the Me	10 NCAC 03R .6346	Adopt
DHHS		
Least Restrictive Alternative and Prohibited	10 NCAC 14J .0201	Amend
Indications For Use of Seclusion and Isolation	10 NCAC 14J .0204	Amend
Indications For Use of Physical Restraints	10 NCAC 14J .0205	Amend
Protective Devices	10 NCAC 14J .0207	Amend
Definitions	10 NCAC 14P .0102	Amend
Informed Consent	10 NCAC 14Q .0303	Amend
Least Restrictive Alternative	10 NCAC 14R .0101	Amend
Protective Devices	10 NCAC 14R .0105	Amend
Client Services	10 NCAC 14V .0208	Amend
Facility Design and Equipment	10 NCA C 14V .0304	Amend
Scope	10 NCAC 14V .0801	Adopt
Definitions	10 NCAC 14V .0802	Adopt
Reporting Requirements	10 NCAC 14V .0803	Adopt
Staff	10 NCAC 14V .6002	Amend
DHHS/COMMISSION FOR MH/DD/SAS		
Schedule IV	10 NCAC 45H .0205	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Heavy Duty Diesel Engine Requirements	15 NCAC 02D .1008	Adopt
Activities Exempted from Permit Requirements	15 NCAC 02Q .0102	Amend
DENR/COASTAL RESOURCES COMMISSION		
Coastal Shorelines	15 NCAC 07H .0209	Amend
Oceanfront Setback Exceptions	15 NCAC 07H .0309	Amend
Accessory Building Definitions	15 NCAC 07K .0209	Adopt
High Hazard Flood AEC	15 NCAC 07K .0213	Adopt
EDUCATION, STATE BOARD OF		
State Graduation Requirements	16 NCAC 06D .0503	Amend
STATE BOARDS/N C BOARD OF REGISTRATION FOR FORESTERS		
Code of Ethics	21 NCAC 20 .0115	Amend
STATE BOARDS/N C BOARD OF NURSING		
Selection and Qualifications of Nurse Members	21 NCAC 36 .0109	Amend
Revocation, Suspension, or Denial of License	21 NCAC 36 .0217	Amend
Exceptions to Health Care Practitioners Identification	21 NCAC 36 .0231	Adopt
STATE BOARDS/N C BOARD OF PHARMACY		
Determination of Election Results	21 NCAC 46 .2108	Amend
Responsibilities of Pharmacist-Manager	21 NCAC 46 .2502	Amend

RULES REVIEW COMMISSION

**STATE BOARDS/N C EXAMINERS FOR SPEECH AND LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS**

Certified Technicians	21 NCAC 64 .0210	Adopt
Name and Qualifications Identification	21 NCAC 64 .0211	Adopt

**AGENDA
RULES REVIEW COMMISSION
November 15, 2001**

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Cultural Resources – 7 NCAC 4S .0104 Objection on 12/21/00 (DeLuca)
 - B. DHHS/Commission for MH/DD/SAS – 10 NCAC 45H .0203 and .0204 Objection on 6/21/01 (DeLuca)
 - C. DENR/Division of Medical Assistance– 10 NCAC 50B .0101 Objection 10/18/01 (Bryan)
 - D. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0307; .0407 Objection on 9/20/01 (Bryan)
 - E. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0401; .0405; .0406 Objection on 10/18/01 (Bryan)
 - F. DENR/Environmental Management Commission – 15A NCAC 2B .0311 Objection 9/20/01, 10/18/01 (Bryan)
 - G. DENR/Environmental Management Commission – 15A 2D .1420 Objection on 10/18/01 (DeLuca)
 - H. DENR/Commission for Health Services – 15A NCAC 18A .1311; .1321 Objection on 10/18/01 (DeLuca)
- IV. Review of rules (Log Report #181)
- V. Commission Business
- VI. Next meeting: Thursday, December 20, 2001

CONTESTED CASE DECISIONS

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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
NC ABC Commission v. Benjamin Franklin Black, B and M Convenience	01 ABC 0663	Morrison	07/23/01	
Deleon Christopher Izi v. NC Alcoholic Beverage Control Commission	01 ABC 0709	Gray	10/11/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
<u>BOARD OF MORTUARY SCIENCE</u>				
NC Board of Mortuary Science v. Beasley's Funeral Home, Inc., Odell Beasley, Crystal Beasley-Walker	00 BMS 0469	Mann	07/17/01	
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
NC Board of Mortuary Science v. Robert Breece, Jr., and Osborne Owens and Rogers and Breece Funeral Home	00 BMS 1763	Morrison	08/22/01	
NC Board of Mortuary Science v. Kyle Garret Peacock, Philip Smoak and Peggy Peacock	01 BMS 0298	Lassiter	09/20/01	
<u>BOARD OF GEOLOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Clarence Forney v. NC Crime Victims Compensation Commission	00 CPS 1994	Elkins	10/11/01	
Sheree D Sirotnak v. NC Crime Victims Compensation Commission	00 CPS 2209	Wade	06/14/01	
Eddie N McLaughlin v. NC Crime Victims Compensation Commission	01 CPS 0086	Elkins	06/05/01	
Bobby Holmes, Jr. v. NC Crime Victims Compensation Commission	01 CPS 1095	Gray	10/09/01	
John R. Ackerman v. NC State Highway Patrol	01 CPS 1327	Morrison	09/24/01	
<u>HEALTH AND HUMAN SERVICES</u>				
Gregory Keith Millican v. NC DHHS, Div of Social Svcs, CSE Section	99 CRA 1008	Gray	10/12/01	
David P. Lemieux v. Department of Health & Human Services	01 CRA 0428	Gray	06/05/01	
Clayton E Reeves v. Department of Health & Human Services	01 CRA 0773 ²	Elkins	08/16/01	
Gerald Pelletier III v. Department of Health & Human Services	01 CRA 0882	Morrison	07/19/01	
Anthony B Smalling v. Department of Health & Human Services	01 CRA 0993	Conner	08/07/01	
Angelo Terry, Jr. v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1294	Wade	10/25/01	
<i>Child Support Enforcement Section</i>				
Sandra Ferrell Miller v. Department of Health & Human Services	99 CSE 1390	Gray	10/24/01	
John F McCollum v. Department of Health & Human Services	00 CSE 0252	Gray	07/18/01	
James J. Murphy v. Department of Health & Human Services	00 CSE 0320	Morrison	09/28/01	
Willie Montgomery v. Department of Health & Human Services	00 CSE 0379	Gray	10/11/01	
Deidra Dawn Andrews v. Department of Health & Human Services	00 CSE 0382	Morrison	09/13/01	
Steven D Hamrick v. Department of Health & Human Services	00 CSE 0383	Lassiter	09/17/01	
Thellie Paul Casper v. Department of Health & Human Services	00 CSE 0587	Mann	10/12/01	
Leverette Lillington Knighten II v. Department of Health & Human Services	00 CSE 0612	Gray	08/24/01	

CONTESTED CASE DECISIONS

Bickett Fort v. Department of Health & Human Services	00 CSE 1169	Mann	08/10/01
Gary E Ligon v. Department of Health & Human Services	00 CSE 1344	Morrison	09/20/01
Gerald L. Coker v. Department of Health & Human Services	00 CSE 1396	Morrison	08/29/01
Marvin Gay Adams v. Department of Health & Human Services	00 CSE 1550	Wade	09/18/01
Dean E McCall v. Department of Health & Human Services	00 CSE 1575	Conner	10/04/01
Edward Cozart v. Department of Health & Human Services	00 CSE 1594	Gray	09/14/01
Rita Caperoon v. Department of Health & Human Services	00 CSE 1597	Lassiter	08/27/01
Trina Player v. Department of Health & Human Services	00 CSE 1611	Wade	10/22/01
Robert B McKay v. Department of Health & Human Services	00 CSE 1620	Gray	09/14/01
Gary E Barker v. Department of Health & Human Services	00 CSE 1659	Mann	09/26/01
Mettie Hansley v. Department of Health & Human Services	00 CSE 1673	Morrison	08/24/01
David K. Rose v. Department of Health & Human Services	00 CSE 1681	Gray	06/05/01
John T McDonald v. Department of Health & Human Services	00 CSE 1687	Wade	06/08/01
Darren S Boyd v. Department of Health & Human Services	00 CSE 1697	Wade	08/29/01
Ilian Tourloukis v. Department of Health & Human Services	00 CSE 1701	Gray	09/14/01
Terry Antonio Leath v. Department of Health & Human Services	00 CSE 1709	Morrison	10/16/01
Jarvis Williams v. Department of Health & Human Services	00 CSE 1712	Wade	10/22/01
Jerry McLean v. Department of Health & Human Services	00 CSE 1725	Mann	09/13/01
Richard Kevin Day v. Department of Health & Human Services	00 CSE 1735	Conner	08/20/01
Willie E Harris v. Department of Health & Human Services	00 CSE 1742	Morrison	07/26/01
Hugh Williams Jr v. Department of Health & Human Services	00 CSE 1753	Morrison	10/02/01
Michael Worthy v. Department of Health & Human Services	00 CSE 1756	Wade	09/18/01
Eduardo R Miranda v. Department of Health & Human Services	00 CSE 1768	Wade	09/18/01
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01
Albert Hooks Jr. v. Department of Health & Human Services	00 CSE 1798	Lassiter	07/30/01
Walter Columbus Simmons v. Department of Health & Human Services	00 CSE 1831	Gray	10/10/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1835 ¹	Wade	05/30/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1837 ¹	Wade	05/30/01
Larry W Kiser v. Department of Health & Human Services	00 CSE 1840	Gray	06/08/01
Jason Parker v. Department of Health & Human Services	00 CSE 1853	Morrison	08/02/01
Michael A Gresham Sr. v. Department of Health & Human Services	00 CSE 1862	Gray	06/28/01
Barbara J Stacy v. Department of Health & Human Services	00 CSE 1903	Lassiter	09/17/01
Michael N Brack v. Department of Health & Human Services	00 CSE 1904	Lassiter	07/02/01
Gregory C McCauley v. Department of Health & Human Services	00 CSE 1915	Wade	08/03/01
Raymond N Strother v. Department of Health & Human Services	00 CSE 1910	Gray	07/18/01
Tamara J Mills-Cooper v. Department of Health & Human Services	00 CSE 1918	Gray	09/14/01
Donald E Scott v. Department of Health & Human Services	00 CSE 1919	Chess	08/08/01
Paul Clayton Shepard v. Department of Health & Human Services	00 CSE 1945	Lassiter	09/20/01
Tammie Sawyer v. Department of Health & Human Services	00 CSE 1946	Gray	09/26/01
Paula Morrill v. Department of Health & Human Services	00 CSE 1948	Conner	10/16/01
Marcus Dontez Chavis v. Department of Health & Human Services	00 CSE 1955	Gray	10/15/01
Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01
John R Pyron v. Department of Health & Human Services	00 CSE 1960	Wade	08/10/01
Richard Stevens Jr. v. Department of Health & Human Services	00 CSE 1965	Morrison	08/07/01
Angela Wells v. Department of Health & Human Services	00 CSE 1967	Morrison	08/21/01
Bobby R. Mayo v. Department of Health & Human Services	00 CSE 1969	Conner	07/09/01
Steven Gregory Hotz v. Department of Health & Human Services	00 CSE 1978	Chess	07/24/01
Sylvia J Walter v. Department of Health & Human Services	00 CSE 1983	Wade	10/22/01
Eugene Little v. Department of Health & Human Services	00 CSE 1995	Gray	10/11/01
April Cheeseman v. Department of Health & Human Services	00 CSE 2000	Wade	10/11/01
Terry Jacobs v. Department of Health & Human Services	00 CSE 2004	Lassiter	10/11/01
William Kay v. Department of Health & Human Services	00 CSE 2060	Conner	07/20/01
Patrick L Merrick v. Department of Health & Human Services	00 CSE 2061	Chess	07/12/01
Luther I Gore v. Department of Health & Human Services	00 CSE 2062	Gray	08/15/01
Darlene S Roush v. Department of Health & Human Services	00 CSE 2102	Gray	10/11/01
David Diaz v. Department of Health & Human Services	00 CSE 2149	Gray	09/21/01
Jerome Maddox v. Department of Health & Human Services	00 CSE 2153	Wade	08/07/01
Toney Cooper v. Department of Health & Human Services	00 CSE 2214	Gray	09/06/01
Winston H Powell v. Department of Health & Human Services	00 CSE 2274	Wade	05/30/01
Kendall L Taylor v. Department of Health & Human Services	00 CSE 0032	Conner	06/08/01
Toni M Rash v. Department of Health & Human Services	01 CSE 0040	Wade	10/02/01
Sue Diane Lambert v. Department of Health & Human Services	01 CSE 0069	Wade	07/13/01
Harlie J Turner v. Department of Health & Human Services	01 CSE 0095	Morrison	09/26/01
George A Snipes v. Department of Health & Human Services	01 CSE 0105	Lassiter	10/25/01
Michael Jarvis v. Department of Health & Human Services	01 CSE 0173	Wade	08/06/01
Samuel E Taylor v. Department of Health & Human Services	01 CSE 0181	Conner	06/08/01
Carlton Griffin Jr. v. Department of Health & Human Services	01 CSE 0211	Lassiter	08/20/01
Randall Blevins v. Department of Health & Human Services	01 CSE 0258	Gray	06/05/01
Jason O Smith v. Department of Health & Human Services	01 CSE 0266	Mann	07/19/01
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Ronnie William Foster v. Department of Health & Human Services	01 CSE 0280	Chess	07/09/01
Craig Darrell McLeod v. Department of Health & Human Services	01 CSE 0301	Gray	07/31/01
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Myhammad Ali Sabakada v. Department of Health & Human Services	01 CSE 0378	Elkins	09/13/01
Eric L Woody v. Department of Health & Human Services	01 CSE 0387	Wade	08/10/01

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Richard E Roberts Jr. v. Department of Health & Human Services	01 CSE 0461	Wade	07/12/01
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Gregory Morgan v. Department of Health & Human Services	01 CSE 0498	Elkins	05/24/01
Malik J Flamer v. Department of Health & Human Services	01 CSE 0501	Wade	07/12/01
Wade Freeman McPhatter Jr. v. Department of Health & Human Services	01 CSE 0504	Conner	10/17/01
Armenous Dobson III v. Department of Health & Human Services	01 CSE 0519	Morrison	09/06/01
George Foster Still v. Department of Health & Human Services	01 CSE 0526	Elkins	09/13/01
John Winstead v. Department of Health & Human Services	01 CSE 0562	Conner	06/08/01
Raymond A McDonald v. Department of Health & Human Services	01 CSE 0592	Gray	07/18/01
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Thomas J Lipppa v. Department of Health & Human Services	01 CSE 0609	Elkins	06/27/01
Boyd H Tucker v. NC Child Support Centralized Collection	01 CSE 0618	Wade	05/31/01
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Christopher R Miller v. Department of Health & Human Services	01 CSE 0678	Lassiter	07/19/01
Larry O Anthony v. Department of Health & Human Services	01 CSE 0681	Lassiter	07/30/01
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Tony Eugene Johnson v. Department of Health & Human Services	01 CSE 0684	Mann	09/11/01
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Steven G Adelman v. Department of Health & Human Services	01 CSE 0766	Wade	09/28/01
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Bryan Keith Berry v. Department of Health & Human Services	01 CSE 0912	Conner	10/04/01
Matilda Thompson v. Department of Health & Human Services	01 CSE 0914	Gray	09/06/01
Sheraton Vincent Walker v. Department of Health & Human Services	01 CSE 0918	Morrison	09/06/01
Ronald Carl Ray v. Department of Health & Human Services	01 CSE 0927	Morrison	09/06/01
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³ Combined Cases

² Combined Cases

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Charles Baron Camp v. Department of Health & Human Services	01 CSE 0979 ⁴	Morrison	09/13/01
Charles Baron Camp v. Department of Health & Human Services	01 CSE 0987 ⁴	Morrison	09/13/01
Edward Conner Gore v. Department of Health & Human Services	01 CSE 0988	Elkins	10/24/01
Joseph L Garland v. Department of Health & Human Services	01 CSE 0991	Wade	08/10/01
Sydell LeMay v. Department of Health & Human Services	01 CSE 1003	Lassiter	09/17/01
Anthony J Edwards v. Department of Health & Human Services	01 CSE 1005	Gray	09/11/01
Pierette Lynn Van Horn v. Department of Health & Human Services	01 CSE 1007	Morrison	09/20/01
Stephen Lee Pendleton v. Department of Health & Human Services	01 CSE 1009	Gray	08/21/01
Daren L Keyes v. Department of Health & Human Services	01 CSE 1017	Elkins	09/27/01
James W Quick v. Department of Health & Human Services	01 CSE 1044	Conner	08/07/01
Elijah Saunders v. Department of Health & Human Services	01 CSE 1052	Gray	08/02/01
Leonard Campbell v. Department of Health & Human Services	01 CSE 1062	Morrison	10/10/01
Franklyn A Barrera v. Department of Health & Human Services	01 CSE 1070	Lassiter	10/09/01
Michael W Campbell v. Department of Health & Human Services	01 CSE 1077	Mann	10/09/01
Richard W Spencer v. Department of Health & Human Services	01 CSE 1085	Elkins	10/05/01
Bobby D Cooper v. Department of Health & Human Services	01 CSE 1087	Wade	08/10/01
Christopher T Middleton v. Department of Health & Human Services	01 CSE 1131	Gray	09/06/01
Gary G Walker v. Department of Health & Human Services	01 CSE 1136	Morrison	10/10/01
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Petre Capraru v. Department of Health & Human Services	01 CSE 1145	Morrison	08/28/01
David Diaz v. Department of Health & Human Services	01 CSE 1150	Elkins	09/13/01
Michael K Seaman v. Department of Health & Human Services	01 CSE 1157	Wade	08/29/01
Thomas M Birdwell, III v. Department of Health & Human Services	01 CSE 1367	Chess	10/09/01
Jennings Butler v. Department of Health & Human Services	01 CSE 1421	Wade	10/22/01
James Purnell Jr. v. Department of Health & Human Services	00 DCS 0360	Lassiter	10/16/01
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Constance Drye v. Department of Health & Human Services	01 DCS 0707	Wade	06/25/01
Linda Warren v. Department of Health & Human Services	01 DCS 0803	Conner	08/17/01
LaVonya Ann Goods v. Department of Health & Human Services	01 DCS 0819	Lassiter	07/12/01
Kechia Bonita Howell v. Department of Health & Human Services	01 DCS 0848	Elkins	09/13/01
Faye D Brown v. Department of Health & Human Services	01 DCS 0923	Lassiter	07/19/01
Sheree R Jenkins v. Department of Health & Human Services	01 DCS 1051	Chess	07/24/01

CULTURAL RESOURCES

Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01
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Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1077 ³	Wade	08/16/01
Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1324 ³	Wade	08/16/01
Salinda Smith v. NC Department of Health & Human Services	00 DHR 1779	Mann	09/20/01
Kenneth E. Frost v. DHHS, Julian F. Keith, ADATC	00 DHR 2278	Conner	07/30/01
Ruby L Laughter v. Dept. of Health & Human Services	01 DHR 0108	Gray	06/29/01
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Duane E McCoy v. DHHS, Broughton Hospital	01 DHR 0398	Wade	06/19/01
Lara Beth Henrick v. DHHS, Dorothea Dix Hospital	01 DHR 0409	Mann	07/19/01
Terry W Hartsoe v. NC Dept. of Health & Human Services	01 DHR 0420	Chess	07/06/01
Richard L Foster, Reansia M Foster v. DHHS, Broughton Hospital	01 DHR 0454	Wade	06/25/01
Yvonne D Cole v. Cherry Hospital, Brenda Wells	01 DHR 0502	Morrison	07/23/01
Cheryl Holloway v. DHHS, Health Care Register	01 DHR 0513	Morrison	07/27/01
Adam Query Fisher, Jr. v. DHHS, Julian F Keith, ADATC	01 DHR 0559	Wade	06/19/01
Dennis E Partridge v. DHHS, Julian F Keith, ADATC	01 DHR 0560	Wade	06/19/01
Eunice L Walden v. NC DHHS	01 DHR 0589	Gray	09/11/01
Robert W Dietz & wife, Iris Dietz v. NC Dept. of Health & Human Svcs.	01 DHR 0603	Wade	10/11/01
Eric L Belton v. Dept. of Health & Human Services, ADATC	01 DHR 0610	Lassiter	06/04/01
Tawn Milteer-Ellerbe v. Dept. of Health & Human Services	01 DHR 0629	Conner	09/04/01
Charles Anthony Tart v. DHHS, Walter B Jones, ADATC	01 DHR 0665	Lassiter	06/22/01
Mable Barnes, CNA v. DHHS	01 DHR 0714	Conner	09/14/01
Calvin Lucas v. Butner Alcohol & Drug Abuse Treatment Center	01 DHR 0738	Morrison	07/02/01
Mollie Williams v. Dept. of Health & Human Services	01 DHR 0753	Conner	07/10/01
Elveter Johnson v. Office of Administrative Hearings	01 DHR 0779	Gray	08/16/01
Fannie Brown v. Caswell Center Healthcare Personnel Registry	01 DHR 0780	Gray	07/02/01
Helen Yoo, Happy Hill Garden v. NC Dept. of Public Health & Human Svcs.	01 DHR 0781	Conner	09/18/01
Margaret Rinkel Sanderlin v. NC Dept. of Health & Human Services	01 DHR 0831	Conner	09/12/01
Donovan Rogers v. Dept. of Health & Human Services	01 DHR 0840	Conner	09/19/01
Monique S. Wearren v. NC Dept. of Health & Human Services	01 DHR 0841	Conner	09/04/01
Robert & Shirley Harmon on behalf of Gary Harmon v. NC DMH/DD/SAS	01 DHR 0955	Chess	06/25/01
Edward D Connor v. Dept. of Health & Human Services	01 DHR 0978	Chess	07/05/01
Subrenia Fillyow v. NC Dept. of Human Resources	01 DHR 0996	Lassiter	08/16/01
Portia A Davis v. Dept. of Health & Human Services	01 DHR 1055	Mann	08/06/01
Dorothy Davis v. Janet Jones RN, HCPR Nurse Investigator	01 DHR 1105	Conner	10/25/01
Shirley A Johnson v. Social Services, State Taxes	01 DHR 1126	Wade	09/19/01
Janet Elizabeth King v. Dept. of Health & Human Services	01 DHR 1185	Morrison	09/11/01
David C Spence v. Walter B Jones, ADATC & NC DHHS	01 DHR 1261	Elkins	10/24/01
Lisa Dupree v. The State Board of Nurse Aid, Debbie Hockaday	01 DHR 1343	Mann	10/12/01

⁴ Combined Cases

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Adrienne McSween v. DHR, R Marcus Lodge, Gen. Counsel	01 DHR 1443	Morrison	10/10/01	
Great Am. Foods, Inc. Anan About v. DHHS, WIC Program	01 DHR 1468	Wade	10/11/01	
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Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child Development	00 DHR 1270	Wade	05/22/01	
Esther M Huntley, Treasurer, Rainbow Nursery Parents Club, Inc. v. DHHS, Division of Child Development	00 DHR 1419	Gray	09/24/01	
Judy Woods Days Care v. DHHS, Div. of Child Development	01 DHR 0084	Wade	10/05/01	
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Wendy Denise Callender v. DHHS, Division of Facility Services	00 DHR 0608	Conner	08/17/01	
Linda Gail Funke v. DHHS, Division of Facility Services	00 DHR 0625	Wade	06/04/01	
Audrey E Alston v. DHHS, Division of Facility Services	00 DHR 1017	Gray	06/14/01	
David Mull v. DHHS, Division of Facility Services	00 DHR 1495	Lassiter	06/12/01	
Ethlyne Phipps v. DHHS, Division of Facility Services	00 DHR 1505	Conner	07/26/01	
Yelton's Healthcare, Inc. v. DHHS, Division of Facility Services	00 DHR 1540	Chess	06/21/01	
Jacqueline A Alexander v. DHHS, Division of Facility Services	00 DHR 1586	Gray	06/28/01	
Debra Brown v. DHHS, Division of Facility Services	00 DHR 2009	Gray	06/28/01	
Kama Kasiah v. DHHS, Division of Facility Services	00 DHR 2203	Lassiter	09/07/01	
Dana McQueen v. DHHS, Division of Facility Services	00 DHR 2261	Elkins	06/27/01	
Peter Lynn Mosher v. DHHS, Division of Facility Services	01 DHR 0178	Mann	05/30/01	
Samuel McKinley Tugman v. DHHS, Division of Facility Services	01 DHR 0512	Gray	07/25/01	
Keysha Lynn Ragas v. DHHS, Division of Facility Services	01 DHR 0214	Wade	06/28/01	
Tabitha Perry v. DHHS, Division of Facility Services	01 DHR 0330	Mann	10/01/01	16:09 NCR 858
Tonitia Langley v. DHHS, Division of Facility Services	01 DHR 0359	Lassiter	10/16/01	
Davina Brook Grant v. DHHS, Division of Facility Services	01 DHR 0363	Conner	06/08/01	
Inez M Stephens v. DHHS, Division of Facility Services	01 DHR 0418	Morrison	09/13/01	
Tara Livingston v. DHHS, Division of Facility Services	01 DHR 0667	Conner	06/26/01	
Dogwood Forest, Nicole Faiger Blackwell v. DHHS, Div. of Fac. Services	01 DHR 0737	Conner	09/19/01	
Arlene E Jackson v. DHHS, Division of Facility Services	01 DHR 0740	Morrison	07/11/01	
Genevieve McLean v. DHHS, Division of Facility Services	01 DHR 0808	Lassiter	07/03/01	
Daphne Michelle Pressley v. DHHS, Division of Facility Services	01 DHR 0863	Morrison	07/27/01	
Candice J Smith v. DHHS, Division of Facility Services	01 DHR 0911	Lassiter	07/27/01	
Madge B Murray v. NC DHHS, Div. of Facility Services, Health Care Personnel Registry	01 DHR 0953	Conner	09/12/01	
Margaret Rose Hiebler v. DHHS, Division of Facility Services	01 DHR 1002	Mann	10/02/01	
Chrishana Lindsay-Dixon v. DHHS, Division of Facility Services	01 DHR 1012	Mann	10/12/01	
Cleo James v. DHHS, Division of Facility Services	01 DHR 1054	Conner	08/16/01	
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Rossie Nicole Home v. DHHS, Division of Facility Services	01 DHR 1198	Gray	10/11/01	
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Michelle Peebles v. NC DHHS, Division of Facility Services	01 DHR 1345	Lassiter	10/19/01	
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Angel McDowell v. Office of Administrative Hearings	01 DHR 0370	Conner	06/05/01	
Kristie N Crabtree v. Greene County Social Services	01 DHR 0401	Lassiter	06/05/01	
Claire Diggs v. DHHS, Moore Co. Dept. of Social Services	01 DHR 0551	Elkins	08/02/01	
Elizabeth Jackson v. DHHS, Dept. of Social Services	01 DHR 0601	Lassiter	06/22/01	
John H Anderson v. Bladen County Dept. of Social Services	01 DHR 0605	Morrison	06/22/01	
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Judy P Miller v. Ashe Co. Dept. of Social Services, NC DHHS, Division of Facility Services, Health Care Personnel Registry	01 DHR 1363	Gray	09/18/01	
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Fordion Packaging, Ltd., Bird Bailey v. Dept. of State Purchasing, J. Arthur Leaston	01 DOA 1001	Gray	08/24/01	
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Deona Renna Hooper v. Co. Police Program, Co. Police Administrator	00 DOJ 2177	Wade	06/22/01	
Alarm Systems Licensing Board				
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Joseph Brian Moses v. Alarm Systems Licensing Board	01 DOJ 0582	Wade	06/01/01	
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Stephen Wayne Farmer v. Alarm Systems Licensing Board	01 DOJ 0998	Lassiter	07/24/01	
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James Kevin Hightower v. Alarm System Licensing Board 01 DOJ 1351 Gray 10/12/01 16:10 NCR 947

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Linda Morton Kiziah v. Private Protective Services Board 01 DOJ 0353 Wade 06/01/01
 Willie Carl Wilson v. Private Protective Services Board 01 DOJ 0580 Morrison 06/04/01
 Emar I. Ifediora v. Private Protective Services Board 01 DOJ 0823 Conner 10/16/01
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 Calvin McNair v. Private Protective Services Board 01 DOJ 1000 Lassiter 07/03/01
 Michael David Faris v. Private Protective Services Board 01 DOJ 1271 Gray 10/12/01

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Larry Russell Jackson v. NC Criminal Justice & Trng. Stds. Comm. 00 DOJ 0721 Gray 07/20/01
 Joshua Craig Brothers v. NC Sheriffs' Educ. & Trng. Stds. Comm. 00 DOJ 1558 Elkins 06/12/01
 Wardell R.K. Scott v. NC Sheriffs' Educ. & Trng. Stds. Comm. 00 DOJ 1577 Gray 08/27/01
 Darrick Harris v. NC Sheriffs' Educ. & Training Standards Comm. 00 DOJ 2267 Wade 10/17/01
 Anita Allen Coats v. NC Criminal Justice & Training Stds. Comm. 01 DOJ 0023 Morrison 09/07/01
 Mark J Smith v. NC Sheriffs' Educ. & Training Stds. Comm. 01 DOJ 0470 Gray 10/11/01
 Marcus O Clark v. NC Sheriffs' Educ. & Training Stds. Comm. 01 DOJ 0500 Gray 10/12/01
 James D. Panther v. NC Sheriffs' Educ. & Trng. Stds. Comm. 01 DOJ 0616 Wade 08/29/01
 Christina Hilliard Davis v. NC Criminal Justice & Trng. Stds. Comm. 01 DOJ 0650 Gray 09/28/01
 Gary C Daugherty v. NC Sheriffs' Educ. & Trng. Stds. Comm. 01 DOJ 1267 Chess 10/04/01

DEPARTMENT OF STATE TREASURER

Gwen A Lindsey v. Timothy S Bryan, State of NC, Dept. of State Treasurer, Retirement Systems 00 DST 0727 Mann 08/06/01
 Bruce E. Colvin v. Board of Trustees of the Local Governmental Employees' Retirement System 00 DST 0776 Gray 07/06/01 16:04 NCR 384

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Leahman Coday, Jr. v. NC DENR 99 EHR 1651 Wade 06/21/01
 Roger M Oxindine Jr. v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0438 Conner 08/17/01
 Thomas E Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0439 Conner 08/17/01
 Joe Fairlamb, Brenda Fairlamb v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0440 Conner 08/17/01
 Thomas M Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0441 Conner 08/17/01
 Paul Blythe, Lori Blythe v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0448 Conner 08/17/01
 Rusty Eller v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0449 Conner 08/17/01
 Lisa Oxidine v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0450 Conner 08/17/01
 Linda M Hickle v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0501 Conner 08/17/01
 Shannon M Scharm, Alex F Schram v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0508 Conner 08/17/01
 Jacqueline Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0509 Conner 08/17/01
 Gary Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0510 Conner 08/17/01
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 David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department) 00 EHR 1251¹ Gray 08/07/01 16:05 NCR 463
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 David T. Stephenson, Lot 66 v. NC DENR (Brunswick County Health Department) 00 EHR 1255¹ Gray 08/07/01 16:05 NCR 463

¹ Combined Cases

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CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
01 DOJ 1351

JAMES KEVIN HIGHTOWER,
Petitioner,

v.

**NORTH CAROLINA ALARM SYSTEMS LICENSING
BOARD,**
Respondent.

PROPOSAL FOR DECISION

This contested case was heard before Administrative Law Judge Beecher R. Gray on September 24, 2001 in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared pro se.

Respondent was represented by Attorney Bradford A. Williams.

WITNESSES

Petitioner - Petitioner testified on his own behalf; Barbara Hightower testified for Petitioner.

Respondent - Investigator Helen Parker testified for the Board; Special Deputy Attorney General John J. Aldridge, III also testified for the Board.

ISSUES

Whether grounds exist for Respondent to deny Petitioner's Alarm Registration Permit application for lack of good moral character or temperate habits.

BURDEN OF PROOF

Respondent has the burden of proving that Petitioner lacks good moral character or temperate habits. Petitioner may rebut Respondent's showing.

**STATUTES AND RULES APPLICABLE
TO THE CONTESTED CASE**

Official notice is taken of the following statutes and rules applicable to this case:

G.S. 74D-2;
74D-6(1);
74D-6(3);
74D-8;
74D-10(a)(4);
12 NCAC 11 §§ .0100, .0200, and .0300.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C.G.S. 74D-1 et seq. and is charged with the duty of licensing and registering individuals engaged in the burglar alarm systems profession, which includes alarm installers.
2. Petitioner applied for an Alarm Registration Permit.

3. Investigator Helen Parker (hereinafter "Investigator Parker") testified that an investigation into Petitioner's background was conducted pursuant to his Alarm Registration application.
4. Based upon Petitioner's criminal record, Investigator Parker determined that he received a conviction on December 17, 1987 for felony manufacturing a schedule VI controlled substance.
5. Investigator Parker further testified that Petitioner's criminal record contained a pardon of forgiveness issued by Governor James B. Hunt, Jr. on August 6, 2000 forgiving Petitioner's December 17, 1987 felony conviction for manufacturing a schedule VI controlled substance.
6. Respondent Board tendered Special Deputy Attorney General John J. Aldridge (hereinafter "Mr. Aldridge") as an expert witness on the issue of pardons and on the issue of whether an occupational licensing board with good moral character requirements for registration permit applicants can consider a pardoned conviction as evidence of an applicant's lack of good moral character or temperate habits.
7. The Court accepted Mr. Aldridge as an expert witness on the issue of pardons and on the issue of whether an occupational licensing board with good moral character requirements for registration permit applicants can consider a pardoned conviction as evidence of an applicant's lack of good moral character or temperate habits. The Court accepted Mr. Aldridge as an expert witness on the above-described issues because of his experience as an attorney with the Law Enforcement Liaison Section of the North Carolina Attorney General's Office where Mr. Aldridge has represented the Sheriffs' Education and Training Standards Commission, the Criminal Justice Education and Training Standards Commission, and the North Carolina Company Police Program, all of which require their applicants for certification to have good moral character.
8. In representing these law enforcement licensing commissions, Mr. Aldridge has encountered applicants for law enforcement certification who have pardoned convictions in their criminal records, and as a result Mr. Aldridge has conducted research into the issue of whether these law enforcement licensing commissions can consider pardoned convictions as evidence of an applicant's lack of good moral character. Mr. Aldridge has relied upon the North Carolina Constitution, North Carolina statutory law, North Carolina case law, attorney general opinions from the North Carolina Attorney General's Office, federal case law, and case law and attorney general opinions from other states to formulate his expert opinion on whether an occupational licensing board with good moral character requirements for registration permit applicants can consider a pardoned conviction as evidence of an applicant's lack of good moral character.
9. Mr. Aldridge testified that a governor of North Carolina can issue two types of pardons: a pardon of innocence and a pardon of forgiveness. A pardon of innocence acts to blot out the underlying criminal conviction as though the conviction never took place. A pardon of forgiveness acts to forgive the underlying criminal activity, while the conviction remains in the criminal record.
10. Since a pardon of innocence blots out the underlying conviction, a licensing commission such as the Respondent Board is barred from considering a conviction subject to a pardon of innocence as evidence of a registration applicant's lack of good moral character.
11. Mr. Aldridge, however, did testify that a licensing commission such as the Respondent Board can consider an applicant's criminal conviction that is subject to a pardon of forgiveness as evidence of his or her lack of good moral character because the pardon of forgiveness, while it forgives the penal consequences of an individual's criminal act(s), does not alter the fact that the individual engaged in criminal behavior.
12. Mr. Aldridge further testified that the Respondent Board, because it has the statutory authority to deny a registration application when the applicant lacks good moral character, could consider Petitioner's 1987 felony conviction for manufacturing a schedule VI controlled substance as evidence of his lack of good moral character, even though the conviction is subject to a pardon of forgiveness. The pardon of forgiveness does not blot out Petitioner's criminal behavior, and Respondent Board's controlling statute identifies convictions for violations of the state's Controlled Substances Act as prima facie evidence of a lack of good moral character.
13. Petitioner's mother, Barbara Hightower, testified on Petitioner's behalf. She admitted that Petitioner had been convicted in 1987 for manufacturing five marijuana plants. She further testified that, though Petitioner didn't sell the marijuana he manufactured, she assumed that he was using the drug.
14. At the time of Petitioner's arrest and conviction for manufacturing a schedule VI controlled substance, Barbara Hightower served as an Assistant Clerk of Superior Court for Caldwell County. She testified that Petitioner's conviction caused her and her family embarrassment.

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15. Barbara Hightower further testified that Petitioner, since 1987, has been free of any criminal charges other than minor traffic offenses. She characterized him as a changed man who dotes on his two teenage children and who is a good husband and son.
16. In his testimony, Petitioner admitted that, at the time of his 1987 felony conviction, he used marijuana on a daily basis. Petitioner also testified that he was using marijuana while working as a bail bondsman.
17. As a result of his felony drug conviction, Petitioner lost his job as a bail bondsman. Petitioner testified that, after the conviction, he changed his life. He quit doing drugs, he raised his two children with his wife, he coached little league baseball, and has been active in his church. He also testified that he has been free of any other criminal offenses, other than minor traffic violations, since 1987.
18. Petitioner admitted that, when he was younger, he fell into the wrong crowd, and that he has had to live with the consequences of a felony drug conviction ever since. He is sorry for his past behavior, and hopes that the Respondent Board can look beyond a single, fourteen-year old conviction.

CONCLUSIONS OF LAW

Pursuant to G.S. 74D-6, the Board may refuse to issue an Alarm Registration Permit for lack of good moral character or temperate habits.

Pursuant to G.S. 74D-6(3), a conviction for any crime involving the illegal manufacture of a controlled substance constitutes prima facie evidence that the applicant lacks good moral character or temperate habits.

Respondent presented prima facie evidence of Petitioner's lack of good moral character or temperate habits through the introduction of Petitioner's criminal record, which includes a felony conviction for the manufacture of a schedule VI controlled substance.

However, Petitioner has rebutted Respondent's prima facie case in that he has presented to the Court sufficient evidence to show that he is a man of good moral character who, for the fourteen years since his felony drug conviction, has quit using drugs, been free of any other criminal charges, and that he is a doting family man active in his church and in his community.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

The North Carolina Alarm Systems Licensing Board will make the final decision in this contested case. It is proposed that the Board **REVERSE** its initial decision to deny Petitioner's application for an Alarm Registration Permit, and that the Board issue Petitioner a registration permit subject to a probationary period of the Board's choosing during which the Petitioner must be free of any criminal convictions save minor traffic offenses.

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, N.C. 27699-6714, in accordance with G.S. 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to G.S. 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Alarm Systems Licensing Board.

This the 10th day of October, 2001.

Beecher R. Gray,
Administrative Law Judge