

NORTH CAROLINA

IN THIS ISSUE



REGISTER

Volume 16, Issue 12
Pages 1060 - 1270

December 17, 2001

This issue contains documents officially filed
through November 26, 2001.

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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
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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
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16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
Publication Schedule for January 2002 – December 2002

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	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/00/02	03/04/02	03/20/02	05/00/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/00/02	03/18/02	03/20/02	05/00/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/00/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/00/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
16:19	04/01/02	03/08/02	06/03/02	04/16/02	05/01/02	05/20/02	01/29/03	05/31/02	06/20/02	01/29/03	12/27/02
16:20	04/15/02	03/22/02	06/17/02	04/30/02	05/15/02	05/20/02	01/29/03	06/14/02	06/20/02	01/29/03	01/10/03
16:21	05/01/02	04/10/02	07/01/02	05/16/02	05/31/02	06/20/02	01/29/03	07/01/02	07/22/02	01/29/03	01/26/03
16:22	05/15/02	04/24/02	07/15/02	05/30/02	06/14/02	06/20/02	01/29/03	07/15/02	07/22/02	01/29/03	02/09/03
16:23	06/03/02	05/10/02	08/15/02	06/18/02	07/03/02	07/22/02	01/29/03	08/02/02	08/20/02	01/29/03	02/28/03
16:24	06/17/02	05/24/02	09/03/02	07/02/02	07/17/02	07/22/02	01/29/03	08/16/02	08/20/02	01/29/03	03/14/03
17:01	07/01/02	06/10/02	09/03/02	07/16/02	07/31/02	08/20/02	01/29/03	08/30/02	09/20/02	01/29/03	03/28/03
17:02	07/15/02	06/21/02	09/16/02	07/30/02	08/14/02	08/20/02	01/29/03	09/13/02	09/20/02	01/29/03	04/11/03
17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
17:04	08/15/02	07/25/02	10/15/02	08/30/02	09/16/02	09/20/02	01/29/03	10/14/02	10/21/02	01/29/03	05/12/03
17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
17:06	09/16/02	08/30/02	11/15/02	10/01/02	10/16/02	10/21/02	01/29/03	11/15/02	11/20/02	01/29/03	06/13/03
17:07	10/01/02	09/10/02	12/02/02	10/16/02	10/31/02	11/20/02	01/29/03	12/02/02	12/20/02	05/00/04	06/28/03
17:08	10/15/02	09/24/02	12/16/02	10/30/02	11/14/02	11/20/02	01/29/03	12/16/02	12/20/02	05/00/04	07/12/03
17:09	11/01/02	10/11/02	01/02/03	11/16/02	12/02/02	12/20/02	05/00/04	12/31/02	01/21/03	05/00/04	07/29/03
17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

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.

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

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

Penco Products, Inc.

Pursuant to N.C.G.S. 130A-310.34, Penco Products, Inc. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Hamilton, Martin County, North Carolina. The Property consists of 106.3 acres and is located at 1301 Penco Drive. The Property is bounded on the north by property owned by W.C. House, some of which is under cultivation and some of which is undeveloped (including some wooded property); on the south by property owned by Mary Charles Coppage, some of which is undeveloped and some of which is in residential use; on the east by the Roanoke River; and on the west by North Carolina Route 125. Environmental contamination exists on the Property in soil and groundwater. Penco Products, Inc. has committed itself to redevelop the Property as a metal products manufacturing facility whose products will include school lockers, shelving and storage containers. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Penco Products, Inc., which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) any proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Martin Memorial Library, located at 200 N. Smithwick Street, Williamston, N.C. 27892 by contacting Ann Phelps at (252) 792-7476, or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919)733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Head, Special Remediation Branch
Superfund Section
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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

Center, Raleigh, NC 27699-2201, (919) 662-4543, or by email to janice.fain@ncmail.net.

CHAPTER 03 – FACILITY SERVICES

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

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 03U .0102, .0302, .1700, .2400, .2700, .2800 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 110-88; 143B-168.3

Statement of the Subject Matter: These child care licensing rules pertain to the following areas: definitions, application for license, family child care homes, child care for sick children, criminal records checks, and voluntary rated license standards.

Reason for Proposed Action: The Child Care Commission is reviewing these Rules to consider whether any changes or updates are needed to child care requirements in the areas listed. In addition, in Section .2400, the Commission plans to adopt new licensing requirements that will be appropriate for child care facilities that care for children who are mildly sick.

Comment Procedures: Questions or written comments regarding this matter may be directed to Janice Fain, APA Coordinator, Division of Child Development, 2201 Mail Service

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

Notice of Rule-making Proceedings is hereby given by State Board of Education 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: 16 NCAC 06C .0311; 06G .0502. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 115C-12(9)a.; 115C-238.29G(b)

Statement of the Subject Matter: Temporary permit to teach; Charter Schools Advisory Committee

Reason for Proposed Action: These rule-making proceedings are initiated by the State Board of Education to make clarifying amendments to licensing policies for holders of temporary permits and to the scope of duties of the Charter Schools Advisory Committee.

Comment Procedures: Written comments may be submitted to Harry E. Wilson, State Board of Education, 301 N. Wilmington St., Raleigh, NC 27601-2825.

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 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Agriculture intends to adopt rules cited as 02 NCAC 39 .0101; 52B .0213, and amend the rules cited as 02 NCAC 09G .0101; 20B .0104; 38 .0701; 48A .1702-.1703; 52B .0212; 52C .0701. Notice of Rule-making Proceedings for 02 NCAC 09G .0101, 20B .0104, 39 .0101, 52B .0212-.0213, 52C .0701 were published in the Register on October 1, 2001. Notice of Rule-making Proceedings for 02 NCAC 38 .0701 was published in the Register on October 15, 2001. Notice of Rule-making Proceedings for 02 NCAC 48A .1702 - .1703 were published in the Register on February 1, 2001.

Proposed Effective Date: July 1, 2002

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than January 2, 2002, to David S. McLeod, Secretary, North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.*

Reason for Proposed Action:

02 NCAC 09G .0101 - Existing State law prohibits the sale of raw milk to consumers for human consumption. The proposed change is needed to prevent the sale or distribution of raw milk for other purposes, such as the manufacture of cheese, which may lead to human consumption of adulterated food products.

02 NCAC 20B .0104 - The price of an adult admission ticket to the State Fair has not changed since 1993. Operating costs and other expenses have increased, and additional revenues are needed to offset these costs. The change would become effective for the 2002 Fair.

02 NCAC 38 .0701 – The 2001 edition of the National Fire Protection Association Pamphlet 58 (NFPA 58) requires a written fire safety analysis for LP gas tanks of a certain size. Previously, no written document was required. The Department believes the requirement for a written document is unnecessary for most installations and proposes to modify the adoption by reference to provide for an alternative means of complying with the fire safety analysis requirement.

02 NCAC 39 .0101 - The National Organic Program rules adopted by USDA provide for cooperative agreements with states that have State Organic Programs that meet certain requirements set forth in the Federal rules. The North Carolina Department of Agriculture and Consumer Services believes it will be in the best interest of North Carolina organic producers, dealers and consumers to have the State involved in the implementation of the national organic standards.

02 NCAC 48A .1702-.1703 – Oriental Bittersweet is a non-native, invasive plant species which invades natural woodland

areas, particularly in western North Carolina, and interferes with hardwood regeneration. Other changes are technical corrections in the scientific names of certain noxious weeds.

02 NCAC 52B .0212 - .0213 - The State Veterinarian has determined that there is minimal risk of transmission of tuberculosis and brucellosis by camelids, and that the testing requirement constitutes an unnecessary burden to the importation of camelids, such as llamas. An official health certificate would continue to be required. The State Veterinarian has determined that current rules for importation and movement of cervidae are not adequate to prevent the spread of animal disease. Proposed changes would include stricter rules for importation; testing requirements for cervids that die in captivity; and inventory and record keeping requirements for cervid owners.

02 NCAC 52C .0701 - The State Veterinarian has determined that current rules for importation and movement of cervidae are not adequate to prevent the spread of animal disease. Proposed changes would include stricter rules for importation; testing requirements for cervids that die in captivity; and inventory and record keeping requirements for cervid owners.

Comment Procedures: Written comments may be submitted no later than January 16, 2002, to David S. McLeod, Secretary, North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

Fiscal Impact

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

CHAPTER 09 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09G - MILK AND MILK PRODUCTS

SECTION .0100 - PASTEURIZED MILK ORDINANCE

02 NCAC 09G .0101 ADOPTION BY REFERENCE

The following are adopted by reference, including subsequent amendments:

- (1) "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," U.S. Department of Agriculture, Agricultural Marketing Service. A farmstead shall be exempt from all mandatory milk testing except the mastitic milk test and the appearance and odor test. For the purposes of this Section, "farmstead" means a milk or milk product production facility that uses only milk from its own

animals in its product production and has no other source of milk.

- (2) "General Instructions for Performing Farm Inspections According to the USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, for Adoption by State Regulatory Agencies," U.S. Department of Agriculture, Agricultural Marketing Service.
- (3) "Grading and Inspection - General Specifications for Approved Dairy Plants and Standards for Grades of Dairy Products," 7 C.F.R. 58.
- (4) 15A NCAC 18A .1210, "Restrictions on Dispensing Raw Milk."

Copies of these materials are available at no cost from the Food and Drug Protection Division.

Authority G.S. 106-139; 106-267; 106-267.2.

CHAPTER 20 - THE NORTH CAROLINA STATE FAIR

SUBCHAPTER 20B - REGULATIONS OF THE STATE

- (d) Outside gate admission prices are as follows:
 - (1) adult/child, 13 years of age and over \$7.00
 - (2) child, 6 through 12 years of age \$2.00
 - (3) senior citizen, 65 and over Free
 - (4) child, under 6 years of age Free
- (e) Outside gate admission prices for advance ticket sales are as follows:
 - (1) adult/child, 13 years of age and over \$5.00
 - (2) child, 6 through 12 years of age \$1.00
 - (3) senior citizen, 65 and over Free
 - (4) child, under 6 years of age Free
 - (5) adult group sales purchasing a minimum of 40 tickets \$4.75

Authority G.S. 106-503.

CHAPTER 38 - STANDARDS DIVISION

SECTION .0700 - STANDARDS FOR STORAGE, HANDLING AND INSTALLATION OF LP GAS

02 NCAC 38 .0701 ADOPTION BY REFERENCE

The following are incorporated by reference, including subsequent amendments, as standards for storage, handling and installation of liquefied petroleum gas:

- (1) National Fire Protection Association, Pamphlet No. 58, "Storage and Handling of Liquefied Petroleum Gases," with the following additions and exceptions:
 - ~~(a) When two or more containers are manifolded to a single service, each container shall be considered independent of the other and all rules and regulations relating to a single container shall apply;~~
 - ~~(b)(a)~~ All cut-off valves and regulating equipment exposed to rain, sleet, or snow shall be protected against such elements either by design or by a hood;

FAIR

SECTION .0100 - GENERAL PROVISIONS

02 NCAC 20B .0104 ADMISSION; HOURS OF OPERATION

- (a) All persons entering the North Carolina State Fair grounds must pay the established admission fee, except persons holding worker's permits. One-time-only admissions may be issued to those persons who are employed by the fair or are asked to appear on the grounds by the fair management for a specific purpose, relative to the operation of the fair.
- (b) The gates of the North Carolina State Fair shall be open to visitors from 9:00 a.m. until midnight each day of the fair. Exhibit buildings shall be open from 9:00 a.m. to 9:45 p.m. daily.
- (c) The State Fair Manager may operate a pass-out system at one or more of the outside gates. Persons exiting through these gates may, upon request, have their hand or vehicle stamped for readmittance through the same gate without additional charge. Readmittance must occur before 10:00 p.m. on the same day as pass-out or the hand stamp shall not be honored.

- ~~(e)(b)~~ "Firm Foundation" as used in Chapter 3 of Pamphlet 58 means that the foundation material has a level top surface, rests on solid ground, is constructed of a masonry material or wood treated to prevent decay by moisture rot and will not settle, careen or deteriorate;
- ~~(d)(c)~~ No person shall use liquefied petroleum gas as a source of pressure in lieu of compressed air in spray guns or other pressure operated equipment;
- ~~(e)(d)~~ Piping, tubing or regulators shall be considered well supported when they are rigidly fastened in their intended position; ~~and~~
- ~~(f)(e)~~ At bulk storage installations, the bulkhead and the plant piping on the hose side of the bulkhead shall be designed and constructed so that an application of force from the hose side will not result in damage to the plant piping on the tank side of the bulkhead. In addition, the bulkhead shall incorporate a mechanical means to automatically close emergency

- (f) As an alternative to the requirement for a fire safety analysis (Section 3.10 of NFPA 58, 2001 Edition, or equivalent provisions in later editions), the owner, or his designee, of an LP-gas facility which utilizes individual storage containers in excess of 2,000 gallons water capacity, storage containers interconnected through the liquid withdrawal outlets of the containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers interconnected through the vapor withdrawal outlets of the containers with an aggregate capacity in excess of 6,000 gallons, shall, for new installations of containers of such capacity or for additions to an existing LP-gas facility which result in containers of such capacity, meet with fire officials for the jurisdiction in which the facility is located in order to:
- (i) review potential exposure to fire hazards to or from real property which is adjacent to such facility;
 - (ii) identify emergency access routes to such facility; and
 - (iii) review the equipment and emergency shut-down procedures for the facility.
- The owner of such facility or his designee shall document in writing the time, date and place of such meeting(s), the participants in the meeting, and the discussions at the meeting in order to provide a written record. This documentation shall be made available to the Department not later than 60 days after installation of the new or additional containers. Compliance with the availability requirement shall be met by having a copy of the documentation kept on site or at the owner's office and immediately available for review by NCDA&CS inspection personnel. This meeting, review, and documentation shall be repeated when NCDA&CS determines that the plant design has changed or that potential exposures have significantly changed;
- (g) As an alternative to the requirement for a fire safety analysis (Section 3.10 of NFPA 58, 2001 Edition, or equivalent provisions in later

editions), the owner, or his designee, of an LP-gas facility existing on July 1, 2001, which utilizes individual storage containers in excess of 2,000 gallons water capacity, storage containers interconnected through the liquid withdrawal outlets of the containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers interconnected through the vapor withdrawal outlets of the containers with an aggregate capacity in excess of 6,000 gallons shall meet with fire officials for the jurisdiction in which the facility is located in order to:

- (i) review potential exposure to fire hazards to or from real property which is adjacent to such facility;
- (ii) identify emergency access routes to such facility; and
- (iii) review the equipment and emergency shut-down procedures for the facility.

The owner of such facility or his designee shall document in writing the time, date and place of such meeting(s), the participants in the meeting, and the discussions at the meeting in order to provide a written record. This documentation shall be made available to the Department not later than July 1, 2004. Compliance with the availability requirement shall be met by having a copy of the documentation kept on site or at the owner's office and immediately available for review by NCDA&CS inspection personnel. This meeting, review, and documentation shall be repeated when NCDA&CS determines that the plant design has changed or that potential exposures have significantly changed. Compliance with Sub-item (1)(f) of this Rule for additions to an existing LP-gas facility shall be deemed to be in compliance with Sub-item (1)(g) of this Rule; and

- (h) An LP-gas facility which utilizes storage containers that are interconnected through the vapor withdrawal outlets of the containers only with an aggregate water capacity in excess of 4,000 gallons, but not in excess of 6,000 gallons, shall be exempt from the requirements of a fire safety analysis.

- (2) National Fire Protection Association, Pamphlet No. 54, "National Fuel Gas Code,"

- with the addition that underground service piping shall rise above ground immediately before entering a building.
- (3) A fire safety analysis as described in NFPA 58 may be prepared by the owner of an LP-Gas facility, or by an employee of such owner in the course of the employee's employment, and shall not be required to be prepared, approved or sealed by a professional engineer. This is in keeping with a formal interpretation (F.I. No.: 58-01-2) by the technical committee for Liquefied Petroleum Gases issued by the National Fire Protection Association on November 7, 2001, with an effective date of November 27, 2001. [Explanatory Note: The North Carolina Board of Examiners for Engineers and Surveyors regulates the practice of engineering. This Rule does not supercede the authority of that Board to determine what constitutes the practice of engineering and requires the involvement of a licensed Professional Engineer.]

Copies of Pamphlet No. 54 and Pamphlet No. 58 are available for inspection in the Office of the Director of the Standards ~~Division and Division.~~ They may be obtained at a cost of ~~twenty-four~~ thirty-three dollars and ~~forty~~ twenty-five cents (\$24.50) (\$33.25) each (November 2001 price), plus shipping, by contacting National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02269, 02269, by calling them at 800-344-3555, or by accessing them on the Internet at www.nfpacatalog.org. Copies may also be available through the North Carolina Propane Gas Association, 5112 Bur Oak Circle, Raleigh, NC 27612 or by calling them at 919-787-8485.

Authority G.S. 119-55; 150B-21.6.

CHAPTER 39 - STATE ORGANIC PROGRAM

SECTION .0100 - ORGANIC STANDARDS

02 NCAC 39 .0101 ADOPTION BY REFERENCE

Title 7, Part 205 of the Code of Federal Regulations, "National Organic Program," is hereby adopted by reference, including subsequent amendments. Copies of this document are available from the United States Government Printing Office, Washington, DC, at a cost of thirty-four dollars (\$34.00).

Authority G.S. 106-22.3.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .1700 - STATE NOXIOUS WEEDS

02 NCAC 48A .1702 NOXIOUS WEEDS

(a) Class A Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class A Noxious Weeds:

- (1) All weeds listed in 7 C.F.R. 360.200 which is

hereby incorporated by reference including subsequent amendments and editions. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twelve dollars (\$12.00);

- (2) Elodea, African -- *Lagarosiphon* spp. (all species);
- (3) Fern, Water -- *Salvinia* spp. (all except *S. rotundifolia*); *minima*;
- (4) Mile-a-Minute -- *Polygonum perfoliatum*;
- (5) Stonecrop, Swamp -- *Crassula helmsii*;
- (6) Water-chestnut -- *Trapa* spp.

(b) Class B Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class B Noxious Weeds:

- (1) Betony, Florida--*Stachys floridana* Shuttlew.;
- (2) Fieldcress, Yellow--*Rorippa sylvestris* (L.) Bess.;
- (3) Lythrum -- Any *Lythrum* species not native to North Carolina;
- (4) Puncturevine--*Tribulus terrestris* L.;
- (5) Thistle, Canada--*Cirsium arvense* (L.) Scop.;
- (6) Thistle, Musk--*Carduus nutans* L.;
- (7) Thistle, Plumeless--*Carduus acanthoides* L.;
- (8) Watermilfoil, Eurasian -- *Myriophyllum spicatum* L.;
- (9) Waterprimrose, Uruguay -- *Ludwigia uruguayensis* (Camb.) Hara. *hexapetala* (Hook & Arn.) Zardini, Gu & Raven.

(c) Class C Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class C Noxious Weeds: ~~none.~~ Bittersweet, Oriental -- *Celastrus orbiculatus* Thunb.

Authority G.S. 106-420.

02 NCAC 48A .1703 REGULATED AREAS

(a) Except as permitted in ~~2~~ 02 NCAC 48A .1705 and .1706, the following is prohibited:

- (1) The movement of Canada Thistle [*Cirsium arvense* (L.) Scop.] or any regulated article infested with Canada Thistle from the following counties is prohibited: Ashe, Avery, Haywood, Mitchell, Northampton, Yancey;
- (2) The movement of Class A A, B, or ~~B C~~ C noxious weeds or any regulated article infested with Class A A, B, or ~~B C~~ C noxious weeds into North Carolina is prohibited;
- (3) The movement of a Class A noxious weed or any regulated article infested with any Class A noxious weed is prohibited throughout the State;
- (4) The movement of Eurasian Watermilfoil (*Myriophyllum spicatum* L.) or any regulated article infested with Eurasian Watermilfoil from the following counties is prohibited: Halifax, Northampton, Perquimans, Tyrrell, Warren;
- (5) The movement of Florida Betony (*Stachys*

- floridana* Shuttlew.) or any regulated article infested with Florida Betony from the following counties is prohibited: Bladen, Brunswick, Cumberland, Forsyth, Hoke, New Hanover, Onslow, Wake;
- (6) The movement of Musk Thistle (*Carduus nutans* L.) or any regulated article infested with Musk Thistle from the following counties is prohibited: Buncombe, Cleveland, Chatham, Gaston, Henderson, Lincoln, Madison, Randolph, Rowan, Rutherford;
- (7) The movement of Plumeless Thistle (*Carduus acanthoides* L.) or any regulated article infested with Plumeless Thistle from the following counties is prohibited: Haywood, Jackson, Madison, Watauga;
- (8) The movement of Puncturevine (*Tribulus terrestris* L.) or any regulated article infested with Puncturevine from the following counties is prohibited: Durham, New Hanover;
- (9) The movement of any *Lythrum* species not native to North Carolina or any regulated article infested with any non-native *Lythrum* species from the following counties is prohibited: Forsyth, Watauga;
- (10) The movement of Uruguay Waterprimrose [*Ludwigia uruguayensis* (Camb.) ~~Hara~~] *hexapetala* (Hook & Arn.) Zardini, Gu & Raven] or any regulated article infested with Uruguay Waterprimrose from the following counties is prohibited: Bladen, Brunswick, Columbus, Durham, Granville, Hyde, New Hanover, Orange, Rowan, Wake, Warren;
- (11) The movement of Yellow Fieldcress [*Rorippa sylvestris* (L.) Bess.] or any regulated article infested with Yellow Fieldcress from the following county is prohibited: ~~Orange~~. Orange;
- (12) The sale or distribution of any Class A, B, or C noxious weed.

(b) Other regulated areas. The Commissioner may take appropriate action as authorized under G.S. 106-421 to designate as a regulated area any state or portion of a state in which ~~he has~~ there is reasonable cause to believe that a noxious weed exists, and there is an immediate need to prevent its introduction, spread or dissemination in North Carolina.

Authority G.S. 106-420; 106-421.

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

02 NCAC 52B .0212 IMPORTATION REQUIREMENTS: WILD ANIMALS

(a) A person shall obtain a permit from the State Veterinarian before importing any of the following animals into this State:

- (1) Skunk;

- (2) Fox;
- (3) Raccoon;
- (4) Ringtail;
- (5) Bobcat (includes Lynx and other North and South American felines as cougars, jaguars, etc.);
- (6) Coyote;
- (7) Marten;
- (8) Brushtail Possum (*Trichosurus vulpecula*).

(b) Permits for the importation into this State of any of the animals listed in Paragraph (a) of this Rule shall be issued only if the animal(s) will be used in a research institute, or for exhibition by a USDA licensed exhibitor, or organized entertainment as in zoos or circuses.

(c) Camelids, bison, and other bovidae other than domestic cattle may be imported into the State if accompanied by an official health certificate issued by an accredited veterinarian which states that:

- (1) all animals six months of age or older have tested negative for brucellosis within 30 days prior to importation; and
- (2) all animals six months of age or older have tested negative for tuberculosis within 60 days prior to importation; and
- (3) the herd of origin has had no brucellosis or tuberculosis diagnosed within the past 12 months.

The requirements of this Paragraph shall not apply to llamas, vicunas, alpacas, and guanacos from other states that are tuberculosis Accredited-Free and brucellosis-free, when accompanied by an official health certificate.

(d) Any species or hybrid of a mammal not otherwise covered in the Administrative Code that is found to exist in the wild or naturally occurs in the wild must be accompanied by a valid certificate of veterinary inspection.

Authority G.S. 106-317; 106-400.

02 NCAC 52B .0213 IMPORTATION REQUIREMENTS: CERVIDAE

All cervidae entering North Carolina must be accompanied by all of the following:

- (1) an official health certificate issued within 30 days prior to arrival;
- (2) individual identification, such as a bangle-type ear tag, with lettering two inches or greater that can be viewed from a distance and noted on the health certificate;
- (3) an importation permit issued by the North Carolina State Veterinarian. The request for an importation permit must be made by a licensed, accredited veterinarian and must be accompanied by a copy of the official health certificate and a copy of the captivity permit issued by the North Carolina Wildlife Resources Commission;
- (4) proof of a negative test for brucellosis for all animals six months of age or older within 60 days prior to arrival. The herd of origin must

- have had no diagnosis of brucellosis in the 12 months preceding shipment;
- (5) proof of a negative single cervical test for tuberculosis for animals six months of age or older conducted within 60 days prior to arrival if the animal originates from a tuberculosis accredited or qualified herd. If the animal is six months of age or older and originates from a herd of unknown status, two negative single cervical tests for tuberculosis will be required with the second being greater than 90 days from the initial test and within 60 days prior to arrival. If the animal is less than six months of age and from a herd of unknown status, one negative single cervical test will be required. The herd of origin and commingled susceptible species must have had no diagnosis of tuberculosis in the 36 months preceding shipment; and
- (6) one of the following statements must also appear on the health certificate:
- (A) "All cervidae on this certificate have been part of the herd of origin for at least one year or were natural additions to this herd from animals in the herd for at least one year. There has been no diagnosis, signs, or epidemiological evidence of Chronic Wasting Disease (CWD) in this herd for the past year;" or
- (B) "All cervidae on this certificate originate from a Chronic Wasting Disease (CWD) monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd for the past year."

Authority G.S. 106-307.5; 106-317; 106-400.

SUBCHAPTER 52C - CONTROL OF LIVESTOCK DISEASES: MISCELLANEOUS PROVISIONS

02 NCAC 52C .0701 INTRASTATE REQUIREMENTS: WILD ANIMALS

- (a) Cervidae which originate from herds containing cervidae only may be sold within North Carolina, if they test negative for tuberculosis within 60 days of change of ownership.
- (b) Cervidae which are commingled with domestic livestock may be sold within North Carolina provided that domestic cattle are tested annually, and all cervidae and bovidae other than domestic cattle and bison are tested negative for tuberculosis within 60 days prior to moving intrastate.
- (c) Cervidae owners shall maintain records showing:
- (1) date and source of new additions to the herd;
 - (2) date of deaths of cervidae and copy of laboratory report on cause of death; and
 - (3) date of sale or other disposition of any animal from a herd containing cervidae and the name

and address of person who received the animal.

These records shall be maintained by the cervidae owner for a period of five years and shall be made available for inspection and copying by an employee of the Veterinary Division.

(d) All captive cervidae of any species 18 months of age or older that die of any cause must be tested for Chronic Wasting Disease. The animal's head shall be submitted to a USDA-approved laboratory for testing. A copy of the laboratory report shall be sent to the State Veterinarian.

(e) Cervidae owners must comply with the "Uniform Methods & Rules: Tuberculosis Eradication in Cervidae," U.S. Department of Agriculture, which is hereby adopted by reference, including subsequent editions and amendments. A copy of this document may be obtained from the Veterinary Division at no charge.

Authority G.S. 106-317; 106-400.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Gasoline and Oil Inspection Board intends to amend the rule cited as 02 NCAC 42 .0401. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: February 6, 2002

Time: 10:00 a.m

Location: Donald W. Eaddy Building (Agronomics Building), 4300 Reedy Creek Rd., Raleigh, NC

Reason for Proposed Action: The North Carolina Energy Policy Council has requested the Board to consider repealing the requirement for fuel dispenser labeling for gasoline blended with up to 10 percent fuel grade ethanol. This would affect fuel dispenser labeling for gasoline/ethanol blends known as E10 (10 percent fuel grade ethanol blended with 90 percent gasoline).

Comment Procedures: Written comments may be submitted no later than February 6, 2002, to Winston Sutton, Director, Standards Division, NC Department of Agriculture and Consumer Services, P.O. Box 27647 SD, Raleigh, NC 27611.

Fiscal Impact

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

CHAPTER 42 - GASOLINE AND OIL INSPECTION BOARD

SECTION .0400 - DISPENSING DEVICES AND PUMPS

02 NCAC 42 .0401 LABELING OF DISPENSING DEVICES

(a) For the purpose of product identity, each dispensing device used in the retailing of any motor fuel shall be plainly and

conspicuously labeled with the following:

- (1) for gasoline, the registered brand name;
- (2) for diesel fuel, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type and/or grade of product;
- (3) for gasoline-oxygenate blends containing at least one percent by volume of methanol, the registered brand name plus an additional label which states that the blend "contains methanol." The label shall be composed of letters at least one inch in height, minimum one-eighth inch stroke, which contrast distinctly with the label background and shall be affixed to the dispenser front panel in a position clear and conspicuous from the driver's position. Exceptions to this Rule are:
 - (A) for fuels not covered by an EPA waiver, the additional label shall identify the percent by volume of ethanol and/or methanol in the blend.
 - (B) for fuels meeting the EPA's "Substantially Similar" rule and which do not contain methanol, no additional label is required.

(b) Each dispensing device used in the retailing of products other than motor fuel shall be plainly and conspicuously labeled as follows:

- (1) Kerosene shall be labeled as either 1-K Kerosene or 2-K Kerosene. In addition, each dispenser shall contain one of the following legends as appropriate:
 - (A) On 1-K kerosene dispensers, the legend "Suitable For Use In Unvented Heaters".
 - (B) On 2-K kerosene dispensers, the legend "May Not Be Suitable For Use In Unvented Heaters".
- (2) Other products shall be labeled with either the applicable generic name or a brand name which identifies the type of product.

(c) Whenever a motor fuel or other product provided for in this Section is offered for sale, sold, or delivered at retail in barrels, casks, cans, or other containers, each container shall be labeled in accordance with this Section and in accordance with 15 U.S.C. 1451 et. seq.

(d) If a dispenser is so designed that two or more hose/ nozzles which are connected to a common housing dispense more than one type or grade of product, means shall be provided to clearly indicate the identity of the product being dispensed from each hose/nozzle.

Authority G.S. 119-27.

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MHDDSAS intends to amend the rules cited

as 10 NCAC 18W .0101-.0104. Notice of Rule-making Proceedings was published in the Register on April 2, 2001.

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any interested person may request a public hearing by submitting a written request within 15 days after publication of this notice. The request should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, North Carolina, 27699-3012. Telephone No. 919-881-2446.*

Reason for Proposed Action: *The amended language is necessary to reflect current area authority names and the counties included in their catchment areas.*

Comment Procedures: *Written comments should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, North Carolina, 27699-3012. Telephone No. 919-881-2446. Comments must be received by January 16, 2002.*

Fiscal Impact

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

CHAPTER 18 – MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18W – DESIGNATION OF AREA MENTAL HEALTH: DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE AUTHORITIES AND CATCHMENT AREAS

SECTION .0100 – SCOPE AND DEFINITIONS

10 NCAC 18W .0101 SCOPE

(a) The purpose of the rules in this Subchapter is to designate area authorities and catchment areas for the delivery of community-based mental health, developmental disabilities and substance abuse services and to specify the process to be followed in requesting changes in catchment areas.

(b) These Rules apply to the 39 area mental health, developmental disabilities and substance abuse authorities.

Authority G.S. 122C-3; 122C-112; 122C-115; 122C-116; 122C-117; 122C-118; 122C-132; 143B-147.

10 NCAC 18W .0102 DEFINITIONS

As used in this Subchapter, the following terms have the meanings specified:

- (1) "Area Authority" means an area mental health, developmental disabilities and substance abuse authority which is the governing unit authorized by the Commission and delegated the authority to serve as the comprehensive

planning, budgeting, implementing, and monitoring group for community-based mental health, developmental disabilities and substance abuse programs. An area authority is a local political subdivision of the state except that a single-county area mental health, developmental disabilities and substance abuse authority shall be considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.

- (2) "Catchment Area" means a geographic portion of the state served by a specific area authority.

Authority G.S. 122C-3; 122C-112; 143B-147.

10 NCAC 18W .0103 AREA AUTHORITIES AND CATCHMENT AREAS

The designated area authorities and the counties which comprise the catchment area for each authority shall be as follows:

- (1) The Western Region consists of:
- (a) Smoky Mountain Area Authority serving a catchment area of Cherokee, Clay, Graham, Jackson, Haywood, Macon, and Swain Counties;
 - (b) Blue Ridge Area Authority serving a catchment area of Buncombe, Madison, Mitchell, and Yancey Counties;
 - (c) New River Authority serving a catchment area of Alleghany, Ashe, Avery, Watauga, and Wilkes Counties;
 - (d) Trend Area Authority serving a catchment area of Transylvania and Henderson Counties;
 - (e) Foothills Area Authority serving a catchment area of Caldwell, Burke, Alexander, and McDowell Counties;
 - (f) Rutherford-Polk Area Authority serving a catchment area of Rutherford and Polk Counties;
 - (g) Pathways Area Authority serving a catchment area of ~~Gaston~~Gaston, Cleveland and Lincoln Counties;
 - (h) Catawba Area Authority serving a catchment area of Catawba County;
 - (i) Mecklenburg Area Authority serving a catchment area of Mecklenburg County; and
 - (j) Piedmont Area Authority serving a catchment area of Stanly, ~~Cabarrus~~Cabarrus, Rowan and Union Counties.
- (2) The North Central Region consists of:
- (a) Crossroads Area Authority serving a catchment area of ~~Surry~~Surry, Iredell and Yadkin Counties;

- (b) CenterPoint Area Authority serving a catchment area of ~~Forsyth~~Forsyth, Davie and Stokes Counties;
- (c) Rockingham Area Authority serving a catchment area of Rockingham County;
- (d) Alamance-Caswell Area Authority serving a catchment area of Alamance and Caswell Counties;
- (e) Guilford Area Authority serving a catchment area of Guilford County;
- (f) Orange, Person, Chatham Area Authority serving a catchment area of Orange, Person and Chatham Counties;
- (g) Durham Area Authority serving a catchment area of Durham County; and
- (h) Vance, Granville, Franklin, Warren Area Authority serving a catchment area of Vance, Granville, Franklin, and Warren Counties.

- (3) The South Central Region consists of:
- (a) Davidson Area Authority serving a catchment area of Davidson County;
 - (b) Sandhills Area Authority serving a catchment area of Moore, Hoke, Richmond, Montgomery, and Anson Counties;
 - (c) Southeastern Regional Area Authority serving a catchment area of Robeson, Bladen, Scotland, and Columbus Counties;
 - (d) Cumberland Area Authority serving a catchment area of Cumberland County;
 - (e) Lee-Harnett Area Authority serving a catchment area of Lee and Harnett Counties;
 - (f) Johnston Area Authority serving a catchment area of Johnston County;
 - (g) Wake Area Authority serving a catchment area of Wake County; and
 - (h) Randolph Area Authority serving a catchment area of Randolph County.
- (4) The Eastern Region consists of:
- (a) Southeastern Area Authority serving a catchment area of New Hanover, Brunswick, and Pender Counties;
 - (b) Onslow Area Authority serving a catchment area of Onslow County;
 - (c) Wayne Area Authority serving a catchment area of Wayne County;
 - (d) Wilson-Greene Area Authority serving a catchment area of Wilson and Greene Counties;
 - (e) Edgecombe-Nash Area Authority serving a catchment area of Edgecombe and Nash Counties;
 - (f) Riverstone Area Authority serving a catchment area of Halifax County;

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- (g) Neuse Area Authority serving a catchment area of Craven, Jones, Pamlico, and Carteret Counties;
- (h) Lenoir Area Authority serving a catchment area of Lenoir County;
- (i) Pitt Area Authority serving a catchment area of Pitt County;
- (j) Roanoke-Chowan Area Authority serving a catchment area of Hertford, Bertie, Gates, and Northampton Counties;
- (k) Tideland Area Authority serving a catchment area of Beaufort, Washington, Tyrrell, Hyde, and Martin Counties;
- (l) Albemarle Area Authority serving a catchment area of Pasquotank, Chowan, Perquimans, Camden, Dare, and Currituck Counties; and
- (m) Duplin-Sampson Area Authority serving a catchment area of Duplin and Sampson Counties.

Authority G.S. 122C-3; 122C-112; 143B-147.

10 NCAC 18W .0104 CHANGE OF CATCHMENT AREAS

(a) Any catchment area designated after July 1, 1984 shall have a population of at least 75,000 and no more than 200,000.

(b) Any request for designation as a catchment area shall be submitted in a written petition to: Chairman, Commission for Mental Health, Developmental Disabilities and Substance Abuse Services, c/o Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N. C. 27611. The petition shall meet the following requirements:

- (1) The petition shall be submitted by the board or boards of county commissioners of the proposed catchment area.
- (2) The petition shall contain the written concurrence of the present area authority and that of the Board of commissioners of each county of the present catchment area.
- (3) The petition shall contain documentation that the proposed catchment area has the capacity to provide comprehensive mental health, developmental disabilities and substance abuse services as required by the rules of the Commission and the Department.
- (4) The petition shall contain documentation that comprehensive services can be provided in the proposed catchment area at no additional cost to the state.

Authority G.S. 122C-3; 122C-112; 143B-147.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rule cited

as 10 NCAC 30 .0218. Notice of Rule-making Proceedings was published in the Register on July 2, 2001.

Proposed Effective Date: July 17, 2002

Public Hearing:

Date: February 14, 2002

Time: 10:00 a.m.

Location: Albemarle Building, Room 832, 325 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: Food and Nutrition of the United States Department of Agriculture amended 7 CFR part 273.8 as a result of Public Law 106-387. This regulation includes a provision that allows states to add their Temporary Assistance to Needy Families (TANF) policy to existing Food Stamp regulations in determining vehicles that must be considered in the household's resources. Currently, federal Food Stamp regulations require evaluation of each vehicle to determine its use and licensure status, followed by a determination of each vehicle's value using a complicated set of instructions to assess equity value or fair market value and count as a resource the greater of the two. The TANF policy excludes from resources one vehicle for each adult household member. Equity value of any other vehicles is counted in resources. With the adoption of this Rule, Federal Food Stamp regulations regarding excluded vehicles will continue to be utilized in addition to the TANF exclusion. The Division of Social Services proposes to adopt this Rule to encourage and promote participation in the Food Stamp Program by families for whom the value of one or more vehicles results in ineligibility under current federal regulations. Access to Food Stamp benefits for low income families that have not been traditionally eligible will assist them in meeting the nutritional needs of their families.

Comment Procedures: Anyone wishing to comment should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919/733-3055. Verbal comments will be heard during the public hearing. Written comments must be received by Ms. Ransome no later than 10:00 a.m., February 14, 2002.

Fiscal Impact

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

CHAPTER 30 – FOOD ASSISTANCE

SECTION .0200 - MANUAL

10 NCAC 30 .0218 VEHICLE DETERMINATIONS

The county department of social services shall adhere to the policy that provides greater benefit to the recipient when determining vehicle value to be considered in a household's resources:

- (1) the Food Stamp Act, Section 5(g)(2)(C); or
- (2) the Temporary Assistance to Needy Families (TANF) State Plan.

A copy of these documents may be obtained by contacting the State Division of Social Services, Economic Independence Section, 2420 Mail Service Center, Raleigh, North Carolina 27699-2420.

Authority G.S. 108A-51; 143B-153; H.R.4461; C.F.R 273.8.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10 NCAC 35E .0303; 42E .0901, .1103; 42Z .0502, .0804. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 14, 2002

Time: 10:00 a.m.

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

Reason for Proposed Action: S.L. 2001-90 amended G.S. 131D-6 making the provision of transportation an optional service for adult day care programs rather than a required service. These Rules are being proposed for amendment to be consistent with this change in the General Statute.

Comment Procedures: Anyone who wishes to comment may do so by contacting Ms. Shannon Crane, Division of Aging, 2101 Mail Service Center, Raleigh, NC 27699-2101; (919) 733-0440. Verbal comments will be heard during the public hearing. Written comments must be received by Ms. Crane not later than February 14, 2002.

Fiscal Impact

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

CHAPTER 35 – FAMILY SERVICES

SUBCHAPTER 35E - SOCIAL SERVICES BLOCK GRANT (TITLE XX)

SECTION .0300 – SERVICE DEFINITIONS

10 NCAC 35E .0303 DAY CARE SERVICES FOR ADULTS

(a) Primary Service. Day care services for adults is the provision of an organized program of services during the day in a community group setting for the purpose of supporting adults' personal independence, and promoting their social, physical, and emotional well-being. Services must include a variety of program activities designed to meet the individual needs and interests of the participants, and referral to and assistance in using appropriate community resources. Also included are medical examinations required for individual participants for

admission to day care and periodically thereafter when not otherwise available without cost, and food and food services to provide a nutritional meal and snacks as appropriate to the program. Services must be provided in a home or center certified to meet state standards for such programs. Services include recruitment, study and development of adult day care programs, evaluation and period re-evaluation to determine if the programs meet the needs of the individuals they serve, and consultation and technical assistance to help day care programs expand and improve the quality of care provided. Transportation to and from the service facility is an optional service that may be provided by adult day care programs.

(b) Components. None.

(c) Resource Items. None.

(d) Target Population. Adults who because of age, disability or handicap need the service to enable them to remain in or return to their own homes. Within the target population, eligible clients shall be provided day care services for adults in the following order of priority:

- (1) adults who require complete, full-time daytime supervision in order to live in their own home or prevent impending placement in substitute care (e.g. nursing home, domiciliary home), and adults who need the service as part of a protective services plan;
- (2) adults who need help for themselves with activities of daily living or support for their caregivers in order to maintain themselves in their own homes or both;
- (3) adults who need intervention in the form of enrichment and opportunities for social activities in order to prevent deterioration that would lead to placement in group care;
- (4) individuals who need time-limited support in making the transition from independent living to group care, or individuals who need time-limited support in making the transition from group care to independent living.

Authority G.S. 143B-153.

CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42E - ADULT DAY CARE STANDARDS FOR CERTIFICATION

SECTION .0900 - ADMINISTRATION

10 NCAC 42E .0901 GOVERNING BODY

(a) Responsibility for sound management rests with the governing body of the day care program. In a private for-profit program, responsibility for management rests with the owner or board of directors; in a private, non-profit program, with the board of directors; in a public agency, with the board of that agency.

(b) The governing body of a day care center shall establish and maintain sound management procedures, including:

- (1) approval of organizational structure;
- (2) adoption of an annual budget;
- (3) regular review of financial status, making sure that the program is under sound fiscal

management; This includes an annual budget, monthly accounts of income and expenditures to reflect against the projected budget, and an annual audit;

- (4) appointment of the program director who may delegate responsibility for conduct of specific programmatic and administrative activities in accordance with approved policies;

- (5) establishment of written policies regarding operation, including;

(A) program policy statement outlining program goals; enrollment criteria and procedures; hours of operation; types of services provided, including transportation if offered; rates and payments; medications; and any other information considered appropriate to include in this document; the policy statement must be designed so copies can be given to interested parties who request information about the day care program;

(B) personnel policies;

(C) any other policies deemed necessary, such as agreements with other agencies and organizations;

(D) all policies affecting clients shall be written in the most direct and understandable language.

(c) The operator of a day care home shall establish and maintain sound operating procedures, including the following:

- (1) develop an annual budget;
- (2) maintain monthly accounts of income and expenditures;

- (3) establishment of written policies regarding operation, including:

(A) program policy statement outlining program goals; enrollment criteria and procedures; hours of operation; types of services provided, including transportation if offered; rates and payments; medications; and any other information considered appropriate to include in this document; the policy statement must be designed so copies can be given to interested parties who request information about the day care program;

(B) personnel policies;

(C) any other policies deemed necessary, such as agreements with other agencies and organizations;

(D) all policies affecting clients shall be written in the most direct and understandable language.

Authority G.S. 143B-153.

SECTION .1100 - PROGRAM OPERATION

10 NCAC 42E .1103 TRANSPORTATION

(a) When the day care program provides transportation, the following requirements must be met to ensure the health and safety of the participants:

(1) Each person transported must have a seat in the vehicle.

(2) Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop.

(3) Vehicles used to transport participants shall be equipped with seatbelts. Participants shall be instructed to use seatbelts while being transported.

(b) It is desired that participants use public transportation, if available. Relatives and other responsible parties should be encouraged to provide regular transportation, if possible.

Authority G.S. 143B-153.

SUBCHAPTER 42Z - ADULT DAY HEALTH STANDARDS FOR CERTIFICATION

SECTION .0500 - INTRODUCTION AND DEFINITIONS

10 NCAC 42Z .0502 DEFINITIONS

(a) Adult day health services is the provision of an organized program of services during the day in a community group setting for the purpose of supporting an adult's personal independence, and promoting his social, physical, and emotional well-being. Services must include health care services as defined in Rule .0803(a) of this Subchapter and a variety of program activities designed to meet the individual needs and interests of the participants, and referral to and assistance in using appropriate community resources. Also included are food and food services to provide a nutritional meal and snacks as appropriate to the program. Transportation to and from the service facility is an optional service that may be provided by the day health program.

(b) The community group setting is:

(1) a day health center, which is a program operated in a structure other than a single family dwelling; or

(2) a day health home, which is a program operated in a single family dwelling limited to two to five adults; or

(3) a day health program in a multi-use facility, which is a day health center established in a building which is used at the same time for other activities; or

(4) a combination program, which is a program offering both adult day care and adult day health services.

(c) In addition to (a) and (b) of this Rule, the definitions of terms set forth in 10 NCAC 42E .0800 shall apply.

Authority G.S. 131D-6.

SECTION .0800 – PROGRAM OPERATION

10 NCAC 42Z .0804 TRANSPORTATION

(a) When the day health program provides transportation, the following requirements must be met to ensure the health and safety of the participants:

- (1) Each person transported must have a seat in the vehicle;
- (2) Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop;
- (3) Vehicles used to transport participants shall be equipped with seatbelts. Participants shall be instructed to use seatbelts while being transported.

(b) It is desired that participants use public transportation, if available. Relatives and other responsible parties shall be encouraged to provide transportation if possible.

Authority G.S. 131D-6.

TITLE 15A – ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02D .1210 and amend the rules cited as 15A NCAC 02D .0504, .0538, .0927, .0932 .1201-.1206, .1208; 02Q .0104, .0202, .0702. Notice of Rule-making Proceedings was published in the Register on February 15, 1999 for 15A NCAC 02D .0927, .0932; June 15, 2001 for 15A NCAC 02D 0504, .0538, .1201-.1206, .1208, .1210; 02Q .0104, .0202, .0702.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 7, 2002

Time: 7:00 p.m.

Location: Division of Air Quality Training Room, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC

Reason for Proposed Action:

15A NCAC 02D .0504, .0538 – These Rules are proposed for amendment to correct references.

15A NCAC 02D .0927, .0932 – These Rules are proposed to be amended to require truck tank owners or operators to file a copy of the truck tank leak tight certification with the terminal where the tank is loaded and to maintain a copy of the certification on each truck tank.

15A NCAC 02D .1201-.1206, .1208 – These Rules are proposed to be amended to incorporate recent federal requirements for small municipal waste combustors, to incorporate General Assembly modifications to the compliance date for municipal waste combustors, make cross reference corrections, and insert a missing word.

15A NCAC 02D .1205 - This Rule will also be considered for adoption as a temporary rule at the February 2002 Environmental Management Commission meeting.

15A NCAC 02D .1210 – This Rule is proposed to adopt recent federal requirements for existing commercial and industrial solid waste incinerators.

15A NCAC 02Q .0104 – This Rule is proposed for amendment to correct a mailing address.

15A NCAC 02Q .0202 - This Rule is proposed to be amended to revise the Title V fee definition to include landfills and hospital,

medical, and infectious waste incinerators designated as Title V sources by recent EPA regulations.

15A NCAC 02Q .0702 – This Rule is proposed for amendment to clarify that activities exempted from toxics permitting and not included in modeling demonstrations are not to be included in compliance determination and to correct a cross reference.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until January 16, 2002, to receive additional written statements. To be included, the statement must be received by the Division by January 16, 2002. Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, (919) 733-1489 phone, (919) 715-7476 fax, thom.allen@ncmail.net.

Fiscal Impact

- | | | |
|-------------------------------------|-----------------------------------|--|
| <input type="checkbox"/> | State | |
| <input checked="" type="checkbox"/> | Local | 15A NCAC 02Q .0202 |
| <input type="checkbox"/> | Substantive (>\$5,000,000) | |
| <input checked="" type="checkbox"/> | None | 15A NCAC 02D .0504, .0538, .0927, .0932, .1201-.1206, .1208, .1210; 02Q .0104, .0702 |

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0504 PARTICULATES FROM WOOD BURNING INDIRECT HEAT EXCHANGERS

(a) For the purpose of this Rule the following definitions shall apply:

- (1) "Functionally dependent" means that structures, buildings or equipment are interconnected through common process streams, supply lines, flues, or stacks.
- (2) "Indirect heat exchanger" means any equipment used for the alteration of the temperature of one fluid by the use of another fluid in which the two fluids are separated by an impervious surface such that there is no mixing of the two fluids.
- (3) "Plant site" means any single or collection of structures, buildings, facilities, equipment, installations, or operations which:
 - (A) are located on one or more adjacent properties,
 - (B) are under common legal control, and
 - (C) are functionally dependent in their operations.

(b) The definition contained in Subparagraph (a)(3) of this Rule does not affect the calculation of the allowable emission rate of any indirect heat exchanger permitted prior to April 1, 1999.

PROPOSED RULES

(c) Emissions of particulate matter from the combustion of wood shall not exceed:

Maximum Heat Input In Million Btu/Hour	Allowable Emission Limit For Particulate Matter In Lb/Million Btu
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Up to and Including 10	0.70
100	0.41
1,000	0.25
10,000 and Greater	0.15

For a heat input between any two consecutive heat inputs stated in the preceding table, the allowable emissions of particulate matter shall be calculated by the equation $E = 1.1698 \text{ times } Q$ to the -0.2230 power. E = allowable emission limit for particulate matter in lb/million Btu. Q = Maximum heat input in million Btu/hour.

(d) This Rule applies to installations in which wood is burned for the primary purpose of producing heat or power by indirect heat transfer.

(e) For the purpose of this Rule, the heat content of wood shall be 8,000 Btu per pound (dry-weight basis). The total of maximum heat inputs of all wood burning indirect heat exchangers at a plant site in operation, under construction, or with a permit shall be used to determine the allowable emission limit of a wood burning indirect heat exchanger. Wood burning indirect heat exchangers constructed or permitted after February 1, 1983, shall not change the allowable emission limit of any wood burning indirect heat exchanger whose allowable emission limit has previously been set.

(f) The emission limit for fuel burning equipment that burns both wood and other fuels in combination or for wood and other fuel burning equipment that is operated such that emissions are measured on a combination basis shall be calculated by the procedure described in Paragraph (f) of Rule .0503 of this Section.

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

15A NCAC 02D .0538 CONTROL OF ETHYLENE OXIDE EMISSIONS

(a) For purposes of this Rule, "medical devices" means instruments, apparatus, implements, machines, implants, in vitro reagents, contrivances, or other similar or related articles including their components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or to affect the structure or any function of the body of man or other animals.

(b) This Rule applies to emissions of ethylene oxide resulting from use as a sterilant in:

- (1) the production and subsequent storage of medical devices; or
- (2) the packaging and subsequent storage of medical devices for sale;

from the processes described in Paragraph (d) of this Rule for which construction of facilities began after August 31, 1992.

(c) This Rule does not apply to hospital or medical facilities.

(d) Facilities subject to this Rule shall comply with the following standards:

- (1) For sterilization chamber evacuation, a closed loop liquid ring vacuum pump, or equipment

demonstrated to be as effective at reducing emissions of ethylene oxide shall be used;

(2) For sterilizer exhaust, a reduction in uncontrolled emissions of ethylene oxide of at least 99.8 percent by weight shall be achieved;

(3) For sterilizer unload and backdraft valve exhaust, a reduction in uncontrolled emissions of ethylene oxide of at least 99 percent by weight shall be achieved;

(4) Sterilized product ethylene oxide residual shall be reduced by:

(A) a heated degassing room to aerate the products after removal from the sterilization chamber; the temperature of the degassing room shall be maintained at a minimum of 95 degrees Fahrenheit during the degassing cycle, and product hold time in the aeration room shall be at least 24 hours; or

(B) a process demonstrated to be as effective as Part (d)(4)(A) of this Rule.

(5) Emissions of ethylene oxide from the degassing area (or equivalent process) shall be vented to a control device capable of reducing uncontrolled ethylene oxide emissions by at least 99 percent by weight. The product aeration room and the product transfer area shall be maintained under a negative pressure.

(e) Before installation of the controls required by Paragraph (d) of this Rule, and annually thereafter, a written description of waste reduction, elimination, or recycling plan shall be submitted [as specified in G.S. 143-215.108(g)] to determine if ethylene oxide use can be reduced or eliminated through alternative sterilization methods or process modifications.

(f) The owner or operator of the facility shall conduct a performance test to verify initial efficiency of the control devices. The owner or operator shall maintain temperature records to demonstrate proper operation of the degassing room. Such records shall be retained for a period of at least two calendar years at all times and shall be made available for inspection by Division personnel.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5); 143-215.108(c).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

15A NCAC 02D .0927 BULK GASOLINE TERMINALS

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Bulk gasoline terminal" means:

- (A) breakout tanks of an interstate oil pipeline facility; or
 - (B) a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
 - (2) "Breakout tank" means a tank used to:
 - (A) relieve surges in a hazardous liquid pipeline system, or
 - (B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.
 - (3) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.
 - (4) "Contact deck" means a deck in an internal floating roof tank that rises and falls with the liquid level and floats in direct contact with the liquid surface.
- (b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or trailer compartments.
- (c) Gasoline shall not be loaded into any tank trucks or trailers from any bulk gasoline terminal unless:
- (1) The bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding 35 milligrams per liter. The owner or operator shall obtain from the manufacturer and maintain in his records a pre-installation certification stating the vapor control efficiency of the system in use;
 - (2) Displaced vapors and gases are vented only to the vapor control system or to a flare;
 - (3) A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and
 - (4) All loading and vapor lines are equipped with fittings that make vapor-tight connections and that are automatically and immediately closed upon disconnection.
- (d) Sources regulated by Paragraph (b) of this Rule shall not:
- (1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation, or
 - (2) allow the pressure in the vapor collection system to exceed the tank truck or trailer pressure relief settings.
- (e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or by December 1, 2002, whichever occurs first.
- (f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome, at the next time that the tank is taken out of service or by December 1, 2002, whichever occurs first.
- (g) The following equipment shall be required on all tanks storing gasoline at a bulk gasoline terminal:
- (1) rim-mounted secondary seals on all external and internal floating roof tanks;
 - (2) gaskets on deck fittings; and
 - (3) floats in the slotted guide poles with a gasket around the cover of the poles.
- (h) Decks shall be required on all above ground tanks with a capacity greater than 19,800 gallons storing gasoline at a bulk gasoline terminal. All decks installed after June 30, 1998 shall comply with the following requirements:
- (1) deck seams shall be welded, bolted or riveted; and
 - (2) seams on bolted contact decks and on riveted contact decks shall be gasketed.
- (i) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:
- (1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and
 - (2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter,
- the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved from compliance with this Rule, in the ratio of at least 1.3 to 1.
- (j) The owner or operators of a bulk gasoline terminal that has received an air permit before December 1, 1992, to emit toxic air pollutants under 15A NCAC 02Q .0700 to comply with Section .1100 of this Subchapter shall continue to follow all terms and conditions of the permit issued under 15A NCAC 02Q .0700 and to bring the terminal into compliance with Section .1100 of this Subchapter according to the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (i) of this Rule.
- (k) Within one year after December 1, 1996, the Director shall determine the incremental ambient benzene levels at the fence line of any bulk gasoline terminal cluster resulting from benzene emissions from such cluster and shall report his findings to the Commission.
- (l) The owner or operator of a bulk gasoline terminal shall not load, or allow to be loaded, gasoline into any truck tank or trailer unless the truck tank or trailer has been certified leak tight according to Rule .0932 of this Section within the last 12 months.
- (m) The owner or operator of a bulk gasoline terminal shall have on file at the terminal a copy of the certification test conducted according to Rule .0932 of this Section for each gasoline tank truck loaded at the terminal.

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

15A NCAC 02D .0932 GASOLINE TRUCK TANKS AND VAPOR COLLECTION SYSTEMS

(a) For the purposes of this Rule, the following definitions apply:

- (1) "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.
- (2) "Bulk gasoline plant" means a gasoline storage and distribution facility that has an average daily throughput of less than 20,000 gallons of gasoline and usually receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.
- (3) "Bulk gasoline terminal" means a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of no less than 20,000 gallons of gasoline.
- (4) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 psia or greater.
- (5) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.
- (6) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.
- (7) "Truck tank" means the storage vessels of trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities and gasoline service stations.
- (8) "Truck tank vapor collection equipment" means any piping, hoses, and devices on the truck tank used to collect and route gasoline vapors in the tank to or from the bulk gasoline terminal, bulk gasoline plant, gasoline dispensing facility or gasoline service station vapor control system or vapor balance system.
- (9) "Vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.
- (10) "Vapor collection system" means a vapor balance system or any other system used to collect and control emissions of volatile organic compounds.

(b) This Rule applies to gasoline truck tanks equipped for vapor collection and to vapor control systems at bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities,

and gasoline service stations equipped with vapor balance or vapor control systems.

(c) Gasoline Truck Tanks

- (1) Gasoline truck tanks and their vapor collection systems shall be tested annually. The test procedure that shall be used is described in Rules .0940 and .0941 of this Section, and is according to Rule .0912 of this Section. The gasoline truck tank shall not be used if it sustains a pressure change greater than 3.0 inches of water in five minutes when pressurized to a gauge pressure of 18 inches of water or when evacuated to a gauge pressure of 6.0 inches of water.
- (2) Each gasoline truck tank that has been certified leak tight, according to Subparagraph (1) of this Paragraph shall display a sticker near the Department of Transportation certification plate required by 49 CFR 178.340-10b. This sticker shall show the identification number of the tank and the date that the tank last passed the pressure and vacuum test.
- (3) There shall be no liquid leaks from any gasoline truck tank.
- (4) Any truck tank with a leak equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section, shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the tank has been certified to be leak tight according to Subparagraph (1) of this Paragraph.

(d) Vapor Collection System

- (1) The vapor collection system and vapor control system shall be designed and operated to prevent gauge pressure in the truck tank from exceeding 18 inches of water and to prevent a vacuum of greater than six inches of water.
- (2) During loading and unloading operations there shall be:
 - (A) no vapor leakage from the vapor collection system such that a reading equal to or greater than 100 percent of the lower explosive limit at one inch around the perimeter of each potential leak source as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section; and
 - (B) no liquid leaks.
- (3) If a leak is discovered that exceeds the limit in Part (2)(A) of this Paragraph, the vapor collection system or vapor control system (and therefore the source) shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the system has been retested and found to comply with Part (2)(A) of this Paragraph.

- (4) The owner or operator of a vapor collection system at a bulk gasoline plant or a bulk gasoline terminal shall monitor, according to Rule .0912 and .0940 of this Section, the vapor collection system at least once per year. If after two complete annual checks no more than 10 leaks are found, the frequency of monitoring may be decreased with the approval of the Director. If more than 20 leaks are found, the Director may require that the frequency of monitoring be increased.

(e) The owner or operator of a source subject to this Rule shall maintain records of all certification testing and repairs. The records shall identify the gasoline truck tank, vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records of certification tests shall include:

- (1) the gasoline truck tank identification number;
- (2) the initial test pressure and the time of the reading;
- (3) the final test pressure and the time of the reading;
- (4) the initial test vacuum and the time of reading;
- (5) the final test vacuum and the time of the reading; and
- (6) the date and location of the tests.

A copy of the most recent certification test shall be kept with the truck tank. The owner or operator of the truck tank shall also file a copy of the most recent certification test with each bulk gasoline terminal that loads the truck tank. The records shall be maintained for at least two years after the date of the testing or repair, and copies of such records shall be made available within a reasonable time to the Director upon written request.

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

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

15A NCAC 02D .1201 PURPOSE AND SCOPE

(a) This Section sets forth rules for the control of the emissions of air pollutants from incinerators.

(b) The rules in this Section apply to all types of incinerators as defined by 15A NCAC 02D .0101(20), including incinerators with heat recovery and industrial incinerators.

(c) The rules in this Section do not apply to:

- (1) afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;
- (2) any boilers or industrial furnaces that burn waste as a fuel, except hazardous waste as defined in 40 CFR 260.10;
- (3) air curtain burners, which shall comply with Section .1900 of this Subchapter; or
- (4) incinerators used to dispose of dead animals or poultry that meet the following requirements:
 - (A) the incinerator is located on a farm and is owned and operated by the farm owner or by the farm operator;

(B) the incinerator is used solely to dispose of animals or poultry originating on the farm where the incinerator is located;

(C) the incinerator is not charged at a rate that exceeds its design capacity; and

(D) the incinerator complies with Rule .0521 (visible emissions) and .1806 (odorous emissions) of this Subchapter.

(d) If an incinerator can be defined as being more than one type of incinerator, then the following order shall be used to determine the standards and requirements to apply:

- (1) hazardous waste incinerators;
- (2) sewage sludge incinerators;
- (3) sludge incinerators;
- (4) municipal waste combustors;
- (5) hospital, medical, or infectious waste incinerators (HMIWIs);
- (6) commercial and industrial solid waste incinerators;
- (7) conical incinerators;
- (8) crematory incinerators; and
- (9) other incinerators.

(e) In addition to any permit that may be required under 15A NCAC 02Q, Air Quality Permits Procedures, a permit may be required by the Division of Solid Waste Management.

(f) Referenced document SW-846 "Test Methods for Evaluating Solid Waste," Third Edition, cited by Rules in this Section is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the North Carolina Department of Environment and Natural Resources Library located at 512 North Salisbury Street, Raleigh, NC 27603. Copies of this document may be obtained through the US Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or by calling (202) 783-3238. The cost of this document is three hundred nineteen dollars (\$319.00).

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(1), (3), (4), (5).

15A NCAC 02D .1202 DEFINITIONS

(a) For the purposes 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 shall apply. If a term in this Rule is also defined at 15A NCAC 02D .0101, then the definition in this Rule controls.

- (1) "Air curtain burner" or "air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floors. (Conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors are not air curtain burners.)

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| <p>(2) "Class I municipal waste combustor" means a small municipal waste combustor located at a municipal waste combustion plant with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste.</p> <p>(3) "Commercial and industrial solid waste incinerator" (CISWI) or "commercial and industrial solid waste incineration unit" means any combustion device that combusts commercial and industrial waste except air pollution control devices.</p> <p>(4) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air).</p> <p>(5) "Co-fired combustor (as defined in 40 CFR Part 60, Subpart Ec)" means a unit combusting hospital, medical, or infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital, medical, or infectious waste as measured on a calendar quarter basis. For the purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital, medical, or infectious waste combusted.</p> <p>(6) "Crematory incinerator" means any incinerator located at a crematory regulated under 21 NCAC 34C that is used solely for the cremation of human remains.</p> <p>(7) "Construction and demolition waste" means wood, paper, and other combustible waste resulting from construction and demolition projects except for hazardous waste and asphaltic material.</p> <p>(8) "Dioxin and Furan" means tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.</p> <p>(9) "Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0101 through .0119, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.</p> <p>(10) "Hospital, medical and infectious waste incinerator (HMIWI)" means any device that combusts any amount of hospital, medical and infectious waste.</p> <p>(11) "Large HMIWI" means:</p> <p style="padding-left: 20px;">(A) Except as provided in Part (B) of this Subparagraph:</p> | <p style="padding-left: 40px;">(i) a HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour;</p> <p style="padding-left: 40px;">(ii) a continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or</p> <p style="padding-left: 40px;">(iii) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.</p> <p>(B) The following are not large HMIWIs:</p> <p style="padding-left: 40px;">(i) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or</p> <p style="padding-left: 40px;">(ii) a batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.</p> <p>(12) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.</p> <p>(13) "Large municipal waste combustor" means each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste.</p> <p>(14) "Medical and Infectious Waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in Part (A)(i) through (A)(vii) of this Subparagraph.</p> <p>(A) The definition of medical and infectious waste includes:</p> <p style="padding-left: 40px;">(i) cultures and stocks of infectious agents and associated biologicals, including:</p> <p style="padding-left: 80px;">(I) cultures from medical and pathological laboratories;</p> <p style="padding-left: 80px;">(II) cultures and stocks of infectious agents from research and industrial laboratories;</p> <p style="padding-left: 80px;">(III) wastes from the production of biologicals;</p> <p style="padding-left: 80px;">(IV) discarded live and attenuated vaccines; and</p> |
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| <p>(V) culture dishes and devices used to transfer, inoculate, and mix cultures;</p> <p>(ii) human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;</p> <p>(iii) human blood and blood products including:</p> <p style="margin-left: 20px;">(I) liquid waste human blood;</p> <p style="margin-left: 20px;">(II) products of blood;</p> <p style="margin-left: 20px;">(III) items saturated or dripping with human blood; or</p> <p style="margin-left: 20px;">(IV) items that were saturated or dripping with human blood that are now caked with dried human blood including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category;</p> <p>(iv) sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;</p> | <p>(v) animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals;</p> <p>(vi) isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases; and</p> <p>(vii) unused sharps including the following unused or discarded sharps:</p> <p style="margin-left: 20px;">(I) hypodermic needles;</p> <p style="margin-left: 20px;">(II) suture needles;</p> <p style="margin-left: 20px;">(III) syringes; and</p> <p style="margin-left: 20px;">(IV) scalpel blades.</p> <p>(B) The definition of medical and infectious waste does not include:</p> <p style="margin-left: 20px;">(i) hazardous waste identified or listed under 40 CFR Part 261;</p> <p style="margin-left: 20px;">(ii) household waste, as defined in 40 CFR 261.4(b)(1);</p> <p style="margin-left: 20px;">(iii) ash from incineration of medical and infectious waste, once the incineration process has been completed;</p> <p style="margin-left: 20px;">(iv) human corpses, remains, and anatomical parts that are intended for interment or cremation; and</p> <p style="margin-left: 20px;">(v) domestic sewage materials identified in 40 CFR 261.4(a)(1).</p> <p>(15) "Medium HMIWI" means:</p> <p style="margin-left: 20px;">(A) Except as provided in Part (B) of this Subparagraph:</p> <p style="margin-left: 40px;">(i) a HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour;</p> <p style="margin-left: 40px;">(ii) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less</p> |
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| <p>(iii) than or equal to 500 pounds per hour; or
a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.</p> <p>(B) The following are not medium HMIWIs:</p> <p>(i) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or</p> <p>(ii) a batch HMIWI whose maximum charge rate is more than or equal to 4,000 pounds per day or less than or equal to 1,600 pounds per day.</p> <p>(16) "Municipal waste combustor (MWC) or municipal waste combustor unit" means a municipal waste combustor as defined in 40 CFR 60.51b.</p> <p>(17) "Municipal waste combustor plant" means one or more designated units at the same location.</p> <p>(18) "Municipal waste combustor unit capacity" means the maximum charging rate of a municipal waste combustor unit expressed in tons per day of municipal solid waste combusted, calculated according to the procedures under 40 CFR 60.58b(j). Section 60.58b(j) includes procedures for determining municipal waste combustor unit capacity for continuous and batch feed municipal waste combustors.</p> <p>(19) "Municipal-type solid waste (MSW) or Municipal Solid Waste" means municipal-type solid waste defined in 40 CFR 60.51b.</p> <p>(20) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.</p> <p>(21) "Same Location" means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).</p> <p>(22) "Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.</p> <p>(23) "Sludge incinerator" means any incinerator regulated under Rule .1110 of this Subchapter but not under 40 CFR Part 503, Subpart E.</p> | <p>(24) "Small HMIWI" means:</p> <p>(A) Except as provided in Part (B) of this Subparagraph:</p> <p>(i) a HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour;</p> <p>(ii) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or</p> <p>(iii) a batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.</p> <p>(B) The following are not small HMIWIs:</p> <p>(i) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour; or</p> <p>(ii) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.</p> <p>(25) "Small municipal waste combustor" means each municipal waste combustor unit with a combustion capacity that is greater than 11 tons per day but not more than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994.</p> <p>(26) "Small remote HMIWI" means any small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area (SMSA) and which burns less than 2,000 pounds per week of hospital, medical and infectious waste. The 2,000 pound per week limitation does not apply during performance tests.</p> <p>27) "Standard Metropolitan Statistical Area (SMSA)" means any area listed in Office of Management and Budget (OMB) Bulletin No. 93-17, entitled "Revised Statistical Definitions for Metropolitan Areas" dated July 30, 1993. The referenced document cited by this Item is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document may be obtained from the Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626-0580 at a cost of ten cents (\$0.10) per page or may be obtained through the internet at "http://www.census.gov/population/estimates/metro-city/93mfips.txt".</p> <p>(b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of Federal Regulations shall apply unless specifically stated otherwise in a particular rule.</p> <p align="right"><i>Authority G.S. 143-213; 143-215.3(a)(1).</i></p> |
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15A NCAC 02D .1203 HAZARDOUS WASTE INCINERATORS

(a) Applicability. This Rule applies to hazardous waste incinerators.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 260.10, 270.2, and 40 CFR 63.1201 shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Rule apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, in any event, Subparagraphs (8) or (9) of this Paragraph and Paragraph (h) of this Rule shall control.
- (2) Particulate Matter. Any incinerator subject to this Rule shall meet the particulate matter emission requirements of 40 CFR 264.343(c).
- (3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.
- (4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
- (5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (6) Hydrogen Chloride. Any incinerator subject to this Rule shall meet the hydrogen chloride emission requirements of 40 CFR 264.343(b). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
- (7) Mercury Emissions. The emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
- (8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700 for the control of toxic emissions.
- (9) Ambient Standards.
 - (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
 - (i) arsenic and its

- compounds 2.3×10^{-7}
- (ii) beryllium and its compounds 4.1×10^{-6}
- (iii) cadmium and its compounds 5.5×10^{-6}
- (iv) chromium (VI) and its compounds 8.3×10^{-8}

- (B) When Subparagraph (1) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rule .0524, .1110, or .1111 of this Subchapter to the contrary.
- (C) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
- (D) The emission rates computed or used under Part (C) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(d) Operational Standards.

- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) Hazardous waste incinerators shall comply with 15A NCAC 13A .0101 through .0119, which are administered and enforced by the Division of Waste Management.

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (2) The Director may require the owner or operator to test his incinerator to demonstrate

compliance with the emission standards listed in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter, 40 CFR 270.31, and 40 CFR 264.347.
- (2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.

(g) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) In addition to the requirements of Paragraphs (c) through (g) of this Rule, incinerators subject to this Rule shall comply with the emission limits, operational specifications, and other restrictions or conditions determined by the Division of Waste Management under 40 CFR 270.32, establishing Resource Conservation and Recovery Act permit conditions, as necessary to protect human health and the environment.

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

15A NCAC 02D .1204 SEWAGE SLUDGE AND SLUDGE INCINERATORS

(a) Applicability. This Rule applies to sewage sludge and sludge incinerators.

(b) Definitions. For the purpose of this Rule, the definitions in 40 CFR Part 503 shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Rule apply to any incinerator subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, in any event,

Subparagraphs (11) or (12) of this Paragraph shall control.

- (2) Particulate Matter. Any incinerator subject to this Rule shall comply with one of the following emission standards for particulate matter:

(A) For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation $E=0.002P$, calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the allowable emission rate is 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by averaging emissions over a block three-hour period.

(B) Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a block three-hour period.

- (3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.

- (4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.

- (5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.

- (6) Hydrogen Chloride. Any incinerator subject to this Rule shall control hydrogen chloride emissions such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
 - (7) Mercury Emissions. Emissions of mercury from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.
 - (8) Beryllium Emissions. Emissions of beryllium from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.
 - (9) Lead Emissions. The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).
 - (10) Other Metal Emissions. The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).
 - (11) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
 - (12) Ambient Standards.
 - (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
 - (i) arsenic and its compounds 2.3×10^{-7}
 - (ii) beryllium and its compounds 4.1×10^{-6}
 - (iii) cadmium and its compounds 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds 8.3×10^{-8}
 - (B) When Subparagraph (1) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rule .0524, .1110, or .1111 of this Subchapter to the contrary.
 - (C) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
- (D) The emission rates computed or used under Part (C) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (d) Operational Standards.
- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
 - (2) Sewage Sludge Incinerators.
 - (A) The maximum combustion temperature for a sewage sludge incinerator shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).
 - (B) The values for the operational parameters for the sewage sludge incinerator air pollution control device(s) shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).
 - (C) The monthly average concentration for total hydrocarbons, or carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitor required in Part (f)(3)(A) of this Rule.
 - (3) Sludge Incinerators. The combustion temperature in a sludge incinerator shall not be less than 1200°F. The maximum oxygen content of the exit gas from a sludge incinerator stack shall be:

- (A) 12 percent (dry basis) for a multiple hearth sludge incinerator,
- (B) seven percent (dry basis) for a fluidized bed sludge incinerator;
- (C) nine percent (dry basis) for an electric sludge incinerator, and
- (D) 12 percent (dry basis) for a rotary kiln sludge incinerator.

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.
- (3) The owner or operator of a sewage sludge incinerator shall perform testing to determine pollutant control efficiencies of any pollution control equipment and obtain information on operational parameters, including combustion temperature, to be specified as a permit condition.

(f) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon

monoxide or both as necessary to determine proper operation of the incinerator.

- (3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a sewage sludge incinerator shall:

- (A) install, operate, and maintain, for each incinerator, continuous emission monitors to determine the following:

- (i) total hydrocarbon concentration of the incinerator stack exit gas according to 40 CFR 503.45(a) unless the requirements for continuously monitoring carbon monoxide as provided in 40 CFR 503.40(c) are satisfied;
- (ii) oxygen content of the incinerator stack exit gas; and
- (iii) moisture content of the incinerator stack exit gas;

- (B) monitor the concentration of beryllium and mercury from the sludge fed to the incinerator at least as frequently as required by Rule .1110 of this Subchapter but in no case less than once per year;

- (C) monitor the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage sludge fed to the incinerator at least as frequently as required under 40 CFR 503.46(a)(2) and (3);

- (D) determine mercury emissions by use of Method 101 or 101A of 40 CFR Part 61, Appendix B, where applicable to 40 CFR 61.55(a);

- (E) maintain records of all material required under Paragraph (e) of this Rule and this Paragraph according to 40 CFR 503.47; and

- (F) for class I sludge management facilities (as defined in 40 CFR 503.9), POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater, submit the information recorded in Part (D) of this Subparagraph to the Director on or before February 19 of each year.

(g) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5).

15A NCAC 02D .1205 MUNICIPAL WASTE

COMBUSTORS

(a) Applicability. This Rule applies to:

- (1) Class I municipal waste combustors, as defined in Rule .1202 of this Section, and
- (2) Large municipal waste combustors, as defined in Rule .1202 of this Section.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51b and 40 CFR 60 .1940 (except administration means the Director of the Division of Air Quality) shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Rule apply to any municipal waste combustor subject to the requirements of this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, in any event, Subparagraphs (13) or (14) of this Paragraph shall control.
- (2) Particulate Matter.
 - (A) — Emissions of particulate matter from each municipal waste combustor shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.
- (3) Visible Emissions.
 - (A) The emission limit for opacity from any municipal waste combustor shall not exceed 10 percent (30 6-minute averages).
 - (B) Air curtain burners shall comply with Rule .1904 of this Subchapter.
- (4) Sulfur Dioxide.
 - (A) Emissions of sulfur dioxide from each Class I municipal waste combustor shall be reduced by at least 75 percent by weight or volume of potential sulfur dioxide emissions or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily block geometric average concentration percent reduction.
 - (B) Emissions of sulfur dioxide from each large municipal waste combustor shall be:
 - (i) reduced by at least 75 percent by weight or volume, or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit is based on a

- (ii) 24-hour daily geometric mean; and reduced by at least 75 percent by weight or volume, or to no more than 29 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(5) Nitrogen Oxide.

- (A) Emissions of nitrogen oxide from each Class I municipal waste combustor shall not exceed the emission limits in Table 3 40 CFR 60, Subpart BBBB.
- (B) Emissions of nitrogen oxide from each large municipal waste combustor shall not exceed the emission limits in Table 1 of Paragraph (d) of 40 CFR 60.33b. Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v).
- (C) In addition to the requirements of Part (B) of this Subparagraph, emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 180 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002. If nitrogen oxide emissions averaging is used as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(V), emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 165 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002.

(6) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.

(7) Hydrogen Chloride.

- (A) Emissions of hydrogen chloride from each Class I municipal waste combustor shall be reduced by at least 95 percent by weight or volume of potential hydrogen chloride emissions or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this

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| <p>Part shall be determined by averaging emissions over a one-hour period.</p> <p>(B) Emissions of hydrogen chloride from each large municipal waste combustor shall be:</p> <p>(i) reduced by at least 95 percent by weight or volume, or to no more than 31 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit shall be determined by averaging emissions over a one-hour period; and</p> <p>(ii) reduced by at least 95 percent by weight or volume, or to no more than 29 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit shall be determined by averaging emissions over a one-hour period.</p> | <p>(11) Dioxins and Furans.</p> <p>Emissions of dioxins and furans from each municipal waste combustor shall not exceed:</p> <p>(A) 60 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that employ an electrostatic precipitator-based emission control system; or</p> <p>(B) 30 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that do not employ an electrostatic precipitator-based emission control system.</p> |
| <p>(8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall be reduced by at least 85 percent by weight of potential mercury emissions or shall not exceed 0.08 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.</p> | <p>(12) Fugitive Ash.</p> <p>(A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per block three-hour period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k), except as provided in Parts (B) and (C) of this Subparagraph.</p> <p>(B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.</p> |
| <p>(9) Lead Emissions.</p> <p>(A) Emissions of lead from each Class I municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen.</p> <p>(B) Emissions of lead from each large municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2000 and shall not exceed 0.44 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2002.</p> | <p>(13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.</p> <p>(14) Ambient Standards.</p> <p>(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:</p> <p>(i) arsenic and its compounds 2.3×10^{-7}</p> <p>(ii) beryllium and its compounds 4.1×10^{-6}</p> |
| <p>(10) Cadmium Emissions.</p> <p>(A) — Emissions of cadmium from each municipal waste combustor shall not exceed 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen.</p> | |

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| <p>(iii) cadmium and its compounds 5.5×10^{-6}</p> <p>(iv) chromium (VI) and its compounds 8.3×10^{-8}</p> <p>(B) When Subparagraph (1) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rule .0524, .1110, or .1111 of this Subchapter to the contrary.</p> <p>(C) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.</p> <p>(D) The emission rates computed or used under Part (C) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.</p> <p>(15) The emission standards of Subparagraphs (1) through (12) of this Paragraph applies at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction that last no more than three hours.</p> <p>(d) Operational Standards.</p> <p>(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.</p> <p>(2) Each municipal waste combustor shall meet the following operational standards:</p> <p>(A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the concentration in:</p> <p>(i) Table 3 of 40 CFR 60.34b(a) for large municipal waste combustors. The municipal waste combustor technology named in this table is defined in 40 CFR 60.51b.</p> <p>(ii) Table 5 of 40 CFR 60 Subpart BBBB. The municipal waste combustor technology named in this</p> | <p>table is defined in 40 CFR 60.1940.</p> <p>(B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor unit load (4-hour block average). (C) The temperature at which the combustor operates measured at the particulate matter control device inlet shall not exceed 63° F above the maximum demonstrated particulate matter control device temperature (four-hour block average).</p> <p>(D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test and shall evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to the municipal waste combustor shall be at or above the required quarterly usage of carbon and shall be calculated as specified in equation four or five in 40 CFR 60.1935(f).</p> <p>(E) The owner or operator of a municipal waste combustor is exempt from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during:</p> <p>(i) the annual tests for dioxins and furans;</p> <p>(ii) the annual mercury tests for carbon feed requirements only;</p> <p>(iii) the two weeks preceding the annual tests for dioxins and furans;</p> <p>(iv) the two weeks preceding the annual mercury tests for carbon feed rate requirements only; and</p> <p>(v) any activities to improve the performance of the municipal waste combustor or its emission control including performance evaluations and diagnostic or new technology testing.</p> <p>(3) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule</p> |
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when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter and Subparagraph (4) of this Paragraph. Incinerators subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.

- (4) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours.

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (2) The owner or operator of a municipal waste combustor shall do compliance and performance testing according to 40 CFR 60.58b.
- (3) For large municipal waste combustors that achieve a dioxin and furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen, the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.58b(g)(5)(iii). For Class I municipal waste combustors the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.1785 to demonstrate compliance with the applicable emission standards in Paragraph (c) of this Rule.
- (4) The Director may require the owner or operator of any incinerator subject to this Rule to test his incinerator to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.

The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.

- (3) The owner or operator of a municipal waste combustor shall:

- (A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine the following:
 - (i) opacity according to 40 CFR 60.58b(c) for large municipal waste combustors and 40 CFR 60.1720 for Class I municipal waste combustors;
 - (ii) sulfur dioxide according to 40 CFR 60.58b(e) for large municipal waste combustors and 40 CFR 60.1720 for Class I municipal waste combustors;
 - (iii) nitrogen oxides according to 40 CFR 60.58b(h) for large municipal waste combustors and 40 CFR 60.1720 for Class I municipal waste combustors;
 - (iv) oxygen (or carbon dioxide) according to 40 CFR 60.58b(b) for large municipal waste combustors and 40 CFR 60.1720 for Class I municipal waste combustors; and
 - (v) temperature level in the primary chamber and, where there is a secondary chamber, in the secondary chamber.
- (B) monitor load level of each class I municipal waste combustor according to 40 CFR 60.1810 (C) monitor temperature of the gases flue at the inlet of the particular matter air pollution control device according to 40 CFR 60.1815.
- (D) monitor carbon feed rate if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.1820.

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| <p>(E) maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) for large municipal waste combustors and in 40 CFR 60.1840 through 1855 for Class I municipal waste combustors for a period of at least five years.</p> <p>(F) following the initial compliance tests as required under Paragraph (e) of this Rule, submit the information specified in 40 CFR 60.59b(f)(1) through (f)(6) for large municipal waste combustors and in 40 CFR 60.1875 for Class I municipal waste combustors, in the initial performance test report.</p> <p>(G) following the first year of municipal combustor operation, submit an annual report specified in 40 CFR 60.59b(g) for large municipal waste combustors and in 40 CFR 60.1885 for Class I municipal waste combustors, as applicable, no later than February 1 of each year following the calendar year in which the data were collected. Once the unit is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually.</p> <p>(H) submit a semiannual report specified in 40 CFR 60.59b(h) for large municipal waste combustors and in 40 CFR 60.1900 for Class I municipal waste combustors, for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR 60.59b(h)(6).</p> | <p>combustor shall have completed full certification or shall have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).</p> <p>(C) The owner or operator of a municipal waste combustor plant shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:</p> <ul style="list-style-type: none"> (i) a fully certified chief facility operator, (ii) a provisionally certified chief facility operator who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph, (iii) a fully certified shift supervisor, or (iv) a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph. <p>(D) If one of the persons listed in this Subparagraph leaves the large municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements of this Part.</p> <p>(E) If one of the persons listed in this Part leaves the Class I municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements specified in 40 CFR 60.1685.</p> |
| <p>(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.</p> <p>(h) Operator Training and Certification.</p> <p>(1) By January 1, 2000, or six months after the date of start-up of a Class I municipal waste combustor, whichever is later, and by July 1, 1999 or six months after the date of start-up of a large municipal waste combustor, whichever is later:</p> <p>(A) Each facility operator and shift supervisor of a municipal waste combustor shall obtain and maintain a current provisional operator certification from the American Society of Mechanical Engineers (ASME QRO-1-1994).</p> <p>(B) Each facility operator and shift supervisor of a municipal waste</p> | <p>(2) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address the elements of municipal waste combustor unit operation specified in 40 CFR 60.54b(e)(1) through (e)(11).</p> <p>(3) By July 1, 1999, or six months after the date of start-up of a municipal waste combustor, whichever is later, the owner or operator of the municipal waste combustor plant shall comply with the following requirements:</p> <p>(A) All chief facility operators, shift supervisors, and control room operators shall complete the EPA municipal waste combustor training course.</p> <ul style="list-style-type: none"> (i) The requirements specified in Part (A) of this Subparagraph shall not apply |

- to chief facility operators, shift supervisors and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.
- (ii) As provided under 40 CFR 60.39b(c)(4)(iii)(B), the owner or operator may request that the Administrator waive the requirement specified in Part (A) of this Subparagraph for the chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before July 1, 1998.
- (B) The owner or operator of each municipal waste combustor shall establish a training program to review the operating manual, according to the schedule specified in Subparts (i) and (ii) of this Part, with each person who has responsibilities affecting the operation of an affected facility, including the chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane-load handlers.
 - (i) Each person specified in Part (B) of this Subparagraph shall undergo initial training no later than the date specified in Items (I) through (III) of this Subpart, whichever is later.
 - (I) The date six months after the date of start-up of the affected facility;
 - (II) July 1, 1999; or
 - (III) The date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.
 - (ii) Annually, following the initial training required by Subpart (i) of this Part.
- (C) The operating manual required by Subparagraph (2) of this Paragraph shall be updated continually be kept in a readily accessible location for all persons required to undergo training
 - under Part (B) of this Subparagraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.
- (D) The operating manual of Class I municipal waste combustors shall contain requirements specified in 40 CFR 60.1665 in addition to requirements of Part (C).
- (4) The referenced ASME exam in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars (\$49.00).
 - (i) Compliance Schedules.
 - (1) The owner or operator of a large municipal waste combustor shall choose one of the following three compliance schedule options:
 - (A) comply with all the requirements or close before August 1, 2000;
 - (B) comply with all the requirements after one year but before three years following the date of issuance of a revised construction and operation permit, if permit modification is required, or after August 1, 2000, but before August 1, 2002, if a permit modification is not required. If this option is chosen, then the owner or operator of the facility shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:
 - (i) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;
 - (ii) a date by which on site construction, installation, or modification of emission control equipment shall begin;
 - (iii) a date by which on site construction, installation, or modification of emission control equipment shall be completed;
 - (iv) a date for initial start-up of emissions control equipment;
 - (v) a date for initial performance test(s) of emission control equipment; and

- (vi) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later than three years from the issuance of the permit; or
 - (C) close between August 1, 2000, and August 1, 2002. If this option is chosen then the owner or operator of the facility shall submit to the Director a closure agreement which includes the date of the plant closure.
- (2) All large municipal waste combustors for which construction, modification, or reconstruction commenced after June 26, 1987, but before September 19, 1994, shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Part (c)(11)(B) of this Rule within one year following issuance of a revised construction and operation permit, if a permit modification is required, or by August 1, 2000, whichever is later.
- (3) The owner or operator of a Class I municipal waste combustor that began construction, reconstruction or modification after June 26, 1987 shall choose one of the following four compliance schedule options:
 - (A) comply with all requirements of this Rule beginning March 1, 2002 or stop operating the Class I municipal waste combustor until such time as compliance is demonstrated;
 - (B) comply with all requirements of this Rule by March 1, 2002 whether a permit modification is required or not. If this option is chosen, then the owner or operator shall submit to the Director along with the permit application if a permit application is needed or by September 1, 2002 if a permit application is not needed a compliance schedule that contains the following increments of progress:
 - (i) a final control plan as specified in 40 CFR 60.1610;
 - (ii) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;
 - (iii) a date by which onsite construction, installation, or modernization of emission control system or equipment shall begin;
- (iv) a date by which onsite construction, installation, or modernization of emission control system or equipment shall be completed; and
 - (v) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later no later than March 1, 2003;
- (C) comply with all requirements of this Rule by closing the combustor and then restart it. If this option is chosen the owner or operator shall:
 - (i) meet increments of progress specified in 40 CFR 60.1585, if the Class I combustor is closed and then reopened prior to the final compliance date; and
 - (ii) complete emissions control retrofit and meet the emission limits and good combustion practices on the date that the Class I combustor restarts operation if the Class I combustor is closed and then reopened after the final compliance date; or
- (D) comply by permanently closing the combustor. If this option is chosen the owner or operator shall:
 - (i) submit a closure notification, including the date of closure, to the Director by July 1, 2002 if the Class I combustor is to be closed on or before September 1, 2002; or
 - (ii) enter into a legally binding closure agreement with the Director by July 1, 2002 if the Class I combustor is to be closed after September 1, 2002, and the combustor shall be closed no later than March 1, 2003;
- (4) The owner or operator of a Class I municipal waste combustor that began construction, reconstruction or modification after June 26, 1987 shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Part (c)(11)(B) of this Rule March 1, 2002.
- (5) The owner or operator of any municipal waste combustor shall certify to the Director within five days after the deadline, for each increment

of progress, whether the required increment of progress has been met.

(A) Emissions of particulate matter from a HMIWI shall not exceed:

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.34e; 40 CFR 60.35b; 40 CFR 60.1515.

Incinerator Size

Allowable Emission Rate (mg/dscm)
[corrected to seven percent oxygen]

Small	115
Medium	69
Large	34

15A NCAC 02D .1206 HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS

(a) Applicability. This Rule applies to any hospital, medical, and infectious waste incinerator (HMIWI), except:

- (1) any HMIWI required to have a permit under Section 3005 of the Solid Waste Disposal Act;
- (2) any pyrolysis unit;
- (3) any cement kiln firing hospital waste or medical and infectious waste;
- (4) any physical or operational change made to an existing HMIWI solely for the purpose of complying with the emission standards for HMIWIs in this Rule. These physical or operational changes are not considered a modification and do not result in an existing HMIWI becoming subject to the provisions of 40 CFR Part 60, Subpart Ec;
- (5) any HMIWI during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided that the owner or operator of the HMIWI:
 - (A) notifies the Director of an exemption claim; and
 - (B) keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned; or
- (6) any co-fired HMIWI, if the owner or operator of the co-fired HMIWI:
 - (A) notifies the Director of an exemption claim;
 - (B) provides an estimate of the relative weight of hospital, medical and infectious waste, and other fuels or wastes to be combusted; and
 - (C) keeps records on a calendar quarter basis of the weight of hospital, medical and infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired HMIWI.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51c shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Rule apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, in any event, Subparagraphs (13) or (14) of this Paragraph shall control.
- (2) Particulate Matter.

(B) Emissions of particulate matter from any small remote HMIWI shall not exceed 197 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(3) Visible Emissions. On and after the date on which the initial performance test is completed, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than 10 percent opacity (6-minute block average).

(4) Sulfur Dioxide. Emissions of sulfur dioxide from any HMIWI shall not exceed 55 parts per million corrected to seven percent oxygen (dry basis).

(5) Nitrogen Oxide. Emissions of nitrogen oxides from any HMIWI shall not exceed 250 parts per million by volume corrected to seven percent oxygen (dry basis).

(6) Carbon Monoxide. Emissions of carbon monoxide from any HMIWI shall not exceed 40 parts per million by volume, corrected to seven percent oxygen (dry basis).

(7) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.

(8) Hydrogen Chloride.

(A) Emissions of hydrogen chloride from any small, medium, or large HMIWI shall be reduced by at least 93 percent by weight or volume or to no more than 100 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period.

(B) Emissions of hydrogen chloride from any small remote HMIWI shall not exceed 3100 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Part shall be determined by averaging emissions over a one-hour period.

(9) Mercury Emissions.

(A) Emissions of mercury from any small, medium, or large HMIWI shall be reduced by at least 85 percent by weight or shall not exceed 0.55

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| | milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period. | | this Subchapter according to 15A NCAC 2Q .0700. |
| | (B) Emissions of mercury from any small remote HMIWI shall not exceed 7.5 milligrams per dry standard cubic meter, corrected to seven percent oxygen. Compliance with this Part shall be determined by averaging emissions over a one-hour period. | (14) | Ambient Standards. |
| (10) | Lead Emissions. | (A) | In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule: |
| | (A) Emissions of lead from any small, medium, or large HMIWI shall be reduced by at least 70 percent by weight or shall not exceed 1.2 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. | (i) | arsenic and its compounds 2.3×10^{-7} |
| | (B) Emissions of lead from any small remote HMIWI shall not exceed 10 milligrams per dry standard cubic meter, corrected to seven percent oxygen. | (ii) | beryllium and its compounds 4.1×10^{-6} |
| | | (iii) | cadmium and its compounds 5.5×10^{-6} |
| | | (iv) | chromium (VI) and its compounds 8.3×10^{-8} |
| (11) | Cadmium Emissions. | (B) | When Subparagraph (1) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rule .0524, .1110, or .1111 of this Subchapter to the contrary. |
| | (A) Emissions of cadmium from any small, medium, or large HMIWI shall be reduced by at least 65 percent by weight or shall not exceed 0.16 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. | (C) | The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter. |
| | (B) Emissions of cadmium from any small remote HMIWI shall not exceed 4 milligrams per dry standard cubic meter, corrected to seven percent oxygen. | (D) | The emission rates computed or used under Part (C) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates. |
| (12) | Dioxins and Furans. | (d) | Operational Standards. |
| | (A) Emissions of dioxins and furans from any small, medium, or large HMIWI shall not exceed 125 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 2.3 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen. | (1) | The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply. |
| | (B) Emissions of dioxins and furans from any small remote HMIWI shall not exceed 800 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 15 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen. | (2) | Each small remote HMIWI shall have an initial equipment inspection by July 1, 2000, and an annual inspection each year thereafter. |
| (13) | Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of | | |

- (A) At a minimum, the inspection shall include all the elements listed in 40 CFR 60.36e(a)(1)(i) through (xvii). secondary chamber temperature shall constitute a violation of the established operating parameters.
- (B) Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period. The Director shall grant the extension if:
 - (i) the owner or operator of the small remote HMIWI demonstrates that achieving compliance by the time allowed under this Part is not feasible, and
 - (ii) the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request.
- (3) The owner or operator of any HMIWI, except small remote HMIWI, subject to this Rule shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding the fugitive emissions testing requirements under 40 CFR 60.56c(b)(12) and (c)(3).
- (4) The owner or operator of any small remote HMIWI shall comply with the following compliance and performance testing requirements:
 - (A) conduct the performance testing requirements in 40 CFR 60.56c(a), (b)(1) through (b)(9), (b)(11)(mercury only), and (c)(1). The 2,000 pound per week limitation does not apply during performance tests;
 - (B) establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits; and
 - (C) following the date on which the initial performance test is completed, ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three hour rolling averages, calculated each hour as the average of all previous three operating hours, at all times except during periods of start-up, shut-down and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum
- (5) Except as provided in Subparagraph (3) of this Paragraph, operation of the HMIWI above the maximum charge rate and below the minimum secondary temperature, each measured on a three hour rolling average, simultaneously shall constitute a violation of the particulate matter, carbon monoxide, and dioxin and furan emission limits.
- (6) The owner or operator of a HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating parameters to demonstrate that the HMIWI is not in violation of the applicable emission limits. Repeat performance tests conducted pursuant to this Subparagraph shall be conducted using the identical operating parameters that indicated a violation under Subparagraph (4) of this Paragraph.
- (e) Test Methods and Procedures.
 - (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
 - (2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.
- (f) Monitoring, Recordkeeping, and Reporting.
 - (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
 - (2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper

- operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.
- (3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a HMIWI shall comply with the reporting and recordkeeping requirements listed in 40 CFR 60.58c(b), (c), (d), (e), and (f), excluding 40 CFR 60.58c(b)(2)(ii) and (b)(7).
- (4) In addition to the requirements of Subparagraphs (1), (2) and (3) of this Paragraph, the owner or operator of a small remote HMIWI shall:
- (A) maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection;
- (B) submit an annual report containing information recorded in Part (A) of this Subparagraph to the Director no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report. The report shall be signed by the HMIWI manager; and
- (C) submit the reports required by Parts (A) and (B) of this Subparagraph to the Director semiannually once the HMIWI is subject to the permitting procedures of 15A NCAC 2Q .0500, Title V Procedures.
- (5) Waste Management Guidelines. The owner or operator of a HMIWI shall comply with the requirements of 40 CFR 60.55c for the preparation and submittal of a waste management plan.
- (6) Except as provided in Subparagraph (7) of this Paragraph, the owner or operator of any HMIWI shall comply with the monitoring requirements in 40 CFR 60.57c.
- (7) The owner or operator of any small remote HMIWI shall:
- (A) install, calibrate, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.
- (B) install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI.
- (C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the HMIWI is combusting hospital, medical, and infectious waste.
- (g) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
- (h) Operator Training and Certification.
- (1) The owner or operator of a HMIWI shall not allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators.
- (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.53c(c) through (g).
- (3) The owner or operator of a HMIWI shall maintain, at the facility, all items required by 40 CFR 60.53c(h)(1) through (h)(10).
- (4) The owner or operator of a HMIWI shall establish a program for reviewing the information required by Subparagraph (3) of this Paragraph annually with each HMIWI operator. The initial review of the information shall be conducted by January 1, 2000. Subsequent reviews of the information shall be conducted annually.
- (5) The information required by Subparagraph (3) of this Paragraph shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by Division personnel upon request.
- (6) All HMIWI operators shall be in compliance with this Paragraph by July 1, 2000.
- (i) Compliance Schedules.
- (1) Title V Application Date. Any HMIWI subject to this rule shall have submitted an application for a permit under the procedures of 15A NCAC 2Q .0500, Title V Procedures, by January 1, 2000.
- (2) Final Compliance Date. Except for those HMIWIs described in Subparagraphs (3) and (4) of this Paragraph, any HMIWI subject to this Rule shall be in compliance with this Rule or close on or before July 1, 2000.

- (3) Installation of Air Pollution Control Equipment. Any HMIWI planning to install the necessary air pollution control equipment to comply with the emission standards in Paragraph (c) of this Rule shall be in compliance with Paragraph (c) of this Rule by September 15, 2002. If this option is chosen, then the owner or operator of the HMIWI shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:
- (A) the submission of a petition for site specific operating parameters under 40 CFR 63.56c(i);
 - (B) the obtaining of services of an architectural and engineering firm regarding the air pollution control device(s);
 - (C) the obtaining of design drawings of the air pollution control device(s);
 - (D) the ordering of air pollution control device(s);
 - (E) the obtaining of the major components of the air pollution control device(s);
 - (F) the initiation of site preparation for the installation of the air pollution control device(s);
 - (G) the initiation of installation of the air pollution control device(s);
 - (H) the initial startup of the air pollution control device(s); and
 - (I) the initial compliance test(s) of the air pollution control device(s).
- (4) Petition for Extension of Final Compliance Date.
- (A) The owner or operator of a HMIWI may petition the Director for an extension of the compliance deadline of Subparagraph (2) of this Paragraph provided that the following information is submitted by January 1, 2000, to allow the Director adequate time to grant or deny the extension by July 1, 2000:
 - (i) documentation of the analyses undertaken to support the need for an extension, including an explanation of why up to July 1, 2002 is sufficient time to comply with this Rule while July 1, 2000, is not sufficient. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent bases; and
 - (ii) documentation of the measurable and enforceable incremental steps of progress listed in Subparagraph (3) of this Paragraph to be taken towards compliance with the emission standards in Paragraph (c) of this Rule.
 - (B) The Director may grant the extension if all the requirements in Part (A) of this Subparagraph are met.
 - (C) If the extension is granted, the HMIWI shall be in compliance with this Section by July 1, 2002.
- Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 40 CFR 60.34e.*
- 15A NCAC 02D .1208 OTHER INCINERATORS**
- (a) Applicability.
- (1) This Rule applies to any incinerator not covered under Rule .1203 through .1207 of this Section.
 - (2) If any incinerator subject to this Rule:
 - (A) is used solely to cremate pets; or
 - (B) if the emissions of all toxic air pollutants from an incinerator subject to this Rule and associated waste handling and storage are less than the levels listed in 15A NCAC 02Q .0711;
 the incinerator shall be exempt from Subparagraphs (b)(6) through (b)(9) and Paragraph (c) of this Rule.
- (b) Emission Standards.
- (1) The emission standards in this Rule apply to any incinerator subject to this Rule except where Rule .0525, .1110, or .1111 of this Subchapter applies. However, in any event, Subparagraphs (8) or (9) of this Paragraph shall control.
 - (2) Particulate Matter. Any incinerator subject to this Rule shall comply with one of the following emission standards for particulate matter:
 - (A) For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation $E=0.002P$ calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the

- allowable emission rate in 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by averaging emissions over a block three-hour period.
- (B) Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a block three-hour period.
- (3) Visible Emissions.
- (A) Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.
- (B) Air curtain incinerators shall comply with Rule .1904 of this Subchapter for the control of visible emissions.
- (4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
- (5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (6) Hydrogen Chloride. Any incinerator subject to this Rule shall control emissions of hydrogen chloride such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
- (7) Mercury Emissions. Emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
- (8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (9) Ambient Standards.
- (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
- (i) arsenic and its compounds 2.3×10^{-7}
 - (ii) beryllium and its compounds 4.1×10^{-6}
 - (iii) cadmium and its compounds 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds 8.3×10^{-8}
- (B) When Subparagraph (1) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rule .0524, .1110, or .1111 of this Subchapter to the contrary.
- (C) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
- (D) The emission rates computed or used under Part (C) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rule .0524, .1110 or .1111 of this Subchapter requires more restrictive rates.
- (c) Operational Standards.
- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.

- (2) Crematory Incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600°F for a period of not less than one second.
 - (3) Other Incinerators. All incinerators not subject to any other rule in this Section shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800°F for a period of not less than one second. The temperature of 1800°F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600°F.
 - (4) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter. Any incinerator subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.
- (d) Test Methods and Procedures.
- (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
 - (2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (b) of this Rule.
- (e) Monitoring, Recordkeeping, and Reporting.
- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
 - (2) The owner or operator of an incinerator, except an incinerator meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section, shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The Director may require a temperature monitoring device for incinerators meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen

chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.

- (f) Excess Emissions and Start-up and Shut-down. Any incinerator subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

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

15A NCAC 02D .1210 COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS

(a) Applicability. With the exceptions in Paragraph (b) of this Rule applies to the commercial and industrial solid waste incinerators (CISWI).

(b) Exemptions. The following types of incineration units are exempted from this Rule:

- (1) incineration units covered under Rules .1203 through .1206;
- (2) units, burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of auxiliary fuel and combustion air, of agricultural waste, pathological waste, low-level radioactive waste, or chemotherapeutic waste, if the owner or operator of the unit:
 - (A) notifies the Director that the unit qualifies for this exemption; and
 - (B) keeps records on a calendar-quarter basis of the weight of agricultural waste, pathological waste, low level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;
- (3) small power production or cogeneration units if:
 - (A) the unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) or as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));
 - (B) the unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity; and

- (C) the owner or operator of the unit notifies the Director that the unit qualifies for this exemption;
- (4) units that combust waste for the primary purpose of recovering metals;
 - (5) cyclonic barrel burners;
 - (6) rack, part, and drum reclamation units that burn the coatings off racks used to hold small items for application of a coating;
 - (7) cement kilns;
 - (8) chemical recovery units burning materials to recover chemical constituents or to produce chemical compounds as listed in 40 CFR 60.2555(n)(1) through (7);
 - (9) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis; and
 - (10) air curtain burners covered under Rule .1904 of this Subchapter.
- (c) The owner or operator of a chemical recovery unit not listed under 40 CFR 60.2555(n) may petition the Director to be exempted. The petition shall include all the information specified under 40 CFR 60.2558(a). The Director shall approve the exemption if he finds that all the requirements of 40 CFR 60.2555(n) are satisfied and that the unit burns materials to recover chemical constituents or to produce chemical compounds where there is an existing market for such recovered chemical constituents or compounds.
- (d) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.2875 shall apply in addition to the definitions in Rule .1202 of this Section.
- (e) Emission Standards. The emission standards in this Rule apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies.
- (1) Particulate Matter. Emissions of particulate matter from a CISWI unit shall not exceed 70 milligrams per dry standard cubic meter corrected to seven percent oxygen (dry basis).
 - (2) Opacity. Visible emissions from the stack of a CISWI unit shall not exceed 10 percent opacity (6-minute block average).
 - (3) Sulfur Dioxide. Emissions of sulfur dioxide from a CISWI unit shall not exceed 20 parts per million by volume corrected to seven percent oxygen (dry basis).
 - (4) Nitrogen Oxides. Emissions of nitrogen oxides from a CISWI unit shall not exceed 368 parts per million by volume corrected to seven percent oxygen (dry basis).
 - (5) Carbon Monoxide. Emissions of carbon monoxide from a CIWI unit shall not exceed 157 parts per million by volume, corrected to seven percent oxygen (dry basis).
 - (6) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
 - (7) Hydrogen Chloride. Emissions of hydrogen chloride from a CISWI unit shall not exceed 62 parts per million by volume, corrected to seven percent oxygen (dry basis).
 - (8) Mercury Emissions. Emissions of mercury from a CISWI unit shall not exceed 0.47 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
 - (9) Lead Emissions. Emissions of lead from a CISWI unit shall not exceed 0.04 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
 - (10) Cadmium Emissions. Emissions of cadmium from a CISWI unit shall not exceed 0.004 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
 - (11) Dioxins and Furans. Emissions of dioxins and furans from a CISWI unit shall not exceed 0.41 nanograms per dry standard cubic meter (toxic equivalency basis), corrected to seven percent oxygen. Toxic equivalency is given in Table 4 of 40 CFR part 60, Subpart DDDD.
 - (12) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
 - (13) Ambient Standards.
 - (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
 - (i) arsenic and its compounds 2.3×10^{-7}
 - (ii) beryllium and its compounds 4.1×10^{-6}
 - (iii) cadmium and its compounds 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds 8.3×10^{-8}
 - (B) When Subparagraph (1) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
 - (C) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the

- requirements of Rule .0533 of this Subchapter.
- (D) The emission rates computed or used under Part (C) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (e) Operational Standards.
- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) If a wet scrubber is used to comply with emission limitations:
- (A) operating limits for the following operating parameters shall be established:
- (i) maximum charge rate, which shall be measured continuously, recorded every hour, and calculated using one of the following procedures:
- (I) for continuous and intermittent units, the maximum charge rate is 110 percent of the average charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; or
- (II) for batch units, the maximum charge rate is 110 percent of the daily charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations;
- (ii) minimum pressure drop across the wet scrubber, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of:
- (I) the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or
- (II) the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations;
- (iii) minimum scrubber liquor flow rate, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; and
- (iv) minimum scrubber liquor pH, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations.
- (B) A three hour rolling average shall be used to determine if operating parameters in Subparts (A)(i) through (A)(iv) of this Subparagraph have been met.
- (C) The owner or operator of the CISWI unit shall meet the operating limits established during the initial performance test on the date the initial performance test is required or completed.
- (3) If a fabric filter is used to comply with the emission limitations, then it shall be operated as specified in 40 CFR 60.2675(c);
- (4) If an air pollution control device other than a wet scrubber is used or if emissions are limited in some other manner to comply with the

emission standards of Paragraph (d) of this Rule, the owner or operator shall petition the Director for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The initial performance test shall not be conducted until after the Director approves the petition. The petition shall include:

- (A) identification of the specific parameters to be used as additional operating limits;
- (B) explanation of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants;
- (C) explanation of establishing the upper and lower limits for these parameters, which will establish the operating limits on these parameters;
- (D) explanation of the methods and instruments used to measure and monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and
- (E) identification of the frequency and methods for recalibrating the instruments used for monitoring these parameters.

The Director shall approve the petition if he finds that the requirements of this Subparagraph have been satisfied and that the proposed operating limits will ensure compliance with the emission standards in Paragraph (d) of this Rule.

(f) Test Methods and Procedures.

- (1) For the purposes of this Paragraph, "Administrator" in 40 CFR 60.8 means "Director".
- (2) The test methods and procedures described in Rule .0501 of this Subchapter, in 40 CFR Part 60 Appendix A, 40 CFR Part 61 Appendix B, and 40 CFR 60.2690 shall be used to determine compliance with emission standards in Paragraph (d) this Rule. Method 29 of 40 CFR Part 60 shall be used to determine emission standards for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (3) All performance tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations. Compliance with emissions standards under Subparagraph (d)(1), (3) through (5), and (7) through (11) of this Rule shall be determined by averaging three one-hour emission tests.

These tests shall be conducted within 12 months following the initial performance test and within every 12 months following the previous annual performance test after that.

(4) The owner or operator of CISWI shall conduct an initial performance test as specified in 40 CFR 60.8 to determine compliance with the emission standards in Paragraph (d) of this Rule and to establish operating standards using the procedure in Paragraph (e) of this Rule. The initial performance test must be conducted no later than July 1, 2006.

(5) The owner or operator of the CISWI unit shall conduct an annual performance test for particulate matter, hydrogen chloride, and opacity as specified in 40 CFR 60.8 to determine compliance with the emission standards for the pollutants in Paragraph (d) of this Rule.

(6) If the owner or operator of CISWI unit has shown, using performance tests, compliance with particulate matter, hydrogen chloride, and opacity for three consecutive years, the Director may allow the owner or operator of CISWI unit to conduct performance tests for these three pollutants every third year. However, each test shall be within 36 month of the previous performance test. If the CISWI unit continues to meet the emission standards for these three pollutants the Director may allow the owner or operator of CISWI unit to continue to conduct performance tests for these three pollutants every three years.

(7) If a performance test shows a deviation from the emission standards for particulate matter, hydrogen chloride, or opacity, the owner or operator of the CISWI unit shall conduct annual performance tests for these three pollutants until all performance tests for three consecutive years show compliance for particulate matter, hydrogen chloride, or opacity.

(8) The owner or operator of CISWI unit may conduct a repeat performance test at any time to establish new values for the operating limits.

(9) The owner or operator of the CISWI unit shall repeat the performance test if the feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

(10) If the Director has evidence that an incinerator is violating a standard in Paragraph (d) or (e) of this Rule or that the feed stream or other operating conditions have changed since the last performance test, the Director may require the owner or operator to test the incinerator to demonstrate compliance with the emission standards listed in Paragraph (d) of this Rule at any time.

(g) Monitoring.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator subject to the requirements of this Rule shall install, calibrate to manufacturers specifications, maintain, and operate;
 - (A) devices or establish methods for continuous temperature monitoring and recording for the primary chamber and, where there is a secondary chamber, for the secondary chamber;
 - (B) devices or establish methods for monitoring the value of the operating parameters used to determine compliance with the operating parameters established under Subparagraph (e)(2) of this Rule;
 - (C) if a fabric filter is used to comply with the requirements of the emission standards in Paragraph (d) of this Rule, bag leak detection system:
 - (i) that meets the requirements of 40 CFR 60.2730(b) shall be installed and operated for each exhaust stack of the fabric filter;
 - (ii) that meets the requirements of 40 CFR 60.2730(b) shall be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations;
 - (iii) that meets the requirements of 40 CFR 60.2730(b) shall be certified by manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less;
 - (iv) whose sensor shall provide output of relative or absolute particulate matter loadings;
 - (v) that meets the requirements of 40 CFR 60.2730(b) shall be equipped with a device to continuously record the output signal from the sensor;
 - (vi) that meets the requirements of 40 CFR 60.2730(b) shall be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected, the alarm shall be located where it is easily heard by plant operating personnel;
 - (vii) that meets the requirements of 40 CFR 60.2730(b) shall be installed in each baghouse compartment or sell for positive pressure fabric filters and downstream of the fabric filter for negative pressure or induced air fabric filters; and
 - (viii) whose instrumentation and alarm may be shared among detectors if multiple detectors are required.
 - (D) Equipment necessary to monitor compliance with the cite-specific operating parameters established under Subparagraph (e)(4) of this Rule.
- (3) The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the CISWI unit.
- (4) The Director may require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or less to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the CISWI unit.
- (5) The owner or operator of the CISWI unit shall conduct all monitoring at all times the CISWI unit is operating, except;
 - (A) malfunctions and associated repairs; and
 - (B) required quality assurance or quality control activities including calibrations checks and required zero and span adjustments of the monitoring system.
- (6) The data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities shall not be used in assessing compliance with the operating standards in Paragraph (e) of this Rule.
- (h) Recordkeeping, and Reporting.
 - (1) The owner or operator of CISWI unit shall maintain records required by this Rule on site in either paper copy or electronic format that can be printed upon request for a period of at least five years.

- (2) The owner or operator of CISWI unit shall maintain all records required under 40 CFR 60.2740.
 - (3) The owner or operator of CISWI unit shall submit as specified in Table 5 of 40 CFR 60, Subpart DDDD the following reports:
 - (A) Waste management Plan;
 - (B) initial test report, as specified in 40 CFR 60.2760;
 - (C) annual report as specified in 40 CFR 60.2770;
 - (D) emission limitation or operating limit deviation report as specified in 40 CFR 60.2780;
 - (E) qualified operator deviation notification as specified in 40 CFR 60.2785(a)(1);
 - (F) qualified operator deviation status report, as specified in 40 CFR 60.2785(a)(2); and
 - (G) qualified operator deviation notification of resuming operation as specified in 40 CFR 60.2785(b).
 - (4) The owner or operator of the CISWI unit shall submit a deviation report if:
 - (A) any recorded three-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under Paragraph (e) of this Rule; or
 - (B) the bag leak detection system alarm sounds for more than five percent of the operating time for the six-month reporting period; or
 - (C) a performance test was conducted that deviated from any emission standards in Paragraph (d) of this Rule.

The deviation report shall be submitted by August 1 of the year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).
 - (5) The owner or operator of the CISWI unit may request changing semiannual or annual reporting dates as specified in this Paragraph, and the Director may approve the request change using the procedures specified in 40 CFR 60.19(c).
 - (6) Reports required under this Rule shall be submitted electronically or in paper format, postmarked on or before the submittal due dates.
 - (7) If the CISWI unit has been shut down by the Director under the provisions of 40 CFR 60.2665(b)(2), due to failure to provide an accessible qualified operator, the owner or operator shall notify the Director that the operations are resumed once a qualified operator is accessible.
- (i) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with 15A NCAC 02D .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
 - (j) Operator Training and Certification.
 - (1) The owner or operator of the CISWI unit shall not allow the CISWI unit to operate at any time unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more CISWI unit operators.
 - (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.2635(c) by the later of:
 - (A) December 1, 2005; or
 - (B) six months after CISWI unit startup; or
 - (C) six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.
 - (3) Operator qualification shall be valid from the date on which the training course is completed and the operator successfully passes the examination required in 40 CFR 60.2635(c)(2).
 - (4) Operator qualification shall be maintained by completing an annual review or refresher course covering, at a minimum:
 - (A) update of regulations;
 - (B) incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;
 - (C) inspection and maintenance;
 - (D) responses to malfunctions or conditions that may lead to malfunction; and
 - (E) discussion of operating problems encountered by attendees.
 - (5) Lapsed operator qualification shall be renewed by:
 - (A) completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, and
 - (B) repeating the initial qualification requirements as specified in Subparagraph (2) of this Paragraph for a lapse of three years or more.
 - (6) The owner or operator of the CISWI unit shall:
 - (A) have documentation specified in 40 CFR 60.2660(a)(1) through (a)(10) and (c)(1) through (c)(3) available at the facility and readily accessible for all CISWI unit operators and are suitable for inspection upon request;

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| <p>(B) establish a program for reviewing the documentation specified in Part (A) of this Subparagraph with each CISWI unit operator:</p> <p style="margin-left: 20px;">(i) the initial review of the documentation specified in Part (A) of this Subparagraph shall be conducted by the later of the three dates:</p> <p style="margin-left: 40px;">(I) December 1, 2005; or</p> <p style="margin-left: 40px;">(II) six months after CISWI unit startup; or</p> <p style="margin-left: 40px;">(III) six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit; and</p> <p style="margin-left: 20px;">(ii) subsequent annual reviews of the documentation specified in Part (A) of this Subparagraph shall be conducted no later than 12 months following the previous review.</p> <p>(7) The owner or operator of the CISWI unit shall meet one of the two criteria specified in 40 CFR 60.2665(a) and (b), depending on the length of time, if all qualified operators are temporarily not at the facility and not able to be at the facility within one hour.</p> <p>(k) Waste Management Plan.</p> <p style="margin-left: 20px;">(1) The owner or operator of the CISWI unit shall submit a waste management plan that identifies in writing the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. A waste management plan shall be submitted to the Director before December 1, 2003.</p> <p style="margin-left: 20px;">(2) The waste management plan shall include:</p> <p style="margin-left: 40px;">(A) consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;</p> <p style="margin-left: 40px;">(B) identification of any additional waste management measures;</p> <p style="margin-left: 40px;">(C) implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place;</p> | <p style="margin-left: 20px;">(D) the costs of additional measures and the emissions reductions expected to be achieved; and</p> <p style="margin-left: 20px;">(E) any other environmental or energy impacts.</p> <p>(l) Compliance Schedule.</p> <p style="margin-left: 20px;">(1) The owner or operator of the CISWI unit, which plans to achieve compliance after November 30, 2003, shall submit before December 1, 2003, along with the permit application, the final control plan for the CISWI unit. The final compliance shall be achieved no later than December 1, 2005.</p> <p style="margin-left: 20px;">(2) The final control plan shall contain the information specified in 40 CFR 60(a)(1) through (a)(5), and a copy shall be maintained on site.</p> <p style="margin-left: 20px;">(3) The owner or operator of the CISWI unit shall notify the Director within five days after the CISWI unit is to be in final compliance whether the final compliance have been achieved. The final compliance is achieved by completing all process changes and retrofitting construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought on line, all necessary process changes and air pollution control devices would operate as designed. If the final compliance has not been achieved the owner or operator of the CISWI unit, shall submit a notification informing the Director that the final compliance has not been met and submit reports each subsequent calendar month until the final compliance is achieved.</p> <p style="margin-left: 20px;">(4) The owner or operator of the CISWI unit, that closes the CISWI unit and restarts it:</p> <p style="margin-left: 40px;">(A) before December 1, 2005, shall submit along with the permit application, the final control plan for the CISWI unit, and the final compliance shall be achieved by December 1, 2005.</p> <p style="margin-left: 40px;">(B) after December 1, 2005 shall complete emission control retrofits and meet the emission limitations and operating limits on the date the CISWI unit restarts operation.</p> <p style="margin-left: 20px;">(5) The owner or operator of the CISWI unit that plans to close it rather than comply with the requirements of this Rule shall submit a closure notification including the date of closure to the Director by December 1, 2003, and shall cease operation by December 1, 2005.</p> |
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Authority 40 C.F.R. 60.215(a)(4).

SUBCHAPTER 02Q - AIR QUALITY PERMIT PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 02Q .0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS

(a) Official application forms for a permit or permit modification may be obtained from and shall be filed in writing with the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641 or any of the regional offices listed under Rule .0105 of this Section.

(b) The number of copies of applications to be filed are specified in Rules .0305 (construction and operation permit procedures), .0507 (Title V permit procedures), and .0602 (transportation facility construction air permit procedures) of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

SECTION .0200 – PERMIT FEES

15A NCAC 02Q .0202 DEFINITIONS

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

- (1) "Actual emissions" means the actual rate of emissions in tons per year of any air pollutant emitted from the facility over the preceding calendar year. Actual emissions shall be calculated using the sources' actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Actual emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. For fee applicability and calculation purposes under Rule .0201 or .0203 of this Section and emissions reporting purposes under Rule .0207 of this Section, actual emissions do not include emissions beyond the normal emissions during violations, malfunctions, start-ups, and shut-downs, do not include a facility's secondary emissions such as those from motor vehicles associated with the facility, and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Subchapter.
- (2) "Title V facility" means a facility that is required to have a permit under Section .0500 of this Subchapter.
- (3) "Synthetic minor facility" means a facility that would be a Title V facility except that the potential emissions are reduced below the thresholds in Paragraph (2) of this Rule by one or more physical or operational limitations on the capacity of the facility to emit an air pollutant. Such limitations must be enforceable by EPA and may include air pollution control equipment and restrictions on hours of operation, the type or amount of material combusted, stored, or processed.
- (4) "General facility" means a facility obtaining a permit under Rule .0310 or .0509 of this Subchapter.

- (5) "Small facility" means a facility that is not a Title V facility, a synthetic minor facility, a general facility, nor solely a transportation facility.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6.

SECTION .0700 - TOXIC AIR POLLUTANT PROCEDURES

15A NCAC 02Q .0702 EXEMPTIONS

(a) A permit to emit toxic air pollutants shall not be required under this Section for:

- (1) residential wood stoves, heaters, or fireplaces;
- (2) hot water heaters that are used for domestic purposes only and are not used to heat process water;
- (3) maintenance, structural changes, or repairs that do not change capacity of that process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant or toxic air pollutant;
- (4) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or non-asbestos bearing insulation removal;
- (5) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
- (6) paving parking lots;
- (7) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emissions of any regulated air pollutant or toxic air pollutant and that does not affect compliance status and, with replacement that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes to the permit;
- (8) comfort air conditioning or comfort ventilation systems that does not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (9) equipment used for the preparation of food for direct on-site human consumption;
- (10) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;
- (11) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (12) use of fire fighting equipment;
- (13) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the

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| <p>(14) compounds listed in 15A NCAC 02D .1104 if such compounds are applied according to agronomic practices acceptable to the North Carolina Department of Agriculture;</p> <p>(15) asbestos demolition and renovation projects that comply with 15A NCAC 02D .1110 and that are being done by persons accredited by the Department of Health and Human Services under the Asbestos Hazard Emergency Response Act;</p> <p>(16) incinerators used only to dispose of dead animals or poultry as identified in 15A NCAC 02D .1201(c)(4) or incinerators used only to dispose of dead pets as identified in 15A NCAC 02D .1208(a)(2)(A);</p> <p>(17) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or with air pollution control equipment;</p> <p>(18) laboratory activities:</p> <p style="padding-left: 20px;">(A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;</p> <p style="padding-left: 20px;">(B) bench scale experimentation, chemical or physical analyses, training or instruction from nonprofit, non-production educational laboratories;</p> <p style="padding-left: 20px;">(C) bench scale experimentation, chemical or physical analyses, training or instruction from hospital or health laboratories pursuant to the determination or diagnoses of illnesses; and</p> <p style="padding-left: 20px;">(D) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;</p> <p>(19) combustion sources as defined in 15 NCAC 02Q .0703 until 18 months after promulgation of the MACT or GACT standards for combustion sources. (Within 18 months following promulgation of the MACT or GACT standards for combustion sources, the Commission shall decide whether to keep or remove the combustion source exemption. If the Commission decides to remove the exemption, it shall initiate rulemaking procedures to remove this exemption.)</p> <p>(20) storage tanks used only to store:</p> | <p>(A) inorganic liquids with a true vapor pressure less than 1.5 pounds per square inch absolute;</p> <p>(B) fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, liquefied petroleum gas, or petroleum products with a true vapor pressure less than 1.5 pounds per square inch absolute;</p> <p>(21) dispensing equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;</p> <p>(22) portable solvent distillation systems that are exempted under 15A NCAC 02Q .0102(b)(1)(I);</p> <p>(23) processes:</p> <p style="padding-left: 20px;">(A) small electric motor burn-out ovens with secondary combustion chambers or afterburners;</p> <p style="padding-left: 20px;">(B) electric motor bake-on ovens;</p> <p style="padding-left: 20px;">(C) burn-off ovens for paint-line hangers with afterburners;</p> <p style="padding-left: 20px;">(D) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;</p> <p style="padding-left: 20px;">(E) blade wood planers planing only green wood;</p> <p style="padding-left: 20px;">(F) saw mills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;</p> <p style="padding-left: 20px;">(G) perchloroethylene drycleaning processes with 12-month rolling average consumption of:</p> <p style="padding-left: 40px;">(i) less than 1366 gallons of perchloroethylene per year for facilities with dry-to-dry machines only;</p> <p style="padding-left: 40px;">(ii) less than 1171 gallons of perchloroethylene per year for facilities with transfer machines only; or</p> <p style="padding-left: 40px;">(iii) less than 1171 gallons of perchloroethylene per year for facilities with both transfer and dry-to-dry machines;</p> <p>(24) wood furniture manufacturing operations as defined in 40 CFR 63.801(a) that comply with the emission limitations and other requirements of 40 CFR Part 63 Subpart JJ, provided that the terms of this exclusion shall not affect the authority of the Director under 15A NCAC 02Q .0712;</p> <p>(25) gasoline dispensing facilities or gasoline service station operations that comply with 15A NCAC 02D .0928 and .0932 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 02D .0524, .0925, .0926, .0927, .0932,</p> |
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- and .0933 via tank trucks that comply with 15A NCAC 02D .0932;
- (25) the use of ethylene oxide as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale if the emissions from all new and existing sources at the facility described in 15A NCAC 02D .0538(d) are controlled at least to the degree described in 15A NCAC 02D .0538(d) and the facility complies with 15A NCAC 02D .0538(e) and (f);
- (26) bulk gasoline plants, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0926, .0932, and .0933; unless the Director finds that a permit to emit toxic air pollutants is required under this Section for a particular bulk gasoline plant; or
- (27) bulk gasoline terminals, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992; unless:
- (A) the Director finds that a permit to emit toxic air pollutants is required under this Section for a particular bulk gasoline terminal, or
- (B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 2D .0927(i);

(b) Emissions from the activities identified in Subparagraphs (a)(24) through (a)(27) of this Rule shall be included in determining compliance with the toxic air pollutant requirements in this Section and shall be included in the permit if necessary to assure compliance. Emissions from the activities identified in Subparagraphs (a)(1) through (a)(23) of this Rule shall not be included in determining compliance with the toxic air pollutant requirements in this Section.

(c) The addition or modification of an activity identified in Paragraph (a) of this Rule shall not cause the source or facility to be evaluated for emissions of toxic air pollutants.

(d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02D .0542. Notice of Rule-making

Proceedings was published in the Register on June 15, 1999 and June 15, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 8, 2002

Time: 7:00 p.m.

Location: Wilson Technical Community College Auditorium, 902 Herring Ave., Wilson, NC

Reason for Proposed Action: This Rule is proposed for adoption to establish particulate emission control requirements specifically applicable to cotton gins.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until January 16, 2002, to receive additional written statements. To be included, the statement must be received by the Division by January 16, 2002. Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, (919) 733-1489 phone, (919) 715-7476 fax, thom.allen@ncmail.net.

Fiscal Impact

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 – EMISSION CONTROL STANDARDS

15A NCAC 02D .0542 CONTROL OF PARTICULATE EMISSIONS FROM COTTON GINNING OPERATIONS

(a) Purpose. The purpose of this Rule is to establish control requirements for particulate emissions from cotton ginning operations.

(b) Definitions. For the purposes of this Rule the following definitions apply:

- (1) "1D-3D cyclone" means any cyclone-type collector of the 1D-3D configuration. This designation refers to the ratio of the cylinder to cone length, where D is the diameter of the cylinder portion. A 1D-3D cyclone has a cylinder length of 1xD and a cone length of 3xD.
- (2) "2D-2D cyclone" means any cyclone-type collector of the 2D-2D configuration. This designation refers to the ratio of the cylinder to cone length, where D is the diameter of the cylinder portion. A 2D-2D cyclone has a

- cylinder length of 2xD and a cone length of 2xD.
- (3) "Bale" means a compressed and bound package of cotton lint, nominally weighing 500 pounds.
- (4) "Ginning operation" means any facility or plant that removes seed, lint, and trash or one or more combination of these from raw cotton or bales of lint cotton.
- (5) "Ginning season" means the period from September 1 until January 31 of the following year or until such date beyond the end of January of the following year as extended by the Director if the Commissioner of Agriculture certifies to the Director that the cotton ginning season has been delayed because of adverse weather;
- (6) "High pressure exhausts" means the exhaust air systems at a cotton gin that are not defined as "low pressure exhausts."
- (7) "Low pressure exhausts" means the exhaust cotton handling systems located at a cotton gin that handle air from the cotton lint handling system and battery condenser.
- (c) **Applicability.** This Rule applies to all existing, new, and modified cotton ginning operations. Facilities with a maximum rated capacity of less than 10 bales per hour that do not have control devices on lint cleaners and battery condensers as of July 1, 2002 shall not be required to add the emission control devices in Subparagraph (d)(1) of this Rule to lint cleaning exhausts and shall not be required to add the emission control devices in Subparagraph (d)(2) of this Rule to battery condenser exhausts.
- (d) **Emission Control Requirements.** The owner or operator of each cotton ginning operation shall control particulate emissions from the facility as follows:
- (1) By no later than September 1, 2003, the owner or operator shall control all high pressure exhausts and lint cleaning exhausts with an emission control system that includes:
 - (A) one or more properly sized 1D-3D cyclones to achieve 95% efficiency; or
 - (B) an equivalent device with a minimum of 95% efficiency.
 - (2) By no later than September 1, 2003, the owner or operator shall control all remaining low pressure exhausts by an emission control system that includes:
 - (A) at least a 2D-2D cyclone to achieve 90% efficiency; or
 - (B) an equivalent device with at least a 90% efficiency.
 - (3) For any controls that are not in place as of July 1, 2002, the owner or operator shall submit by September 1, 2002, a compliance schedule detailing the installation of those controls that includes:
 - (A) a description of the type of equipment to be installed;
 - (B) date by which design plans shall be completed;
 - (C) date by which construction shall begin;
 - (D) date by which construction shall be completed; and
 - (E) date by which compliance shall be achieved.

The date for completing construction of controls shall be no later than September 1, 2003.
 - (e) **Raincaps.** Exhausts from emission points or control devices shall not be equipped with raincaps or other devices that deflect the emissions downward or outward after September 1, 2002.
 - (f) **Operation and Maintenance.** To ensure that optimum control efficiency is maintained, the owner or operator shall establish, based on manufacturers recommendations, an inspection and maintenance schedule for the control devices, other emission processing equipment, and monitoring devices that are used pursuant to this Rule. The inspection and maintenance schedule shall be followed throughout the ginning season. The results of the inspections and any maintenance performed on the control equipment, emission processing equipment, or monitoring devices shall be recorded in the log book required in Paragraph (i) of this Rule.
 - (g) **Fugitive Emissions.** The owner or operator shall minimize fugitive emissions from cotton ginning operations as follows:
 - (1) **Trash Stackers.** The owner or operator of a trash stacker shall:
 - (A) install, maintain, and operate as a minimum, a three sided enclosure with a roof whose sides are high enough above the opening of the dumping device to prevent wind from dispersing dust or debris; or
 - (B) install, maintain, and operate a device to provide wet suppression at the dump area of the trash cyclone and minimize free fall distance of waste material exiting the trash cyclone.
 - (2) **Trash Stacker/Trash Composting System.** The owner or operator of a trash stacker/trash composting system shall install, maintain, and operate a wet suppression system providing dust suppression in the auger box assembly and at the dump area of the trash stacker system. The owner or operator shall keep the trash material wet and compost it in place until the material is removed from the dump area for additional composting or disposal.
 - (3) **Gin Yard.** The owner or operator shall clean and dispose of accumulations of trash or lint on the non-storage areas of the gin yard daily.
 - (4) **Traffic areas.** The owner or operator shall clean paved roadways, parking, and other traffic areas at the facility as necessary to prevent re-entrainment of dust or debris. The owner or operator shall treat unpaved roadways, parking, and other traffic areas at the facility with wet or chemical dust suppressant as necessary to prevent dust from leaving the facility's property and shall install and maintain signs limiting vehicle speed to 10

miles per hour where chemical suppression is used and to 15 miles per hour where wet suppression is used.

- (5) Transport of Trash Material. The owner or operator shall ensure that all trucks transporting gin trash material are covered and that the trucks are cleaned of over-spill material before trucks leave the trash hopper dump area. The dump area shall be cleaned daily.

(h) Alternative Control Measures. The owner or operator of a ginning operation may petition for use of alternative control measures to those specified in this Rule. The petition shall include:

- (1) the name and address of the petitioner;
- (2) the location and description of the ginning operation;
- (3) a description of the alternative control measure; and
- (4) a demonstration that the alternative control measure is at least as effective as the control device or method specified in this Rule.

(i) Approval of Alternative Control Measure. The Director shall approve the alternative control measure if he finds that:

- (1) all the information required by Paragraph (h) of this Rule has been submitted; and
- (2) the alternative control measure is at least as effective as the control device or method specified in this Rule.

(j) Monitoring.

- (1) The owner or operator of each ginning operation shall install, maintain, and calibrate monitoring devices that measure pressures, rates of flow, and other operating conditions necessary to determine if the control devices are functioning properly.
- (2) Before or during the first week of operation of the 2002-2003 ginning season, the owner or operator of each gin shall conduct a baseline study of the entire dust collection system, without cotton being processed, to ensure air flows are within the design range for each collection device. For 2D-2D cyclones the air flow design range is 2700 to 3600 feet per minute. For 1D-3D cyclones the design range is 2800 to 3600 feet per minute. For other control devices the air flow design range is that found in the manufacturer's specifications. Gins constructed after the 2002-2003 ginning season shall conduct the baseline study before or during the first week of operation of the first ginning season following construction. During the baseline study the owner or operator shall measure or determine according to the methods specified in this Paragraph and record in a logbook:

- (A) the calculated inlet velocity for each control device;
- (B) the static pressure downstream of each fan; and

- (C) the pressure drop across each control device.

The owner or operator shall use Method 1 and Method 2 of 40 CFR Part 60 Appendix A to measure flow and static pressure and determine inlet velocity.

- (3) On a monthly basis following the baseline study, the owner or operator shall measure and record in the logbook the static pressure at each port where the static pressure was measured in the baseline study. Measurements shall be made using a manometer, a Magnahelic® gauge, or other device that the Director has approved as being equivalent to a manometer. If the owner or operator measures a change in static pressure of 20 percent or more from that measured in the baseline study, the owner or operator shall initiate corrective action. Corrective action shall be recorded in the logbook. If corrective action will take more than 48 hours to complete, the owner or operator shall notify the regional supervisor of the region in which the ginning operation is located as soon as possible, but by no later than the end of the day such static pressure is measured.

- (4) When any design changes to the dust control system are made, the owner or operator shall conduct a new baseline study for that portion of the system and shall record the new values in the logbook required in Paragraph (k) of this Rule. Thereafter monthly static pressure readings for that portion of the system shall be compared to the new values.

- (5) During the ginning season, the owner or operator shall daily inspect for structural integrity of the control devices and other emissions processing systems and shall ensure that the control devices and emission processing systems conform to normal and proper operation of the gin. If a problem is found, corrective action shall be taken and recorded in the logbook required in Paragraph (k) of this Rule.

- (6) At the conclusion of the ginning season, the owner or operator shall conduct an inspection of the facility to identify all scheduled maintenance activities and repairs needed relating to the maintenance and proper operation of the air pollution control devices for the next season. Any deficiencies identified through the inspection shall be corrected before beginning operation of the gin for the next season.

(k) Recordkeeping. The owner operator shall establish and maintain on-site a logbook documenting the following items:

- (1) Results of the baseline study as specified in Subparagraph (j)(2) of this Rule;
- (2) Results of new baseline studies as specified in Subparagraph (j)(4) of this Rule;

- (3) Results of monthly static pressure checks and any corrective action taken as specified in Subparagraph (j)(3) of this Rule;
- (4) Observations from daily inspections of the facility and any resulting corrective actions taken as required in Subparagraph (j)(5) of this Rule; and
- (5) A copy of the manufacturer's specifications for each type of control device installed.

The logbook shall be maintained on site and made available to Division representatives upon request.

(l) Reporting. The owner or operator shall submit:

- (1) by March 1 of each year a report containing the following:
 - (A) the name and location of the cotton gin;
 - (B) the number of bales of cotton produced during the previous ginning season;
 - (C) a maintenance and repair schedule based on inspection of the facility at the conclusion of the previous cotton ginning season required in Subparagraph (j)(6) of this Rule; and
 - (D) signature of the appropriate official as identified in 15A NCAC 02Q .0304(j), certifying as to the truth and accuracy of the report.

(m) Compliance Schedule. Existing sources shall comply as specified in Paragraph (d) of this Rule. New and modified sources shall be in compliance upon start-up.

(n) Record retention. The owner or operator shall retain all records required to be kept by this Rule for a minimum of three years from the date of recording.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .1001-.1002, .1004-.1005. Notice of Rule-making Proceedings was published in the Register on May 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 7, 2002

Time: 7:00 p.m.

Location: Division of Air Quality Training Room, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC

Reason for Proposed Action: *The motor vehicle emission control standards are proposed to be amended to incorporate statutory amendments establishing on-board diagnostic testing requirements beginning in 2002, expansion of the geographic applicability of the inspection and maintenance program, and phase-out of tailpipe emission testing.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until February 15, 2002, to receive additional written statements. To be included, the statement must be received by the Division by February 15, 2002. Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, (919) 733-1489 Phone, (919) 715-7476 Fax, thom.allen@ncmail.net email.*

Fiscal Impact

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1000 – MOTOR VEHICLE EMISSION CONTROL STANDARDS

15A NCAC 02D .1001 PURPOSE

This Section sets forth motor vehicle emission control standards in areas where a motor vehicle inspection/maintenance program is implemented pursuant to State law

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7).

15A NCAC 02D .1002 APPLICABILITY

(a) This Section is applicable to all 1975 and later gasoline-powered motor vehicles, except motorcycles and excluding the current model year, that are:

- (1) required to be registered by the North Carolina Division of Motor Vehicles in the counties identified in Paragraph (b) of this Rule;
- (2) part of a fleet primarily operated within the counties identified in Paragraph (b) of this Rule; or
- (3) operated on a federal installation located in a county identified in Paragraph (b) of this Rule and that meet the requirements of 40 C.F.R. 51.356(a)(4).

(b) The emission control standards of this Section become effective in the counties identified in G.S. 143-215.107A on the dates specified in G.S. 215.107A.

Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A.

15A NCAC 02D .1004 TAILPIPE EMISSION

STANDARDS FOR CO AND HC

(a) This Rule applies according to Rule .1002 of this Section to all 1995 and earlier gasoline-powered motor vehicles, except motorcycles, in the following counties:

- (1) Mecklenburg
- (2) Wake
- (3) Forsyth
- (4) Guilford

- (5) Durham
- (6) Gaston
- (7) Cabarrus
- (8) Orange
- (9) Union

(b) The following standards specify the maximum carbon monoxide (CO) and hydrocarbon (HC) concentrations permitted to be exhausted from motor vehicles subject to these Rules:

Vehicle Class	Model Year	CO Standard At Idle(%)	HC Standard At Idle(PPM)
Light-duty Vehicle	1975-1977	4.5	450
	1978-1979	3.5	350
	1980	2.0	250
	1981 and later	1.2	220
Heavy-duty Vehicle	1975-1978	5.0	500
	1979 and later	4.0	400

(c) Exceptions or variances to the standards in this Rule are permitted only according to G.S. 20-183.5.

(d) Compliance with the emission standards in this Rule shall be determined using:

- (1)_____the test procedures and standards described in 40 CFR 51.357;
- (2)_____test equipment described in 40 CFR 51.358; and
- (3)_____quality control described in 40 CFR 51.359.

(e) The requirements of this Rule expire on January 1, 2006.

Authority G.S. 20-128.2(a); 20-183.5; 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7).

15A NCAC 02D .1005 ON-BOARD DIAGNOSTIC STANDARDS

(a) This Rule applies according to rule .1002 of this Section to all 1996 and later gasoline-powered motor vehicles, except motorcycles, in the counties identified in G.S. 143-215.107A.

(b) Vehicles covered under this Rule shall pass annually the on-board diagnostic test described in 40 CFR 85.2222. The vehicle shall fail the on-board diagnostic test if any of the conditions of 40 CFR 85.2207 are met. Equipment used to perform on-board diagnostic tests shall meet the requirements of 40 CFR 85.2231.

(c) The tester shall provide the owner of a vehicle that fails the on-board diagnostic test described in Paragraph (b) of this Rule a report of the test results. This report shall include the codes retrieved (these codes are listed in 40 CFR 85.2223(b)), the status of the malfunction indicator light illumination command, and the customer alert statement described in 40 CFR 85.2223(c).

(d) Persons performing on-board diagnostic tests shall provide the Division of Air Quality data necessary to determine the effectiveness of the on-board diagnostic testing program. The data submitted shall be what is necessary to satisfy the

requirements of 40 CFR 51.365, Data Collection, and 40 CFR 51.366, Data Analysis and Reporting.

Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A(b); S.L. 1999, c. 328, s. 3.2.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission/DENR intends to adopt the rules cited as 15A NCAC 02S .0103, .0301-.0302, .0401, and amend the rules cited as 15A NCAC 02S .0102, .0201-.0202. Notice of Rule-making Proceedings was published in the Register on May 15, 2001. Notice of Rule-making Proceedings was published for 15A NCAC 02S .0201 in the Register on October 16, 2000

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing may be demanded by sending a written request to Lisa Taber, 1646 Mail Service Center Raleigh, NC 27699-1646. All requests must be made by January 2, 2002.*

Reason for Proposed Action: *The proposed new rules provide a framework for DENR to implement the Drycleaning Solvent Cleanup Act (DSCA) Program that was created by the DSCA of 1997 (amended by S.L. 2000-19 and 2001-265). The DSCA Program administers a trust fund that will be used to assess and cleanup environmental contamination from drycleaning solvent. The proposed amendments to existing rules clarify applicability of rules and provide new definitions.*

Comment Procedures: *The purpose of this announcement is to encourage those interested in this proposal to provide comments to DENR. Written comments will be accepted through January 16, 2002 and should be sent to Lisa Taber, 1646 Mail Service Center, Raleigh, NC 27699-1646.*

Fiscal Impact

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 02S - RULES AND CRITERIA FOR THE
ADMINISTRATION OF THE DRY-CLEANING
SOLVENT CLEANUP FUND**

SECTION .0100 – GENERAL CONSIDERATIONS

15A NCAC 02S .0102 DEFINITIONS

The definition of any word or phrase used in this Subchapter shall be the same as given in G.S. 143-215.104B and the following words and phrases shall have the following meanings:

- “(1) "Act" means the Dry-Cleaning Solvent Cleanup Act of 1997 and any amendments thereto.
- (2) "Apparel and household fabrics" means apparel and fabrics that have been purchased at retail or have been purchased at wholesale for rental at retail.
- (3) "Business" means a sole proprietorship, a partnership, a limited partnership, a limited liability company, a corporation or any other business entity.
- (4) "Closed container solvent transfer system" means a device or system specifically designed to fill a dry-cleaning machine with dry-cleaning solvent through a mechanical valve or sealed coupling in order to prevent spills or other loss of solvent liquids or vapors to the environment.
- (5) "Discovery Site" means the physical site or area where dry-cleaning solvent contamination has been discovered. A discovery site may or may not be the same property as the facility site.
- (6) "Division" means the Division of Waste Management of the Department of Environment and Natural Resources.
- (7) "Dry-Cleaning Business" means a business having engaged in dry-cleaning operations or the operation of a wholesale distribution facility at a facility site.
- (8) "Environmental media" means soil, sediment, surface water, groundwater or other physical substance.
- (9) "Facility site" means the physical location of a dry-cleaning facility, a wholesale distribution facility or an abandoned site.
- (10) "Material impervious to drycleaning solvent" means a material that has been demonstrated

- by the manufacturer or a reputable testing organization to maintain its chemical and structural integrity in the presence of the applicable dry-cleaning solvent and prevent the movement of dry-cleaning solvent for a period of a least 72 hours.
- (11) "Number of full time employees" means the number of full-time equivalent employees employed by a person who owns a dry-cleaning facility, as calculated pursuant to 15A NCAC 02S .0103.
- (12) "Person" means any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.
- (13) "Petitioner" means a potentially responsible party that submits a petition for certification of a facility site.

Authority G.S. 143-215.104D(b); 150B-21.2;

**15A NCAC 02S .0103 CALCULATION OF FULL TIME
EQUIVALENT EMPLOYMENT**

(a) This Rule governs the calculation of the number of full-time equivalent employees employed by a person who owns a dry-cleaning facility. For the purposes of this Rule, the person that owns the dry-cleaning facility shall be referred to as the "facility owner." If the dry-cleaning facility is jointly owned by more than one person, the full-time equivalent employment associated with the dry-cleaning facility shall be the number of full-time equivalent employees employed in activities related to dry-cleaning by all persons with an ownership interest in the dry-cleaning facility.

(b) The number of full-time employees employed by a facility owner in activities related to dry-cleaning operations shall be the sum of the following:

- (1) The number of salaried employees employed by the facility owner in activities related to dry-cleaning operations;
- (2) The total number of hours worked in the previous calendar year by non-salaried employees employed by the facility owner in activities related to dry-cleaning operations divided by 2080; and
- (3) The lesser of: (i) the number of persons who hold ownership interests in the dry-cleaning facility, but are not included in Subparagraphs (b)(1) or (b)(2) of this Rule, and who perform activities related to dry-cleaning operations at a dry-cleaning facility in which the persons have ownership interests, or (ii) the total number of hours worked by such persons divided by 2080.

(c) If a facility owner was not engaged in the operation of dry-cleaning facilities during the entire calendar year for which full-time equivalent employment is being calculated, then the number in Subparagraph (b)(2) of this Rule shall be prorated according to the number of weeks, or partial weeks, during the

previous calendar year that the facility owner was engaged in the operation of such dry-cleaning facilities.

(d) For the purposes of this Section, an employee shall be considered to be employed in activities related to dry-cleaning operations if the employee's duties include any of the following activities:

- (1) The provision of dry-cleaning or laundry services, including the collection, cleaning, pressing, altering, repair, packaging, handling, or delivery of items of apparel or household fabrics for which dry-cleaning or laundry services are provided;
- (2) The supervision of employees involved in the provision of dry-cleaning or laundry services as described in Subparagraph (d)(1) of this Rule;
- (3) The maintenance or operation of physical facilities used to provide dry-cleaning or laundry services as described in Subparagraph (d)(1) of this Rule; or
- (4) The management, including accounting, financial, human resource, or other support functions, of the business providing dry-cleaning or laundry services as described in Subparagraph (d)(1) of this Rule.

Authority G.S. 143-215.104D(b); 150B-21.2.

SECTION .0200 – MINIMUM MANAGEMENT PRACTICES

15A NCAC 02S .0201 APPLICABILITY

The provisions contained in this Section set forth the minimum management practices for the storage and handling of dry-cleaning solvents required to be implemented at all dry-cleaning facilities, dry-cleaning solvent wholesale distribution facilities, and abandoned sites. The provisions contained in this Section are applicable only to owners and operators of dry-cleaning facilities, dry-cleaning solvent wholesale distribution facilities, and abandoned sites.

Authority G.S. 143-215.104D(b); 150B-21.2.

15A NCAC 02S .0202 REQUIRED MINIMUM MANAGEMENT PRACTICES

(a) All abandoned sites, as defined by G.S.143-215.104(B)(b)(1), shall at all times after this Rule becomes effective, comply with Subparagraph (b)(5) of this Rule.

(b) All dry-cleaning facilities and wholesale distribution facilities shall, at all times after this Rule becomes effective, comply with the following minimum management practices:

- (1) At no time shall any dry-cleaning solvent, wastes containing dry-cleaning solvent, or water containing dry-cleaning solvent be discharged onto land or into waters of the State, sanitary sewers, storm drains, floor drains, septic systems, boilers, or cooling-towers. All invoices generated as a result of disposal of all dry-cleaning solvent waste shall be made available for review by the Department. If a dry-cleaning facility uses

devices such as atomizers, evaporators, carbon filters, or other equipment for the treatment of wastewater containing solvent, all records, including but not limited to, invoices for the purchase, maintenance, and service of such devices, shall be made available to the Department. Records shall be kept for a period of three years.

- (2) Spill containment shall be installed and maintained under and around dry-cleaning machines, filters, dry-cleaning solvent pumps, stills, vapor adsorbers, solvent storage areas, and waste solvent storage areas by January 1, 2002. Spill containment shall have a volumetric capacity of 110 percent of the largest vessel, tank, or container within the spill containment area and shall be capable of preventing the release of the applicable liquid dry-cleaning solvent beyond the spill containment area for a period of at least 72 hours. All floor drains within or beneath the spill containment area shall be removed or permanently sealed with materials impervious to dry-cleaning solvents. Emergency adsorbent spill clean-up materials shall be on the premises. Facilities must maintain an emergency response plan that is in compliance with federal, state and local requirements.

- (3) All perchloroethylene dry-cleaning machines installed at a dry-cleaning facility after the effective date of this Rule shall meet air emissions that equal or exceed the standards that apply to a comparable dry-to-dry perchloroethylene dry-cleaning machine with an integrated refrigerated condenser. All perchloroethylene dry-cleaning facilities must be in compliance with the EPA Perchloroethylene Dry Cleaner NESHAP: 40CFR, Part 63, Subpart M to be eligible for certification. (4) Facilities that use perchloroethylene shall use a closed container solvent transfer system by January 1, 2002.(5)

Within six months of the effective date of this Rule, no dry-cleaning facility shall use underground storage tanks for solvents or waste.

Authority G.S. 143-215.104D(b); 150B-21.2.

SECTION .0300 -- PETITIONS FOR CERTIFICATION

15A NCAC 02S .0301 FILING

(a) Any potentially responsible party may petition for certification of a facility site by filing a petition with the Division using forms provided by the Division. Petitions shall be verified by the petitioner, and shall include a laboratory analysis demonstrating the presence of dry-cleaning solvent in environmental media at the discovery site.

(b) Petition forms may be obtained from the Dry-Cleaning Solvent Cleanup Act Program of the Superfund Section of the Division, 401 Oberlin Road, Raleigh, North Carolina, 27605.

Authority G.S. 143-215.104D(b); 150B-21.2.

15A NCAC 02S .0302 OTHER POTENTIALLY RESPONSIBLE PARTIES

(a) After receiving a petition, the Division may notify other potentially responsible parties that a petition has been filed.

(b) The Division may request from any potentially responsible party that has not petitioned for certification of the facility site additional information concerning the dry-cleaning business, the discovery site, or the facility site. The Division may refuse to enter into an assessment or remediation agreement with any potentially responsible party that:

- (1) Fails to provide within 60 days any additional information requested by the Division that is in the possession or control of the party, or
- (2) Fails or refuses to cooperate in the assessment or remediation of the facility site or the discovery site.

The time for responding to requests for additional information described in this Rule shall be measured from the date a request for information is received by the potentially responsible party from whom the information is requested.

Authority G.S. 143-215.104D(b); 150B-21.2.

SECTION .0400 – ASSESSMENT AGREEMENTS

15A NCAC 02S .0401 PRIORITIZATION ASSESSMENT

(a) Upon receipt of a petition for certification that meets the requirements of the Act and Section .0300 of this Subchapter, the Division may enter into an agreement with one or more potentially responsible parties that have petitioned for certification requiring such party or parties to provide a prioritization assessment of the dry-cleaning solvent contamination identified in the petition. A prioritization assessment agreement entered into pursuant to this Paragraph shall qualify the petitioners party thereto to the liability protections of the Act.

(b) An agreement made pursuant to Paragraph (a) of this Rule shall provide that costs associated with the prioritization assessment be paid by the petitioner or petitioners who are party to the agreement, provided that costs in excess of the petitioner's deductible and copay obligations under the Act shall be reimbursed from the Fund in accordance with the provisions of the Act.

Authority G.S. 143-215.104D(b); 150B-21.2.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR – Soil & Water Conservation Commission intends to adopt the rules cited as 15A NCAC 06H .0101-.0105. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: August 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person

requesting that the Soil and Water Conservation Commission conduct a public hearing on any portion of these proposed rules must submit a written request to Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614 by January 2, 2002. The request must specify which rule the hearing is being requested on. Mailed requests must be postmarked no later than January 2, 2002.

Reason for Proposed Action: In August 1998, the DENR – Environmental Management Commission (EMC) adopted rules specifying that the Soil and Water Conservation Commission designate technical specialists to assist agricultural operations to comply with the requirements of 15A NCAC 02B .0238 Neuse River Basin – Sensitive Waters Management Strategy: Agricultural Nitrogen Reduction Strategy. These proposed rules also comply with the EMC's rules adopted for the Tar-Pamlico River Basin – Nutrient Sensitive Waters Management Strategy: Agricultural Nutrient Control Strategy (15A NCAC 02B .0256). Session Law 2001-284 authorizes the Soil and Water Conservation Commission to develop and implement a program for the approval of water quality and animal waste management systems technical specialists and to develop and approve best management practices for use in water quality protection programs and to adopt rules that establish criteria governing approval of these best management practices.

Comment Procedures: All persons interested in these proposed rules are encouraged to submit written requests. Comments must be postmarked by January 16, 2002 and submitted to Vernon Cox, Division of Soil and water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614.

Fiscal Impact

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

CHAPTER 06 - SOIL AND WATER CONSERVATION COMMISSION

SUBCHAPTER 06H - APPROVAL OF TECHNICAL SPECIALISTS AND BMPS FOR WATER QUALITY PROTECTION

15A NCAC 06H .0101 PURPOSE

This Subchapter describes criteria and procedures for the Commission to approve water quality technical specialists and to approve Best Management Practices (BMPs) for use in water quality protection programs of the Department. These criteria and procedures are intended for use by the Commission where technical specialists or BMPs are needed in conjunction with actions by the Environmental Management Commission or other commissions in Department water quality protection programs.

Authority G.S. 139-4; 143B-294; S.L. 2001-284.

15A NCAC 06H .0102 DEFINITIONS

(a) "Department" means the Department of Environment and Natural Resources.

- (b) "EMC" means the Environmental Management Commission.
- (c) "NRCS" means the USDA Natural Resources Conservation Service.
- (d) "Technical Specialist" means an individual designated by the Commission to certify that the planning, design and implementation of BMPs are to the standards and specifications of the Commission or NRCS.
- (e) "Water management" means a BMP for control of water levels in the soil profile, including but not limited to, the use of flashboard risers or other similar structures placed in drainage ditches to benefit crop water needs and reduce nutrient loss.
- (f) "Nutrient management" means a BMP for managing the amount, source, placement, form and timing of nutrients to ensure adequate fertility for plant production and to minimize the potential for water quality impairment.
- (g) "Technical specialist designation category" means a designation specific to any of several individual or groups of BMPs.
- (h) "Best Management Practice" (BMP) means a structural or nonstructural management practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.

Authority G.S. 139-4; 143B-294; S.L. 2001-284.

15A NCAC 06H .0103 APPROVAL OF BEST MANAGEMENT PRACTICES (BMPs)

The Commission may approve individual BMPs or systems of BMPs in conjunction with water quality protection programs for agriculture and other nonpoint sources. Approved BMPs shall meet the minimum standards of the USDA Natural Resources Conservation Service Technical Guide, or minimum standards and specifications as otherwise determined by the Commission as appropriate to provide water quality protection. In approving BMPs, the Commission shall consider technical input from persons engaged in agriculture or experienced in nonpoint source management.

Authority G.S. 139-4; 143B-294; S.L. 2001-284.

15A NCAC 06H .0104 APPROVAL OF WATER QUALITY TECHNICAL SPECIALISTS

- (a) Technical specialist designation categories are established for:
 - (1) nutrient management;
 - (2) water management; and
 - (3) other groups of BMPs as necessary for nonpoint source water quality protection as identified by the Commission.
- (b) The Commission designates the following as technical specialists:
 - (1) Individuals who have been assigned approval authority for a designation category by the USDA NRCS, the North Carolina Department of Agriculture and Consumer Services, the Division of Soil and Water Conservation, or the North Carolina Cooperative Extension Service;

- (2) Professional engineers subject to the "The NC Engineering and Land Surveying Act" for the water management designation category; and
 - (3) Individuals with the demonstrated skill and experience in a designation category.
- (c) Those individuals not designated in Subparagraphs (b)(1) or (b)(2) of this Rule must:
- (1) Meet the minimum qualifications established by the Commission for each designation category;
 - (2) Provide to the Division an "Application for Designation for Technical Specialist" and evidence of demonstrated skill and experience required for each designation category;
 - (3) Receive approval of their application by the Commission to become designated; and
 - (4) Attend training in new areas to maintain their designation as determined by the Commission.
- (d) Upon the finding by the Commission that the work of a technical specialist designated under Subparagraph (b)(3) of this Rule or under 15A NCAC 06F .0105(a)(3) fails to comply with NRCS technical standards, technical standards contained in EMC rules, or guidance published by the interagency group created under Section 18 of Chapter 626 of the 1995 Session Laws, the Commission may withdraw its designation of the technical specialist in any or all categories. For technical specialists designated under Subparagraph (b)(1) of this Rule or under 15A NCAC 06F .0105(a)(1), the Commission will forward findings of improper work performed by an agency technical specialist to the respective agency with the recommendation that the agency provide documentation that their technical specialist has received training to correct deficiencies in the area of work to retain designation. If the agency fails to provide such documentation, the Commission may withdraw its designation of the technical specialist for any or all categories.

Authority G.S. 139-4; 143B-294; S.L. 2001-284.

15A NCAC 06H .0105 APPLICATION OF BMP APPROVAL AND TECHNICAL SPECIALIST DESIGNATION TO WATER QUALITY PROTECTION PROGRAMS

Approved BMPs or systems of BMPs and technical specialist designation by the Commission under this Chapter may be used to satisfy the requirements of:

- (1) The Neuse Basin Rule in 15A NCAC 02B .0238(8)(b)(x) and (c)(i) and 15A NCAC 02B .0239(2)(a) and (b);
- (2) The Tar-Pamlico Rule in 15A NCAC 02B .0256 and 15A NCAC 02B .0257(f)(2); and
- (3) Other applicable water quality protection rules adopted by the EMC or other commissions that include BMP development or implementation or technical specialist designation by the Commission.

Authority G.S. 139-4; 143B-294; S.L. 2001-284.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .0305. Notice of Rule-making Proceedings was published in the Register on December 15, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: January 23, 2002

Time: 4:30 p.m.

Location: K.S. White Center, Elizabeth City State University, 1704 Weeksville Road, Elizabeth City, NC

Reason for Proposed Action: *The intent of the proposed amendment is to provide an alternative vegetation line to communities faced with a situation where, because of recent storms, the vegetation line determined prior to the onset of construction of a beach nourishment project is significantly landward of its likely long-term stable location.*

Comment Procedures: *Written comments will be received through January 23, 2002. Please mail to Mr. Steve Benton, NC Div. of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687.*

Fiscal Impact

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

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

- (1) the growth of vegetation occurs, or
- (2) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(b) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(c) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(d) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having

sufficient vegetation, height, continuity and configuration to offer protective value.

(e) General Identification. For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

(f) "Vegetation Line" means the first line of stable natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. It is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. In areas where there is no stable natural vegetation present, this line shall be established by connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line. In areas within the boundaries of a large scale beach nourishment or spoil deposition project, the vegetation line that existed prior to the onset of project construction shall be used as the vegetation line for determining oceanfront setbacks after the project is completed except for those circumstances described under Paragraph (g) of this Rule for projects constructed after September 1, 2000. A project shall be considered large scale when:

- (1) it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline, or
- (2) it is a Hurricane Protection project constructed by the U.S. Army Corps of Engineers.

(g) If within three years prior to the award of contract date of a large scale project as defined in Subparagraph (f)(1) or (f)(2) of this Rule, a large storm or series of storms cause the vegetation line to be relocated landward of its normal position relative to other natural features of the beach such as the typical high water or mid-tide line, the affected local government may request that the CRC establish an alternative vegetation line where the storm effect on the vegetation line contained within the boundaries of a large scale beach nourishment or spoil deposition project is mitigated. Once the CRC grants the local government's request to establish an alternative vegetation line the following activities will be conducted:

- (A) A primary vegetation line shall be established prior to the onset of project construction as described in Paragraph (f) of this Rule;
- (B) An alternative vegetation line shall be determined based on a dry sand beach width template (measured from the wet/dry line or other appropriate shoreline indicator to the vegetation line) developed by DCM staff from analysis of historic aerial photographs, a ground reconnaissance survey of the site and adjacent areas,

and where available, other historic data such as beach profiles and site specific studies. The template is intended to show the location of the vegetation line relative to the existing shoreline as if no storm had affected the location of the vegetation line. The template will be applied to the existing shoreline immediately prior to the commencement of project construction; and

(C) After a minimum time period of eight years from the award of contract date of the large scale project as defined in Subparagraph (e)(1) or (e)(2) of this Rule, and the Division of Coastal Management personnel have determined that natural vegetation is reestablished on the large scale project such that:

- (i) the dune grasses appear the same in terms of species composition and stem density as adjacent non-project dune areas,
- (ii) the majority of stems are from continuous rhizomes rather than planted individual rooted sets and,
- (iii) the vegetation is established and stable at least as far seaward as the storm effect mitigated pre-project vegetation line, then the storm effect mitigated vegetation line may be used to replace the primary pre-project vegetation line for setback determinations and other appropriate regulatory actions.

(h) "Erosion Escarpment" means normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(i) Measurement line means the line from which the ocean front setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:

- (1) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and
- (2) locating the line of stable natural vegetation on the most current pre-storm aerial photography

of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10B .0106, .0110, .0116 - .0118, .0202 - .0203, .0209; 10C .0205 - .0206, .0401, .0501 - .0503; 10D .0103; 10I .0102. Notice of Rule-making Proceedings was published in the Register on September 17, 2001.

Proposed Effective Date: July 1, 2001

Public Hearing:

Date: January 15, 2002

Time: 7:00 p.m.

Location: Southwestern Community College, Sylva, NC

Date: January 16, 2002

Time: 7:00 p.m.

Location: City of Morganton Municipal Auditorium, Morganton, NC

Date: January 17, 2002

Time: 7:00 p.m.

Location: Dixon Auditorium, Elkin High School, Elkin, NC

Date: January 22, 2002

Time: 7:00 p.m.

Location: Courthouse, Elizabethtown, NC

Date: January 23, 2002

Time: 7:00 p.m.

Location: Courthouse, Graham, NC

Date: January 24, 2002

Time: 7:00 p.m.

Location: Moore County Courthouse, Carthage, NC

Date: January 29, 2002

Time: 7:00 p.m.

Location: Swain Auditorium, Edenton, NC

Date: January 30, 2002

Time: 7:00 p.m.

Location: Courthouse, New Bern, NC

Date: January 31, 2002

Time: 7:00 p.m.

Location: Courthouse, Nashville, NC

Reason for Proposed Action:

15A NCAC 10B .0106 - To set/amend rules on taking for depredation or by accident. Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10B .0110 - To set/amend rules that address the attendance of traps.

15A NCAC 10B .0116 - To amend rules that set forth permitted archery equipment.

15A NCAC 10B .0117 - To set/amend rules that set forth replacement costs of wildlife resources (wild animals and birds.)

15A NCAC 10B .0118 - To set/amend rules regarding the sale of wildlife.

15A NCAC 10B .0202 - .0203 - To set/amend rules that address the hunting of Deer. The Wildlife Resources Commission may adopt these

Rules as temporary rules pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10B .0209 - To set/amend rules that set the seasons for hunting wild (bearded) turkey.

15A NCAC 10C .0205 - To set/amend rules regarding Public Mountain Trout Waters. The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10C .0206 - To set/amend rules that regulate placement and kind of trotlines and set-hooks. The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10C .0401 - To set/amend rules regarding the manner of taking nongame fishes. The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10C .0501 - To amend rules setting the scope and purpose for Primary Nursery Areas. The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10C .0502 - To amend rules defining Primary Nursery Areas. The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10C .0503 - To amend rules setting the descriptive boundaries for Primary Nursery Areas. The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following

the public hearing and public comment period as indicated in this notice.

15A NCAC 10D .0103 - To set/amend seasons including the addition of waterfowl hunting opportunities on the game lands and regulate the manner of hunting on game lands which are necessary to manage and conserve the resource. The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10I .0102 - This Rule is intended to clarify the current rule on permits for taking or possession of an endangered, threatened or special concern species by an entity or person other than the Wildlife Resources Commission.

Comment Procedures: Interested persons may present their views either orally or in writing the hearing. In addition, the record of hearing will be open for receipt of written comments until February 17, 2002. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, North Carolina 27699-1701.

Fiscal Impact

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDATIONS OR ACCIDENTALLY

(a) Depredation Permit:

- (1) Endangered or Threatened Species. No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I by reason of depredations to property. An individual may take an endangered or threatened species in immediate defense of his own life or of the lives of others without a permit. Any endangered or threatened species which may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0002.
- (2) Other Wildlife Species. Except as provided in Subparagraph (1) of this Paragraph, the Executive Director or an agent of the Wildlife Resources Commission may, upon application of a landholder and after such investigation of the circumstances as he may require, issue a permit to such landholder to take any species

of wildlife which is or has been damaging or destroying his property provided there is evidence of substantial property damage. No permit may be issued for the taking of any migratory birds and other federally protected animals unless a corresponding valid U.S. Fish and Wildlife Service depredation permit has been issued. The permit shall name the species allowed to be taken and, in the discretion of the Executive Director or an agent, may contain limitations as to age, sex or any other condition within the species so named. The permit may be used only by the landholder or another person named on the permit.

- (3) **Wildlife Damage Control Agents:** Upon completion of a Wildlife Resources Commission approved training and demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual may apply to the Wildlife Resources Commission (Commission) to become a Wildlife Damage Control Agent (WDCA). Those persons approved as agents by the Commission may then issue depredation permits to landholders and list themselves as a second party to provide the control service. WDCA's may not issue depredation permits for big game animals, bats, or species listed as endangered, threatened or special concern under 15A NCAC 10I .0003, .0004 and .0005 of this Chapter. WDCA's must report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records must be available for inspection by a Wildlife Enforcement officer at any time during normal business hours. WDCA status may be revoked at any time by the Executive Director when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. WDCA's may not charge for the permit, but may charge for their investigations and control services. In order to maintain a knowledge of current laws, rules, and techniques, WDCA's must renew their agent status every three years by showing proof on having attended at least one Wildlife Commission approved training course provided for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques within the previous 12 months.

(b) **Term of Permit.** Each depredation permit issued by the Executive Director or an agent shall have entered thereon a date or time of expiration after which date or time the same shall become invalid for any purpose, except as evidence of lawful possession of any wildlife that may be retained thereunder.

(c) **Manner of Taking:**

(1) **Taking Without a Permit.** Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season such depredating wildlife may be taken without a permit only by the use of firearms.

(2) **Taking With a Permit.** Wildlife taken under a depredation permit may be taken only by the method or methods specifically authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, according to the particular circumstances, within which the traps must be set. The Executive Director or agent may also state in a permit authorizing trapping whether or not bait may be used and the type of bait, if any, that is authorized. In addition to any trapping restrictions that may be contained in the permit the method of trapping must be in accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of 1971, the Structural Pest Control Act of 1955, and Article 22A of Chapter 113 of the General Statutes of North Carolina. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of another.

(3) **Intentional Wounding.** It is unlawful for any landholder, with or without a depredation permit, intentionally to wound a wild animal in a manner so as not to cause its immediate death as suddenly and humanely as the circumstances permit.

(d) **Disposition of Wildlife Taken:**

(1) **Generally.** Except as provided by the succeeding Subparagraphs of this Paragraph, any wildlife killed accidentally or without a permit while committing depredations shall be buried or otherwise disposed of in a safe and sanitary manner on the property. Wildlife killed under a depredation permit may be transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals being transported under a depredation permit must have the depredation permit in their possession. Except as provided by the succeeding Subparagraphs of (d)(2) through (6) of this Rule, all wildlife killed under a depredation permit must be buried or otherwise disposed of in a safe and sanitary manner.

- (2) Deer. The edible portions of up to five deer may be retained by the landholder for consumption but must not be transported from the property where the depredations took place without a valid depredation permit. An enforcement officer, if so requested by the permittee, shall provide the permittee a written authorization the use by a charitable organization of the edible portions of the carcass. The nonedible portions of the carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife enforcement officer for disposition. When a deer is accidentally killed on a road or highway by reason of collision with a motor vehicle, the law enforcement officer who investigates the accident shall, upon request of the operator of the vehicle, provide such operator a written permit authorizing him to possess and transport the carcass of such deer for his personal and lawful use, including delivery of such carcass to a second person for his private use or the use by a charitable organization upon endorsement of such permit to such person or organization by name and when no money or other consideration of value is received for such delivery or endorsement.
- (3) Fox. Any fox killed accidentally shall be disposed of in the appropriate manner as provided by Subparagraph (1) or (6) of this Paragraph. Any fox killed under a depredation permit may be disposed of in the same manner or, upon compliance with the fur tagging requirements of 15A NCAC 10B .0400, the carcass or pelt thereof may be sold to a licensed fur dealer. Any live fox taken under a depredation permit may be sold to a licensed controlled hunting preserve for fox in accordance with G.S. 113-273(g).
- (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal either accidentally or for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping license, provided further that, bobcats and otters may only be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.
- (5) Animals Taken Alive. Wild animals in the order Carnivora and beaver shall be humanely euthanized either at the site of capture or at an appropriate facility designed to humanely handle the euthanasia or released on the property where captured. Animals transported or held for euthanasia must be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit must have the depredation permit in their possession.
- (6) A person killing a wild bird or wild animal accidentally with a motor vehicle or finding a dead wild bird or wild animal which was killed accidentally may possess that wild bird or wild animal for a period not to exceed 10 days for the purpose of delivering it to a licensed taxidermist for preparation. The licensed taxidermist may accept the wild bird or wild animal after satisfying himself that the animal was killed accidentally. The taxidermist shall certify and record the circumstances of acquisition as determined by the injuries to the animal. Licensed taxidermists shall keep accurate records of each wildlife specimen received pursuant to the rule as required by 15A NCAC 10H .1003 of this Chapter. Upon delivery of the finished taxidermy product to the person presenting the animal, the taxidermist shall give the person a receipt indicating the sex and species, date of delivery, circumstances of initial acquisition and the name, address, and signature of the taxidermist. The receipt shall be permanently affixed to the back or bottom of the finished product and shall be retained by the person for as long as the mounted specimen is kept. Mounted specimens possessed pursuant to this Rule may not be sold and, if such specimens are transferred by gift or inheritance, the new owner must retain the permit to document the legality of possession. This provision does not allow possession of accidentally killed raptors; nongame migratory birds; species listed as endangered, threatened, or of special concern under 15A NCAC 10I .0003, .0004, and .0005 of this Chapter; black bear or wild turkey.
- (7) Edible portions of wild boar taken under depredation permit may be retained by the landowner for consumption or if stipulated on the permit donated to a charitable food organization.
- (e) Reporting Requirements. Any landholder who kills a deer, bear or wild turkey under a currently valid depredation permit shall report such kill on the form provided with the permit and mail the form immediately upon the expiration date to the Wildlife Resources Commission. The killing and method of disposition of every game animal and game bird, every furbearing animal, and every nongame animal or nongame bird for which there is no open season, when killed for committing depredations to property, without a permit, shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing, except that when the carcass or pelt of a fox, killed under a depredation permit, or of a furbearing animal, killed with or without a permit, is lawfully sold to a licensed fur dealer in this State the fur dealer is required to report the source of acquisition and no report is required of the seller.

Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337.

15A NCAC 10B .0110 ATTENDANCE OF TRAPS

Every trap shall be visited daily and any animal caught therein removed, except for completely submerged conibear type traps which shall be visited once every 72 hours and any animal caught therein removed.

Authority G.S. 113-134; 113-291.6.

15A NCAC 10B .0116 PERMITTED ARCHERY EQUIPMENT

(a) Only longbows and recurved bows having a minimum pull of 45 pounds and compound bows having a minimum pull of 35 pounds may be used for taking game. It is unlawful to use a crossbow or any other type of bow equipped with any device by which the bow can be set at full or partial pull and released by a trigger or any similar mechanism without a disabled sportsman's crossbow hunting permit issued by the Executive Director.

(b) Only arrows with a fixed minimum broadhead width of seven-eighths of an inch or a mechanically opening broadhead with a width of at least seven-eighths of an inch in the open position may be used for taking bear, deer, wild boar or wild turkey. Blunt-type arrow heads may be used in taking small animals and birds including, but not limited to, rabbits, squirrels, quail, grouse and pheasants. Poisonous, drugged, barbed, or explosive arrowheads may not be used for taking any game.

(c) Crossbows used under a disabled sportsman's crossbow permit shall have a minimum pull rated at least 150 pounds. Heads on bolts used with crossbows shall conform to those described for arrows in Paragraph (b) of this Rule.

Authority G.S. 113-134; 113-291.1(a).

15A NCAC 10B .0117 REPLACEMENT COSTS OF WILDLIFE RESOURCES - WILD ANIMALS AND BIRDS

(a) Replacement Costs Distinguished. As it applies to wildlife resources, the term "replacement costs" must be distinguished from the "value" of the wildlife concerned. Except in cases where wild animals and wild birds may lawfully be sold on the open market, as with the carcasses or pelts of furbearing animals, the monetary value of the specimens cannot be determined easily. The degree of special interest or concern in a particular species by the public, including not only hunters and trappers, but conservationists and those to whom the value of wildlife resources is primarily aesthetic, cannot be measured in

dollar amounts. The average cost per animal or bird legally taken by hunters, including travel and lodging, weapons and ammunition, excise taxes on equipment, licenses, and hunting club fees, may fairly be estimated. This too, however, is a reflection of the value of existing wildlife resources rather than a measure of the cost of its replacement. Thus, the relative values of wildlife species should be considered only as they may bear on the necessity or desirability of actual replacement.

(b) Factors to Be Considered. The factors which should be considered in determining the replacement costs of resident species of wildlife resources that have been taken, injured, removed, harmfully altered, damaged, or destroyed include the following:

- (1) whether the species is classified as endangered or threatened;
- (2) the relative frequency of occurrence of the species in the state;
- (3) the extent of existing habitat suitable for the species within the state;
- (4) the dependency of the species on unique habitat requirements;
- (5) the cost of acquiring, by purchase or long-term lease, lands and waters for habitat development;
- (6) the cost of improving and maintaining suitable habitat for the species on lands and waters owned or acquired;
- (7) the cost of live-trapping the species in areas of adequate populations and transplanting them to areas of suitable habitat with low populations;
- (8) the availability of the species and the cost of acquisition for restocking purposes;
- (9) the cost of rearing in captivity those species which, when released, have a probability of survival in the wild;
- (10) the ratio between the natural life expectancy of the species and the period of its probable survival when, having been reared in captivity, it is released to the wild;
- (11) the change in the value of money as reflected by the consumer price index.

(c) Costs of Replacement. Based on the factors listed in Paragraph (b) of this Rule, including a June, 2001 update of the original figures using consumer price index from the June, 1980 base, the following wild animals and wild birds are listed with the estimated replacement cost of each individual specimen:

Species	Replacement Cost
Any endangered species	\$4,960.00
Any threatened species	4313.00
Any other species with no open season	54.00
Beaver	104.00
Black Bear	2232.00
Crow	4.00
Deer	602.00
Dove	13.00
Duck	41.00
Elk	2500.00

Fox	88.00
Goose	125.00
Grouse	37.00
Mink	75.00
Muskrat	19.00
Nutria	15.00
Opossum	6.00
Otter	647.00
Pheasant	37.00
Quail	30.00
Rabbit	13.00
Raccoon	58.00
Rail	37.00
Skunk	19.00
Snipe	26.00
Squirrel, fox	54.00
Squirrel, gray and red	17.00
Tundra swan	1078.00
Weasel	11.00
Wild boar	755.00
Wildcat	647.00
Wild turkey	1617.00
Woodcock	26.00

(d) Costs of Investigations

(1) Factors to Be Considered. Upon any investigation required as provided by G.S. 143-215.3(a)(7) or by court order for the purpose of determining the cost of replacement of wildlife resources which have been killed, taken, injured, removed, harmfully altered, damaged, or destroyed, the factors to be considered in determining the cost of the investigation are as follows:

- (A) the time expended by the employee or employees making the investigation, including travel time between the place of usual employment and the site of the investigation, and the time required in formulating and rendering the report;
- (B) the cost of service to the state of each employee concerned, including annual salary, hospitalization insurance, and the state's contribution to social security taxes and to the applicable retirement system;
- (C) subsistence of the investigating personnel, including meals, reasonable gratuities, and lodging away from home, when required;
- (D) the cost of all necessary transportation;
- (E) the use or rental of boats and motors, when required;
- (F) the cost of cleaning or repairing any uniform or clothing that may be damaged, soiled or contaminated by reason of completing the investigation;

(G) the cost of necessary telephonic communications;

(H) any other expense directly related to and necessitated by the investigation.

(2) Computation of Costs. In assessing the cost of time expended in completing the investigation, the time expended by each person required to take part in the investigation shall be recorded in hours, the value of which shall be computed according to the ratio between the annual costs of service of the employee and his total annual working hours (2087 hours reduced by holidays, annual leave entitlement, and earned sick leave). Other costs shall be assessed as follows:

- (A) subsistence: the actual cost of meals, reasonable gratuities, and lodging away from home, not to exceed the then current maximum per diem for state employees;
- (B) transportation: total mileage by motor vehicle multiplied by:
 - (i) the then current rate per mile for travel by state-owned vehicle; or
 - (ii) the then current rate per mile for travel by privately owned vehicle, as applicable;
- (C) boat and motor: \$5.00 per hour;
- (D) uniform and clothing cleaning and repair: actual cost;
- (E) telephonic communications: actual cost;
- (F) other expenses: actual cost.
- (G) Inflation costs based on the consumer price index from the last update shown in Paragraph (c).

Authority G.S. 113-134; 113-267.

15A NCAC 10B .0118 SALE OF WILDLIFE

(a) The carcasses or pelts of bobcats, opossums and raccoon which have been lawfully taken by any hunting method, upon compliance with applicable fur tagging requirements set forth in 15A NCAC 10B .0400, may be sold to licensed fur dealers. The sale of carcasses or pelts of bobcats, opossum and raccoon killed accidentally or taken by hunting for control of depredations is permitted under the conditions set forth in 15A NCAC 10B .0106(d)(4).

(b) Except as otherwise provided in Paragraph (a) of this Rule, the sale of game birds and game animals or parts thereof is prohibited, except that processed products other than those made from edible portions may be sold provided that no label or advertisement identifies the product as a game bird, game animal, or part thereof and provided further that the game bird or game animal was lawfully acquired and the product is not readily identifiable as a game bird or game animal, or part thereof.

(c) The sale of edible portions or products of game birds and game animals is prohibited, except as may be otherwise provided by statute.

(d) The pelt, or feathers of deer, elk, fox, pheasant, quail, rabbit or squirrel (fox and gray), may be bought or sold for the purpose of making fishing flies provided the source of these animals can be documented as being legally obtained from out of state sources or from lawfully operated commercial breeding facilities. The buying and selling of migratory game birds shall be in accordance with Code of Federal Regulations 50, part 20.91(j).

Authority G.S. 113-134; 113-273; 113-291.3.

SECTION .0200 - HUNTING

15A NCAC 10B .0202 BEAR

(a) Open Seasons for bear shall be from the:

- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of the boundary formed by NC 113 from the Virginia State line to the intersection with NC 18 and NC 18 to the South Carolina State line.
- (2) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the following Wednesday in all of Hertford and Martin counties; and in the following parts of counties:
Halifax: that part east of US 301.
Northampton: that part east of US 301.
- (3) Second Monday in November to January 1 in all of Bladen, Carteret, Duplin, New Hanover, Onslow and Pender counties; and in the following parts of counties:
Cumberland: that part south of NC 24 and east of the Cape Fear River.
Sampson: that part south of NC 24.

(4) Second Monday in December to January 1 in Brunswick and Columbus counties.

(5) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in all of Beaufort, Bertie, Camden, Craven, Dare, Gates, Hyde, Jones, Pamlico, Pasquotank, Tyrrell, and Washington counties, and in the following parts of counties:

Chowan: that part north of US 17.

Currituck: except Knotts Island and the Outer Banks.

Perquimans: that part north of US 17.

(b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear sanctuaries:

Avery, Burke and Caldwell counties--Daniel Boone bear sanctuary

Beaufort, Bertie and Washington counties--Bachelor Bay bear sanctuary

Beaufort and Pamlico counties--Gum Swamp bear sanctuary

Bladen County--Suggs Mill Pond bear sanctuary

Brunswick County--Green Swamp bear sanctuary

Buncombe, Haywood, Henderson and Transylvania counties--Pisgah bear sanctuary

Carteret, Craven and Jones counties--Croatan bear sanctuary

Clay County--Fires Creek bear sanctuary

Columbus County--Columbus County bear sanctuary

Currituck County--North River bear sanctuary

Dare County--Bombing Range bear sanctuary

Haywood County--Harmon Den bear sanctuary

Haywood County--Sherwood bear sanctuary

Hyde County--Gull Rock bear sanctuary

Hyde County--Pungo River bear sanctuary

Jackson County--Panthertown-Bonas Defeat bear sanctuary

Macon County--Standing Indian bear sanctuary

Macon County--Wayah bear sanctuary

Madison County--Rich Mountain bear sanctuary

McDowell and Yancey counties--Mt. Mitchell bear sanctuary

Mitchell and Yancey counties--Flat Top bear sanctuary

Wilkes County--Thurmond Chatham bear sanctuary

(c) Bag limits shall be:

- (1) daily, one;
- (2) possession, one;
- (3) season, one.

(d) Kill Reports. The carcass of each bear shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-291.2; 113-291.7; 113-305.

15A NCAC 10B .0203 DEER (WHITE-TAILED)

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

(1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:

Cumberland: All of the county except that part east of US 401, north of NC 24, and west of I-95;

Harnett: That part west of NC 87;

Moore**: All of the county except that part north of NC 211 and west of US 1;

*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

**Refer to 15A NCAC 10D .0103(f) (54)(B) for seasons on Sandhills Game Land.

(B) Saturday before Thanksgiving through the third Saturday after Thanksgiving Day in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.

(C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.

(D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties, and in the following parts of counties:

Cumberland: That part east of US 401, north of NC 24 and west of I-95;

Harnett: That part east of NC 87;

Moore: That part north of NC 211 and west of US 1;

(E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge;

(F) Saturday before Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Gaston and Lincoln counties.

(G) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland and Rutherford counties.

(2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.

- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Avery, Buncombe, Haywood, Henderson, Madison, Mitchell, Transylvania, and Yancey counties and the following parts of counties:
 Robeson: That part south of NC 211 and west of I-95.
 Scotland: That part south of US 74.
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, Polk and Watauga and the following parts of counties:
 Camden: That part south of US 158.
 Dare: Except the Outer Banks north of Whalebone.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Carteret, Cleveland, Hoke, Richmond, Rutherford, counties and in the following parts of counties:
 Columbus: That part west of US 74, SR 1005, and SR 1125.
 Cumberland: That part west of I-95.
 Harnett: That part west of NC 87.
 Moore: All of the county except that part north of NC 211 and west of US 1.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Caswell, Chatham, Chowan, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Hertford, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, Wilkes, Wayne, Wilson, and Yadkin counties, and in the following parts of counties:
 Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280.
 Camden: That part north of US 158.
 Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.
 Cumberland: That part east of I-95.
 Currituck: All of the county except the Outer Banks.
 Dare: That part of the Outer Banks north of Whalebone.
 Harnett: That part east of NC 87.
 Henderson: That part east of NC 191 and north and west of NC 280.
 Moore: That part north of NC 211 and west of US 1.
- (c) Open Seasons (Bow and Arrow)
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Saturday on or nearest September 10 to the fourth Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land and the area known as the Outer Banks in Currituck County.

- (B) Saturday on or nearest September 10 to the second Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln Counties.
 - (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (b)(1) of this Rule and in Cleveland and Rutherford counties.
 - (D) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.
- (2) Restrictions
- (A) Dogs may not be used for hunting deer during the bow and arrow season.
 - (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
 - (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.
- (d) Open Seasons (Muzzle-Loading Rifles and Shotguns)
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:
 - (A) The Saturday on or nearest October 8 to the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land and the area known as the Outer Banks in Currituck County.
 - (B) The second Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln counties.
 - (C) Monday on or nearest October 8 to the following Saturday in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (b)(1) of this Rule.
 - (D) The third Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.
- (2) Restrictions
- (A) Deer of either sex may be taken during muzzle-loading firearms season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Wilkes, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms season in all other counties.
 - (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms seasons.
 - (C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms seasons.
- (e) In those counties or parts of counties listed in Part (b)(1)(A) of Subparagraph (b)(1) of this Rule and those counties or parts of counties listed in Part (b)(1)(D) of this Rule in which hunting deer with dogs is allowed, the daily bag limit shall be two and the possession limit six, two of which shall be antlerless. The season limit shall be six, two of which shall be antlerless. In all other counties or parts of counties, the daily bag limit shall be two and the possession limit six, four of which shall be antlerless. The season limit shall be six, four of which shall be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described above do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season antlerless bag limits shall be set by the number of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, shall be tagged with these special tags but the hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license.
- (f) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.
- Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.*

15A NCAC 10B .0209 WILD TURKEY (BEARDED TURKEYS ONLY)

(a) Open Season for wild turkey shall be from the: Second Saturday in April to Saturday of the fourth week thereafter on bearded turkeys in the following counties: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, **Bertie, **Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, **Camden, Carteret, Caswell, Catawba, **Chatham, Cherokee, Chowan, Clay, Cleveland, Craven, Currituck, Davie, Duplin, **Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, **Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Lincoln, Macon, Madison, **Martin, McDowell, Mecklenburg, Mitchell, Montgomery, Moore, Northampton, Onslow, **Orange, Pasquotank, Perquimans, Person, Pitt, Polk, **Richmond, Rockingham, Rowan, Rutherford, Sampson, **Scotland, Stanley, Stokes, Surry, Swain, Transylvania, **Tyrrell, Vance, Wake, **Washington,, Warren, Watauga, Wilkes, Yadkin, Yancey and in the following portions of counties:

Columbus: All of the county except that part east of NC 701 and west of SR 1005.

Cumberland: That part west of NC 53 or I-95.

Davidson: That part south of I-85.

Guilford: That part north of I-40.

Hoke: That part south and west of NC 211 and that part known as Fort Bragg.

Johnston: That part east of I-95.

Nash: All of the county except that part east of NC 581 and south of US 64.

New Hanover: Starting at the Brunswick County line, that part north and west of a line formed by NC-133 and SR 1002.

Pamlico: That part west of NC 306.

**Pender: All of the county except that part west of I-40, north of NC 53, and east of US 421.

Randolph: That part west of US 220.

Robeson: That part east of I-95.

Union: That part south of US 74.

Wayne: That part south of US 70.

**The Sandhills Game Land in Hoke, Moore, Richmond, and Scotland, counties; the Bladen Lakes State Forest Game Lands in Bladen County; the North River Game Lands in Camden County; the Northeast Cape Fear Wetlands Game Lands in Pender County; the Jordan Game Land in Chatham, Durham, Orange, and Wake counties; the Butner-Falls of the Neuse Game Land in Durham, Granville, and Wake counties; the Roanoke River Wetlands in Bertie, Halifax, and Martin counties; Chatham Game Land in Chatham and Harnett counties; Lantern Acres Game Land in Washington and Tyrrell counties; and the Shearon-Harris Game Land in Chatham and Wake counties are closed to turkey hunting except by holders of special permits authorizing turkey hunting as provided in G.S. 113-264(d).

(b) Bag Limits shall be:

- (1) daily, one;
- (2) possession, two; and
- (3) season, two.

(c) Dogs Prohibited. It is unlawful to use dogs for hunting turkeys.

(d) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2.

SUBCHAPTER 10C – INLAND FISHING REGULATIONS

SECTION .0200 – GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. The waters listed herein or in 15A NCAC 10D .0104 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1) through (6) of this Paragraph. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

- (1) Hatchery Supported Trout Waters. The listed waters in the counties in Subparagraphs (1)(A)-(Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein. Otherwise, Wild Trout regulations apply to the tributaries.

(A) Alleghany County:

New River (not trout water)

Little River (Whitehead to McCann Dam)

Crab Creek

Brush Creek (except where posted against trespass)

Big Pine Creek

Laurel Branch

Big Glade Creek

Bledsoe Creek

Pine Swamp Creek

South Fork New River (not trout water)

Prather Creek

Cranberry Creek

Piney Fork

Meadow Fork

Yadkin River (not trout water)

Roaring River (not trout water)

East Prong Roaring River (that portion on Stone Mountain State Park)

[Delayed Harvest

- Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (B) Ashe County:
- New River (not trout waters)
 - North Fork New River (Watauga Co. line to Sharp Dam)
 - Helton Creek (Virginia State line to New River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Big Horse Creek (Mud Creek at SR1363 to Tuckerdale)
 - Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)
 - Big Laurel Creek
 - Three Top Creek (portion not on game lands)
 - Hoskins Fork (Watauga County line to North Fork New River)
 - South Fork New River (not trout waters)
 - Cranberry Creek (Alleghany County line to South Fork New River)
 - Nathans Creek
 - Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
 - Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Roan Creek
 - North Beaver Creek
 - Pine Swamp Creek (all forks)
 - Old Fields Creek
 - Mill Creek (except where posted against trespass)
- (C) Avery County:
- Nolichucky River (not trout waters)
 - North Toe River (headwaters to Mitchell County line, except where posted against trespass)
 - Squirrel Creek
- Elk River (Mouth of Curtis Creek to Tennessee State line, including portions of tributaries on game lands)
- Catawba River (not trout water)
- Johns River (not trout water)
- Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 - Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
- Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Boyde Coffey Lake
 - Archie Coffey Lake
- Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
- Milltimber Creek
- (D) Buncombe County:
- French Broad River (not trout water)
 - Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
 - Dillingham Creek (Corner Rock Creek to Big Ivy Creek)
 - Stony Creek
 - Mineral Creek (including portions of tributaries on game lands)
 - Corner Rock Creek (including tributaries, except Walker Branch)
 - Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)
 - Swannanoa River (SR 2702 bridge near Ridgecrest to Sayles Bleachery in Asheville, except where posted against trespass)
 - Bent Creek (headwaters to N.C. Arboretum boundary

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| | line, including portions of
tributaries on game lands)
Lake Powhatan
Cane Creek (headwaters to
SR 3138 bridge) | | Boone
Fork Pond
Yadkin River (not trout water)
Buffalo Creek (mouth of
Joes Creek to McCloud
Branch)
Joes Creek (first falls
upstream of SR 1574 to
confluence with Buffalo
Creek) |
| (E) | Burke County:
Catawba River (not trout water)
South Fork Catawba River
(not trout water)
Henry Fork (lower
South Mountains State
Park line downstream to
SR 1919 at Ivy Creek)
Jacob Fork (Shinny
Creek to lower
South Mountain
State Park
boundary) [Delayed
Harvest
Regulations apply.
See Subparagraph
(a)(5) of this Rule.]
Johns River (not trout water)
Parks Creek
(portion not on
game lands not
trout water)
Carroll Creek
(game lands portion
above SR 1405
including
tributaries)
Linville River (game lands
portion below the Blue
Ridge Parkway including
portions of tributaries on
game lands and from first
bridge on SR 1223 below
Lake James powerhouse to
Muddy Creek) | (G) | Cherokee County:
Hiwassee River (not trout water)
Shuler Creek (headwaters to
Tennessee line, except
where posted against
trespass including portions
of tributaries on game lands)
North Shoal Creek (Crane
Creek) (headwaters to SR
1325, including portions of
tributaries on game lands)
Persimmon Creek
Davis Creek (confluence of
Bald and Dockery creeks to
Hanging Dog Creek) Beaver
Dam Creek (headwaters to
SR 1326 bridge, including
portions of tributaries on
game lands)
Valley River
Hyatt Creek
(including portions of
tributaries on game lands)
Webb Creek
(including portions of
tributaries on game lands)
Junaluska Creek
(Ashturn Creek to
Valley River, including
portions of
tributaries on game
lands) |
| (F) | Caldwell County:
Catawba River (not trout water)
Johns River (not trout water)
Wilson Creek (Phillips
Branch to Browns
Mountain Beach dam,
except where posted
against trespass)
Estes Mill Creek
(not trout water)
Thorps Creek (falls
to NC 90 bridge)
Mulberry Creek (portion
not on game lands not trout
water)
Boone Fork [not
Hatchery Supported
trout water. See
Subparagraph (a)(2) of
this Rule.] | (H) | Clay County:
Hiwassee River (not trout water)
Fires Creek (first bridge
above the lower game land
line on US Forest Service
road 442 to SR 1300)
Tusquitee Creek (headwaters
to lower SR 1300 bridge,
including portions of Bluff
Branch on game lands)
Tuni Creek
(including portions
of tributaries on
game lands)
Chatuge Lake (not trout
water)
Shooting Creek (SR 1349
bridge to US 64 bridge at SR
1338) |

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| | <p>Hothouse Branch
(including portions
of tributaries on
gamelands)
Vineyard Creek
(including portions
of tributaries on
game lands)</p> | <p>Cold Springs Creek
(including portions of
tributaries on game lands)
Jonathans Creek - lower
(concrete bridge in
Dellwood to Pigeon River)
Jonathans Creek - upper [SR
1302 bridge (west) to SR
1307 bridge]
Hemphill Creek
West Fork Pigeon River
(triple arch bridge on
highway NC 215 to
Queens Creek,
including portions of
tributaries within this
section located on game
lands, except Middle
Prong)
Richland Creek (Russ
Avenue bridge to US 19A-
23 bridge) [Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]
West Fork Pigeon River
(Queen Creek to the first
game land boundary
upstream of Lake Logan)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]</p> |
| (I) | <p>Graham County:
Little Tennessee River (not trout
water)
Calderwood Reservoir
(Cheoah Dam to Tennessee
State line)
Cheoah River (not trout
water)
Yellow Creek
Santeetlah Reservoir
(not trout water)
West
Buffalo Creek
Huffman
Creek (Little Buffalo Creek)
Santeetlah Creek
(Johns Branch to
mouth including
portions of
tributaries within
this section located
on game lands,
excluding Johns
Branch and Little
Santeetlah Creek)
(Big) Snowbird
Creek (old railroad
junction to mouth,
including portions
of tributaries on
game lands)
Mountain Creek
(game lands boundary to SR
1138 bridge)
Long
Creek (portion not on game
lands)
Tulula
Creek (headwaters to lower
bridge on SR 1275)
Franks
Creek
Cheoah Reservoir
Fontana Reservoir (not
trout water)
Stecoah Creek
Sawyer Creek
Panther Creek
(including portions of
tributaries on game lands)</p> | <p>(K) Henderson County:
(Rocky) Broad River (one-half
mile north of Bat Cave to
Rutherford County line)
Green River - upper (mouth of
Bobs Creek to mouth of Rock
Creek)
Green River - lower (Lake
Summit Dam to I-26 bridge)
Camp Creek (SR 1919 to
Polk County line)
(Big) Hungry River
Little Hungry River
French Broad River (not trout water)
Mills River (not trout water)
North Fork Mills River
(game lands portion below
the Hendersonville
watershed dam). [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]</p> |
| (J) | <p>Haywood County:
Pigeon River (not trout water)</p> | <p>(L) Jackson County:
Tuckasegee River (confluence
with West Fork Tuckasegee
River to SR 1392 bridge at
Wilmot) [Delayed Harvest
Regulations apply to that portion</p> |

between NC 107 bridge at Love Field and the Dillsboro dam. See Subparagraph (a)(5) of this Rule.]

Scott Creek (entire stream, except where posted against trespass)

Dark Ridge Creek (Jones Creek to Scotts Creek)

Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)

Savannah Creek (Headwaters to Bradley's Packing House on NC 116)

Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)

Cullowhee Creek (Tilley Creek to Tuckasegee River)

Bear Creek Lake

Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]

Wolf Creek Lake

Balsam Lake

Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]

Tanasee Creek Lake

West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)

Shoal Creek (Glenville Reservoir pipeline to mouth)

(M) Macon County:

Little Tennessee River (not trout water)

Nantahala River (Nantahala Dam to Swain County line)

[Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.]

Queens Creek Lake

Burningtown Creek (including portions of tributaries on game lands)

Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Big Buck Creek and Turtle

Pond Creek on game lands. [Wild Trout Regulations apply. See Subparagraphs (a)(2) and (a)(6) of this Rule.]

Ellijay Creek (except where posted against trespass, including portions of tributaries on game lands)

Skitty Creek

Cliffside Lake

Cartoogechaye Creek (US 64 bridge to Little Tennessee River)

Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)

Savannah River (not trout water)

Big Creek (base of falls to Georgia State line, including portions of tributaries within this Section located on game lands)

(N) Madison County:

French Broad River (not trout water)

Shut-In Creek (including portions of tributaries on game lands)

Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line, including portions of tributaries on game lands)

Meadow Fork Creek

Roaring Fork (including portions of tributaries on game lands)

Little Creek

Max Patch Pond

Mill Ridge Pond

Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)

Big Laurel Creek (NC 208 bridge to US 25-70 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Shelton Laurel Creek (confluence of Big Creek and Mill Creek to NC 208 bridge at Belva)

Shelton Laurel Creek (NC 208 bridge at Belva)

- to the confluence with
Big Laurel Creek)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of
this Rule.]
- Mill Creek (upper game
lands boundary to
confluence with Big Creek)
Puncheon Fork
(Hampton Creek to Big
Laurel Creek)
Big Pine Creek (SR
1151 bridge to French Broad
River)
- (O) McDowell County:
Catawba River (portion not on
game lands, not trout water)
Buck Creek (portion not on
game lands, not trout water)
Little Buck Creek
(game land portion including
portions of tributaries on
game
lands)
Curtis Creek game lands
portion downstream of US
Forest Service boundary at
Deep Branch) [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
North Fork Catawba River
(headwaters to SR 1569
bridge)
Armstrong Creek (Cato
Holler line downstream to
upper Greenlee line)
Mill Creek (upper railroad
bridge to U.S. 70 Bridge,
except where posted against
trespass)
- (P) Mitchell County:
Nolichucky River (not trout
water)
Big Rock Creek (headwaters
to NC 226 bridge at SR 1307
intersection)
Little Rock Creek
(Green Creek Bridge to
Big Rock Creek, except
where posted against
trespass)
Cane Creek (SR 1219 to NC
226 bridge)
Cane Creek (NC 226 bridge
to NC 80 bridge) [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
- (Q) Polk County:
Broad River (not trout water)
North Pacolet River (Pacolet
Falls to NC 108 bridge)
Fork Creek (Fork Creek
Church on SR 1100 to
North Pacolet River)
Big Fall Creek (portion
above and below water
supply reservoir)
Green River (Fishtop Falls
Access Area to mouth of
Brights Creek) [Delayed
Harvest Regulations apply to
the portion from Fishtop
Falls Access Area to Cove
Creek. See Subparagraph
(a)(5) of this Rule.]
Little Cove Creek
(including portions of
tributaries on game lands)
Cove Creek (including
portions of tributaries on
game lands)
Camp Creek
[Henderson County line (top
of falls) to Green River]
- (R) Rutherford County:
(Rocky) Broad River (Henderson
County line to US 64/74 bridge,
except where posted against
trespass)
- (S) Stokes County:
Dan River (Virginia State line
downstream to a point 200 yards
below the end of SR 1421)
- (T) Surry County:
Yadkin River (not trout water)
Ararat River (SR 1727
bridge downstream to the
NC 103 bridge)
Stewarts Creek (not
trout water)
Pauls Creek
(Virginia State line
to 0.3 mile below
SR 1625 bridge -
lower Caudle
property line)
Fisher River
(Cooper Creek) (Virginia
State line to SR 1331 bridge)
Little Fisher River
(Virginia State line to NC 89
bridge)

- Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (U) Swain County:
- Little Tennessee River (not trout water)
 - Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 - Cheoah Reservoir
 - Fontana Reservoir (not trout water)
 - Alarka Creek (game lands boundary to Fontana Reservoir)
 - Nantahala River (Macon County line to existing Fontana Reservoir water level)
 - Tuckasegee River (not trout water)
 - Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
 - Connelly Creek (including portions of tributaries on game lands)
- (V) Transylvania County:
- French Broad River (junction of west and north forks to US 276 bridge)
 - Davidson River (Avery Creek to Ecusta intake)
 - East Fork French Broad River (Glady Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Middle Fork French Broad River
 - West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)
- (W) Watauga County:
- New River (not trout waters)
 - North Fork New River (from confluence with Maine and
- Mine branches to Ashe County line)
 - Maine Branch (headwaters to North Fork New River)
 - South New Fork River (not trout water)
 - Meat Camp Creek
 - Norris Fork Creek
 - Howards Creek (downstream from lower falls)
 - Middle Fork New River (Lake Chetola Dam to South Fork New River)
 - Yadkin River (not trout water)
 - Stony Fork (headwaters to Wilkes County line)
 - Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
 - Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Beech Creek
 - Buckeye Creek Reservoir
 - Coffee Lake
 - Beaverdam Creek (SR 1209 bridge at Bethel to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)
 - Laurel Creek
 - Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)
 - Dutch Creek (second bridge on SR 1134 to mouth)
- (X) Wilkes County:
- Yadkin River (not trout water)
 - Roaring River (not trout water)
 - East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) [Delayed Harvest Regulations apply to portion on Stone Mountain State Park. See Subparagraph (a)(5) of this Rule.]
 - Stone Mountain Creek [Delayed Harvest Regulations apply.

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| <p>See Subparagraph (a)(5) of this Rule.]</p> <p>Middle Prong Roaring River (headwaters to second bridge on SR 1736)</p> <p>Bell Branch Pond</p> <p>Boundary Line Pond</p> <p>West Prong Roaring River (not trout waters)</p> <p>Pike Creek</p> <p>Pike Creek Pond</p> <p>Reddies River (not trout water)</p> <p>Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)</p> <p>South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River)</p> <p>North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)</p> <p>Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)</p> <p>Lewis Fork Creek (not trout water)</p> <p>South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)</p> <p>Fall Creek (except portions posted against trespass)</p> <p>(Y) Yancey County:</p> <p>Nolichucky River (not trout water)</p> <p>Cane River [Bee Branch (SR 1110) to Bowlens Creek]</p> <p>Bald Mountain Creek (except portions posted against trespass)</p> <p>Indian Creek (not trout water)</p> <p>Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)</p> <p>North Toe River (not trout water)</p> | <p>South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)</p> <p>(2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless specifically classified otherwise in (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.</p> <p>(A) Alleghany County:</p> <p>Big Sandy Creek (portion on Stone Mountain State Park)</p> <p>Ramey Creek (entire stream)</p> <p>Stone Mountain Creek (that portion on Stone Mountain State Park)</p> <p>(B) Ashe County:</p> <p>Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> <p>Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> <p>(C) Avery County:</p> <p>Birchfield Creek (entire stream)</p> <p>Cow Camp Creek (entire stream)</p> <p>Cranberry Creek (entire stream)</p> <p>Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]</p> <p>Gragg Prong (entire stream)</p> <p>Horse Creek (entire stream)</p> <p>Jones Creek (entire stream)</p> <p>Kentucky Creek (entire stream)</p> <p>North Harper Creek (entire stream)</p> <p>Plumtree Creek (entire stream)</p> <p>Roaring Creek (entire stream)</p> <p>Rockhouse Creek (entire stream)</p> <p>South Harper Creek (entire stream)</p> <p>Webb Prong (entire stream)</p> <p>Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> <p>(D) Buncombe County:</p> <p>Carter Creek (game land portion)[Catch and Release/Artificial Lures only</p> |
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- Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (E) Burke County:
All waters located on South Mountain State Park, except the main stream of Jacob Fork
Between the mouth of Shinnery Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.]
Nettle Branch (game land portion)
- (F) Caldwell County:
Buffalo Creek (Watauga County line to Long Ridge Branch)
Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)
Rockhouse Creek (entire stream)
- (G) Cherokee County:
Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (H) Graham County:
South Fork Squally Creek (entire stream)
Squally Creek (entire stream)
- (I) Haywood County:
Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (J) Henderson County:
Green River (I-26 bridge to Henderson/Polk County line)
- (K) Jackson County:
Gage Creek (entire stream)
North Fork Scott Creek (entire stream)
Tanasee Creek (entire stream)
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (L) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
Spillcorn Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (M) Mitchell County:
Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
Wiles Creek (game land boundary to mouth)
- (N) Polk County:
Green River (Henderson County line to Fishtop Falls Access Area)
Pulliam (Fulloms) Creek and tributaries (game lands portions)
- (O) Transylvania County:
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (P) Watauga County:
Dutch Creek (headwaters to second bridge on SR 1134)
Howards Creek (headwaters to lower falls)
Watauga River (Avery County line to steel bridge at Riverside Farm Road)
- (Q) Wilkes County:
Big Sandy Creek (portion on Stone Mountain State Park)
Garden Creek (portion on Stone Mountain State Park)
Harris Creek and tributaries [portions on Stone Mountain State Park] [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
Widow Creek (portion on Stone Mountain State Park)
- (R) Yancey County:
Licksillet Creek (entire stream)
Middle Creek (game land boundary to mouth)
Rock Creek (game land boundary to mouth)

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| <p>(3) South Toe River (game land boundary downstream to Clear Creek)</p> <p>Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:</p> <p>(A) Ashe County:
 Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
 Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)</p> <p>(B) Avery County:
 Wilson Creek (game land portion)</p> <p>(C) Buncombe County:
 Carter Creek (game land portion)</p> <p>(D) Burke County:
 Henry Fork (portion on South Mountains State Park)</p> <p>(E) Jackson County:
 Flat Creek
 Tuckasegee River (upstream of Clarke property)</p> <p>(F) McDowell County:
 Newberry Creek (game land portion)</p> <p>(G) Wilkes County:
 Harris Creek (portion on Stone Mountain State Park)</p> <p>(H) Yancey County:
 Lower Creek
 Upper Creek</p> <p>(4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:</p> <p>(A) Avery County:
 Elk River (portion on Lees-McRae College property, excluding the millpond)
 Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)</p> <p>(B) Transylvania County:
 Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)</p> <p>(C) Yancey County:</p> | <p>South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Big Lost Cove Creek)</p> <p>(5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules:</p> <p>(A) Ashe County:
 Trout Lake
 Helton Creek (Virginia state line to New River)</p> <p>(B) Burke County:
 Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)</p> <p>(C) Haywood County:
 Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
 West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)</p> <p>(D) Henderson County:
 North Fork Mills River (game land portion below the Hendersonville watershed dam)</p> <p>(E) Jackson County:
 Tuckasegee River (NC 107 bridge at Love Field Downstream to the Dillsboro dam)</p> <p>(F) Macon County:
 Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light power house discharge canal)</p> <p>(G) Madison County:
 Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
 Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)</p> |
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| <p>(H) McDowell County:
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)</p> <p>(I) Mitchell County:
Cane Creek (NC 226 bridge to NC 80 bridge)</p> <p>(J) Polk County:
Green River (Fishtop Falls Access Area to confluence with Cove Creek)</p> <p>(K) Surry County:
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)</p> <p>(L) Transylvania County:
East Fork French Broad River (Glady Fork to French Broad River)</p> <p>(M) Watauga County:
Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)</p> <p>(N) Wilkes County:
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)</p> <p>(6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].</p> <p>(A) Cherokee County:
Bald Creek (game land portions)
Dockery Creek (game land portions)
Tellico River (Fain Ford to Tennessee state line excluding tributaries)</p> <p>(B) Clay County:
Buck Creek (game land portion downstream of US 64 bridge)</p> <p>(C) Graham County:
Deep Creek
Long Creek (game land portion)</p> <p>(D) Haywood County:
Hurricane Creek (including portions of tributaries on game lands)</p> | <p>(E) Jackson County:
Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)</p> <p>(F) Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)</p> <p>(G) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries)
Spillcorn Creek (entire stream, excluding tributaries)</p> <p>(H) Transylvania County:
North Fork French Broad River (game land portions downstream of SR 1326)
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)</p> <p>(b) Fishing in Trout Waters</p> <p>(1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].</p> <p>(2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters.</p> <p>(A) Open Season. There is a year round open season for the licensed taking of trout.</p> <p>(B) Creel Limit. The daily creel limit is four trout.</p> <p>(C) Size Limit. The minimum size limit is seven inches.</p> <p>(D) Manner of Taking. Only artificial lures having only one single hook</p> |
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may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).

- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

Authority G.S. 113-134; 113-272; 113-292.

15A NCAC 10C .0206 TROT LINES AND SET-HOOKS

Trotlines and set-hooks may be set in the inland waters of North Carolina, provided no live bait is used; except that no trotlines or set-hooks may be set in designated public mountain trout waters or in any of the impounded waters on the Sandhills Game Land, and in Lake Waccamaw, trotlines or set-hooks may be set only from October 1 through April 30. For the purposes of this Regulation, a set-hook is defined as any hook and line which is attached at one end only to a stationary or floating object and which is not under immediate control and attendance of the person using such device. Each trotline and set-hook shall have attached the name and address of the user legibly and indelibly inscribed. Each trotline shall be conspicuously marked at each end and each set hook conspicuously marked at one end with a flag, float, or other prominent object so that its location is readily discernable by boat operators and swimmers. Trotlines must be set parallel to the nearest shore in ponds, lakes, and reservoirs. All trotlines and throwlines must be fished at least once daily and all fish removed at that time. Untended trotlines and set-hooks, as evidenced by the absence of bait, may be removed from the water by wildlife enforcement officers when located in areas of multiple water use.

Recognizing the safety hazards to swimmers, boaters and water skiers which are created by floating metal cans and glass jugs, it is unlawful to use metal cans or glass jugs as floats. This shall not be construed to prohibit the use of plastic jugs, cork, styrofoam, or similar materials as floats.

Authority G.S. 113-134; 113-272; 113-292.

SECTION .0400 - NONGAME FISH

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, except that no trotlines or set-hooks may be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters. In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30. The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.

(b) Nongame fishes, except alewife and blueback herring (greater than six inches in length) and bowfin, taken by hook and line, grabbling or by licensed special devices may be sold. Alewife and blueback herring less than six inches in length may

be sold except in those waters specified in 15A NCAC 10C .0402(d), where their possession is prohibited. Eels less than six inches in length may not be taken from inland waters for any purpose.

(c) Freshwater mussels may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County.

(d) It is unlawful to use boats powered by gasoline engines on impoundments located on the Barnhill Public Fishing Area.

(e) In the posted Community Fishing Program waters listed below it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate:

Cedarock Pond, Alamance County
 Lake Tomahawk, Buncombe County
 Frank Liske Park Pond, Cabarrus County
 Lake Rim, Cumberland County
 C.G. Hill Memorial Park Pond, Forsyth County
 Kernersville Lake, Forsyth County
 Winston Pond, Forsyth County
 Bur-Mil Park Ponds, Guilford County
 Oka T. Hester Pond, Guilford County
 San-Lee Park Ponds, Lee County
 Kinston Neuseway Park Pond, Lenoir County
 Freedom Park Pond, Mecklenburg County
 Hornet's Nest Pond, Mecklenburg County
 McAlpine Lake, Mecklenburg County
 Lake Luke Marion, Moore County
 Anderson Community Park Pond, Orange County
 Lake Michael, Orange County
 River Park North Pond, Pitt County
 Hamlet City Lake, Richmond County
 Big Elkin Creek, Surry County
 Apex Community Lake, Wake County
 Lake Crabtree, Wake County
 Shelley Lake, Wake County
 Simpkins Pond, Wake County
 Lake Toisnot, Wilson County
 Ellerbe Community Lake, Richmond County
 Indian Lake, Edgecombe County
 Harris Lake County Park Ponds, Wake County
 Park Road Pond, Mecklenburg County
 Etheridge Pond on the Barnhill Public Fishing Area, Edgecombe County
 Newbold Pond on the Barnhill Public Fishing Area, Edgecombe County

Authority G.S. 113-134; 113-272; 113-292.

SECTION .0500 - PRIMARY NURSERY AREAS

15A NCAC 10C .0501 SCOPE AND PURPOSE

To establish and protect those fragile inland waters that support embryonic, larval or juvenile populations of economically important species marine or estuarine fish or crustaceans, this Rule will set forth permanent nursery areas in inland fishing waters by extensive survey sampling conducted by personnel of the Wildlife Resources Commission or the Division of Marine Fisheries. Nursery areas are necessary for the early growth and development of virtually all of North Carolina's important marine and estuarine fish and crustacean species. Because

nursery areas need to be maintained, maintained as much as possible in their natural state, the fish and crustaeen populations within them must be permitted to develop in a normal manner with minimal inteference from man..

Authority G.S. 113-132; 113-134.

**15A NCAC 10C .0502 PRIMARY NURSERY AREAS
DEFINED**

Primary nursery areas are defined as those areas inhabited by the embryonic, larval or juvenile life stages of marine or estuarine fish or crustacean species due to favorable physical, chemical or biological factors.

Authority G.S. 113-132; 113-134.

15A NCAC 10C .0503 DESCRIPTIVE BOUNDARIES

The following waters have been designated as primary nursery areas:

- (1) North River:
 - (a) Broad Creek - Camden County - Entire stream;
 - (b) Deep Creek - Currituck County - Entire stream;
 - (c) Lutz Creek - Currituck County - Entire stream.
- (2) Alligator River:
 - (a) East Lake - Dare County - Inland waters portion;
 - (b) Little Alligator River - Tyrrell County - Entire stream.
- (3) Currituck Sound:
 - (a) Martin Point Creek - Dare County - Entire stream (Jean Guite Creek);
 - (b) Tull Creek and Bay - Currituck County - Tull Bay to mouth of Northwest River; Tull Creek from mouth upstream to SR 1222 bridge.
- (4) Pamlico River:
 - (a) Duck Creek - Beaufort County - Entire stream;
 - (b) Bath Creek - Beaufort County - Entire stream;
 - (c) Mixons Creek - Beaufort County - Entire stream;
 - (d) Porter Creek - Beaufort County - Entire stream;
 - (e) Tooleys Creek - Beaufort County - Entire stream;
 - (f) Jacobs Creek - Beaufort County - Entire stream;
 - (g) Jacks Creek - Beaufort County - Entire stream;
 - (h) Bond Creek - Beaufort County - Entire stream;
 - (i) Muddy Creek - Beaufort County - Entire stream;
 - (j) Strawhorn Creek - Beaufort County - Entire stream;
 - (k) South Prong Wright Creek - Beaufort County - Entire stream;

- (l) Jordan Creek - Beaufort County - Entire stream.
- (5) Neuse River:
 - (a) Slocum Creek - Craven County - Entire stream;
 - (b) Hancock Creek - Craven County - Entire stream.
- (6) New River:
 - (a) French Creek - Onslow County - Entire stream;
 - (b) New River - Onslow County - US Highway 17 bridge to point 0.75 miles upstream.
- (7) Roanoke River: Halifax and Northampton counties - US 258 bridge to Roanoke Rapids dam.
- (8) Albemarle Sound: Peter Mashoes Creek - Dare County - Entire Stream
- (9) Croatan Sound: Spencer Creek - Dare County - Entire Stream

Authority G.S. 113-132; 113-134.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

**15A NCAC 10D .0103 HUNTING ON GAME LANDS IS
PROPOSED FOR AMENDMENT AS FOLLOWS:**

- (a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.
- (b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.
- (c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.
- (d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made

based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

- (1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).
- (2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.
- (3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons, except that:
 - (A) Bears shall not be taken on lands designated and posted as bear sanctuaries;
 - (B) Wild boar shall not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries;
 - (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
 - (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.

- (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.

- (iii) Additionally, raccoon and opossum may be hunted when in season on Uwharrie Game Lands.

- (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15;

(f) Game Lands Seasons and Other Restrictions:

- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
- (2) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (3) Bachlelor Bay Game Land in Bertie and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (4) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (5) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon

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| <p>(with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program.</p> <p>(C) Handguns shall not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used or possessed.</p> <p>(D) On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting.</p> <p>(E) Wild turkey hunting is by permit only.</p> <p>(F) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.</p> <p>(6) Brunswick County Game Land in Brunswick County: Permit Only Area</p> <p>(7) Buckridge Game Land</p> <p>(A) Six Days per Week Area.</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Bear may only be taken the first six hunting days during the November Bear Season.</p> <p>(8) Bullard and Branch Hunting Preserve Game Lands in Robeson County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(9) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 p.m. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.</p> <p>(D) Horseback riding, including all equine species, is prohibited.</p> <p>(E) Target shooting is prohibited</p> <p>(F) Wild turkey hunting is by permit only.</p> <p>(10) Cape Fear Game Land in Pender County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.</p> | <p>(11) Caswell Game Land in Caswell County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.</p> <p>(C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.</p> <p>(12) Caswell Farm Game Land in Lenoir County-Dove-Only Area</p> <p>(A) Dove hunting is by permit only during the first two open days of the first segment of dove season.</p> <p>(13) Catawba Game Land in Catawba County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.</p> <p>(14) Chatham Game Land in Chatham and Harnett counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Wild turkey hunting is by permit only.</p> <p>(15) Cherokee Game Land in Ashe County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(16) Chowan Game Land in Chowan County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.</p> <p>(17) Chowan Swamp Game Land in Gates County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(18) Cold Mountain Game Land in Haywood County</p> <p>(A) Six Days per Week Area</p> <p>(B) Horseback riding is prohibited except on designated trails May 16 through</p> |
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PROPOSED RULES

- August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (19) Columbus County Game Land in Columbus County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (20) Croatan Game Land in Carteret, Craven and Jones counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (21) Currituck Banks Game Land in Currituck County
- (A) Six Days per Week Area
- (B) Permanent waterfowl blinds in Currituck Sound adjacent to these game lands shall be hunted by permit only after November 1.
- (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a firearm.
- (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- (E) Dogs shall be allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark will be used to attach a tree stand or blind to a tree.
- (22) Dare Game Land in Dare County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) No hunting on posted parts of bombing range.
- (D) The use and training of dogs is prohibited from March 1 through June 30.
- (23) Dupont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by Permit only.
- (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
- (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (24) Dysartsville Game Land in McDowell and Rutherford counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (25) Elk Knob Game Land in Ashe and Watauga counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (26) Gardner-Webb Game Land in Cleveland County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (27) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) On posted waterfowl impoundments waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the duck hunting seasons. After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.
- (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (28) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through-August 31 and all horseback riding is prohibited from September 1 through May 15. This rule includes all equine species.

PROPOSED RULES

- (29) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (30) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons.
- (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (F) Bear may only be taken the first six hunting days during the November Bear Season on the Long Shoal River Tract of Gull Rock Game Land.
- (31) Hickorynut Mountain Game Land in McDowell County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (32) Hofmann Forest Game Land in Jones and Onslow counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (33) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program
- (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.
- (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (34) Hyco Game land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (35) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (36) Jordan Game Land in Chatham, Durham, Orange and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) Horseback riding, including all equine species, is prohibited.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only.
- (37) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (38) Lee Game Land in Lee County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (39) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (40) Mayo Game Land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- (41) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties

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| <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.</p> <p>(C) Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.</p> <p>(42) Neuse River Game Land in Craven County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(43) New Lake Game Land in Hyde County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(44) North River Game Land in Currituck County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season except in that part in Camden County south of US 158 where the season is the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.</p> <p>(D) Wild turkey hunting is by permit only on that portion in Camden County.</p> <p>(45) Northwest River Marsh Game Land in Currituck County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.</p> <p>(46) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> | <p>(C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.</p> <p>(D) On that part of Pee Dee River Game Lands between Blewett Falls Dam and the South Carolina state line, waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 PM in this area.</p> <p>(47) Perkins Game Land in Davie County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(48) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery and Yancey counties and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east. Notwithstanding any other administrative rule, no antlerless deer may be taken on Game Lands in Madison County during any deer season.</p> <p>(C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.</p> <p>(49) Pungo River Game Land in Hyde County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(50) Roanoke River Wetlands in Bertie, Halifax and Martin counties</p> <p>(A) Hunting is by Permit only.</p> <p>(B) Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.</p> |
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PROPOSED RULES

- (C) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (51) Roanoke Sound Marshes Game Land in Dare County-Hunting is by permit only.
- (52) Robeson Game Land in Robeson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (53) Sampson Game Land in Sampson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (54) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
- (A) Three Days per Week Area
- (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the third Saturday before Thanksgiving through the following Wednesday, and during the Deer With Visible Antlers season.
- (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, and raccoon seasons specifically indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
- (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
- (E) Wild turkey hunting is by permit only.
- (F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.
- (G) Opossum, rabbit, and raccoon hunting on the field trial grounds will be allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving.
- (55) Sauratown Plantation Game Land in Stokes County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (56) Scuppernong Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (57) Shearon Harris Game Land in Chatham and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) The use or construction of permanent hunting blinds is prohibited.
- (E) Wild turkey hunting is by permit only.
- (F) During waterfowl seasons, hunters shall not enter the lake or surrounding shoreline earlier than 4:00 a.m., and hunting is prohibited after 1:00 p.m.; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day.
- (58) Shocco Creek Game Land in Warren County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (59) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is

- prohibited from September 1 through May 15. This Rule includes all equine species.
- (60) Suggs Mill Pond Game Land in Bladen County;
- (A) Hunting is by Permit only.
- (B) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (61) Sutton Lake Game Land in New Hanover County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (62) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (63) Thurmond Chatham Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.
- (64) Toxaway Game Land in Transylvania County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (65) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (66) Vance Game Land in Vance County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (67) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (68) White Oak River Impoundment Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the statewide waterfowl hunting seasons. After October 1, a special permit is required for hunting waterfowl on opening and closing days of the duck seasons, and on Thanksgiving and New Year's day.
- (g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperators agent or by phone.
- (h) The following game lands and refuges shall be closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- Bertie, Halifax and Martin counties--Roanoke River Wetlands
- Bertie County--Roanoke River National Wildlife Refuge
- Bladen County--Suggs Mill Pond Game Lands
- Burke County--John's River Waterfowl Refuge
- Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)

Dare County--Roanoke Sound Marshes Game Lands
 Davie--Hunting Creek Swamp Waterfowl Refuge
 Gaston, Lincoln and Mecklenburg counties--Cowan's
 Ford Waterfowl Refuge
 Henderson and Transylvania counties--Dupont State
 Forest Game Lands

*Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5;
 113-305.*

**SUBCHAPTER 10I - ENDANGERED AND THREATENED
 SPECIES**

**SECTION .0100 - ENDANGERED AND THREATENED
 SPECIES**

**15 NCAC 10I .0102 PROTECTION OF
 ENDANGERED/THREATENED/SPECIAL CONCERN
 SPECIES**

(a) No Open Season. There shall be no open season for taking any of the species listed as endangered in Rule .0103, threatened in Rule .0104 or, unless otherwise provided, as special concern in Rule .0105 of this Subchapter. Except as provided in Paragraphs (b), (c) and (e) of this Rule, it is unlawful to take or possess any of such species at any time.

(b) Permits. The executive director may issue permits to take or possess an endangered, threatened or special concern species as follows:

- (1) To a qualified individual or institution for the purpose of scientific investigation relevant to perpetuation or restoration of said species or as a part of a commission-approved study or restoration effort;
- (2) To a public or private educator or exhibitor who demonstrates to the satisfaction of the Commission that he or she has lawfully obtained the specimen or specimens in his or her possession, and that he or she possesses the requisite equipment and expertise to care for such specimen or specimens; and
- (3) To a person who lawfully possessed any such species for more than 90 days immediately prior to the date that such species was listed, provided however, that no permit shall be issued more than 90 days after the effective date of the initial listing for that species.

(c) Taking Without a Permit:

- (1) An individual may take an endangered, threatened, or special concern species in defense of his own life or the lives of others without a permit; and
- (2) A state or federal conservation officer or employee who is designated by his agency to do so may, when acting in the course of his official duties, take, possess, and transport endangered, threatened, or special concern species without a permit if the action is necessary to:
 - (A) aid a sick, injured, diseased or orphaned specimen;
 - (B) dispose of a dead specimen;

- (C) salvage a dead specimen which may be useful for scientific study; or
- (D) remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided the taking is done in a humane and noninjurious manner; the taking may involve injuring or killing endangered, threatened, or special concern species only if it is not reasonably possible to eliminate the threat by live-capturing and releasing the specimen unharmed, in a suitable habitat.

(d) Reporting. Any taking or possession of an endangered, threatened, or special concern species under Paragraphs (b) and (c) of this Rule is subject to applicable reporting requirements of federal law and regulations and the reporting requirements of the permit issued by the Executive Director or of 15A NCAC 10B .0106(e).

(e) Exception.

- (1) Notwithstanding any other provisions of this Rule, processed meat and other parts of American alligators, which have been lawfully taken in a state in which there is an open season for harvesting alligators, may be possessed, bought and sold when such products are marketed in packages or containers which are distinctly labeled to indicate the state in which they were taken and the identity, location, and lawful authority of the processor or distributor.
- (2) Raptors listed as special concern species in Rule .0105 of this Subchapter may be taken from the wild for falconry purposes and for falconry propagation, provided that a valid North Carolina endangered species permit has been obtained as required in Paragraph (b) of this Rule.
- (3) Captive-bred raptors listed as special concern species may be bought, sold, bartered or traded as provided in 50 C.F.R. 21.30 when marked as required under those regulations.
- (4) Importation, possession, sales, transportation and exportation of species listed as special concern species in Rule .0105 of this Subchapter shall be allowed under permit by retail and wholesale establishments whose primary function is providing scientific supplies for research; provided that the specimens were lawfully obtained from captive or wild populations outside of North Carolina; and that they must be possessed in indoor facilities; and that all transportation of specimens provides adequate safeguards against accidental escape; and that importation, possession and sale or transfer is permitted only as listed in Subparts (e)(4)(A) and (B) of this Rule.
 - (A) A written application to the Commission is required for a permit

to authorize importation, and possession for the purpose of retail or wholesale sale. The application shall identify the source of the specimens, and provide documentation of lawful acquisition. Applications for permits shall include plans for holding, transportation, advertisement, and sale in such detail as to allow a determination of the safeguards provided against accidental escape and sales to unauthorized individuals.

- (B) Purchase, importation, and possession of special concern species within North Carolina shall be allowed under permit to state and federal governmental agencies, corporate research entities, and research institutions; provided that sales are permitted to out of state consumers; and, provided that they must be possessed in indoor facilities and that all transportation of specimens provides adequate safeguards against accidental escape; and that the agency's or institution's Animal Use and Care Committee has approved the research protocol for this species; and, further provided that no specimens may be stocked or released in the public or private waters or lands of North Carolina and may not be transferred to any private individual.

Authority G.S. 113-134; 113-291.2; 113-291.3; 113-292; 113-333.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10C .0107; 10D .0104. Notice of Rule-making Proceedings was published in the Register on September 17, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 16, 2002

Time: 1:00 p.m.

Location: NC Wildlife Resources Commission hearing room, 3rd floor, Archdale Building, 512 N. Salisbury St., Raleigh, NC.

Reason for Proposed Action: *The Wildlife Resources Commission may adopt these Rules as temporary rules pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until February 18, 2002. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

Fiscal Impact

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

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C – INLAND FISHING REGULATIONS

SECTION .0100 - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

15A NCAC 10C .0107 SPECIAL REGULATIONS: JOINT WATERS

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules; the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 10C .0106:

- (1) Striped Bass
 - (a) It shall be unlawful to possess any striped bass or striped bass hybrid taken by any means which is less than 18 inches long (total length).
 - (b) It shall be unlawful to possess more than three striped bass or their hybrids taken by hook and line in any one day from joint waters.
 - (c) It shall be unlawful to engage in net fishing for striped bass or their hybrids in joint waters except as authorized by duly adopted rules of the Marine Fisheries Commission.
 - (d) It is unlawful to possess striped bass or striped bass hybrids in the joint waters of Albemarle, Currituck, Roanoke and Croatan Sounds and their tributaries, excluding the Roanoke River, except during seasons as authorized by duly adopted rules of the Marine Fisheries Commission.
 - (e) In the joint waters of the Roanoke River and its tributaries, including Cashie, Middle and Eastmost Rivers, striped bass and hybrid striped bass fishing season, size limits and creel

- limits shall be the same as those authorized by duly adopted rules of the Wildlife Resources Commission for adjacent inland fishing waters.
- (f) It is unlawful to possess aboard a vessel or while engaged in fishing from the shore or a pier any species of fin fish which is subject to a size or harvest restriction without having head and tail attached. Blueback herring, hickory shad and alewife shall be exempt from this Rule when used for bait provided that not more than two fish per boat or fishing operation may be cut for bait at any one time.
- (2) Lake Mattamuskeet
- (a) It shall be unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
- (b) It shall be unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It shall be unlawful to use or attempt to use any net or net stakes within 800 feet of the dam at Lock No. 1 on Cape Fear River.
- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

Authority G.S. 113-132; 113-134; 113-138; 113-292.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

15A NCAC 10D .0104 FISHING ON GAME LANDS

- (a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide rules. All game lands are open to public fishing except restocked ponds when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, ~~gig, bow and arrow~~ or other special fishing device of a type mentioned in 15A NCAC 10C .0404 (b)(c)(d) and (f) may be used in any impounded waters located entirely on game lands. Bow and arrow may be used to take nongame fishes in impounded waters located entirely on gamelands with the exception of those waters mentioned in 15A NCAC 10C .0404(a). Blue crabs taken by hook and line (other than set-hooks) in designated waterfowl impoundments located on game lands must have a minimum carapace width of five inches (point to point) and the daily possession limit is 50 per person and 100 per vessel.
- (b) Designated Public Mountain Trout Waters

- (1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land and in all waters on the Dupont State Forest Game Land from one-half hour after sunset to one-half hour before sunrise, except in Hatchery Supported Trout waters as stated in 15A NCAC 10C .0305(a), Delayed Harvest waters as stated in 15A NCAC 10C .0205(a)(5), game lands sections of the Nantahala River located downstream from the Swain County line, and in the sections of Green River in Polk County located on Green River Game Lands from Cove Creek downstream to Brights Creek.
- (2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to Tennessee state line, Nolichucky River, Mill Ridge Pond, Cheoah River downstream of Santeetlah Reservoir, Little River from Hooker Falls downstream to the Dupont State Forest boundary, Lake Imaging, Lake Dense, Lake Alfred, Lake Julia, Fawn Lake and the portion of West Fork Pigeon River below Lake Logan.

Dupont State Forest Game Lands in Henderson and Transylvania counties
 Three Top Mountain Game Land, Ashe County
 Nantahala National Forest Game Lands in the Counties of Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania
 Pisgah National Forest Game Lands in the Counties of Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania and Yancey
 Thurmond Chatham Game Land in Wilkes County
 Toxaway Game Land in Transylvania County
 South Mountains Game Land in the counties of Cleveland and Rutherford
 Cold Mountain Game Land in Haywood County

- (3) All designated public mountain trout waters located on the game lands listed in Subparagraph (b)(2) of this Rule are wild trout waters unless classified otherwise. [See 15A NCAC 10C .0205(a)(1)].
- (c) Ponds. In all game lands ponds, it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line and the daily creel limit for forked tail catfish is six fish in aggregate.

Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10C .0302, .0407. Notice of Rule-making Proceedings was published in the Register on September 17, 2001.

Proposed Effective Date: July 1, 2001

Public Hearing:

Date: January 30, 2002

Time: 6:00 p.m.

Location: The Magistrates Courtroom, Rockingham, NC

Reason for Proposed Action: *The Wildlife Resources Commission may adopt these Rules as temporary rules pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until February 17, 2002. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

Fiscal Impact

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

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER
SAFETY**

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0300 - GAME FISH

**15A NCAC 10C .0302 MANNER OF TAKING INLAND
GAME FISHES**

(a) Except as provided in this Rule, it is unlawful for any person to take inland game fishes from any of the waters of North Carolina by any method other than with hook and line. Landing nets may be used to land fishes caught on hook and line. Game fishes taken incidental to commercial fishing operations in joint fishing waters or coastal fishing waters shall be immediately returned to the water unharmed. Game fishes taken incidental to the use of licensed special devices for taking nongame fishes from inland fishing waters as authorized by 15A NCAC 10C .0407 shall be immediately returned to the water unharmed, except that a daily creel limit of American and hickory shad may be taken with dip nets and bow nets from March 1 through April 30 in those waters where such gear may be lawfully used.

(b) In the inland waters of the Roanoke River upstream of U.S. 258 bridge, only a single barbless hook or a lure with a single barbless hook may be used from 1 April to 30 June. Barbless as

used in this Rule, requires that the hook does not have a barb or the barb is bent down.

Authority G.S. 113-134; 113-273; 113-292; 113-302.

SECTION .0400 - NONGAME FISH

**15A NCAC 10C .0407 PERMITTED SPECIAL
DEVICES AND OPEN SEASONS**

Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. The use of special fishing devices, including crab pots, in impoundments located entirely on game lands is prohibited. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:

- (1) Alamance:
 - (a) July 1 to August 31 with seines in Alamance Creek below NC 49 bridge and Haw River;
 - (b) July 1 to June 30 with gigs in all public waters;
- (2) Alexander: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir;
- (3) Alleghany: July 1 to June 30 with gigs in New River, except designated public mountain trout waters;
- (4) Anson:
 - (a) July 1 to June 30 with traps and gigs in all public waters;
 - (b) March 1 to April 30 with dip and bow nets in Pee Dee River below Blewett Falls Dam;
 - (c) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
- (5) Ashe: July 1 to June 30 with gigs in New River (both forks), except designated public mountain trout waters;
- (6) Beaufort:
 - (a) July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters;
- (7) Bertie:
 - (a) July 1 to June 30 with traps in the Broad Creek (tributary of Roanoke);
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (8) Bladen: December 1 to June 5 with dip and bow nets in Black River;

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- (9) Brunswick: December 1 to May 1 with dip and bow nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek;
- (10) Buncombe: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (11) Burke:
- (a) July 1 to August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters;
- (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
- (12) Cabarrus:
- (a) July 1 to August 31 with seines in all running public waters,
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (13) Caldwell: July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- (14) Camden:
- (a) July 1 to June 30 with traps in all inland public waters;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (15) Carteret: December 1 to June 5 with dip and bow nets in all inland public waters except South River and the tributaries of the White Oak River;
- (16) Caswell:
- (a) July 1 to June 30 with gigs in all public waters;
- (b) July 1 to August 31 with seines in all running public waters, except Moons Creek;
- (c) July 1 to June 30 with traps in Hyco Reservoir;
- (17) Catawba:
- (a) July 1 to August 31 with seines in all running public waters, except Catawba River below Lookout Dam;
- (b) July 1 to June 30 with traps, spear guns, and gigs in all public waters;
- (18) Chatham:
- (a) December 1 to April 15 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law);
- (b) July 1 to August 31 with seines in the Cape Fear River, and Haw River;
- (c) July 1 to June 30 with traps in Deep River; and with gigs in all public waters;
- (19) Cherokee: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (20) Chowan:
- (a) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (b) July 1 to June 30 with traps in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (21) Clay: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (22) Cleveland:
- (a) July 1 to August 31 with seines in all running public waters;
- (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- (23) Columbus:
- (a) December 1 to March 1 with gigs in all inland public waters, except Lake Waccamaw and its tributaries;
- (b) December 1 to June 5 with dip and bow nets in Livingston Creek;
- (24) Craven:
- (a) July 1 to June 30 with traps in the main run of the Trent and Neuse Rivers;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, except Pitch Kettle, Grindle, Slocum (downstream of the US 70 bridge), Spring and Hancock Creeks and their tributaries; and with seines in the Neuse River;
- (25) Currituck:
- (a) July 1 to June 30 with traps in Tulls Creek and Northwest River;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (26) Dare:
- (a) July 1 to June 30 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (27) Davidson:
- (a) July 1 to August 31 with seines in all running public waters,
- (b) July 1 to June 30 with gigs in all public waters, and with traps in all public waters except Leonard's Creek, Abbott's Creek below Lake Thom-A-Lex dam, and the Abbott's

PROPOSED RULES

- (28) Davie: Creek arm of High Rock Lake upstream from the NC 8 bridge;
- (a) July 1 to June 30 with traps and gigs in all public waters;
- (b) July 1 to August 31 for taking only carp and suckers with seines in Dutchmans Creek from US 601 to Yadkin River and in Hunting Creek from SR 1338 to South Yadkin River;
- (29) Duplin: December 1 to June 5 with dip and bow nets and seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;
- (30) Durham:
- (a) July 1 to August 31 with seines in Neuse River,
- (b) July 1 to June 30 with gigs in all public waters;
- (31) Edgecombe: December 1 to June 5 with dip and bow nets in all public waters;
- (32) Forsyth: July 1 to June 30 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir;
- (33) Franklin:
- (a) July 1 to August 31 with seines in Tar River;
- (b) July 1 to June 30 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's Ponds, and in the Franklinton City ponds;
- (34) Gaston:
- (a) July 1 to August 31 with seines in all running public waters;
- (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- (35) Gates: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (36) Graham: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (37) Granville:
- (a) July 1 to June 30 with gigs in all public waters, except Kerr Reservoir;
- (b) July 1 to August 31 with seines in the Neuse River and the Tar River below US 158 bridge;
- (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
- (d) July 1 to June 30 with cast nets in all public waters;
- (38) Greene: December 1 to June 5 with dip and bow nets and reels in Contentnea Creek;
- (39) Guilford:
- (a) July 1 to August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge;
- (b) July 1 to June 30 with gigs in all public waters;
- (40) Halifax:
- (a) December 1 to June 5 with dip and bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run;
- (b) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;
- (41) Harnett:
- (a) January 1 to May 31 with gigs in Cape Fear River and tributaries;
- (b) December 1 to June 5 with dip and bow nets in Cape Fear River;
- (42) Haywood: July 1 to June 30 with gigs in all public waters, except Lake Junaluska and designated public mountain trout waters;
- (43) Henderson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (44) Hertford:
- (a) July 1 to June 30 with traps in Wiccacon Creek;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (45) Hyde:
- (a) July 1 to June 30 with traps in all inland waters;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (46) Iredell: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lookout Shoals Reservoir and Lake Norman;
- (47) Jackson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (48) Johnston: December 1 to June 5 with dip and bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River and Swift Creek;
- (49) Jones:
- (a) July 1 to June 30 with traps in the Trent River below US 17 bridge and White Oak River below US 17 bridge;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, except the tributaries to the White Oak River;
- (50) Lee:
- (a) December 1 to April 15 with dip and gill nets (local law) in Cape Fear

PROPOSED RULES

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|-------------------|---|------|--|
| | River and Deep River; and with gill nets in Morris Pond; | (c) | July 1 to June 30 with gigs in all public waters, except lakes located on the Sandhills Game Land; and with traps in Deep River and its tributaries; |
| (b) | July 1 to August 31 with seines in Cape Fear River; | | |
| (c) | July 1 to June 30 with traps in Deep River, and with gigs in all public waters; | (60) | Nash: |
| (51) Lenoir: | | (a) | July 1 to June 30 with gigs in all public waters, except Tar River; |
| (a) | July 1 to June 30 with traps in Neuse River below US 70 bridge at Kinston; | (b) | December 1 to June 5 with dip and bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam; |
| (b) | December 1 to June 5 with dip and bow nets in Neuse River and Contentnea Creek upstream from NC 118 bridge at Grifton; and with seines in Neuse River; | (61) | New Hanover: December 1 to June 5 with dip and bow nets in all inland public waters, except Sutton (Catfish) Lake; |
| (52) Lincoln: | | (62) | Northampton: |
| (a) | July 1 to August 31 with seines in all running public waters; | (a) | July 1 to June 30 with gigs in all public waters, except Gaston and Roanoke Rapids Reservoirs and the Roanoke River above the US 301 bridge; |
| (b) | July 1 to June 30 with traps, gigs and spear guns in all public waters; | (b) | December 1 to June 5 with dip and bow nets in Oconeechee Creek, Old River Landing Gut and Vaughans Creek below Watsons Mill; |
| (53) McDowell: | | (c) | July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir; |
| (a) | July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters; | (63) | Onslow: |
| (b) | July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James; | (a) | July 1 to June 30 with traps in White Oak River below US 17 bridge; |
| (54) Macon: | July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; | (b) | August 1 to March 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek; |
| (55) Madison: | July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; | (c) | December 1 to June 5 with dip and bow nets in the main run of New River and in the main run of the White Oak River; |
| (56) Martin: | December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; | (d) | March 1 to April 30 with dip and bow nets in Grant's Creek; |
| (57) Mecklenburg: | | (64) | Orange: |
| (a) | July 1 to August 31 with seines in all running public waters; | (a) | July 1 to August 31 with seines in Haw River, |
| (b) | July 1 to June 30 with traps, gigs and spear guns in all public waters except Freedom Park Pond and Hornet's Nest Ponds; | (b) | July 1 to June 30 with gigs in all public waters; |
| (58) Montgomery: | | (65) | Pamlico: December 1 to June 5 with dip and bow nets in all inland public waters, except Dawson Creek; |
| (a) | July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River; | (66) | Pasquotank: |
| (b) | July 1 to June 30 with traps and gigs in all public waters; | (a) | July 1 to June 30 with traps in all inland waters; |
| (59) Moore: | | (b) | December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; |
| (a) | December 1 to April 15 with gill nets in Deep River and all tributaries; | (67) | Pender: |
| (b) | July 1 to August 31 with seines in all running public waters except in Deep River; | (a) | December 1 to June 5 with dip and bow nets in the Northeast Cape Fear River, Long Creek and Black River; and with seines in the main run of Northeast Cape Fear River; |

PROPOSED RULES

- (b) December 1 to May 1 with dip and bow nets in Moore's Creek approximately one mile upstream to New Moon Fishing Camp;
- (68) Perquimans:
- (a) July 1 to June 30 with traps in all inland waters;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (69) Person:
- (a) July 1 to August 31 with seines in Hyco Creek and Mayo Creek;
- (b) July 1 to June 30 with gigs in all public waters.
- (70) Pitt:
- (a) July 1 to June 30 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, except Grindle Creek, and Contentnea Creek between NC 118 bridge at Grifton and the Neuse River;
- (c) December 1 to June 5 with seines in Tar River;
- (71) Polk: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (72) Randolph:
- (a) December 1 to March 1 with gill nets in Deep River and Uwharrie River;
- (b) July 1 to August 31 with seines in Deep River above the Coleridge Dam and Uwharrie River;
- (c) July 1 to June 30 with gigs in all public waters;
- (73) Richmond:
- (a) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
- (b) July 1 to June 30 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land;
- (c) March 1 to April 30 with dip and bow nets in Pee Dee River below Blewett Falls Dam;;
- (74) Robeson: December 1 to March 1 with gigs in all inland public waters.
- (75) Rockingham:
- (a) July 1 to August 31 with seines in Dan River and Haw River;
- (b) July 1 to June 30 with traps in Dan River; and with gigs in all public waters;
- (76) Rowan:
- (a) July 1 to August 31 with seines in all running public waters,
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (77) Rutherford:
- (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
- (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- (78) Sampson: December 1 to June 5 with dip and bow nets in Big Coharie Creek, Black River and Six Runs Creek;
- (79) Stanly:
- (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (80) Stokes: July 1 to June 30 with traps and gigs in all public waters, except designated public mountain trout waters, and traps may not be used in Belews Creek Reservoir;
- (81) Surry: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; and with traps in the main stem of Yadkin River;
- (82) Swain: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (83) Transylvania: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (84) Tyrrell:
- (a) July 1 to June 30 with traps in Scuppernong River, Alligator Creek, and the drainage canals of Lake Phelps;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impounded waters;
- (85) Union:
- (a) July 1 to August 31 with seines in all running public waters,
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (86) Vance:
- (a) July 1 to August 31 with seines in the Tar River;
- (b) July 1 to June 30 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon Ponds, City Lake, and Kerr Reservoir;

PROPOSED RULES

- (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
- (d) July 1 to June 30 with cast nets in all public waters;
- (87) Wake:
- (a) July 1 to June 30 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson Lakes;
- (b) December 1 to June 5 with dip and bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam;
- (88) Warren:
- (a) July 1 to August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill Ponds;
- (b) July 1 to June 30 with gigs in all public waters, except Duck and Hammes Mill Ponds, Kerr Reservoir, and Gaston Reservoir;
- (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir and Gaston Reservoir;
- (d) July 1 to June 30 with cast nets in all public waters;
- (89) Washington:
- (a) July 1 to June 30 with traps in the drainage canals of Lake Phelps;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impoundments;
- (90) Wayne: December 1 to June 5 with dip and bow nets in Little River, Mill Creek and Neuse River.
- (91) Wilkes: July 1 to June 30 with traps in Yadkin River below W. Kerr Scott Reservoir; and with gigs and spear guns in all public waters, except designated public mountain trout waters;
- (92) Wilson:
- (a) July 1 to June 30 with gigs in Contentnea Creek (except Buckhorn Reservoir), including unnamed tributaries between Flowers Mill and SR 1163 (Deans) bridge;
- (b) December 1 to June 5 with dip and bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam;
- (93) Yadkin: July 1 to June 30 with gigs in all public waters, and with traps in the main stem of Yadkin River.

Authority G.S. 113-134; 113-276; 113-292.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10C .0305. Notice of Rule-making Proceedings was published in the Register on September 17, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 16, 2002

Time: 1:00 p.m.

Location: The Wildlife Resources Commission Conference Room, Archdale Building, 3rd floor, 512 N. Salisbury, Raleigh, NC

Date: January 30, 2002

Time: 6:00 p.m.

Location: The Magistrates Courtroom, Rockingham, NC.

Reason for Proposed Action: The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until February 18, 2002. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.

Fiscal Impact

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0300 - GAME FISH

15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
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Mountain Trout:

PROPOSED RULES

Wild Trout Waters	4	7 in.	ALL YEAR (exc. 2)
Hatchery Supported Trout Waters and undesignated waters	7 (exc. 2)	None (exc. 2)	March 1 to 6:00 a.m. All year, except on first Saturday in April (exc. 2)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (exc. 9)	None	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass: Largemouth	5	14 in. (excs. 3, 8 & 10)	ALL YEAR (exc. 17)
Smallmouth and Spotted	5	12 in. (excs. 3, 8 & 10)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	1	18 in. (exc. 19)	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1,5,6,11& 13)	16 in. (excs. 1, 5,6,11 & 13)	ALL YEAR (excs. 6, 13 & 15)
Shad: (American and hickory)	10 aggregate	None	ALL YEAR (exc. 18)
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 4, 12 & 16)	None (exc. 12)	ALL YEAR (exc. 4)
NONGAME FISHES	None (exc. 14)	None (excs. 7)	ALL YEAR
(b) Exceptions			(2)
(1)	In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.		In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs

- open to the public for fishing. In Lake Lure the daily creel limit for trout is five fish and minimum size limit for trout is 15 inches.
- (3) Bass taken from Calderwood Reservoir may be retained without restriction as to size limit.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Cape Fear, Neuse, Pee Dee, Pungo and Tar-Pamlico rivers and their tributaries extending upstream to the first impoundment, and Lake Mattamuskeet, the daily creel limit for striped bass and their hybrids is three fish in aggregate and the minimum length limit is 18 inches. In the Tar-Pamlico River and its tributaries upstream of the Grimesland bridge and in the Neuse River and its tributaries upstream of the NC 55 bridge in Lenoir County, no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches shall be retained during the period April 1 through May 31.
- (6) In the inland and joint [as identified in 15A NCAC 10C .0107(1)(e)] fishing waters of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 15 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to the US 258 bridge and is March 15 through April 30 from the US 258 bridge upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches, no fish between 22 inches and 27 inches in length and only one fish larger than 27 inches may be retained in the daily creel limit. (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, High Rock Lake downstream of I-85, Badin Lake, Falls Lake, Lake Tillery, Blewett Falls Lake, Tuckertown Lake and in the following waters and their tributaries: New River in Onslow County, Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U.S. 258 bridge, Lake Mattamuskeet, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir, in Falls of the Neuse Reservoir, east of SR 1004, and in Lake Lure the minimum size limit for largemouth bass is 16 inches, with no exception.. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass. In Lake Lure the minimum size limit for smallmouth bass is 14 inches, with no exception. In Lake Phelps the minimum size limit for black bass is 14 inches, with no exception, and no fish between 16 and 20 inches may be possessed. In Shearon Harris Reservoir no black bass between 16 and 20 inches may be possessed.
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
 (A) Cane Creek Lake in Union County;
 (B) Lake Thom-A-Lex in Davidson County; and
 (C) Sutton Lake in New Hanover County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (5), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (12) A daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie in the following waters:
 Lake Tillery, Falls Lake, High Rock Lake, Badin Lake, Tuckertown Lake, Lake Hyco, Lake Ramseur, Cane Creek Lake and the following waters and all their tributaries: Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U.S. 258 bridge, Lake Mattamuskeet, Lake Phelps, Pungo Lake, Alligator Lake and New Lake.. In and west of Madison, Buncombe and Rutherford counties and in Lake James, the daily creel limit for crappie is 20 fish.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries

- Commission in adjacent joint or coastal fishing waters.
- (14) The daily creel limits for channel, white, and blue catfish in designated urban lakes are stated in 15A NCAC 10C .0401(e).
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
- (17) In Sutton Lake, no largemouth bass may be retained from December 1 through March 31.
- ((18) The season for taking American and hickory shad with dip nets and bow nets is March 1 through April 30.
- (19) No red drum greater than 27 inches in length may be retained.

- ☐ **Local**
- ☐ **Substantive** (>\$5,000,000)
- ☒ **None**

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone; Restricted Firearms Zone, or Restricted Zone.

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission.
- (5) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds

Authority G.S. 113-134; 113-292; 113-304; 113-305.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10D .0102. Notice of Rule-making Proceedings was published in the Register on October 1, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 2, 2002

Time: 9:00 a.m.

Location: NC Wildlife Resources Conference Room, 3rd floor, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until February 18, 2002. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

Fiscal Impact

☐ **State**

or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. Furthermore, only shotguns with any size shot may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.
- (2) Exceptions
 - (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
 - (B) The resident and nonresident sportsman's licenses include game lands use privileges.
 - (C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
 - (D) On the game lands described in Rule .0103(e)(2) of this Section the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such

nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National

Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;

- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge;
- (7) on the John's River Waterfowl Refuge in Burke County;
- (8) on the Dupont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) Use of Weapons. In addition to zone restrictions described in Paragraph (a) no person shall discharge a weapon from a vehicle, or within 150 yards of any Game Lands building or designated Game Lands camping area, or within 150 yards of any residence located on or adjacent to game lands.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) holds a Disabled Access Program Permit as described in Paragraph (n) of this Rule and is abiding by the rules described in that paragraph.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping. Camping and associated equipment in designated Hunter Camping Areas at Butner-Falls of the Neuse, Caswell, and Sandhills Game Lands is limited to Sept. 1- Feb. 29 and Apr. 7 - May 14.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0103 an individual shall have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) amputation of one or more limbs;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) legal deafness, meaning the inability to hear or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such

companion has in his possession the companion permit issued with the Disabled Sportsman permit.

(l) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, or hatchery-raised fish on game lands without prior written authorization. Also, it is unlawful to move wild fish from one stream to another on game lands without prior written authorization.

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. People who have obtained a Disabled Access Program permit are exempt from this rule but must comply with the terms of their permit.

(n) Disabled Access Program. Permits issued under this program shall be based upon competent medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands where this special rule applies shall be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It shall be unlawful for anyone other than those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(o) Public nudity. Public nudity, including nude sunbathing, is prohibited on any gameland, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Radiation Protection Commission, Division of Radiation Protection intends to amend the rules cited as 15A NCAC 11 .0104, .0111, .0117, .0320-.0321, .1105, .1403, .1405, .1408-.1409, .1412, .1414-.1415, .1417-.1419, .1422-.1423, .1608, .1610, .1613-.1614, .1625, .1627, .1635, .1640. Notice of Rule-

making Proceedings was published in the Register on April 2, 2001.

Proposed Effective Date: *August 1, 2002*

Public Hearing:

Date: *January 9, 2002*

Time: *2:00 p.m., 7:00 p.m.*

Location: *Division of Radiation Protection, 3825 Barrett Drive, Room 101, Raleigh*

Reason for Proposed Action: *The Division of Radiation Protection is an agreement state with the U.S. Nuclear Regulatory Commission. The Division's rules must be compatible with the U.S. Nuclear Regulatory Commission's regulations. The Division is increasing existing fees to more accurately reflect current inspection program costs.*

Comment Procedures: *Written comments may be submitted to Richard M. Fry, Division Director, and addressed to Division of Radiation Protection, MSC 1645, Raleigh, NC 27699-1645. Written comments will be accepted through January 16, 2001.*

Fiscal Impact

☒ **State** *15A NCAC 11 .0104 and .1105*

☒ **Local** *15A NCAC 11 .0104 and .1105*

☐ **Substantive** *(>\$5,000,000)*

☒ **None** *15A NCAC 11 .0111, .0117, .0320-.0321, .1403, .1405, .1408-.1409, .1412, .1414-.1415, .1417-.1419, .1422-.1423, .1608, .1610, .1613-.1614, .1625, .1627, .1635, .1640*

CHAPTER 11 – RADIATION PROTECTION

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 11 .0104 DEFINITIONS

As used in these Rules, the following definitions shall apply.

- (1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).
- (2) "Accelerator produced material" means any material made radioactive by use of a particle accelerator.
- (3) "Act" means North Carolina Radiation Protection Act as defined in G.S. 104E-1.
- (4) "Activity" is the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).
- (5) "Adult" means an individual 18 or more years of age.
- (6) "Agency" means the North Carolina Department of Environment and Natural Resources, Division of Radiation Protection.
- (7) "Agreement state" means any state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Subsection 274b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

- (8) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.
- (9) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:
 - (a) in excess of the derived air concentrations (DACs) specified in Appendix B to 10 CFR 20.1001 - 20.2401, or
 - (b) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.
- (10) "ALARA" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in the rules of this Chapter as is practical consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of sources of radiation in the public interest.
- (11) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in an effective dose equivalent of five rems (0.05 Sv) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table 1, Columns 1 and 2, of Appendix B to 10 CFR 20.1001 - 20.2401).
- (12) "Annually" means either:
 - (a) at intervals not to exceed 12 consecutive months; or
 - (b) once per year at the same time each year (completed during the same month each year over a period of multiple years).
- (13) "Authorized representative" means an employee of the agency, or an individual outside the agency when the individual is specifically so designated by the agency under Rule .0112 of this Section.
- (14) "Authorized user" means an individual who is authorized by license or registration condition to use a source of radiation.

- (15) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee or registrant. "Background radiation" does not include sources of radiation regulated by the agency.
- (16) "Becquerel" is the SI unit of radioactivity. One becquerel is equal to one disintegration per second (s^{-1}).
- (17) "Bioassay" or "radiobioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.
- (18) "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.
- (19) "Class", "lung class" or "inhalation class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times as follows:
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| Class | Clearance half-time |
| Class D (Day) | less than 10 days |
| Class W (Weeks) | 10 days to 100 days |
| Class Y (Years) | greater than 100 days |
- (20) "Collective dose" is the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.
- (21) "Commission" means the North Carolina Radiation Protection Commission.
- (22) "Committed dose equivalent" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.
- (23) "Committed effective dose equivalent" ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = \sum w_T H_{T,50}$).
- (24) "Constraint (dose constraint)" means a value above which specified licensee actions are required.
- (25) "Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.
- (26) "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.
- (27) "Curie" is the special unit of radioactivity. One curie is equal to 3.7×10^{10} disintegrations per second = 3.7×10^{10} becquerels = 2.22×10^{12} disintegrations per minute.
- (28) "Declared pregnant woman" means a woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.
- (29) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for either unrestricted use and termination of the license or for restricted use and termination of the license.
- (30) "Deep-dose equivalent" (H_d), which applies to external whole-body exposure, is the dose equivalent at a tissue depth of one cm (1000 mg/cm^2).
- (31) "Department" means the North Carolina Department of Environment and Natural Resources.
- (32) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.
- (33) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate 1.2 cubic meters of air per hour), results in an intake of ALI. DAC values are given in Table 1, Column 3, of Appendix B to 10 CFR 20.1001 - 20.2041).
- (34) "Derived air concentration-hour" (DAC-hour) is the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of five rems (0.05 Sv).
- (35) "Diagnostic clinical procedures manual" means a collection of written procedures governing the use of radioactive material that describes each method by which the licensee performs diagnostic clinical procedures and includes other instructions and precautions. Each diagnostic clinical procedure including but not limited in content to the

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| <p>(36) "Distinguishable from Background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey and statistical techniques.</p> <p>(37) "Dose" (or radiation dose) is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, effective dose equivalent, or total effective dose equivalent, as defined in other Items of this Rule.</p> <p>(38) "Dose equivalent" (H_T) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).</p> <p>(39) "Dose limits" (see "Limits" defined in this Rule).</p> <p>(40) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.</p> <p>(41) "Effective dose equivalent" (H_E) is the sum of the products of the dose equivalent to the organ or tissue (H_T) and the weighting factors (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \sum w_T H_T$).</p> <p>(42) "Embryo/fetus" means the developing human organism from conception until the time of birth.</p> <p>(43) "Entrance or access point" means any location through which an individual could gain access to radiation areas or to a source of radiation. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.</p> <p>(44) "Equipment services" means the selling, installation, rebuilding, conversion, repair, inspection, testing, survey or calibration of equipment which can affect compliance with these Rules by a licensee or registrant.</p> <p>(45) "Exposure" means being exposed to ionizing radiation or to radioactive material.</p> <p>(46) "Exposure rate" means the exposure per unit of time, such as R/min and mR/h.</p> <p>(47) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.</p> | <p>(48) "Extremity" means hand, elbow, arm, arm below the elbow, foot, knee, or leg below the knee.</p> <p>(49) "Eye dose equivalent" (See "Lens dose equivalent" as defined in this Rule).</p> <p>(50) "Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2D11 et seq;), as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using sources of radiation.</p> <p>(51) "Gray" (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule/kilogram (100 rads).</p> <p>(52) "High radiation area" means an area, accessible to individuals, in which radiation levels from sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.</p> <p>(53) "Hospital" means a facility that provides as its primary functions diagnostic services and intensive medical and nursing care in the treatment of acute stages of illness.</p> <p>(54) "Human use" means the internal or external administration of radiation or radioactive materials to human beings.</p> <p>(55) "Individual" means any human being.</p> <p>(56) "Individual monitoring" means:</p> <ul style="list-style-type: none"> (a) the assessment of dose equivalent by the use of devices designed to be worn by an individual; (b) the assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e., DAC-hours; or (c) the assessment of dose equivalent by the use of survey data. <p>(57) "Individual monitoring devices" or "individual monitoring equipment" means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.</p> <p>(58) "Inhalation class" (see "Class" defined in this Rule).</p> <p>(59) "Inspection" means an official examination or observation to determine compliance with rules, orders, requirements and conditions of the agency or the Commission.</p> |
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| <p>(60) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.</p> <p>(61) "Lens dose equivalent" or "LDE" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 cm (300 mg/cm²).</p> <p>(62) "License", except where otherwise specified, means a license issued pursuant to Section .0300 of this Chapter.</p> <p>(63) "Licensee" means any person who is licensed by the agency pursuant to Section .0300 of this Chapter.</p> <p>(64) "Licensing state" means any state designated as such by the Conference of Radiation Control Program Directors, Inc. Unless the context clearly indicates otherwise, use of the term Agreement State in this Chapter shall be deemed to include licensing state with respect to naturally occurring and accelerator produced radioactive material (NARM).</p> <p>(65) "Limits" or "dose limits" means the permissible upper bounds of radiation doses.</p> <p>(66) "Lost or missing licensed radioactive material" means licensed radioactive material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.</p> <p>(67) "Lung class" (see "Class" as defined in this Rule).</p> <p>(68) "Medical use" means the intentional internal or external administration of radioactive material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.</p> <p>(69) "Member of the public" means any individual except when that individual is receiving an occupational dose.</p> <p>(70) "Minor" means an individual less than 18 years of age.</p> <p>(71) "Misadministration" means the administration of the following:</p> <p style="margin-left: 20px;">(a) a diagnostic radiopharmaceutical dosage:</p> <p style="margin-left: 40px;">(i) involving a dose to the patient that exceeds 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ; and</p> <p style="margin-left: 60px;">(A) the wrong patient;</p> <p style="margin-left: 60px;">(B) the wrong radiopharmaceutical;</p> <p style="margin-left: 60px;">(C) the wrong route of administration; or</p> <p style="margin-left: 60px;">(D) an administered dosage that differs significantly from the prescribed dosage; or</p> | <p>(ii) for sodium iodide I-125 or I-131 involving:</p> <p style="margin-left: 20px;">(A) the wrong patient or wrong radiopharmaceutical; or</p> <p style="margin-left: 20px;">(B) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries;</p> <p>(b) a therapeutic radiopharmaceutical dosage:</p> <p style="margin-left: 20px;">(i) involving:</p> <p style="margin-left: 40px;">(A) the wrong patient;</p> <p style="margin-left: 40px;">(B) wrong radiopharmaceutical;</p> <p style="margin-left: 40px;">(C) wrong route of administration; or</p> <p style="margin-left: 40px;">(D) when the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or</p> <p style="margin-left: 20px;">(ii) when the administered dosage of sodium iodide I-125 or I-131 differs from the prescribed dosage by more than 20 percent of the prescribed dosage;</p> <p>(c) a teletherapy or accelerator radiation dose:</p> <p style="margin-left: 20px;">(i) involving:</p> <p style="margin-left: 40px;">(A) the wrong patient;</p> <p style="margin-left: 40px;">(B) the wrong mode of treatment; or</p> <p style="margin-left: 40px;">(C) wrong treatment site;</p> <p style="margin-left: 20px;">(ii) when the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;</p> <p style="margin-left: 20px;">(iii) when the calculated weekly administered dose is 30</p> |
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| | percent greater than the weekly prescribed dose; or | (76) | "NRC" means the United States Nuclear Regulatory Commission or its duly authorized representatives. |
| (iv) | when the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose; | (77) | "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or registrant or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, from voluntary participation in medical research programs, or as a member of the general public. |
| (d) | a brachytherapy radiation dose: | | |
| | (i) involving: | | |
| | (A) the wrong patient; | | |
| | (B) the wrong radioisotope; or | | |
| | (C) the wrong treatment site. This excludes, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site; | (78) | "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles. |
| | (ii) involving a sealed source that is leaking; | (79) | "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities. |
| | (iii) when, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or | | |
| | (iv) when the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose; or | (80) | "Personnel monitoring equipment" means devices, such as film badges, pocket dosimeters, and thermoluminescent dosimeters, designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual. |
| (e) | a gamma stereotactic radiosurgery radiation dose: | (81) | "Pharmacist" means an individual licensed by this state to compound and dispense drugs, prescriptions and poisons. |
| | (i) involving the wrong patient or wrong treatment site; or | (82) | "Physician" means an individual currently licensed to practice medicine in this state. |
| | (ii) when the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose. | (83) | "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits. |
| (72) | "Mobile nuclear medicine service" means the transportation and medical use of radioactive material. | (84) | "Prescribed dosage" means the quantity of radiopharmaceutical activity documented in a written directive by an authorized user. |
| (73) | "Monitoring", "radiation monitoring" or "radiation protection monitoring" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. | (85) | "Prescribed dose" means: |
| | | (a) | for teletherapy or accelerator radiation: |
| | | (i) | the total dose; and |
| | | (ii) | the dose per fraction as documented in the written directive; |
| | | (b) | for brachytherapy: |
| | | (i) | the total source strength and exposure time; or |
| | | (ii) | the total dose, as documented in the written directive; or |
| (74) | "Natural radioactivity" means radioactivity of naturally occurring nuclides. | (c) | for gamma stereotactic radiosurgery, the total dose as documented in the written directive. |
| (75) | "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect). | | |

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| <p>(86) "Public dose" means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee or registrant, or to another source of radiation within a licensee's or registrant's control. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, or from voluntary participation in medical research programs.</p> <p>(87) "Quality factor" (Q) means the modifying factor that is used to derive dose equivalent from absorbed dose. Quality factors are provided in the definition of rem in this Rule.</p> <p>(88) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee or registrant (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.</p> <p>(89) "Quarterly" means either:</p> <ul style="list-style-type: none"> (a) at intervals not to exceed 13 weeks; or (b) once per 13 weeks at about the same time during each 13 week period (completed during the same month of the quarter (first month, second month or third month) each quarter over a time period of several quarters. <p>(90) "Rad" is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs/gram or 0.01 joule/kilogram (0.01 gray).</p> <p>(91) "Radiation" (ionizing radiation), except as otherwise defined in Section .1400 of this Chapter, means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions.</p> <p>(92) "Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.</p> <p>(93) "Radiation dose" means dose.</p> <p>(94) "Radiation machine" means any device capable of producing radiation except devices which produce radiation only from radioactive material.</p> <p>(95) "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection rules.</p> <p>(96) "Radioactive material" means any material, solid, liquid, or gas, which emits radiation spontaneously.</p> | <p>(97) "Radioactive waste disposal facility" means any low-level radioactive waste disposal facility, as defined in G.S. 104E-5(9c), established for the purpose of receiving low-level radioactive waste, as defined in Rule .1202 of this Chapter, generated by another licensee for the purpose of disposal.</p> <p>(98) "Radioactive waste processing facility" means any low-level radioactive waste facility, as defined in G.S. 104E-5(9b), established for the purpose of receiving waste, as defined in this Rule, generated by another licensee to be stored, compacted, incinerated or treated.</p> <p>(99) "Radioactivity" means the disintegration of unstable atomic nuclei by emission of radiation.</p> <p>(100) "Radiobioassay" means bioassay.</p> <p>(101) "Recordable event" means the administration of the following:</p> <ul style="list-style-type: none"> (a) a radiopharmaceutical or radiation from a licensed source without a written directive where a written directive is required by Sub-items 146(a)(i) and 146(b)-(f) of this Rule; (b) a radiopharmaceutical or radiation from a licensed source where a written directive is required by Sub-items 146(a)(i) and 146(b)-(f) of this Rule without recording each administered radiopharmaceutical dosage or radiation dose in the appropriate record on a daily basis; (c) a radiopharmaceutical dosage of greater than 30 microcuries of sodium iodide I-125 and I-131 when: <ul style="list-style-type: none"> (i) the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage; and (ii) the difference between the administered dosage and prescribed dose exceeds 15 microcuries; (d) a therapeutic dosage of any radiopharmaceutical dosage other than sodium iodide I-125 or I-131 when the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage; (e) a teletherapy or accelerator radiation dose when the calculated weekly administered dose is 15 percent greater than the weekly prescribed dose; or (f) a brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than 10 percent of the prescribed dose. |
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PROPOSED RULES

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| <p>(102) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus as published by the International Commission on Radiological Protection. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.</p> <p>(103) "Registrant" means any person who is registered with the agency as required by provisions of these Rules or the Act.</p> <p>(104) "Registration" means registration with the agency in accordance with these Rules.</p> | <p>(105) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.</p> <p>(106) "Rem" is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (1 rem = 0.01 sievert). As used in this Chapter, the quality factors for converting absorbed dose to dose equivalent are as follows:</p> |
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QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

TYPE OF RADIATION	Quality Factor	Absorbed Dose Equal to a Unit Dose Equivalent ^a
	Q	
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

^aAbsorbed dose in rad equal to one rem or the absorbed dose in gray equal to one sievert.

If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, one rem (0.01 Sv) of neutron radiation of unknown energies may, for purposes of the rules of this Chapter, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body.

If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from the following table to convert a measured tissue dose in rads to dose equivalent in rems:

MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

	Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)
(thermal)	2.5 x 10 ⁻⁸	2	980 x 10 ⁶
	1 x 10 ⁻⁷	2	980 x 10 ⁶
	1 x 10 ⁻⁶	2	810 x 10 ⁶
	1 x 10 ⁻⁵	2	810 x 10 ⁶
	1 x 10 ⁻⁴	2	840 x 10 ⁶
	1 x 10 ⁻³	2	980 x 10 ⁶
	1 x 10 ⁻²	2.5	1010 x 10 ⁶
	1 x 10 ⁻¹	7.5	170 x 10 ⁶
	5 x 10 ⁻¹	11	39 x 10 ⁶
	1	11	27 x 10 ⁶
	2.5	9	29 x 10 ⁶
	5	8	23 x 10 ⁶
	7	7	24 x 10 ⁶
	10	6.5	24 x 10 ⁶
	14	7.5	17 x 10 ⁶
	20	8	16 x 10 ⁶
	40	7	14 x 10 ⁶

60	5.5	16×10^6
1×10^2	4	20×10^6
2×10^2	3.5	19×10^6
3×10^2	3.5	16×10^6
4×10^2	3.5	14×10^6

^a Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.

^b Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

- (107) "Research and development" means:
- (a) theoretical analysis, exploration, or experimentation; or
 - (b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.
- Research and development does not include the internal or external administration of radiation or radioactive material to human beings.
- (108) "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if the burials were made in accordance with the provisions of Section .1600 of this Chapter.
- (109) "Respiratory protective device" means an apparatus, such as a respirator, used to reduce the individual's intake of airborne radioactive materials.
- (110) "Restricted area" means an area, access to which is controlled by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.
- (111) "Roentgen" (R) means the special unit of exposure. One roentgen equals 2.58×10^{-4} coulombs/kilogram of air.
- (112) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.
- (113) "Sealed source" means radioactive material that is permanently bonded, fixed or encapsulated so as to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.
- (114) "Semiannually" means either:
- (a) at intervals not to exceed six months; or
 - (b) once per six months at about the same time during each six month period (completed during the sixth month of each six month period over multiple six month periods).
- (115) "Shallow-dose equivalent" (H_s), which applies to the external exposure of the skin or an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm^2) averaged over an area of one square centimeter.
- (116) "SI unit" means a unit of measure from the International System of Units as established by the General Conference of Weights and Measures.
- (117) "Sievert" is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor ($1 \text{ Sv} = 100 \text{ rems}$).
- (118) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.
- (119) "Source material" means:
- (a) uranium or thorium or any combination of uranium and thorium in any physical or chemical form; or
 - (b) ores which contain, by weight, 0.05 percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.
- (120) "Source of radiation" means any radioactive material, or any device or equipment emitting or capable of producing radiation.
- (121) "Special form radioactive material" means radioactive material which satisfies the following conditions:
- (a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

- | | |
|---|--|
| <p>(b) The piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and</p> <p>(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission, Subpart F of 10 CFR Part 71, and the tests prescribed in Rule .0114 of this Section. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements, Subpart F of 10 CFR Part 71, in effect on June 30, 1984, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation either designed or constructed after June 30, 1985, must meet requirements of this definition applicable at the time of its design or construction.</p> | <p>Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);, determines to be special nuclear material, but does not include source material; or</p> <p>(b) any material artificially enriched by any of the foregoing but does not include source material.</p> |
| <p>(122) "Special nuclear material" means:</p> <p>(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the United States Nuclear Regulatory Commission, pursuant to the provisions of Section 51 of the</p> | <p>(123) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope uranium-235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of uranium-235, uranium enriched in uranium-235 and plutonium in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this Rule for the same kind of special nuclear material. The sum of these ratios for all the kinds of special nuclear material in combination shall not exceed unity. For example, the following quantities in combination would not exceed the limitations and are within the formula, as follows:</p> |
| $\frac{175 \text{ (gram contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} \text{ is } < \text{ or } = 1$ | |
| <p>(124) "State" means the State of North Carolina.</p> <p>(125) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects.</p> | <p>content, would be classified as "hazardous waste" as defined in 15A NCAC 13A .0102(a).</p> |
| <p>(126) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of sources of radiation and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.</p> | <p>(131) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A₁ for special form radioactive material or A₂ for normal form radioactive material, where A₁ and A₂ are given in Rule .0113 of this Section or may be determined by procedures described in Rule .0113 of this Section. All quantities of radioactive material greater than a Type A quantity are Type B.</p> |
| <p>(127) "These Rules" means Chapter 11 of this Title.</p> <p>(128) "To the extent practicable" means to the extent feasible or capable of being done or carried out with reasonable effort.</p> | <p>(132) "Unit dosage" means a dosage intended for medical use in an individual that has been obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent agreement state requirements.</p> |
| <p>(129) "Total effective dose equivalent" (TEDE) means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).</p> | <p>(133) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.</p> |
| <p>(130) "Toxic or hazardous constituent of the waste" means the nonradioactive content of waste which, notwithstanding the radioactive</p> | <p>(134) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant.</p> <p>(135) "Very high radiation area" means an area, accessible to individuals, in which radiation levels from sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at one meter from a radiation source or</p> |

- from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (e.g., rads and grays) are appropriate, rather than units of dose equivalent (e.g., rems and sieverts).
- (136) "Waste" means low-level radioactive waste as defined in G.S. 104E-5(9a) and includes licensed naturally occurring and accelerator produced radioactive material which is not subject to regulation by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, except as defined differently in Rule .1202 of this Chapter.
- (137) "Waste, Class A" is defined in Rule .1650 of this Chapter.
- (138) "Waste, Class B" is defined in Rule .1650 of this Chapter.
- (139) "Waste, Class C" is defined in Rule .1650 of this Chapter.
- (140) "Week" means seven consecutive days starting on Sunday.
- (141) "Weighting factor", w_T , for an organ or tissue (T) is the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^a
Whole body	1.00 ^b

^a 0.30 results from 0.06 for each of 5 "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

^b For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor, $w_T = 1.0$, has been specified.

- (142) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.
- (143) "Worker" means an individual engaged in work under a license or registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.
- (144) "Working level" (WL) is any combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy.
- (145) "Working level month" (WLM) means an exposure to one working level for 170 hours.
- (146) "Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation from a licensed source, except as specified in Sub-item (e) of this definition, containing the following information:
- (a) for the diagnostic administration of a radiopharmaceutical:
 - (i) if greater than 30 microcuries of sodium iodide I-125 or I-131, the dosage to be administered in accordance with the diagnostic clinical procedures manual; or
 - (ii) if not subject to Sub-item (a)(i) of this Item, the type of study to be performed in accordance with the diagnostic clinical procedures manual;
 - (b) for the therapeutic administration of a radiopharmaceutical:
 - (i) radiopharmaceutical;
 - (ii) dosage; and
 - (iii) route of administration;
 - (c) for teletherapy or accelerator radiation therapy:

- (i) total dose;
 - (ii) dose per fraction;
 - (iii) treatment site; and
 - (iv) overall treatment period;
 - (d) for high-dose-rate remote afterloading brachytherapy:
 - (i) radioisotope;
 - (ii) treatment site; and
 - (iii) total dose;
 - (e) for all other brachytherapy:
 - (i) prior to implantation:
 - (A) radioisotope;
 - (B) number of sources to be implanted; and
 - (C) source strengths in millicuries; and
 - (ii) after implantation but prior to completion of the procedure:
 - (A) radioisotope;
 - (B) treatment site; and
 - (C) either:
 - (I) total source strength and exposure time; or
 - (II) total dose;
 - (f) for gamma stereotactic radiosurgery:
 - (i) target coordinates;
 - (ii) collimator size;
 - (iii) plug pattern; and
 - (iv) total dose.
- (147) "Year" means the period of time beginning in January used to determine compliance with the provisions of Section .1600 of this Chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

Authority G.S. 104E-7(a)(2).

15A NCAC 11 .0111 COMMUNICATIONS

- (a) Except as provided in Paragraph (b) of this Rule, all communications and reports concerning these Rules, and applications filed thereunder, shall be mailed to the agency at Division of Radiation Protection, 1645 Mail Service Center, Raleigh, North Carolina 27699-1645 or delivered to the agency at its office located at 3825 Barrett Drive, Raleigh, North Carolina 27609-7221.
- (b) Except as specifically instructed otherwise by the agency, immediate telephone notification and reports required by the rules in this Chapter shall be directed to (919) 571-4141 from 8:00 a.m. to 5:30 p.m. on workdays.

Authority G.S. 104E-7.

15A NCAC 11 .0117 INCORPORATION BY REFERENCE

(a) For the purpose of the rules in this Chapter, the following rules, standards and other requirements are hereby incorporated by reference including any subsequent amendments and editions:

- (1) Appendix A, Appendix B, Appendix C, and Appendix G to 10 CFR Parts 20.1001 - 20.2401;
- (2) 10 CFR Part 21, 10 CFR Part 30.1, 30.10, 10 CFR Part 31, 10 CFR Part 32, 10 CFR Part 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.970, 35.971, 35.972, 10 CFR Part 36, 10 CFR Part 40 and 10 CFR Part 50;
- (3) 10 CFR Part 61, 10 CFR Part 70, 10 CFR Part 71, 10 CFR Part 73, 10 CFR Part 110, 10 CFR Part 140 and 10 CFR Part 150;
- (4) 21 CFR Part 1010, 21 CFR Part 1020 and 21 CFR Part 1040;
- (5) 39 CFR Part 14 and 39 CFR Part 15;
- (6) Postal Service Manual (Domestic Mail Manual) Section 124.3 [incorporated by reference in 39 CFR Section 111.11];
- (7) 40 CFR Part 261;
- (8) 49 CFR Parts 100-189;
- (9) "Agreement Between the United States Atomic Energy Commission and the State of North Carolina for Discontinuance of Certain Commission Regulatory Authority and Responsibility within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended", signed July 21, 1964;
- (10) "Standards and Specifications for Geodetic Control Networks (September 1984);
- (11) "Geometric Geodetic Survey Accuracy Standards and Specifications for Geodetic Surveys Using GPS Relative Positioning Techniques";
- (12) "Reference Man: Anatomical, Physiological and Metabolic Characteristics" (ICRP Publication No. 23) of the International Commission on Radiological Protection;
- (13) "10 CFR, Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 FR 7540"; and
- (14) American National Standard N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography".

(b) The rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule are available for inspection at the Department of Environment and Natural Resources, Division of Radiation Protection at the address listed in Rule .0111 of this Section. Except as noted in the Subparagraphs of this Paragraph, copies of the rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at a cost as follows:

- (1) Three dollars (\$3.00) for the appendixes listed in Subparagraph (a)(1) of this Rule, available from the Division of Radiation Protection;
- (2) Twenty-five dollars (\$25.00) for the regulations listed in Subparagraph (a)(2) of this Rule in a volume containing 10 CFR Parts 0-50;
- (3) Eighteen dollars (\$18.00) for the regulations listed in Subparagraph (a)(3) of this Rule in a volume containing 10 CFR Parts 51-199;
- (4) Eighteen dollars (\$18.00) for the regulations listed in Subparagraph (a)(4) of this Rule in a volume containing 21 CFR Parts 800-1299;
- (5) Sixteen dollars (\$16.00) for the regulations listed in Subparagraph (a)(5) of this Rule in a volume containing 39 CFR;
- (6) Thirty-six dollars (\$36.00) for the manual listed in Subparagraph (a)(6) of this Rule;
- (7) Thirty-one dollars (\$31.00) for the regulations listed in Subparagraph (a)(7) of this Rule in a volume containing 40 CFR Parts 260-299;
- (8) for the regulations listed in Subparagraph (a)(8) of this Rule:
 - (A) Twenty-three dollars (\$23.00) for a volume containing 49 CFR Parts 100-177; and
 - (B) Seventeen dollars (\$17.00) for a volume containing 49 CFR Parts 178-199.
- (9) One dollar (\$1.00) for the agreement in Subparagraph (a)(9) of this Rule, available from the Division of Radiation Protection;
- (10) Two dollars and eighty-five cents (\$2.85) for the standards and specifications in Subparagraph (a)(10) of this Rule, available from the National Geodetic Information Center, N/CG174, Rockwall Building, Room 24, National Geodetic Survey, NOAA, Rockville, MD 20852;
- (11) Two dollars and eighty-five cents (\$2.85) for the standards and specifications in Subparagraph (a)(11) of this Rule, available from the National Geodetic Information Center, NCG174, Rockwall Building, Room 24, National Geodetic Survey, NOAA, Rockville, MD 20852;
- (12) One hundred and five dollars (\$105.00) for the ICRP Publication No. 23 in Subparagraph (a)(12) of this Rule, available from Pergamon Press, Inc., Maxwell House, Fairview Park, Elmsford, NY 10523;
- (13) Two dollars (\$2.00) for the document in Subparagraph (a)(13) of this Rule, available from the Division of Radiation Protection; and
- (14) Thirty-eight dollars plus five dollars shipping and handling (\$43.00) for the American National Standard N432-1980 in Subparagraph (a)(14) of this Rule, available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, telephone number (212) 642-4900.

(c) Nothing in this incorporation by reference of 10 CFR Part 61 in Subparagraph (a)(3) of this Rule shall limit or affect the continued applicability of G.S. 104E-25(a) and (b).

Authority G.S. 104E-7; 104E-15(a); 150B-21.6.

SECTION .0300 – LICENSING OF RADIOACTIVE MATERIAL

15A NCAC 11 .0320 SPECIFIC LICENSES: HUMAN USE BY INDIVIDUAL PHYSICIANS

(a) An application by an individual physician or a group of physicians for a specific license for human use of radioactive material will be approved if:

- (1) the applicant satisfies the general requirements in Rule .0318 of this Section;
- (2) The application is for use in the applicant's practice in an office(s) outside a medical institution;
- (3) the applicant has access to a hospital possessing adequate facilities to hospitalize and monitor the applicant's radioactive patients whenever it is advisable;
- (4) the applicant has extensive experience in the proposed use, the handling and administration of radioisotopes, and where applicable, the clinical management of radioactive patients; and
- (5) the physician(s) shall furnish suitable evidence of experience along with the application, except that a statement from the medical isotope committee in the hospital where the applicant acquired experience, indicating its amount and nature, may be submitted as evidence of experience.

(b) The agency will not approve an application by an individual physician or group of physicians for a specific license to receive, possess or use radioactive material on the premises of a hospital unless:

- (1) The use of radioactive material is limited to:
 - (A) the administration of radiopharmaceuticals for diagnostic or therapeutic purposes;
 - (B) the performance of diagnostic studies on patients to whom a radiopharmaceutical has been administered;
 - (C) the performance of IN VITRO diagnostic studies; or
 - (D) the calibration and quality control checks of radioactive assay instrumentation, radiation safety instrumentation and diagnostic instrumentation.
- (2) The physician brings the radioactive material with him and removes the radioactive material when he departs;
- (3) No radioactive material is received, possessed or stored in the hospital other than the amount of material remaining in the patient; and

- (4) The hospital does not hold a radioactive material license under Rule .0319 of this Section.
- (c) The agency will approve an application by an individual physician or group of physicians for a specific license to receive, possess, or use radioactive materials covered under Rule .0321 of this Section if:
 - (1) the applicant has appointed a medical isotopes committee of at least three members to evaluate all proposals for diagnostic or therapeutic use of radioisotopes within the facility; and
 - (2) membership of the committee includes an authorized user from each department where radioactive material is used, a representative of the institution's management and a person trained in radiation safety.

Authority G.S. 104E-7; 104E-10(b).

15A NCAC 11 .0321 SPECIFIC LICENSES: GROUPS OF DIAGNOSTIC USES

(a) An application for a specific license pursuant to Rule .0318 of this Section for any diagnostic or therapeutic use of radioactive material specified in groups established in Paragraph (b) of this Rule shall be approved for all of the diagnostic or therapeutic uses within the group which include the use specified in the application if:

- (1) the applicant satisfies the requirements in Rule .0319 or Rule .0320 of this Section;
- (2) the applicant's proposed radiation detection instrumentation is adequate for conducting the diagnostic or therapeutic procedure specified in the appropriate group;
- (3) the physicians designated in the application as individual users, have clinical experience in the types of uses included in the group or groups incorporated by reference in Rule .0117(a)(2) of this Chapter;
- (4) the physicians and all other personnel who will be involved in the preparation and use of radioactive material have training and experience in the handling of radioactive material appropriate to their participation in the uses included in the group or groups incorporated by reference in Rule .0117(a)(2) of this Chapter;
- (5) the applicant has detailed radiation safety operating procedures for handling and disposal of the radioactive material involved in the uses included in the group or groups that provide protection to the workers, the public and the environment from radiation exposure and radioactive contamination.
- (b) The groups of diagnostic and therapeutic radiopharmaceutical uses are established as follows:
 - (1) Group I includes radiopharmaceuticals for which a New Drug application has been approved by the U.S. Food and Drug Administration for diagnostic studies involving measurement of uptake, dilution and

- excretion. This group does not include the use of any radiopharmaceutical disapproved by the North Carolina Radiation Protection Commission or involving imaging, tumor localization or therapy.
- (2) Group II includes radiopharmaceuticals for which a New Drug application has been approved by the U.S. Food and Drug Administration for diagnostic studies involving imaging and tumor localizations. This group does not include the use of any radiopharmaceutical disapproved by the North Carolina Radiation Protection Commission.
- (3) Group III includes the use of generators and reagent kits for which a New Drug application has been approved by the U.S. Food and Drug Administration for the preparation of radiopharmaceuticals for certain diagnostic uses. This group does not include any generator or reagent kit disapproved by the North Carolina Radiation Protection Commission.
- (4) Group IV includes radiopharmaceuticals for which a New Drug application has been approved by the U.S. Food and Drug Administration for therapeutic uses which do not normally require hospitalization for purposes of radiation safety. This group does not include any radiopharmaceutical disapproved by the North Carolina Radiation Protection Commission.
- (c) Any licensee who is authorized to use radioactive material in one or more groups pursuant to Paragraph (a) of this Rule is subject to the following conditions:
 - (1) For Groups I, II and IV, no licensee shall receive, possess, or use radioactive materials except as a radiopharmaceutical manufactured in the form to be administered to the patient, labeled, packaged, and distributed in accordance with:
 - (A) a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to Section 32.72 of 10 CFR Part 32; or
 - (B) a specific license issued by the agency or an agreement state pursuant to equivalent regulations.
 - (2) For Group III, no licensee shall receive, possess, or use generators or reagent kits containing radioactive material or shall use reagent kits that do not contain radioactive material to prepare radiopharmaceuticals containing radioactive material, except:
 - (A) reagent kits, not containing radioactive material, that are approved by the U.S. Nuclear Regulatory Commission, the U.S. Atomic Energy Commission, or an agreement state for use by persons licensed for Group III pursuant to Paragraph (a) of this Rule or

- equivalent regulations of an agreement state or the U.S. Nuclear Regulatory Commission;
 - (B) generators or reagent kits containing radioactive material that are manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission or by the agency or an agreement state pursuant to equivalent regulations;
 - (C) any licensee who uses generators or reagent kits shall elute the generator or process radioactive material with the reagent kit in accordance with instructions which are approved by the U.S. Nuclear Regulatory Commission or an agreement state and are furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit.
- (3) For Groups I, II and III, any licensee using radioactive material for clinical procedures other than those specified in the product labeling package insert shall comply with the product labeling regarding:
- (A) chemical and physical form;
 - (B) route of administration; and
 - (C) dosage range.
- (4) Any licensee who is licensed pursuant to Paragraph (a) of this Rule for one or more of the medical use groups also is authorized to use radioactive material under the general license in Rule .0314 of this Section for the specified IN VITRO uses without filing agency form as required by Rule .0314(b) of this Section, provided that the licensee is subject to the other provisions of Rule .0314 of this Section.
- (5) Any licensee who is licensed pursuant to Paragraph (a) of this Rule for one or more of the medical use groups in Paragraph (a) of this Rule also is authorized, subject to the provisions of Parts (c)(5)(E) and (F) of this Rule, to receive, possess, and use for calibration and reference standards:
- (A) Any radioactive material listed in Group I, Group II, or Group III of this Rule with a half-life not longer than 100 days, in amounts not to exceed 15 millicuries total;
 - (B) Any radioactive material listed in Group I, Group II, or Group III of this Rule with half-life greater than 100 days in individual amounts not to exceed 200 microcuries total;
 - (C) Technetium-99m in individual amounts not to exceed 50 millicuries;
 - (D) Any radioactive material in amounts not to exceed 15 millicuries per source contained in calibration or reference sources that have been manufactured, labeled, packaged, and distributed in accordance with:
 - (i) a specific license issued to the manufacturer by an agreement state pursuant to equivalent state regulations;
 - (ii) a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.74 of 10 CFR, Part 32; or
 - (iii) an application filed with the U.S. Atomic Energy Commission pursuant to Section 32.74 of 10 CFR, part 32; or
 - (iv) an application filed with an agreement state pursuant to equivalent state regulations on or before October 15, 1974 for a license to manufacture a source that the applicant distributed commercially on or before August 16, 1974, on which application the U.S. Atomic Energy Commission or the U.S. Nuclear Regulatory Commission or the agreement state has not acted.
 - (E) Any licensee who possesses sealed sources as calibration or reference sources pursuant to Subparagraph (c)(5) of this Rule shall cause each sealed source containing radioactive material other than hydrogen-3 with a half-life greater than 30 days in any form other than gas to be tested for leakage or contamination at intervals not to exceed six months. In the absence of a certificate from a transferor indicating that a test has been made within six months prior to the transfer, the sealed source shall not be used until tested. No leak tests are required when:
 - (i) The source contains 100 microcuries or less of beta or gamma emitting material or ten microcuries or less of alpha emitting material.
 - (ii) The sealed source is stored and is not being used. Such source shall be tested for leakage prior to any use or transfer unless they have been leak tested within six

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- months prior to the date of use or transfer.
- (F) The leak test shall be capable of detecting the presence of 0.005 microcuries of radioactive material on the test sample. The test sample shall be taken from the sealed source or from the surfaces of the device in which the sealed source is permanently mounted or stored on which contamination might be expected to accumulate. Records of leak test results shall be kept in units of microcuries and maintained for inspection by the agency.
- (G) If the leak test reveals the presence of 0.005 microcuries or more of removable contamination, the licensee shall immediately withdraw the sealed source from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with Commission rules. A report shall be filed within five days of the test with the agency address in Rule .0111 of this Chapter describing the equipment involved, the test results, and the corrective action taken.
- (H) Any licensee who possesses and uses calibration and reference sources pursuant to Subparagraph (c)(5) of this Rule shall:
- (i) follow the radiation safety and handling instructions
 - (ii) that are required by the licensing agency to be furnished by the manufacturer on the label attached to the source or permanent container thereof or in the leaflet or brochure that accompanies the source;
 - (iii) maintain such instructions in a legible and conveniently available form;
 - (iii) conduct a quarterly physical inventory to account for all sources received and possessed; Records of the inventories shall be maintained for inspection by the agency and shall include the quantities and kinds of radioactive material, location of sources and the date of the inventory.
- (d) Current lists of the radiopharmaceuticals, generators, reagent kits, and associated uses in Group I to IV are available from the agency at the address in Rule .0111 of this Chapter.

Authority G.S. 104E-7; 104E-10(b).

SECTION .1100 - FEES

15A NCAC 11 .1105 FEE AMOUNTS

(a) Annual fees for persons registered pursuant to provisions of Section .0200 of this Chapter are as listed in the following table:

Type of registered facility	Letters appearing in registration number	Facility plus first X-ray tube	Each additional X-ray Tube to a maximum of 40 additional X-ray tubes
Clinics	A	\$ 90.00	\$ 16.25
Chiropractors	C	\$ 90.00	\$ 16.25
Dentists	D	\$ 90.00	\$ 16.25
Educational	E	\$ 65.00	\$ 13.00
Government	G	\$ 65.00	\$ 13.00
Podiatrists	H	\$ 90.00	\$ 16.25
Industrial	I	\$ 90.00	\$ 16.25
Industrial Medical	IM	\$130.00	\$ 22.75
Health Departments	L	\$130.00	\$ 22.75
Hospitals	M	\$195.00	\$ 29.25
Physicians	P	\$ 90.00	\$ 16.25
Industrial Radiography	R	\$195.00	\$ 29.25
Services	S	\$130.00	\$ 0.00
Veterinarians	V	\$ 65.00	\$ 13.00
Other	Z	\$ 90.00	\$ 16.25

(b) Annual fees for persons licensed pursuant to provisions of Section .0300 of this Chapter are as listed in the following table:

Type of Radioactive Material License	Annual Fee
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Specific license of broad scope	
-medical or academic	\$1,200.00
-other	\$ 425.00
Specific license	
-industrial radiography (with temporary subsites)	\$1,525.00
-industrial radiography (in plant only)	\$ 780.00
-manufacture or distribution	\$ 425.00
-medical institution other than teletherapy	\$ 360.00
-medical private practice	\$ 260.00
-medical teletherapy with one teletherapy unit	\$ 300.00
and	
-each additional teletherapy unit	\$ 65.00
-industrial gauges	\$ 225.00
-moisture-density gauges	\$ 100.00
-gas chromatographs	\$ 100.00
-educational institutions	\$ 360.00
-services/consultants	\$ 100.00
-other	\$ 160.00
General licenses	
-industrial gauges	\$ 100.00
-IN VITRO testing and others	\$ 100.00

(c) Annual fees for persons licensed pursuant to provisions of Section .0900 of this Chapter are as listed in the following table:

Description of Fee	Annual Fee
-Facility with one accelerator	\$ 300.00
-each additional accelerator	\$ 65.00

(d) Annual fees for certain out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rules .0211 and .0345 of this Chapter are the same as that provided for in the applicable category specified in Paragraphs (a), (b), and (c) of this Rule. Only those out-of-state persons granted reciprocal recognition for the purpose of industrial radiography, portable gauge use and use that involves intentional exposures to individuals for medical purposes are subject to the payment of the prescribed fees contained in this Rule. Such fees are due when application for reciprocal recognition of certain out-of-state license or registration is made in the same manner as for a new license or registration as specified in Rule .1102.

- (4) "Individual" means any human being.
- (5) "Inspection" means an official examination or observation to determine compliance with the rules in this Section, and orders, requirements and conditions of the agency.
- (6) "Minor" means any individual less than 18 years of age.
- (7) "Medical Lamps" means any lamp that is specifically designed or labeled for medical use only.
- (8) "Operator" means any individual designated by the registrant to operate or to assist and instruct the consumer in the operation and use of the tanning facility or tanning equipment. Under this definition, the term "operator", includes, but is not limited to, any such individual who conducts one or more of the following activities:
 - (a) determining consumer's skin type;
 - (b) determining the suitability of prospective consumers for tanning equipment use;
 - (c) informing the consumer of dangers of ultraviolet radiation exposure including photoallergic reactions and photosensitizing agents;
 - (d) assuring that the consumer reads and properly signs all forms as required by the rules in this Section;
 - (e) maintaining required consumer exposure records;

Authority G.S. 104E-9(8); 104E-19(a).

SECTION .1400 – TANNING FACILITIES

15A NCAC 11 .1403 DEFINITIONS

As used in this Section, the following definitions shall apply:

- (1) "Agency" means the North Carolina Department of Environment and Natural Resources.
- (2) "Consumer" means any individual who is provided access to a tanning facility which is required to be registered pursuant to provisions of this Section.
- (3) "Formal Operator Training" is a course of study that is offered by person(s) approved by this agency in accordance with the provisions of the rules in this Section.

- (f) recognizing and reporting consumer injuries or alleged injuries to the registrant;
- (g) determining the consumer's exposure schedule;
- (h) setting timers which control the duration of exposure; and
- (i) instructing the consumer in the proper use of protective eyewear.
- (9) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities.
- (10) "Registrant" means any person who is registered with the agency as required by provisions of this Section.
- (11) "Registration" means registration with the agency in accordance with provisions of this Section.
- (12) "Tanning components" means any constituent tanning equipment part, to include ballasts, starters, lamps, reflectors, acrylic shields, timers, and airflow cooling systems.
- (13) "Tanning equipment" means ultraviolet or other lamps and equipment containing such lamps intended to induce skin tanning through the irradiation of any part of the living human body with ultraviolet radiation, e.g., beds, booths, facials and wands.
- (14) "Tanning equipment services" means the installation, sales and servicing of tanning equipment and associated tanning components; calibration of equipment used in surveys to measure radiation and timer accuracy; tanning health physics consulting, e.g. radiation output measurements, design of safety programs, training seminars for tanning operators and service personnel.
- (15) "Tanning facility" means any location, place, area, structure or business which provides consumers access to tanning equipment. For the purpose of this definition tanning equipment registered to different persons at the same location and tanning equipment registered to the same person, but at separate locations, shall constitute separate tanning facilities.
- (16) "Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between 200 nanometers and 400 nanometers.

(b) Each person acquiring or establishing a tanning facility after the effective date of this Rule shall have a certificate of registration issued by the agency for such facility prior to beginning operation.

(c) The application required in Paragraphs (a) and (b) of this Rule shall be completed on forms provided by the agency.

(d) The agency shall require at least the following information on the forms provided for applying for registration of tanning facilities:

- (1) name, physical address, mail address and telephone number of the tanning facility;
- (2) name(s), mail address(es) and telephone number(s) of the owner(s) of the tanning facility;
- (3) each facility shall submit a copy of the tanning operator training certificate for each of the tanning facility operator(s) with the initial application in accordance with the provisions of the rules of this Section.
- (4) the manufacturer(s), model number(s) and type(s) of ultraviolet lamp(s) or tanning equipment located at the tanning facility;
- (5) name(s) of the tanning equipment supplier(s), installer(s) and service agent(s);
- (6) certification that the applicant has read and understands the requirements of the rules in this Section, such certification to be signed and dated by the manager and the owner of the tanning facility; and
- (7) each person operating a tanning facility shall not allow any individual under 18 years of age to be the operator of tanning equipment.

Authority G.S. 104E-7(a)(7).

15A NCAC 11 .1408 RENEWAL OF CERTIFICATE OF REGISTRATION

(a) The registrant shall file applications for renewal in accordance with Rule .1405 of this Section.

(b) Provided that a registrant files with the agency an application for renewal in proper form for renewal by the expiration date stated on the certificate of registration, such certificate of registration shall not expire pending final action on the application by the agency.

Authority G.S. 104E-7(a)(7).

15A NCAC 11 .1409 REPORT OF CHANGES

The registrant shall notify the agency in writing within 30 calendar days after making any change which would render the information contained in the application for registration or the certificate of registration no longer accurate.

Authority G.S. 104E-7(a)(7).

15A NCAC 11 .1405 APPLICATION FOR REGISTRATION OF TANNING FACILITIES

(a) Each person having a tanning facility on the effective date of this Rule shall apply for registration of such facility no later than 60 days following the effective date of this Rule.

Authority G.S. 104E-7(a)(7).

**15A NCAC 11 .1412 DENIAL: REVOCATION:
TERMINATION OF REGISTRATION**

(a) The agency may deny, suspend or revoke a certificate of registration applied for or issued pursuant to this Section:

- (1) for any material false statement in the application for registration or in any statement of fact required by provisions of this Section;
- (2) because of conditions revealed by the application or any report, record, inspection or other means which would warrant the agency to refuse to grant a certificate of registration on an original application;
- (3) for operation of the tanning facility in a manner that causes or threatens to cause hazard to the public health or safety;
- (4) for failure to allow authorized representatives of the agency to enter the tanning facility at reasonable times for the purpose of determining compliance with the provisions of this Section, conditions of the certificate of registration or an order of the agency;
- (5) for violation of or failure to observe any of the terms and conditions of the certificate of registration, the rules in this Section, or an order of the agency; or
- (6) for failure to pay a fee within 15 days of becoming delinquent as described in Paragraph (h) of Rule .1423 or for failure to correct payment of a fee in the form of a check or other instrument which is uncollectible from the paying institution within the timeframe

specified in accordance with the provisions of the rules of this Section.

(b) Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, prior to the institution of proceedings for suspension or revocation of a certificate of registration, the agency shall:

- (1) call to the attention of the registrant, in writing, the facts or conduct which may warrant such actions, and
- (2) provide reasonable opportunity for the registrant to demonstrate or achieve compliance with all lawful requirements.

(c) Any person aggrieved by a decision by the agency to deny a certificate of registration or to suspend or revoke a certificate of registration after issuance may request a hearing under provisions of G.S. 150B, Article 3.

(d) The agency may terminate a certificate of registration upon receipt of a written request for termination from the registrant.

Authority G.S. 104E-7(a)(7); 104E-11(a).

15A NCAC 11 .1414 WARNING SIGNS REQUIRED

(a) The registrant shall post the warning sign described in Paragraph (b) of this Rule within one meter of each tanning station and in such a manner that the sign is clearly visible, not obstructed by any barrier, equipment or other object, and can be easily viewed by the consumer before the tanning equipment is energized.

(b) The warning sign in Paragraph (a) of this Rule shall use upper and lower case letters which are at least seven millimeters and three and one-half millimeters in height, respectively, and shall have the following wording:

DANGER - ULTRAVIOLET RADIATION

-Follow instruction.

-Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer.

-Wear protective eyewear.

FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

-Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using sunlamp or tanning equipment if you are using medication or have a history of skin problems or believe yourself to be especially sensitive to sunlight.

-If you do not tan in the sun, you are unlikely to tan from the use of this product.

-Consumers should report to the agency any injury for which medical attention is sought or obtained resulting from the use of registered tanning equipment. This report should be made within five working days after the occurrence.

(c) Warning signs shall include the current address of the agency.

Authority G.S. 104E-7(a)(7).

**15A NCAC 11 .1415 EQUIPMENT AND
CONSTRUCTION REQUIREMENTS**

(a) The registrant shall use only tanning equipment manufactured in accordance with the specifications set forth in

21 Code of Federal Regulations (CFR) Part 1040, Section 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products". The standard of compliance shall be the standards in effect at the time of manufacture as shown on the equipment identification label required by 21 CFR Part 1010, Section 1010.3.

(b) Each assembly of tanning equipment shall be designed for use by only one consumer at a time.

- (c) Each assembly of tanning equipment shall be equipped with a timer which complies with the requirements of 21 CFR Part 1040, Section 1040.20(c)(2). The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error exceeding plus or minus ten percent of the maximum timer interval for the product.
- (d) Tanning equipment shall include physical barriers to protect consumers from injury induced by touching or breaking the lamps.
- (e) All tanning equipment labeling required in Paragraph (a) of this Rule shall be legible and accessible to view.
- (f) The timer intervals shall be numerically indicated on the face of the timer.
- (g) The timer shall not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle, when emission from the tanning device has been interrupted.
- (h) Each assembly of tanning equipment shall be provided with a control on the equipment to enable the consumer to manually terminate radiation emission from the equipment at any time without disconnecting the electrical plug or removing any ultraviolet lamp.
- (i) The timer for the tanning devices shall be remotely located outside the room where the tanning equipment is located. The remote timer shall be set by a certified tanning operator. Effective two years after the effective date of this Rule, all tanning facilities shall be equipped with remote timers.
- (j) The registrant shall ensure that tests are performed annually on each assembly of tanning equipment and documented in writing for agency review during inspections to ensure the timer is accurate to within 10 percent as specified in Paragraph (c) of Rule .1415 of this Section and the consumer is able to terminate the radiation manually in accordance with this Rule.
- (k) Medical lamps shall not be used for commercial cosmetic tanning purposes.

Authority G.S. 104E-7(a)(7).

15A NCAC 11 .1417 PROTECTIVE EYEWEAR REQUIRED

- (a) The registrant shall provide protective eyewear to each consumer for use during any use of tanning equipment.
- (b) The protective eyewear in Paragraph (a) of this Rule shall meet the requirements of 21 CFR Part 1040, Section 1040.20(c)(4).
- (c) Tanning facility operators shall instruct the consumer in the proper utilization of the protective eyewear required by this Rule.
- (d) The registrant shall ensure that the protective eyewear required by this Rule is properly sanitized before each use and shall not rely upon exposure to the ultraviolet radiation produced by the tanning equipment itself to provide such sanitizing.

Authority G.S. 104E-7(a)(7).

15A NCAC 11 .1418 RECORDS: REPORTS AND OPERATING REQUIREMENTS

- (a) Prior to initial exposure, the tanning facility operator shall provide each consumer the opportunity to read a copy of the warning specified in Rule .1414(b) of this Section and request that the consumer sign a statement that the information has been

read and understood. For illiterate or visually impaired persons unable to sign their name, the warning statement shall be read by the operator, in the presence of a witness, and the witness and the operator shall sign the statement.

- (b) The registrant shall maintain a record of each consumer's total number of tanning visits including dates and durations of tanning exposures.

(c) The registrant shall submit to the agency a written report of injury for which medical attention was sought or obtained from the use of registered tanning equipment within five working days after occurrence. The report shall include:

- (1) the name of the affected individual;
- (2) the name and location of the tanning facility involved;
- (3) the nature of the actual or alleged injury; and
- (4) any other information relevant to the actual or alleged injury, to include the date and duration of exposure and any documentation of medical attention sought or obtained.

(d) The registrant shall not allow individuals under the age of 18 to use tanning equipment unless the individual provides a consent form and a statement, described in Paragraph (a) of this Rule, signed by that individual's parent or legal guardian.

(e) The registrant shall not allow minors to remain in the tanning room while the tanning equipment is in operation except as provided for in this Rule.

(f) The registrant shall replace defective or burned out lamps, bulbs or filters with a type intended for use in the affected tanning equipment as specified by the manufacturer's product label and having the same spectral distribution (certified equivalent lamp).

(g) The registrant shall replace ultraviolet lamps and bulbs, which are not otherwise defective or damaged, at such frequency or after such duration of use as may be recommended by the manufacturer of such lamps and bulbs.

(h) The registrant shall certify that all tanning equipment operators are adequately trained in at least the following:

- (1) the requirements of this Section;
- (2) procedures for correct operation of the tanning facility and tanning equipment;
- (3) recognition of injury or overexposure to ultraviolet radiation;
- (4) the tanning equipment manufacturer's procedures for operation and maintenance of the tanning equipment;
- (5) the determination of skin type of customers and appropriate determination of duration of exposure to registered tanning equipment; and
- (6) emergency procedures to be followed in case of injury.

(i) The registrant shall allow operation of tanning equipment only by and in the physical presence of persons who have successfully completed formal training courses which cover the topics in Subparagraphs (h) (1) to (6) of this Rule and have been approved by the agency.

(j) The registrant shall maintain a record of operator training required in Paragraphs (h) and (i) of this Rule for inspection by authorized representatives of the agency.

(k) No registrant shall possess, use, operate or transfer tanning equipment or their ultraviolet radiation sources in such a manner as to cause any individual under 18 years of age to be exposed to

radiation emissions from such equipment except in accordance with Paragraph (d) of this Rule.

(l) Each registrant shall make available to all employees current copies of the following documents:

- (1) the facility's certificate of registration; and
- (2) conditions or documents incorporated into the registration by reference and amendments thereto.

Authority G.S. 104E-7(a)(7).

15A NCAC 11 .1419 COMMUNICATIONS WITH THE AGENCY: AGENCY ADDRESS

Applications for registration, reports, notifications and other communications required by this Section shall be mailed to the Division of Radiation Protection Mail Service Center 1645, Raleigh, North Carolina 27699-1645 or delivered to the agency at its office located at 3825 Barrett Drive, Raleigh, North Carolina 27609-7221.

Authority G.S. 104E-7(a)(7).

15A NCAC 11 .1422 REPORTS AND INSTALLATION

(a) Persons registered pursuant to Rule .1421 of this Section, who sell, lease, transfer, lend, dispose of, assemble or install tanning equipment in this state shall, within 30 days after each calendar quarter, notify the agency at the address in Rule .1419 of this Section, of:

- (1) whether any tanning equipment was installed, transferred, or disposed of during the calendar quarter;
- (2) the name and address of persons who receive tanning equipment during the calendar quarter;
- (3) the manufacturer, model and serial number of tanning equipment transferred or otherwise disposed of; and
- (4) the date of transfer of any tanning equipment.

(b) No person shall make, sell, lease, transfer, lend, repair, assemble, or install tanning equipment or the supplies used in connection with such equipment unless such supplies and equipment when properly placed in operation and used shall meet the requirements of the rules in this Section and the regulations of 21 CFR 1040.20.

Authority G.S. 104E-7(a)(7).

15A NCAC 11 .1423 FEES AND PAYMENT

(a) This Rule establishes initial, annual and reinstatement fees for persons registered pursuant to the provisions of this Section to cover the anticipated costs of tanning equipment inspection and enforcement activities of the agency.

(b) Annual fees established in this Rule shall be due on the effective date of this Rule and on the first day of July of each subsequent year; reinstatement fees shall be paid prior to reinstatement.

(c) Notwithstanding Paragraph (b) of this Rule, when a new registration is issued by the agency after the first day of July of any year, the initial fee shall be due on the date of issuance of the registration.

(d) The initial fee in Paragraph (c) of this Rule shall be computed as follows:

- (1) When any new registration is issued before the first day of January of any year, the initial fee shall be the full amount specified in this Rule; and
- (2) When any new registration is issued on or after the first day of January of any year, the initial fee shall be one-half of the amount specified in this Rule.

(e) All fees received by the agency pursuant to provisions of this Rule shall be nonrefundable.

(f) Each registrant may pay all fees by cash, check or money order provided:

- (1) Checks or money orders shall be made payable to "Division of Radiation Protection", and mailed to 1645 Mail Service Center, Raleigh, NC 27699-1645 or delivered to the agency office at 3825 Barrett Drive, Raleigh, NC 27609-7221; and
- (2) Cash payments shall be made only by appointment by calling the agency at 919/571-4141 and delivered to the agency office at 3825 Barrett Drive, Raleigh, NC 27609-7221.

(g) Within five days after the due dates established in Paragraphs (b) and (c) of this Rule, the agency shall mail to each registrant, who has not already submitted payment, a notice which indicates the due date, the amount of fees due, the delinquent date and the amount of the reinstatement fee if not paid by the delinquent date.

(h) Payment of fees established in this Rule shall be delinquent, if not received by the agency within 60 days after the due date specified in Paragraphs (b) and (c) of this Rule.

(i) If a registrant remits a fee in the form of a check or other instrument which is uncollectible from the paying institution, the agency shall notify the registrant by certified mail and allow the registrant 15 days to correct the matter.

(j) If payment of fees is uncollectible from the paying institution or not submitted to the agency by the delinquent date, the agency may institute appropriate legal action to collect.

(k) Annual fees for persons registered pursuant to provisions of this Section are as listed in the following table:

Type of registered facility	Letters appearing in registration number	Facility plus first Piece of Tanning Equipment	Each additional Piece of Tanning Equipment
Tanning Facility	B	\$100.00	\$16.00
Tanning Equipment	F	\$100.00	NA

(1) When fees become delinquent as specified in this Rule, in addition to any delinquent fee owed to the agency, the registrant shall pay to the agency a reinstatement fee of one hundred fifty dollars (\$150.00).

Authority G.S. 104E-9(a)(8); 104E-19(a).

SECTION .1600 – STANDARDS OF PROTECTION AGAINST RADIATION

15A NCAC 11 .1608 PLANNED SPECIAL EXPOSURES

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in Rule .1604 of this Section provided that each of the following conditions is satisfied:

- (1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned exposure are unavailable or impractical.
- (2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.
- (3) Before a planned special exposure, the licensee or registrant ensures that the individuals involved are:
 - (a) informed of the purpose of the planned operation;
 - (b) informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and
 - (c) instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.
- (4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Rule .1638(b) of this Section during the lifetime of the individual for each individual involved.
- (5) Subject to Rule .1604(b) of this Section, the licensee or registrant does not authorize a planned special exposure that would cause an individual to receive a dose such that the individual's dose from all planned special exposures and all doses in excess of the limits would exceed:
 - (a) the numerical values of any of the dose limits in Rule.1604(a) of this Section in any year; and
 - (b) five times the annual dose limits in Rule .1604(a) of this Section during the individual's lifetime.

(6) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with Rule .1639 of this Section and submits a written report in accordance with Rule .1648 of this Section.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures is not to be considered in controlling future occupational dose of the individual under Rule .1604(a) of this Section but is to be included in evaluations required by Items (4) and (5) of this Rule.

Authority G.S. 104E-7(a)(2); 104E-12.

15A NCAC 11 .1610 DOSE EQUIVALENT TO AN EMBRYO/FETUS

(a) The licensee or registrant shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). Recordkeeping requirements for doses to an embryo/fetus are provided in Rule .1640 of this Section.

(b) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Paragraph (a) of this Rule.

(c) The dose equivalent to an embryo/fetus shall be taken as the sum of:

- (1) the deep-dose equivalent to the declared pregnant woman; and
- (2) the dose equivalent to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

(d) If the dose equivalent to the embryo/fetus is found to have exceeded 0.45 rem (4.5 mSv) by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with Paragraph (a) of this Rule if the additional dose to the embryo/fetus does not exceed 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

Authority G.S. 104E-7(a)(2).

15A NCAC 11 .1613 SURVEYS

(a) Each licensee or registrant shall make or cause to be made, surveys that:

- (1) may be necessary for the licensee or registrant to comply with the rules in this Section; and
- (2) are reasonable under the circumstances to evaluate:
 - (A) the magnitude and extent of radiation levels;
 - (B) concentrations or quantities of radioactive material; and

- (C) the potential radiological hazards that could be present.

(b) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated periodically for the radiation measured.

(c) All personnel dosimeters (except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities) that require processing to determine the radiation dose and that are used by licensees or registrants to comply with Rule .1604 of this Section, with other applicable provisions of this Chapter, or with conditions specified in a license shall be processed and evaluated by a dosimetry processor:

- (1) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and
- (2) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(d) Exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited.

Authority G.S. 104E-7(a)(2).

15A NCAC 11 .1614 MONITORING OF EXTERNAL AND INTERNAL OCCUPATIONAL DOSE

Each licensee or registrant shall monitor exposures to radiation and radioactive material at levels sufficient to demonstrate compliance with the occupational dose limits of this Section. As a minimum:

- (1) Each licensee or registrant shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:
 - (a) adults likely to receive, in one year from sources external to the body, a dose in excess of 10 percent of the limits in Rule .1604(a) of this Section;
 - (b) minors likely to receive, in one year, from sources of radiation, a deep dose equivalent in excess of 0.1 rem (1 mSv), a lens dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent in excess of 0.5 rem (5 mSv);
 - (c) declared pregnant women likely to receive, during the entire pregnancy, from sources of radiation external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv); and
 - (d) individuals entering a high or very high radiation area.

- (2) Each licensee shall monitor the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

- (a) adults likely to receive, in one year, an intake in excess of 10 percent of the applicable ALI(s) in Table 1, Columns 1 and 2, of Appendix B to 10 CFR 20.1001 - 20.2402; and
- (b) minors and declared pregnant women likely to receive, in one year, a committed effective dose equivalent in excess of 0.1 rem (1mSv).

Authority G.S. 104E-7(a)(2).

15A NCAC 11 .1625 EXCEPTIONS TO POSTING REQUIREMENTS

(a) A licensee is not required to post caution signs in areas or rooms containing radioactive materials for periods of less than eight hours, if each of the following conditions is met:

- (1) The materials are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation or radioactive materials in excess of the limits established in the rules in this Section; and
- (2) The area or room is subject to the licensee's control.

(b) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Rule .1624 of this Section provided that:

- (1) The patient is being treated with sealed sources or has been treated with unsealed radioactive material in quantities less than 30 millicuries (110 MBq), or the measured dose rate at one meter from the patient is less than 0.005 rem (0.05 mSv) per hour; and
- (2) There are personnel in attendance who will take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this Section and to operate within the ALARA provisions of the licensee's radiation protection program.

(c) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the source container or housing does not exceed 0.005 rem (0.05 mSv) per hour.

(d) Rooms or other areas in medical facilities that are occupied by patients while being treated with radiation from an accelerator are not required to be posted with a caution sign pursuant to Rule .1624(c) of this Section provided that:

- (1) access to the room or area is posted in accordance with Rule .1624(b) of this Section; and
- (2) there are personnel in attendance who shall provide assurance that:
 - (A) continuous audio and visual observation of the patient is maintained during treatment;

- (B) all provisions of Subparagraph (b)(2) of this Rule are met; and
- (C) the accelerator is secured in the "beam off" status at the end of each patient's treatment.

(e) Rooms or other areas in medical facilities that are occupied by patients while being treated with radiation from a teletherapy source are not required to be posted with a caution sign pursuant to Rule .1624(c) of this Section provided that:

- (1) access to the room or area is posted in accordance with Rule .1624(b) of this Section; and
- (2) there are personnel in attendance who shall take the necessary precautions to prevent the inadvertent exposures of workers, other patients, and members of the public to radiation in excess of the limits established in the rules of this Section.

Authority G.S. 104E-7(a)(2).

15A NCAC 11 .1627 PROCEDURES FOR RECEIVING AND OPENING PACKAGES

(a) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in Rule .0104 of this Chapter, shall make arrangements to receive:

- (1) the package when the carrier offers it for delivery; or
- (2) notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(b) Each licensee, upon receipt of a package containing radioactive material, shall monitor:

- (1) external surfaces of a package labeled as containing radioactive material for radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 10 C.F.R 71.4;
- (2) external surfaces of a package labeled as containing radioactive material for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in 10 C.F.R 71.4 and Appendix A to Part 71; and
- (3) all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(c) The licensee shall perform the monitoring required by Paragraph (b) of this Rule as soon as practicable after receipt of the package, but not later than three hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours, or not later than three hours from the beginning of the next working day if it is received after working hours.

(d) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the agency when:

- (1) removable radioactive surface contamination exceeds the limits of 10 CFR 71.87(i); or
- (2) external radiation levels exceed the limits of 10 CFR 71.47.

(e) Each licensee shall:

- (1) establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and
- (2) ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(f) Licensees transferring special form sources in licensee-owned or licensee-operated vehicles to and from a work site are exempt from the contamination monitoring requirements of Paragraph (b) of this Rule, but are not exempt from the survey requirement in Paragraph (b) of this Rule for measuring radiation levels that is required to ensure that the source is still properly lodged in its shield.

Authority G.S. 104E-7(a)(2); 104E-12(a).

15A NCAC 11 .1635 GENERAL PROVISIONS FOR RECORDS

(a) Each licensee or registrant shall use the units: curie, rad and rem, including multiples and subdivisions thereof, and shall clearly indicate the units of all quantities on records required by this Section.

(b) Notwithstanding the requirements of Paragraph (a) of this Rule, when recording information on shipping manifests, as required by Rule .1633 of this Section and Appendix G to 10 CFR 20, information shall be recorded in the International System of Units (SI) or SI and units as specified in Paragraph (a) of this Rule. For records other than shipping manifests, the licensee or registrant may record quantities in SI units in parenthesis following each of the units specified in Paragraph (a) of this Rule; however all quantities shall be recorded as stated in Paragraph (a) of this Rule.

(c) The licensee or registrant shall make a clear distinction whether the quantities entered on the records required by this Section are total effective dose equivalent, shallow-dose equivalent, eye dose equivalent, deep-dose equivalent, or committed effective dose equivalent.

(d) The discontinuance or curtailment of activities does not relieve the licensee or registrant of responsibility for retaining all records required by the rules in this Section.

Authority G.S. 104E-7(a)(2); 104E-12(a).

15A NCAC 11 .1640 RECORDS OF INDIVIDUAL MONITORING RESULTS

(a) Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Rule .1614 of this Section, and records of doses received during planned special exposures, accidents, and emergency conditions. These records shall include, when applicable:

- (1) the deep-dose equivalent to the whole body, eye dose equivalent, shallow-dose equivalent to the skin, and shallow-dose equivalent to the extremities;

- (2) the estimated intake of radionuclides (see Rule .1605 of this Section);
- (3) the committed effective dose equivalent assigned to the intake or body burden of radionuclides;
- (4) the specific information used to calculate the committed effective dose equivalent pursuant to Rule .1607(c) of this Section and when required by Rule .1614 of this Section;
- (5) the total effective dose equivalent when required by Rule .1605 of this Section; and
- (6) the total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose.

(b) The licensee or registrant shall make entries of the records specified in Paragraph (a) of this Rule at least annually.

(c) The licensee or registrant shall maintain the records specified in Paragraph (a) of this Rule on the agency form for recording occupational radiation doses, in accordance with the instructions provided with the form, or in clear and legible records containing all the information required by the agency form for recording occupational radiation doses.

(d) Assessments of dose equivalent and records made using units in effect before the licensee's or registrant's adoption of the rules in this Section need not be changed.

(e) The records required under this Rule may be protected from public disclosure because of their personal privacy nature; however, the limitations in this Paragraph are subject to, and do not limit federal and state laws that may require disclosure.

(f) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy shall also be kept on file, but may be maintained separately from the dose records.

(g) The licensee or registrant shall retain each required form or record until the agency terminates each pertinent license or registration requiring the record.

Authority G.S. 104E-7(a)(2); 104E-12(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR Commission for Health Services intends to amend the rules cited as 15A NCAC 13A .0104, .0111. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: January 10, 2002

Time: 1:30 p.m.

Location: Room G-1A, 130 St. Mary's St., Raleigh, NC

Reason for Proposed Action:

15A NCAC 13A .0104 – Public Information – Part 2 – Changes are to update the address for an address substituted in 40 CFR 2.106(a) and 2.213(a). Also, this Rule has been revised to correct the mailing address of the Division of Waste Management.

15A NCAC 13A .0111 – STDS for the Management of Specific HW/Types HWM Facilities – Part 266 – The proposed amendment redesignates Paragraph (f) "The Appendices" as Paragraph (g) and adds 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal" to this Rule.

Comment Procedures: *Comments will be accepted through January 16, 2002. Written comments may be submitted to Jill Pafford, Chief, Hazardous Waste Section, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646.*

Fiscal Impact

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

CHAPTER 13 – SOLID WASTE MANAGEMENT

SUBCHAPTER 13A – HAZARDOUS WASTE MANAGEMENT

SECTION .0100 – HAZARDOUS WASTE

15A NCAC 13A .0104 PUBLIC INFORMATION – PART 2

(a) The provisions concerning requests for information in 40 CFR 2.100 to 2.121 (Subpart A) are incorporated by reference including subsequent amendments and editions, except that 40 CFR 2.106(b), 2.112(f), and 2.120 are not incorporated by reference.

(b) The following address for the Headquarters Freedom of Information Operations (1105) is substituted for the address 1200 Pennsylvania Ave., N.W., Washington, DC 20460 in 40 CFR 2.106(a) and 2.213(a): Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646.

(c) The provisions concerning confidentiality of business information in 40 CFR 2.201 to 2.311 (Subpart B) are incorporated by reference including subsequent amendments and editions, except that 40 CFR 2.209 (b) and (c), 2.301, 2.302, 2.303, 2.304, 2.306, 2.307, 2.308, 2.309, 2.310 and 2.311 are not incorporated by reference.

Authority G.S. 130A-294(c); 150B-21.6.

15A NCAC 13A .0111 STDS FOR THE MGMT OF SPECIFIC HW/TYPES HWM FACILITIES - PART 266

(a) 40 CFR 266.20 through 266.23 (Subpart C), "Recyclable Materials Used in a Manner Constituting Disposal", are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 266.70 (Subpart F), "Recyclable Materials Utilized for Precious Metal Recovery", is incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 266.80 (Subpart G), "Spent Lead-Acid Batteries Being Reclaimed", is incorporated by reference including subsequent amendments and editions.

- (d) 40 CFR 266.100 through 266.112 (Subpart H), "Hazardous Waste Burned in Boilers and Industrial Furnaces", are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 266.200 through 266.206 (Subpart M), "Military Munitions", are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal", are incorporated by reference including subsequent amendments and editions.
- (g) Appendices to 40 CFR Part 266 are incorporated by reference including subsequent amendments and editions.

Authority G.S. 130A-294(c); 150B-21.6.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend the rules cited as 16 NCAC 06D .0101, .0305; 06G .0305. Notice of Rule-making Proceedings was not required pursuant to G.S. 115C-17.

Proposed Effective Date: April 1, 2002

Public Hearing:

Date: January 3, 2002

Time: 1:00 p.m.

Location: Education Bldg., Room 224, 301 N. Wilmington St., Raleigh, NC

Reason for Proposed Action:

16 NCAC 06D .0101 – State Board wishes to amend the definition of "course unit" to provide for block schedules.

16 NCAC 06D .0305 – State Board wishes to provide greater flexibility to high schools in the administration of end-of-course tests.

16 NCAC 06G .0305 – State Board wishes to reduce the number of State-mandated tests in the accountability program.

Comment Procedures: Comments may be made in person at the hearing or may be submitted in writing through January 16, 2002 by mail to Harry E. Wilson, Rule-making Coordinator, 301 N. Wilmington St., Raleigh, NC 27601-2825, by fax to (919) 807-3407, or by email to hwilson@dpl.state.nc.us.

Fiscal Impact

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

CHAPTER 06 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06D – INSTRUCTION

SECTION .0100 – CURRICULUM

16 NCAC 06D .0101 DEFINITIONS

As used in this Subchapter:

- (1) "Competency goals" means broad statements of general direction or purpose.
- (2) "Course unit" means at least 150 clock hours of instruction for courses taught on a traditional schedule and at least 135 clock hours of instruction for courses taught on a block schedule. LEAs may award credit for short courses in an amount corresponding to the fractional part of a total unit.
- (3) "Curriculum guide" means a document prepared by the department for each subject or area of study listed in the standard course of study and many commonly offered electives, including competency goals, objectives and suggested measures.
- (4) "Diploma" means that document by which the LEA certifies that a student has satisfactorily completed all state and local course requirements and has passed the North Carolina Competency Test.
- (5) "Graduation" means satisfactory completion of all state and local course requirements and achievement of a passing score on the North Carolina Competency Test.
- (6) "Measures" means a variety of suggestions for ways in which the student may demonstrate ability to meet an objective.
- (7) "Objective" means a specific statement of what the student will know or be able to do.
- (8) "Proper test administration" means administration of tests adopted by the SBE for students, in accordance with Section .0300 of this Subchapter.
- (9) "Special education student" means a student enrolled in or eligible for participation in a special educational program.
- (10) "Standard course of study" means the program of course work which must be available to all public school students in the state.
- (11) "Transcript" means that document which provides a record of:
 - (a) all courses completed and grades earned;
 - (b) scores achieved on standardized tests; and
 - (c) participation in special programs or any other matter determined by the LEA.

Authority G.S. 115C-81.

SECTION .0300 - TESTING PROGRAMS

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

- (a) The LEA shall include each student's end-of-course test results in the student's permanent records and high school transcript.
- (b) The LEA shall give each end-of-course test within the final 10 days of the course.

- (c) Starting with the 2001-2002 school year LEAs shall use results from all multiple-choice EOC tests (English I, Algebra I, Biology, US History, Economic Legal and Political Systems, Algebra II, Chemistry, Geometry, Physics, and Physical Science) as at least twenty-five percent (25%) of the student's final grade for each respective course. LEAs shall adopt policies regarding the use of EOC test results in assigning final grades.
- (d) Students who are enrolled for credit in courses in which end-of-course tests are required shall take the appropriate end-of-course test.
- (e) Students who are exempt from final exams by local board of education policy shall not be exempt from end-of-course tests.
- (f) Each student shall take the appropriate end-of-course test the first time the student takes the course even if the course is an honors or advanced placement course.
- (g) Students shall take the appropriate end-of-course test at the end of the course regardless of the grade level in which the course is offered.
- (h) Students who are identified as failing a course for which an end-of-course test is required shall take the appropriate end-of-course test.
- (i) Effective with the 1999-2000 school year students may drop a course with an end-of-course test within the first 10 days of a block schedule or within the first 20 days of a traditional schedule.

Authority G.S. 115C-12(9)c.; 115C-81(b)(4).

SUBCHAPTER 06G - EDUCATION AGENCY RELATIONS

SECTION .0300 - PERFORMANCE-BASED ACCOUNTABILITY PROGRAM

16 NCAC 06G .0305 ANNUAL PERFORMANCE STANDARDS, GRADES K-12

- (a) For purposes of this Section, the following definitions shall apply to kindergarten through twelfth grade:
- (1) "Accountability measures" are SBE-adopted tests designed to gauge student performance and achievement.
 - (2) " b_0 " means the state average rate of growth used in the regression formula for the respective grades and content areas (reading and mathematics) in grades 3 through 8 and grade 10; or the state average performance used in the prediction formula for respective high school end-of-course tests. The constant values for b_0 shall be as follows:
 - (A) for reading:
 - (i) 6.2 for grade 3;
 - (ii) 5.2 for grade 4;
 - (iii) 4.6 for grade 5;
 - (iv) 3.0 for grade 6;
 - (v) 3.3 for grade 7;
 - (vi) 2.7 for grade 8; and
 - (vii) 2.3 for grade 10.
 - (B) for mathematics:
 - (i) 12.8 for grade 3;
 - (ii) 7.3 for grade 4;
 - (iii) 7.4 for grade 5;

- (iv) 7.1 for grade 6;
 - (v) 6.5 for grade 7;
 - (vi) 4.9 for grade 8; and
 - (vii) 2.3 for grade 10.
- (C) for EOC courses:
- (i) 60.4 for Algebra I;
 - (ii) 55.2 for Biology;
 - (iii) 54.0 for ELPS (Economic, Legal, and Political Systems);
 - (iv) 53.3 for English I;
 - (v) 56.0 for U.S. History;
 - (vi) 59.3 for Algebra II;
 - (vii) 56.9 for Chemistry;
 - (viii) 58.5 for Geometry;
 - (ix) 53.8 for Physical Science; and
 - (x) 56.1 for Physics.

- (3) " b_1 " means the value used to estimate true proficiency in the regression formulas for grades 3 through 8 and grade 10. The values for b_1 shall be as follows:

- (A) for reading:
 - (i) 0.46 for grade 3;
 - (ii) 0.22 for grades 4 through 8; and
 - (iii) 0.24 for grade 8 to 10.
- (B) for mathematics:
 - (i) 0.30 for grade 3;
 - (ii) 0.26 for grades 4 through 8; and
 - (iii) 0.28 for grade 8 to 10.

- (4) " b_2 " means the value used to estimate regression to the mean in the regression formula for grades 3 through 8. The values for b_2 shall as follows:

- (A) for reading:
 - (i) -0.91 for grade 3;
 - (ii) -0.60 for grades 4 through 8.
- (B) for mathematics:
 - (i) -0.47 for grade 3;
 - (ii) -0.58 for grades 4 through 8.

- (5) " b_{IRP} " means the value used to estimate the effect of the school's average reading proficiency on the predicted average EOC test score. The values for b_{IRP} shall be as follows:

- (A) 0.71 for Biology;
- (B) 0.88 for ELPS;
- (C) 1.01 for English I;
- (D) 0.68 for U.S. History;
- (E) 0.43 for Algebra II;
- (F) 0.42 for Geometry; and
- (G) 0.58 for Physical Science.

- (6) " b_{IMP} " means the value used to estimate the effect, as determined by analysis of empirical data, of the school's average math proficiency on the predicted average EOC test score. The values for b_{IMP} shall be as follows:

- (A) 0.88 for Algebra I;

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| <p>(B) 0.318 for Biology;</p> <p>(C) 0.88 for ELPS;</p> <p>(D) 0.15 for U.S. History;</p> <p>(E) 0.39 for Geometry;</p> <p>(F) 0.34 for Physical Science; and</p> <p>(G) 0.58 for Physics.</p> <p>(7) "b_{IAP}" means the value used to estimate the effect of the school's average Algebra I proficiency on the predicted average EOC test score. The values for b_{IAP} shall be as follows:</p> <p>(A) 0.89 for Algebra II;</p> <p>(B) 0.18 for Chemistry; and</p> <p>(C) 0.43 for Geometry.</p> <p>(8) "b_{IBP}" means the value used to estimate the effect of the school's average Biology proficiency on the predicted average EOC test score. The values for b_{IBP} shall be 0.51 for Chemistry and 0.66 for Physics.</p> <p>(9) "b_{IEP}" means the value used to estimate the effect of the school's average English I proficiency on the predicted average EOC test score. The values for b_{IEP} shall be 0.27 for Chemistry and 0.32 for Physics.</p> <p>(10) "Compliance commission" means that group of persons selected by the SBE to advise the SBE on testing and other issues related to school accountability and improvement. The commission shall be composed of two members from each of the eight educational districts: five teachers, five principals, four central office staff representatives, two local school board representatives; and five at-large members who represent parents, business (two members), and the community.</p> <p>(11) "Composite score" means a summary of student performance in a school. A composite score shall include reading, writing, and mathematics in grades 3 through 8 and in Algebra I & II, Biology, ELPS, English I, Geometry, Chemistry, Physics, Physical Science, and U.S. History in a school where one or more of these EOC tests are administered, as well as student performance on the NC Computer Skills Test, competency passing rate, dropout rates, and percent diploma recipients who satisfy the requirements for College Prep/College Tech Prep courses of study in grades 9 through 12 to the extent that any apply in a given school.</p> <p>(12) "Eligible students" means the total number of students in membership minus the number of students excluded from participation in a statewide assessment.</p> <p>(13) "Expected growth" means the amount of growth in student performance that is projected through use of the regression formula in grades 3 through 8 and grade 10 in reading and mathematics.</p> <p>(14) "Exemplary growth" means the amount of growth in student performance in grades 3 through 8 and grade 10 in reading and</p> | <p>mathematics that is projected through use of the regression formula that includes the state average rate of growth adjusted by an additional ten percent (10%).</p> <p>(15) "Growth standards" means and includes collectively all the factors defined in this paragraph that are used in the calculations described in Paragraph (j) of this Rule to determine a school's growth/gain composite.</p> <p>(16) "IRM" is the index for regression to the mean used in the regression formula. The SBE shall compute the IRM for reading by subtracting the North Carolina average reading scale score from the local school average reading scale score. The SBE shall compute the IRM for mathematics by subtracting the North Carolina average mathematics scale score from the local school average mathematics scale score. The SBE shall base the state average (the baseline) on data from the 1994-95 school year.</p> <p>(17) "ITP" is the index for true proficiency used in the regression formula. The SBE shall compute the ITP by adding the North Carolina average scale scores in reading and mathematics and subtracting that sum from the addition of the local school average scale scores in reading and mathematics. The SBE shall base the state average (the baseline) on data from the 1994-95 school year.</p> <p>(18) "IRP" is the index of reading proficiency used in the prediction formula. The SBE shall compute the "IRP" by calculating the average reading scale score for students in the school and subtracting the average reading scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.</p> <p>(19) "IMP" is the index of mathematics proficiency used in the prediction formula. The SBE shall compute the "IMP" by calculating the average mathematics scale score for students in the school and subtracting the average mathematics scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.</p> <p>(20) "IAP" is the index of Algebra I proficiency used in the prediction formula. The SBE shall compute the "IAP" by calculating the average Algebra I scale score for students in the school and subtracting the average Algebra I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.</p> <p>(21) "IBP" is the index of Biology proficiency used in the prediction formula. The SBE shall compute the "IBP" by calculating the average Biology scale score for students in the school and subtracting the average Biology scale</p> |
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- score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.
- (22) "IEP" is the index of English I proficiency used in the prediction formula. The SBE shall compute the "IEP" by calculating the average English I scale score for students in the school and subtracting the average English I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.
- (23) "Performance Composite" is the percent of scores of students in a school that are at or above Level III, are at a passing level on the Computer Skills Test (students in eighth grade only) as specified by 16 NCAC 06D .0503(c), and at proficiency level or above on the Alternate Assessment Portfolio to the extent that any apply in a given school. The SBE shall:
- (A) determine the number of scores that are at Level III or IV in reading, mathematics, or writing across grades 3 through 8, or on all EOC tests administered as a part of the statewide testing program; add the number of scores that are at a passing level on the NC Computer Skills Test (students in eighth grade only); add the number of scores that are proficient or above on the Alternative Assessment Portfolio; and use the total of these numbers as the numerator;
- (B) determine the number of student scores in reading, mathematics, or writing, across grades 3 through 8, or on all EOC tests administered as part of the statewide testing program; add the number of student scores on the N.C. Computer Skills Test (students in eighth grade only); add the number of student scores on the Alternate Assessment Portfolio; and use the total of these numbers as the denominator; and
- (C) total the numerators for each content area and subject, total the denominators for each content area and subject, and divide the denominator into the numerator to compute the performance composite.
- (24) "Predicted EOC mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula.
- (25) "Predicted EOC exemplary mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula that includes the state average adjusted by an additional five percent (5%).
- (26) "Prediction formula" means a regression formula used in predicting a school's EOC test mean for one school year.
- (27) "Regression formula" means a formula that defines one variable in terms of one or more other variables for the purpose of making a prediction or constructing a model.
- (28) "Standard deviation" is a statistic that indicates how much a set of scores vary. Standard deviation baseline values used for the growth standards are as follow:
- (A) for reading in grades K-8:
- (i) 1.7 for grade 3;
 - (ii) 1.3 for grade 4;
 - (iii) 1.2 for grade 5;
 - (iv) 1.3 for grade 6;
 - (v) 1.1 for grade 7;
 - (vi) 1.2 for grade 8; and
 - (vii) 1.6 for grade 10.
- (B) for mathematics in grades K-8:
- (i) 2.6 for grade 3;
 - (ii) 2.1 for grade 4;
 - (iii) 2.0 for grade 5;
 - (iv) 2.1 for grade 6;
 - (v) 2.0 for grade 7;
 - (vi) 1.7 for grade 8; and
 - (vii) 2.0 for grade 10.
- (C) for courses with an EOC test:
- (i) 3.3 for Algebra I;
 - (ii) 2.6 for Biology;
 - (iii) 3.1 for ELPS;
 - (iv) 1.8 for English I;
 - (v) 2.2 for U.S. History;
 - (vi) 2.9 for Algebra II;
 - (vii) 2.5 for Chemistry;
 - (viii) 2.5 for Geometry;
 - (ix) 2.5 for Physical Science;
 - (x) 3.3 for Physics;
 - (xi) 10.0 for College Prep/College Tech Prep (CP/CTP);
 - (xii) 12.8 for Competency Passing Rate; and
 - (xiii) Dropout Rate will be determined based upon data from the 2000-01 school year.
- (29) "Weight" means the number of students used in the calculation of the amount of growth/gain for a subject or content area.
- (b) In carrying out its duty under G.S. 115C-105.35 to establish annual performance goals for each school, the SBE shall use both growth standards and performance standards.
- (1) The SBE shall calculate the expected growth rate for grades 3 through 8 and grade 10 in an individual school by using the regression formula "Expected Growth = $b_0 + (b_1 \times \text{ITP}) + (b_2 \times \text{IRM})$."

- (2) The SBE shall calculate the predicted EOC expected mean for courses in which end-of-course tests are administered by using the prediction formulas that follow.

- (A) "Predicted Algebra I Mean Score = $b_0 + (b_{IMP} \times IMP)$," where $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency.
- (B) "Predicted Biology Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP) + (b_{IMP}^2 \times IMP^2) + (b_{IMP}^3 \times IMP^3)$," where $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency and $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency.
- (C) "Predicted ELPS Mean Score = $b_0 + (b_{IRP} \times IRP)$," where $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency.
- (D) "Predicted English I Mean Score = $b_0 + (b_{IRP} \times IRP)$," where $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency.
- (E) "Predicted U.S. History Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP) + (b_{IMP}^2 \times IMP^2)$," where $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency and $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency.
- (F) "Predicted Algebra II Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IAP} \times IAP)$," where $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency and $(b_{IAP} \times IAP)$ is the impact of Algebra Proficiency.
- (G) "Predicted Chemistry Mean Score = $b_0 + (b_{IAP} \times IAP) + (b_{IBP} \times IBP) + (b_{IEP} \times IEP)$," where $(b_{IAP} \times IAP)$ is the impact of Algebra Proficiency, $(b_{IBP} \times IBP)$ is the impact of Biology Proficiency, and $(b_{IEP} \times IEP)$ is the impact of English I Proficiency.
- (H) "Predicted Geometry Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP) + (b_{IAP} \times IAP)$," where $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency, $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency, and $(b_{IAP} \times IAP)$ is the impact of Algebra I Proficiency.
- (I) "Predicted Physical Science Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP)$," where $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency and $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency.
- (J) "Predicted Physics Mean Score = $b_0 + (b_{IMP} \times IMP) + (b_{IBP} \times IBP) + (b_{IEP} \times IEP)$," where $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency, $(b_{IBP} \times IBP)$ is the impact of Biology Proficiency, and $(b_{IEP} \times IEP)$ is the impact of English I Proficiency.

(c) Schools shall be accountable for student performance and achievement. This Paragraph describes the conditions under

which an eligible student's scores shall be included in the accountability measures for the school that the student attended at the time of testing.

- (1) To be included in accountability measures for the growth standard, a student in grade three through grade eight must:
 - (A) have a pre-test score and a post-test score in reading and mathematics. For students in grade three the pre-test score refers to the score from the third-grade end-of-grade test administered in the Fall of the third grade and the post-test score refers to the score from the end-of-grade test administered in the Spring of the third grade. For students in grades four through eight, the pre-test score refers to the score from the previous year's end-of-grade test and the post-test score refers to the score from the current year's end-of-grade test; and
 - (B) have been in membership more than one-half of the instructional period (91 of 180 days).
- (2) To be included in accountability measures for Algebra I, Algebra II, Biology, Chemistry, Economic Legal and Political Systems, English I, Geometry, Physical Science, Physics, or U.S. History, a student must have scores for all tests used in the prediction formula.
- (3) Students shall be included in the performance composite without reference to pretest scores or length of membership.

(d) The SBE shall include in the accountability system on the same basis as all other public schools each alternative school with an identification number assigned by the Department. Test scores for students who attend programs or classes in a facility that does not have a separate school number shall be reported to and included in the students' home schools.

(e) Each K-8 school shall test at least 98 percent of its eligible students. If a school fails to test at least 98 percent of its eligible students for two consecutive school years, the SBE may designate the school as low-performing and may target the school for assistance and intervention. Each school shall make public the percent of eligible students that the school tests.

(f) High schools shall test at least 95 percent of enrolled students who are subject to EOC tests, regardless of exclusions. High schools that test fewer than 95 percent of enrolled students for two consecutive years may be designated as low-performing by the SBE.

(g) All students who are following the standard course of study and who are not eligible for exclusion as set out in Paragraph (h) of this Rule shall take the SBE-adopted tests. Every student, including those students who are excluded from testing, shall complete or have completed by a school employee designated by the principal an answer document (except in writing). The answer sheet for an excluded student shall contain only student identification information and the reason the student was excluded. Both the school and the LEA shall maintain records on

the exclusions of students from testing. The Department may audit these records.

(h) Individual students may be excluded from SBE-adopted tests as follows:

- (1) Limited English proficient students may be excluded for one year beginning with the time of enrollment in the LEA if the student's English language proficiency has been assessed as novice/low to intermediate/low in listening, reading, and writing. A student whose English language proficiency has been assessed as intermediate/high or advanced may be excluded from tests in which the student writes responses for up to two years. 12 months after a limited English proficient student has enrolled in the LEA, the student must be reassessed on the same language proficiency test that was used as a part of the identification of the student for inclusion in the limited English proficiency program in that LEA. A student assessed as novice/low to intermediate/low after 12 months may be excluded for an additional 12 months. A student assessed as intermediate/high or above must participate in the state testing program. After two years from the time of initial enrollment in the LEA, all limited English proficiency students must participate in the state testing program. LEAs shall report results of the initial language proficiency test and the results on the same test 12 months after enrollment in the LEA to the Department. LEAs shall use other assessment methods for excluded students to demonstrate that these students are progressing in other subject areas.
- (2) All students with disabilities including those identified under Section 504 shall be included in the statewide testing program through the use of state tests with appropriate accommodations or through the use of other state assessments designed for these students. The student's IEP team shall determine whether a testing accommodation is appropriate for that student's disability or whether the student should be assessed using another state assessment designed for that student's disability.

(i) Students in grades 3-8 with IEPs and serious cognitive deficits and whose program of study focuses on functional/life skills shall participate in the North Carolina Alternate Assessment Portfolio as an alternative.

(j) The SBE shall calculate a school's expected growth/gain composite in student performance using the following process:

- (1) Review expected and exemplary growth standards for all grades and subjects, and review the predicted EOC mean for expected standard gain and the exemplary standard gain for EOC courses.

- (2) Determine the actual growth in reading and mathematics at each grade level included in the state testing program, using data on groups of students identified by Paragraph (c)(1) of this Rule and determine the actual EOC mean for EOC tests using data on the groups of students identified by Paragraph (c)(2) of this Rule from one point in time to another point in time.
- (3) Subtract the expected growth from the actual growth in reading and mathematics at grades 3 through 8 and grade 10; then subtract the predicted EOC mean from the actual EOC mean for EOC tests.
- (4) Divide the differences for reading and mathematics by the standard deviations of the respective differences in growth/gain at each grade level and for each EOC to determine the standard growth score.
- (5) The SBE shall calculate a school's gain composite in college prep/college tech prep using the following process:
 - (A) Compute the percent of graduates who receive diplomas who completed either course of study in the current accountability year. Students shall be counted only once if they complete more than one course of study.
 - (B) Find the baseline, which is the average of the two prior school years' percent of graduates who received diplomas and who completed a course of study.
 - (C) Subtract the baseline from the current year's percentage.
 - (D) Subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero.
 - (E) Divide by the associated standard deviation. The result is the standard gain for college prep/college tech prep.
- (6) The SBE shall calculate a school's expected gain composite in the competency passing rate by comparing the grade 10 competency passing rate to the grade 8 passing rate for the group of students in grade 10 who also took the 8th-grade end-of-grade test.
 - (A) Subtract the grade 8 rate from the grade 10 rate.
 - (B) Subtract 0.1.
 - (C) Divide by the standard deviation. The result is the standard gain in competency passing rate.

- (7) Multiply the expected standard growth scores for reading and mathematics at each grade level from grade 3 to 8, EOC prediction, gain in competency passing rate, gain in college prep/college tech prep, and change in dropout rate by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has made the expected growth standard.
- (8) The SBE shall compute exemplary growth using the exemplary growth standard ($b_o \times 1.10$) in the accountability formula for grades 3 through 8 in reading and mathematics, and ($b_o \times 1.03$) for predicted EOC means. There is no exemplary standard for competency passing rate or college prep/college tech prep gain.
- (9) To determine the composite score for exemplary standards:
 - (A) Subtract the exemplary growth/gain from the actual growth/gain standard in reading and mathematics at grades 3 through 8; subtract the predicted exemplary EOC mean from the actual EOC mean for each EOC test.
 - (B) Divide the difference in growth/gain by the standard deviations of the respective differences in growth/gain to determine the standard growth/gain score.
 - (C) Multiply the exemplary standard growth/gain scores for reading and mathematics at each grade level from grade 3 to 8, EOC gain, expected standard gain in Competency Passing Rate, Dropout Rate, and for College Prep/College Tech Prep by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has met the exemplary growth standard.

(k) If school officials believe that the school's growth standards were unreasonable due to specific, compelling reasons, the school may appeal its growth standards to the SBE. The SBE shall appoint an appeals committee composed of a panel selected from the compliance commission to review written appeals from schools. The school officials must clearly document the circumstances that made the goals unrealistic and must submit its appeal to the SBE within 30 days of receipt of notice from the

21 NCAC 17 .0113 FEES

In accordance with the provisions of the Act, the following fees, where applicable, are payable to the Board by check or money order. Fees are nonrefundable, except for the Issuance Fee, if application is not approved.

Application Fee	\$50.00
Issuance Fee	125.00
License Renewal Fee	75.00
Late Renewal Fee	75.00
Examination Fee	150.00

Department of the school's performance. The appeals committee shall review all appeals and shall make recommendations to the SBE. The SBE shall make the final decision on the reasonableness of the growth goals.

Authority G.S. 115C-12(9)c4.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 17 - BOARD OF DIETETICS/NUTRITION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Dietetics/Nutrition intends to amend the rule cited as 21 NCAC 17 .0113. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: July 1, 2003

Public Hearing:

Date: January 3, 2002

Time: 10:00 a.m.

Location: Law Offices of Jordan, Price, Wall, Gray, Jones & Carlton, 1951 Clark Ave., Raleigh, NC

Reason for Proposed Action: *In the 2001 Session of the General Assembly, the Legislature granted the Board the authority to increase fees. The amendments to the rule propose to increase some of the fees the Board is entitled to charge. The amendments to the rule are intended to cover increases in the Board's operational costs that have occurred since 1996, when fees were last increased.*

Comment Procedures: *Written comments may be directed to Kim Dove, RD, LDN, in care of North Carolina Board of Dietetics/Nutrition, PO Box 1509, Garner, NC 27529. Written comments will be accepted through January 17, 2002.*

Fiscal Impact

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

SECTION .0100 – LICENSURE

The text shown below in bold was approved by the Administrative Rules Review Commission on June 21, 2001 and is pending the next regular Session of the General Assembly.

PROPOSED RULES

Provisional License Fee	35.00	
Duplicate License Certificate Fee		30.00
Duplicate License Identification Card Fee	20.00	
Training Program	150.00	

Authority G.S. 90-356(2),(9); 90-361; 90-364.

**SUBCHAPTER 32B – LICENSE TO PRACTICE
MEDICINE**

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

SECTION .0100 – GENERAL

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Board intends to adopt the rules cited as 21 NCAC 32B .0104-.0106, amend the rules cited as 21 NCAC 32A .0101; 32B .0101, .0508; 32M .0112, and repeal the rules cited as 21 NCAC 32A .0105-.0106; 32B .0103, .0201-.0203. Notice of Rule-making Proceedings was published in the Register on September 17, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 22, 2002

Time: 4:00 p.m.

Location: 1201 Front St., Suite 100, Raleigh, NC

Reason for Proposed Action: Simplification of licensing rules.

Comment Procedures: Written comments should be submitted to Helen D. Meelheim, Rule-making Coordinator, North Carolina Medical Board, PO Box 20007, Raleigh, NC 27619. Comments will be received through January 16, 2002.

Fiscal Impact

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

SUBCHAPTER 32A – ORGANIZATION

SECTION .0101 – ORGANIZATION

21 NCAC 32A .0101 LOCATION

The location of the office of the North Carolina Medical Board is 1201 Front Street, Raleigh, North Carolina 27609. The mailing address is Post Office Box 20007, Raleigh, North Carolina 27619.

Authority G.S. 90-2.

21 NCAC 32A .0105 REQUIREMENT EXCEPTION

Authority G.S. 90-6; 90-11.

**21 NCAC 32A .0106 PROVISIONS FOR PETITION
FOR A RULE CHANGE**

Authority G.S. 150B-20.

21 NCAC 32B .0101 DEFINITIONS

The following definitions apply to Rules within this Subchapter:

- (1) ACGME- Accreditation Council for Graduate Medical Education.
- (2) AOA- American Osteopathic Association.
- (3) Board- The North Carolina Medical Board.
- (4) ECFMG- Educational Commission for Foreign Medical Graduates.
- (5) Fifth Pathway- An avenue for licensure as defined in the Directory of Accredited Residencies 1977-1978, American Medical Association, pp.30-32.
- (6) FLEX- Federation Licensing Examination (not administered after December 1993).
- (7) LCME- Liaison Commission on Medical Education.
- (8) SPEX- Special Purpose Examination.
- (9) AMA Physician's Recognition Award- American Medical Association recognition of achievement by physicians who have voluntarily completed programs of continuing medical education.
- (10) American Specialty Boards- Specialty boards approved by the American Board of Medical Specialties.
- (11) USMLE- United States Medical Licensing Examination.
- (12) FSMB- Federation of State Medical Boards of the United States, INC.
- (13) FCVS- Federation Credentials Verification Service or its successor organization within the FSMB.
- (14) Primary source- An authority that establishes the identity of the applicant and the training or experiences of the applicant and then prepares and submits documentation of the validated information directly to the Board, without inspection by the applicant.
- (15) Core Credentials- documents submitted by the primary source, which validate the identity of the applicant and the applicant's medical education.
- (16) FMG- Foreign medical graduate or an international medical graduate who is a graduate of a medical school located outside the United States or Canada.
- (17) LMCC- Licentiate of the Medical council of Canada.

- (18) NBOME- National Board of Osteopathic Medical Examiners.
- (19) Board approved medical schools are Medical Schools which were approved at the time of the applicant's graduation by:
 - (a) ACGME;
 - (b) AOA; or
 - (c) LCME.
- (20) Unapproved medical schools are medical schools which are located outside the United States or Canada that have not specifically been disapproved by the Board.
- (21) Disapproved medical schools are those medical schools which the Board has determined the medical education is not substantially equivalent to that received in a North Carolina approved medical school.
- (22) A certified photograph is a photograph of the head and shoulders of the applicant which is:
 - (a) At least two and one half inches by three and three quarters inches;
 - (b) Of good quality on permanent paper;
 - (c) Taken while the applicant was not wearing dark glasses or any other devices obscuring facial features; and
 - (d) Certified by a notary public as a true image of the applicant and positive proof of identity.
- (23) Certification of graduation from an approved medical school shall be documented on a form prescribed by the Board and which the medical school Dean signs or the registrar signifying successful completion of all degree requirements including a recent certified photograph which bears the seal of the medical school. All documents from the medical school shall be transmitted directly to the Board by the school or by FCVS.
- (24) Certification of graduation from an unapproved medical school shall be documented by a certified photograph signed by the dean or the registrar signifying successful completion of all degree requirements and bearing the school seal, and a complete transcript of all course work performed at a medical school, including dates of attendance and original signatures of the dean or registrar and the school seal. All documents from the school shall be transmitted directly to the Board by the school or FCVS.
- (25) Examinations accepted by the Board for licensure of physicians are the:
 - (a) NBOME;
 - (b) FLEX I, FLEX II;
 - (c) FLEX I, FLEX II, FLEX III;
 - (d) USMLE I, II, III; and
 - (e) LMCC.
- (26) Endorsement is the process of endorsing credentials of applicants licensed in other

states with credentials, which meet the minimum licensing requirement.

- (27) Temporary License is a license, which is in effect during the dates printed on the face of the license and can only be issued to one who is in all regards eligible for a full license at the time the full Board will meet.

Authority G.S. 90-6.

21 NCAC 32B .0103 FORMS

Authority G.S. 150B-11.

21 NCAC 32B .0104 PHYSICIAN LICENSING REQUIREMENTS

The following requirements apply to all physician applicants:

- (1) All applicants bear the burden of proving to the Board their skill, safety, physical, and moral fitness in order to be licensed.
- (2) All applicants shall complete and submit an application on a form approved by the Board.
 - (a) All forms will be completed legibly, in black ink or electronically as noted on the application instructions.
 - (b) Forms, which are incomplete or include information other than a signature, which is not printed, will be rejected.
 - (c) Applicants may submit core credentials to the Board or may subscribe at their own cost to the FCVS for submission of a core credentials package.
- (3) All applicants shall enclose the application fee as specified in G.S. 90-15 with the application package. No application fee is refundable.
- (4) Applicants must submit proof of graduation from an:
 - (a) approved medical school; or
 - (b) unapproved school if the course content and curriculum is substantially equivalent to that of an approved medical school in North Carolina;
 - (i) And has a current ECFMG certificate;
 - (A) Unless the applicant has evidence of satisfactorily completing a Board approved fifth pathway program; or
 - (B) The applicant has a license in another state of the United States issued prior to 1958 by an examination

- approved by the Board;
 - (ii) Foreign transcripts presented as proof of successful completion of all degree course work must have an accompanying certified true translation into English.
 - (c) No applicant graduated from a medical school disapproved by the Board shall be eligible for examination or licensure in North Carolina. The burden of proof of medical education is on the applicant.
 - (5) All applicants shall submit proof of identity in the form of a certified photograph or fingerprints.
 - (6) All applicants must submit two fingerprint cards, which have been completed in a manner acceptable to the North Carolina SBI. The cards must be completed by the applicant within one year of the application and submitted with each application. The applicant is also responsible for submitting with the application the fee required by the SBI for processing of these cards through the Federal, International and State criminal networks.
 - (7) All applicants shall submit proof of completion of post graduate medical education:
 - (a) Graduates of approved medical schools shall provide proof of completion of one year of post graduate medical education in a program approved by the ACGME, AOA, or LCME.
 - (b) Graduates of unapproved medical schools shall provide proof of completion of three years of post graduate medical education in a program approved by the ACGME, AOA, or LCME.
 - (8) All applicants shall have submitted on the applicant's behalf three letters attesting to the applicant's character, scholastic ability, veracity, and professional abilities. Letters must be on the Board's form and may be accompanied by other correspondence if desired.
 - (a) One letter shall be from a physician responsible for direct supervision of the applicant's most recent graduate medical education.
 - (b) One letter shall be from a physician in active practice that can personally speak for the applicant's abilities as a physician for the 12 months immediately preceding the date of application.
 - (c) One letter shall be from an individual who is not related to the applicant and has personally known the applicant for at least 10 years.
 - (9) All applicants shall present evidence of successfully passing a licensing examination accepted by the Board.
 - (a) Minimum passing score on all parts of all examinations is 75 including the FLEX which has a weighted average calculated by the FSMB.
 - (b) The passing score must conform to the following restrictions:
 - (i) Combined scores must be for the same examination; and
 - (ii) Combined scores must span no more than seven years: The Board reserves the right to waive this requirement if the applicant simultaneously successfully completed an MD or DO degree granting program and a PhD.
 - (10) Applicants shall be of good moral character as is required for fitness to practice medicine. Moral character may be assessed by the Board in the following ways:
 - (a) The Board may develop test questions;
 - (b) Conduct background searches to include criminal history; and
 - (c) Perform any other necessary and reasonable evaluations to include:
 - (i) A Credit history;
 - (ii) A Department of motor vehicle record checks; or
 - (iii) A Medical malpractice claim history.
 - (d) Determine if there is any history of drunkenness or if the applicant has consumed illegal substances or other chemical compounds to excess.
 - (11) Applicants shall be of good mental and physical health and in determining this; the Board may require the applicant to undergo physical or mental evaluations.
 - (12) All applicants for licensure shall be interviewed members of the Board, agents of the Board or by staff for the Board.
 - (13) The Board is authorized to conduct a criminal background check on all applicants to include a fingerprint check. The Board may deny an applicant a license for any of the following reasons:
 - (a) Immoral or dishonorable conduct;
 - (b) Producing or attempting to produce an abortion contrary to law;
 - (c) Making false statements or representations to the Board;

- (d) Becoming unable to practice medicine with reasonable skill and safety to patients;
- (e) Unprofessional conduct;
- (f) Conviction in any court of a crime involving moral turpitude;
- (g) Violation of any law involving the practice of medicine; or
- (h) Conviction of a felony.

will be voted upon. This fee is only reimbursable should the temporary license not be issued.

Authority G.S. 90-6; 90-9; 90-12.

SECTION .0200 - LICENSE BY WRITTEN EXAMINATION

21 NCAC 32B .0201 MEDICAL EDUCATION

Authority G.S. 90-9.

21 NCAC 32 .0202 ECFMG CERTIFICATION

Authority G.S. 90-6; 90-9; 90-10.

21 NCAC 32 .0203 CERTIFICATION OF GRADUATION

Authority G.S. 90-9.

SECTION .0500 – RESIDENT'S TRAINING LICENSE

21 NCAC 32B .0508 MEDICAL EDUCATION

Applicants for resident's training license must have the medical education required by G.S. 90-9.

To be eligible for a resident's training license, an applicant must have the following medical education:

- (1) be a graduate of a medical school approved by either LCME or AOA; or
- (2) be a graduate of a medical school not approved by LCME or AOA and meet the requirement regarding ECFMG under Rule .0507 of this Section.

- (a)
- (b)
- (c)

- (i) _____
- (ii) _____

The burden of proof of medical education is on the applicant.

Authority G.S. 90-15.

SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS

SECTION .0100 - APPROVAL OF NURSE PRACTITIONERS

21 NCAC 32M .0112 FEES

(a) 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. ~~All initial, subsequent and volunteer application fees shall be equally divided between the Board of Nursing and the Medical Board. No other fees shall be shared.~~ Application fee shall be twenty dollars (\$20.00) for the volunteer approval.

(b) The fee for annual renewal of approval shall be fifty dollars (\$50.00).

Authority G.S. 90-6; 90-9; 90-10; 90-11; 90-13; 90-14.

21 NCAC 32B .0105 LICENSING BY EXAMINATION

Applicants for licensing by examination who are graduates of a North Carolina medical school may apply for the USMLE by sending an application to the Board, to another medical board or directly to the FSMB.

- (1) Applicants who will apply to the Board for the privilege of sitting for the examination must also meet all other licensing requirements as established by the North Carolina Medical Board;
- (2) Submit the application within three months of completing post graduate medical training requirements; and
- (3) Pay the fee of four hundred dollars (\$400.00), which is nonrefundable.

Authority G.S. 90-6; 90-9; 90-14.

21 NCAC 32B .0106 LICENSES BY ENDORSEMENT

(a) Applicants who are applying to the Board on the basis of endorsement of credentials shall have:

- (1) Maintained a level of continuing medical education for the past three years that will conform to the current North Carolina continuing medical education rules, 21 NCAC 32R .1000.
- (2) Within the past 10 years taken and passed a Board approved licensing examination and if more than 10 years has elapsed then the applicant will be required to demonstrate within 10 years of the date of making application:
 - (A) Passage of SPEX;
 - (B) Current American Board of Medical Specialty or AOA certification achieved by taking an examination within 10 years of making application to the Board; and
 - (C) Completion of post graduate medical education as required by Rule .0104(6) in this Subchapter;
 - (D) CME equivalency for the 10 year period proceeding making application.

(b) Applicants who meet all requirements for a full license by endorsement may request and pay an extra fee of one hundred fifty dollars (\$150.00) in order to be issued a license that will be effective for the dates printed on the face of the license until the date of the next Board meeting when the full license application

- (c) The fee for annual renewal of volunteer approval shall be ten dollars (\$10.00).
- (d) No portion of any fee in this Rule shall be refundable.
- (e) Fees shall be divided between the Board of Nursing and the Medical Board based on a mutually agreed upon formula for equitable distribution of costs.

Authority G.S. 90-6.

CHAPTER 61 - NORTH CAROLINA RESPIRATORY CARE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Respiratory Care Board intends to adopt the rules cited as 21 NCAC 61 .0101-.0103, .0201-.0204, .0301-.0308, .0401, .0501-.0502, .0601-.0604, .0701-.0714. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: January 3, 2002

Time: 1:00 p.m.

Location: 3600 Glenwood Ave., Raleigh, NC

Reason for Proposed Action: *This rulemaking results from the enactment of the North Carolina Respiratory Care Act by the North Carolina General Assembly during its 2000 Session. As enacted on July 13, 2000, the Act empowers certain officers of the Executive and Legislative Branches and other organizations to appoint or designate members of the North Carolina Respiratory Care Board. Appointments of a quorum of the Board were not completed until June 2001. The appointed members of the Board then met in early July, were sworn in and designated a Rules Committee to develop rules. These Rules were completed and adopted by the Board on August 31, 2001, leading to the present filing as a permanent rule.*

Comment Procedures: *Written comments should be directed to Sandra B Lyons, Rule-making Coordinator, PO Box 10096, Raleigh, NC 27605-0096, telephone 919-873-2825, email slyons@poynerspruill.com. Written comments will be accepted through January 16, 2002.*

Fiscal Impact

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

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

21 NCAC 61 .0101 PURPOSE

It is the responsibility of the Board to license respiratory care practitioners and to see that the qualifications and activities of those engaged in respiratory care are in accord with law and in the best interest of the public. The Board shall issue and enforce standards for the licensure of respiratory care practitioners but

the Board is not a Board of arbitration and has no jurisdiction to settle disputes between private parties.

Authority G.S. 90-652(2).

21 NCAC 61 .0102 BOARD OFFICE

The administrative offices of The North Carolina Respiratory Care Board (NCRCB) are located at 1100 Navaho Drive, Suite 242, Raleigh, NC 27609. Office hours are 9:00 a.m. until 5:00 p.m., Monday through Friday, except North Carolina State Holidays.

Authority G.S. 90-652(2).

21 NCAC 61 .0103 DEFINITIONS

The definitions of terms contained in G.S. 90-648 apply to this Chapter.

Authority G.S. 90-652(1)-90-652(13).

SECTION .0200 - APPLICATION FOR LICENSE

21 NCAC 61 .0201 APPLICATION PROCESS

Each applicant for a respiratory care practitioner license shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) one recent head and shoulders passport type photograph of the applicant of acceptable quality for identification, two inches by two inches in size;
- (2) the proper fees, as required by G.S. 90-653;
- (3) evidence, verified by oath, that the applicant has successfully completed the minimum requirements of a respiratory care education program approved by the Commission for Accreditation of Allied Health Educational Programs;
- (4) evidence, verified by oath, that the applicant has successfully completed the requirements for certification by the American Heart Association for Basic Cardiac Life Support;
- (5) a form provided by the Board containing signed statements from two respiratory care practitioners credentialed by The National Board for Respiratory Care, Inc. (NBRC) attesting to the applicant's good moral character; and
- (6) satisfactory evidence from the NBRC of successful completion of the certification examination administered by it.

Authority G.S. 90-652(1),(2).

21 NCAC 61 .0202 EXEMPTIONS

The Board shall exempt the following persons from the requirement of obtaining a license:

- (1) A respiratory care practitioner who is on active duty in the Armed Forces of the United States or serving in the United States Public Health Service, or employed by the Veterans Administration; but this exemption shall only

- apply to activities and services provided in the course of such service or employment.
- (2) A student or trainee who is working under the direct supervision of a respiratory care practitioner to fulfill an experience requirement or to pursue a course of study to meet licensure requirements. For purposes of this Subpart, direct supervision shall mean that a respiratory care practitioner licensed by the Board is present in the same facility to supervise a respiratory care student at any time while the student is engaged in the practice of respiratory care. The supervising respiratory care practitioner must be specifically assigned to the particular student, but more than one practitioner may be assigned to a particular student. A respiratory care student shall not engage in the performance of respiratory care activities without direct supervision by a respiratory care practitioner licensed by the Board.
- (3) A person who only provides support activities as defined in G.S. 90-648(13), and who has received adequate training and has demonstrated competence in the delivery, calibration, and demonstration of equipment. Unlicensed individuals who deliver, set up, and calibrate prescribed respiratory care equipment may give instructions on the use, fitting and application of apparatus, including demonstrating its mechanical operation for the patient, or caregiver; but may not engage in the teaching, administration, or performance of respiratory care. Instructions to the patient or caregiver regarding the clinical use of the equipment, and any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment, must be performed by a respiratory care practitioner licensed by the Board or other licensed practitioner operating within their scope of practice.
- (4) A person who is licensed by another North Carolina licensing board to carry on an occupation, who is acting within the recognized scope of practice for the license issued by that other board, or who otherwise is carrying out functions recognized as appropriate for the licensed person by that board; and any other person who is working under the supervision of such a licensed person, provided that the supervision of the other person also is recognized as being within the appropriate scope of practice or functions of the licensed person. With regard to other persons who are not licensed by a North Carolina licensing board, the Board shall consider whether there is evidence establishing

that such persons meet the requirements of G.S. 90-664(1).

Authority G.S. 90-648(13); 90-652(2); 90-664.

21 NCAC 61 .0203 INTERVIEWS

If the Board has questions about the qualifications of an applicant, it may conduct interviews of the applicant, or of others with knowledge of an applicant's qualifications.

Authority G.S. 90-652(2).

21 NCAC 61 .0204 FEES

(a) Fees are as follows:

- (1) For an initial application, a fee of twenty-five dollars (\$25.00);
- (2) For issuance of any license, a fee of one hundred dollars (\$100.00);
- (3) For the renewal of any license, a fee of fifty dollars (\$50.00);
- (4) For the late renewal of any license, an additional late fee of fifty dollars (\$50.00);
- (5) For a license with a provisional or temporary endorsement, a fee of thirty-five dollars (\$35.00);
- (6) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing.

(b) Fees shall be nonrefundable and shall be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Respiratory Care Board. However, personal checks may be accepted for payment of renewal fees.

Authority G.S. 90-652(2),(9); 90-660.

SECTION .0300 - LICENSING

21 NCAC 61 .0301 LICENSE NUMBER: DISPLAY OF LICENSE

(a) Each license issued by the Board shall be valid for a period of one year, except as otherwise provided in these Rules, or as noted on the face of the license. For all applicants who apply and are granted an initial license on or before January 2, 2002, such licenses shall be valid for 21 months from date of issuance; for all applicants who apply and are granted an initial license on or before April 1, 2002, such licenses shall be valid for a period of 18 months from date of issuance; for all applicants who apply and are granted an initial license on or before July 1, 2002, such licenses shall be valid for a period of 15 months from date of issuance.

(b) Each individual who is issued a license shall be issued a license number. Should that number be retired for any reason (such as death, failure to renew the license, or any other reason) that number will not be reissued. A license must be filed at the licensee's principal place of business so as to be available to be displayed for inspection. Each licensee also shall keep a copy of the license available for inspection to anyone on request in the course of delivering services.

(c) In accordance with the provisions of G.S. 90-640, whenever a licensee is providing respiratory care to a patient, the licensee

shall wear a badge or nameplate which displays, in easily visible type, the licensee's name followed by a comma and the designation "R.C.P." which is an abbreviation for respiratory care practitioner.

Authority G.S. 90-640; 90-652(2),(4); 90-658(b).

21 NCAC 61 .0302 LICENSE RENEWAL

(a) Any licensee desiring the renewal of a license shall apply for renewal and shall submit the required fee.

(b) Any person whose license is lapsed or expired and who engages in the practice of respiratory care as defined in G.S. 90-648(10) will be subject to the penalties prescribed in G.S. 90-659.

(c) Licenses lapsed in excess of 24 months are expired and shall not be renewable. Persons whose licenses have been lapsed in excess of 24 months and who desire to be licensed shall apply for a new license and shall meet all the requirements then existing.

Authority G.S. 90-652(1),(2),(4).

21 NCAC 61 .0303 LICENSE WITH PROVISIONAL ENDORSEMENT

An applicant for a provisional license must have completed the educational requirements set out in 21 NCAC 61 .0201 and must have made application to take the certification exam administered by the NBRC and must have filed his application with the Board in accordance with G.S. 90-656 and these Rules. The provisional license authorizes the practice of respiratory care under the supervision of a licensed respiratory care practitioner. The provisional license shall be valid for a period not to exceed 12 months from date of issuance or until revoked by the Board, whichever occurs first.

Authority G.S. 90-652(2),(4); 90-656.

21 NCAC 61 .0304 LICENSE WITH TEMPORARY ENDORSEMENT

The Board may grant a temporary license to an applicant who, as of October 1, 2000, does not meet the qualifications of G.S. 90-653 but, through written evidence verified by oath, demonstrates that he or she is performing the duties of a respiratory care practitioner within the State. The temporary license is valid until October 1, 2002, within which time the applicant shall be required to complete the requirements of G.S. 90-653(a)(5). A license granted under this Rule shall contain an endorsement indicating that the license is temporary and shall state the date the license was granted and the date it expires.

Authority G.S. 90-652(1),(2),(4); 90-654(b).

21 NCAC 61 .0305 INACTIVE STATUS

(a) A licensee who wishes to retain a license but who will not be practicing respiratory care may obtain inactive status by indicating this intention on the annual renewal and payment of a fee of twenty dollars (\$20.00). An individual licensed on inactive status may not practice respiratory care during the period in which he or she remains on inactive status.

(b) An individual licensed on inactive status may convert his or her license to active status by submission of an application and

payment of the renewal fee and late fee. The application must contain evidence of the following:

- (1) Regular practice of respiratory care;
- (2) Completion of a minimum of 10 hours of approved continuing education during the prior 12 months of the application for reinstatement, or passage of an NBRC examination during the prior 12 months as required in 21 NCAC 61 .0401; and
- (3) In no case may an individual remain on inactive status for more than 24 months.

Authority G.S. 90-652(1),(2),(4).

21 NCAC 61 .0306 LICENSE BY RECIPROCITY

When the Board determines that a license, certificate or registration issued by another state, political territory, or jurisdiction to a respiratory care practitioner was issued upon satisfaction of substantially the same requirements for licensure required by the North Carolina Respiratory Care Practice Act, the Board may issue a license to that respiratory care practitioner upon receipt of the initial application fee and license issuing fee.

Authority G.S. 90-652(1),(2),(4); 90-655.

21 NCAC 61 .0307 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE

(a) In addition to the conduct set forth in G.S. 90-659, the Board may deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, upon any of the following grounds:

- (1) Failure to meet minimum licensure requirements set by statute or rule.
- (2) Procuring, attempting to procure, or renewing a license as provided by this part by bribery, by fraudulent misrepresentation, or by knowingly perpetuating an error of the Board.
- (3) Violation of any rule adopted by the Board or of a lawful order of the Board.
- (4) Engaging in the delivery of respiratory care with a revoked, suspended, or inactive license.
- (5) Failing to perform any statutory or legal obligation placed upon a respiratory care practitioner licensed pursuant to this Section.
- (6) Failing to properly make the disclosures required by 21 NCAC 61 .0308.
- (7) Permitting, aiding, assisting, procuring, or advising any person to violate any rule of the Board or provision of the Respiratory Care Practice Act, including engaging in the practice of respiratory care without a license.
- (8) Having licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care revoked, suspended, or otherwise acted against, including the denial of licensure, certification, registration, or other authority to deliver respiratory care by the licensing authority of another state, territory, or country.
- (9) Willfully failing to report any violation of these Rules.

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| <p>(10) Unprofessional conduct, which includes, but is not limited to, any departure from, or failure to conform to, acceptable standards related to the delivery of respiratory care, or engaging in any other act or practice that is hazardous to public health, safety or welfare.</p> <p>(11) Performing professional services which have not been duly ordered by a physician licensed pursuant to G.S. 90, Article 1 and which are not in accordance with protocols established by the hospital, other health care provider, or the Board.</p> <p>(12) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, he is not competent to perform.</p> <p>(13) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform.</p> <p>(14) Being unable to deliver respiratory care services with reasonable skill and safety to patients by reason of incapacitating illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material. In enforcing this Paragraph, the Board shall, upon probable cause, have authority to compel a respiratory care practitioner to submit to a mental or physical examination by physicians designated by the Board. The cost of examination shall be borne by the licensee being examined. The failure of a respiratory care practitioner to submit to such an examination when so directed constitutes an admission of the allegations against him, upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond his control. A respiratory care practitioner affected under this Paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent delivery of respiratory care with reasonable skill and safety to his patients. In any proceeding under this Paragraph, neither the record of proceedings nor the orders entered by the Board shall be used against a respiratory care practitioner in any other proceeding.</p> <p>(15) Failing to create and maintain respiratory care records documenting the assessment and treatment provided to each patient.</p> <p>(16) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services.</p> <p>(17) Exercising influence within a respiratory care relationship for the purpose of engaging a</p> | <p>patient in sexual activity. A patient is presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.</p> <p>(18) Exercising influence on the patient in such a manner as to exploit the patient for the financial gain of the licensee or a third party, which includes, but is not limited to, the promoting or selling of services, goods, appliances, or drugs.</p> <p>(19) Making deceptive, untrue, or fraudulent representations in the delivery of respiratory care or employing a trick or scheme in the delivery of respiratory care.</p> <p>(20) Circulating false, misleading, or deceptive advertising.</p> <p>(21) Paying or receiving any commission, bonus, kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this Paragraph shall not be construed to prevent the licensee from receiving a fee for professional consultation services.</p> <p>(22) Soliciting patients, either personally or through an agent, through the use of fraud, deception, or otherwise misleading statements or through the exercise of intimidation or undue influence.</p> <p>(23) Willfully making or filing a false report or record, or willfully failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which require the signature of a respiratory care practitioner or a respiratory therapist licensed pursuant to this Section.</p> <p>(24) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to a licensee's competence or ability to provide respiratory care.</p> <p>(25) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances, as set forth by law, for any purpose other than a lawful purpose.</p> <p>(26) Failing to comply with a court order for child support or failing to comply with a subpoena issued pursuant to child support or paternity establishment proceedings as defined in G.S. 110-142.1. In revoking or reinstating a license under this provision, the Board shall follow the procedures outlined in G.S. 93B-13.</p> |
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Authority G.S. 90-652(2),(4); 90-659.

21 NCAC 61 .0308 CONTINUING DUTY TO REPORT CERTAIN CRIMES AND CIVIL SUITS

(a) All licensed respiratory care practitioners and provisional licensees are under a continuing duty to report to the Board any and all:

- (1) convictions of, or pleas of guilty or nolo contendere to, a felony or any crime, such as fraud, that involves moral turpitude; and
- (2) involvements in a civil suit arising out of or related to the licensee's practice of respiratory care.

(b) A licensee or a provisional licensee must report a conviction, plea, or involvement in a civil suit within 30 days after it occurs.

Authority G.S. 90-652(2).

SECTION .0400 – CONTINUING EDUCATION REQUIREMENTS FOR LICENSE HOLDERS

21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Each year on or before the expiration date of the respiratory care practitioners license, each respiratory care practitioner who is in active practice in the State of North Carolina shall complete continuing education as outlined in either Subparagraph (1) or Subparagraph (2) of this Rule.

- (1) Provide proof of completion of a minimum of 10 hours each year of Category I Continuing Education (CE) acceptable to the Board. "Category I" Continuing Education is defined as participation in an educational activity directly related to respiratory care, which includes any one of the following:
 - (A) Lecture – a discourse given for instruction before an audience or through teleconference.
 - (B) Panel – a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution.
 - (C) Workshop – a series of meetings for intensive, hands- on study, or discussion in a specific area of interest.
 - (D) Seminar – a directed advanced study or discussion in a specific field of interest.
 - (E) Symposium – a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters.
 - (F) Distance Education – includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package.
- (2) Retake the certified respiratory therapist (CRT) examination with a passing score, or

take and pass the Registry Examination for Advanced Respiratory Therapists (RRT), the Perinatal/Pediatric Respiratory Care Specialty Examination, the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), or the Registry Examination for Advanced Pulmonary Function Technologist (RPFT). Licensees may take the examination anytime during the year prior to the expiration of their respiratory care practitioner license.

(b) Licensees will be required to list on a form provided by the Board, the Category I CE courses completed that meet the 10-hour requirement, as well as specified subject matter of the courses completed. Space will be provided on the form for listing the number of hours, course names, dates and providers, as well as the general subject matter of the courses. If the practitioner takes an examination in lieu of the CE requirements, a notation of the examination taken with the date taken is to be placed on the form.

(c) CE course work must be completed through one or more of the approved providers of CE as identified on a list of approved providers to be maintained by the Board.

(d) Verification of Compliance with Continuing Education Requirements. The Board may randomly audit the continuing education documentation forms submitted and confirm the validity of all information on the form with the appropriate parties.

(e) The Board may consider requests for extensions of the continuing education requirements due to personal emergencies and other extenuating circumstances on a case by case basis.

(f) The Board may charge a fee to each firm or organization which wishes to provide continuing education to meet the requirements of this Rule, in order to defray expenses that the Board incurs in reviewing the content of the continuing education materials, to determine their overall suitability, and to assess the number of credit hours which should be assigned for the completion of each such continuing education offering.

Authority G.S. 90-652(2),(13).

SECTION .0500 - GENERAL

21 NCAC 61 .0501 CHANGE OF ADDRESS OR BUSINESS NAME

All licensees shall notify the Board in writing of each change of name, including any change in the name under which the licensee is providing respiratory care, or any change in the licensee's residence or business address, including mailing address, within 30 days of such change.

Authority G.S. 90-652(2).

21 NCAC 61 .0502 ADVERTISING

A licensee may not advertise under a name that is different from the licensee's surname unless written notice has been filed with the Board. For all advertisements relating to respiratory care, the company or respiratory care practitioner sponsoring any advertisement must be able to furnish on request the name and license number of each respiratory care practitioner who will be providing services. Failure by a sponsoring respiratory care

practitioner to provide this information shall constitute unprofessional conduct under 21 NCAC 61 .0307. The Board shall report any failure of a company to provide this information to any agency or board that issues a license for its operation as a health care provider.

Authority G.S. 90-652(2).

SECTION .0600 - RULES

21 NCAC 61 .0601 PETITIONS FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES

(a) General. The procedure for petitioning the Board to adopt, amend, or repeal a rule is governed by G.S. 150B-16.

(b) Submission. Rule-making petitions shall be sent to the Board. No special form is required, but the petitioner shall state his name and address. There are no minimum mandatory contents of a petition, but the Board considers the following information to be pertinent:

- (1) a draft of any proposed rule or amendment to a rule;
- (2) the reason for the proposal;
- (3) the effect of the proposal on existing rules or decisions;
- (4) data supporting the proposed rule change;
- (5) practices likely to be affected by the proposed rule change; and
- (6) persons likely to be affected by the proposed rule change.

(c) Disposition. The Board shall render its decision to either deny the petition or initiate rulemaking, and shall notify the petitioner of its decision in writing, within the 120-day period set by G.S. 150B-16.

Authority G.S. 90-652(2).

21 NCAC 61 .0602 PROCEDURE FOR ADOPTION OF RULES

(a) General. The procedure for the adoption, amendment or repeal of a rule is governed by G.S. 150B-12.

(b) Notice of Rule-Making. In addition to the mandatory publication of notice in the North Carolina Register, the Board, in its discretion, may also publish notice to licensees through its newsletter or by separate mailing. Any person who wishes to receive individual notice shall file a written request with the Board and shall be responsible for the cost of mailing said notice.

(c) Public Hearing. Any public rule-making hearing required by G.S. 150B-12 shall be conducted by the Chairman of the Board or by any person he may designate. The presiding officer shall have complete control of the hearing and shall conduct the hearing so as to provide a reasonable opportunity for any interested person to present views, data and comments.

- (1) Oral presentations shall not exceed 15 minutes unless the presiding officer, in his discretion, prescribes a greater time limit.
- (2) Written presentations shall be acknowledged by the presiding officer and shall be given the same consideration as oral presentations.

Authority G.S. 90-652(2).

21 NCAC 61 .0603 TEMPORARY RULES

The power of the Board to adopt temporary rules and the procedure by which such rules are put into effect are governed by G.S. 150B-13.

Authority G.S. 90-652(2).

21 NCAC 61 .0604 DECLARATORY RULINGS

(a) General. The issuance of declaratory rulings by the Board is governed by G.S. 150B-17.

(b) Contents of Request. A request for a declaratory ruling shall be in writing and addressed to the Board. The request shall contain the following information:

- (1) The name and address of the person making the request;
- (2) The statute or rule to which the request relates;
- (3) A concise statement of the manner in which the person has been aggrieved by the statute or rule; and
- (4) A statement as to whether a hearing is desired, and if desired, the reason therefor.

(c) Refusal to Issue Ruling. The Board shall ordinarily refuse to issue a declaratory ruling under the following circumstances:

- (1) When the Board has already made a controlling decision on substantially similar facts in a contested case or when the matter at issue is properly the subject of a contested case;
- (2) When the facts underlying the request for a ruling on a rule were specifically considered at the time of the adoption of the rule in question; and
- (3) When the subject matter of the request is involved in pending litigation in North Carolina.

Authority G.S. 90-652(1),(2).

SECTION .0700 - ADMINISTRATIVE HEARING PROCEDURES

21 NCAC 61 .0701 APPLICABLE HEARING RULES

When the Board elects to have the Office of Administrative Hearings hear a contested case, the Board's rules pertaining to contested case hearings, instead of the rules of the Office of Administrative Hearings, shall apply.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0702 RIGHT TO HEARING

When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable licensee or applicant for a license, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give all such affected persons notice of their right to a hearing by mailing to them, by certified mail, at their last known address a notice of the proposed action and a notice of a right to a hearing.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0703 REQUEST FOR HEARING

(a) An individual who believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, and who has not received notice of a right to an administrative hearing, may file a formal request for a hearing.

(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board. Upon the request of an individual, the Board may designate one or more of its members, but in all cases less than a majority of the currently serving members of the Board, to meet informally with the individual, and attempt to reach an informal resolution of all matters at issue. Each Board member who is designated to serve in this capacity with regard to an individual's matter, whether the Board member actually meets with the individual or not, shall be disqualified from hearing any contested case when the matter designated for informal resolution is any part of the subject matter of the contested case.

(c) Subsequent to such informal action, if still dissatisfied, the individual should submit a request to the Board's office, with the request bearing the notation: "REQUEST FOR ADMINISTRATIVE HEARING". The request should contain the following information:

- (1) name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) clear and specific statement of request for a hearing.

(d) The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with 21 NCAC 61 .0704, a hearing will be scheduled.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0704 GRANTING OR DENYING HEARING REQUEST

(a) The Board will grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6). Whenever the Board proposes to deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, the licensee shall be deemed to be a person aggrieved.

(b) The denial of a request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the reasons leading the Board to deny the request.

(c) Approval of a request for a hearing will be signified by issuing a notice as required by G.S. 150B-38(b) and explained in Rule .0705 of this Section.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0705 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address, and telephone number of a person at the offices of the Board to contact for further information or discussion;
- (2) the date, time and place for a pre-hearing conference, if any; and
- (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of respiratory care in North Carolina. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0706 CONTESTED CASES

(a) All administrative hearings will be conducted by the Board, a panel consisting of a majority of the members of the Board then serving, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

(b) The hearing of a contested case shall commence no later than 90 days from the date the Board grants a request for a hearing, unless the licensee and the Board together shall jointly agree to extend this deadline.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0707 PREHEARING PROCEDURES

The Board and the other party or parties may agree in advance to simplify the hearing by decreasing the number of issues to be contested at the hearing, accepting the validity of certain proposed evidence, accepting the findings in some other case with relevance to the case at hand, or agreeing to such other matters as may expedite the hearing.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0708 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The request should bear the notation: "PETITION TO INTERVENE IN THE CASE OF (name of case)".

(b) The petition must include the following information:

- (1) the name and address of petitioner;
- (2) the business or occupation of petitioner, where relevant;
- (3) a full identification of the hearing in which petitioner is seeking to intervene;
- (4) the statutory or non-statutory grounds for intervention;
- (5) any claim or defense in respect of which intervention is sought; and
- (6) a summary of the arguments or evidence petitioner seeks to present.

(c) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.

(d) If the Board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0709 TYPES OF INTERVENTION

(a) Intervention of Right. A petition to intervene as of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the petition is timely.

(b) Permissive Intervention. A petition to intervene permissively, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the Board determines that:

- (1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearings; and
- (2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.

(c) Discretionary Intervention. The Board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0710 DISQUALIFICATION OF BOARD MEMBERS

(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit should bear the notation: "AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case)".

(c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification will be considered timely if filed 10 days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule. Where a petition for disqualification is filed less than 10 days before a hearing or during the course of a hearing, the Board may continue the hearing with the challenged Board member

sitting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

(e) Procedure for Determining Disqualification when a timely Affidavit of Disqualification is filed:

- (1) The Board will appoint a Board member to investigate the allegations of the affidavit.
- (2) The investigator will report to the Board the findings of the investigation.
- (3) The Board shall decide whether to disqualify the challenged individual.
- (4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board.
- (5) When a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.
- (6) If four or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0711 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing and delivered to the Board at least 10 days before the date of a contested case hearing and at least 20 days before a date given to provide discovery, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepaies the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(e) Any objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(f) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(g) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(h) Promptly after the close of such hearing, the majority of the Board members hearing the contested case will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0712 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses other than the Licensee from the hearing room until the time they are called to testify, so that they cannot hear the testimony of other witnesses before testifying themselves.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0713 FINAL DECISION

In all cases heard by the Board, the Board will issue its decision within 120 days after its next regularly scheduled meeting following the close of the hearing. The decision will be the prerequisite "final agency decision" for the right to judicial review. To obtain judicial review, the person seeking review must file a petition with the court in accordance with the provisions of G.S. 150B-45.

Authority G.S. 90-652(2), (5), (8).

21 NCAC 61 .0714 PROPOSALS FOR DECISION

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the rules of the Office of Administrative Hearings, 26 NCAC 03 .0126. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within 10 days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within 10 days of the receipt of the proposal for decision. The written exceptions should bear the notation: "EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case)".

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating the time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

Authority G.S. 90-652(2), (5), (8).

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to amend the rules cited as 23 NCAC 02C .0305; 02E .0402-.0403. Notice of Rule-making Proceedings was published in the Register on September 17, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: January 4, 2002

Time: 10:00 a.m.

Location: 1st Floor Conference Room, North Carolina Community Colleges System Office, 200 W. Jones St., Raleigh, NC

Reason for Proposed Action:

23 NCAC 02C .0305 – *The 2001 session of the General Assembly amended G.S. 115D with the addition of Section 115D-1.1 – Discretion in Admission. The Section became effective upon becoming law. It allows students less than 16 who are intellectually gifted and mature to enroll in community colleges. The State Board of Community Colleges is required to adopt rules to implement this provision. The proposed amendment to this rule sets forth conditions under which students less than 16 years old may attend community colleges.*

23 NCAC 02E .0402 – *This Rule-making proceeding was initiated to modify the conditions under which occupational skills training may be provided to business, industries and governmental organizations.*

23 NCAC 02E .0403 – *This rule-making proceeding was initiated to prohibit the offering of physical education or work experience as part of a curriculum in a correctional setting and to regulate programs and courses offered to captive groups.*

Comment Procedures: *Written comments may be sent to Clay T. Hines, North Carolina Community College System, 5004 Mail Service Center, Raleigh, NC 27699-5004 until January 16, 2002.*

Fiscal Impact

- ☒ **State** 23 NCAC 02C .0305
☐ **Local**
☐ **Substantive** (>\$5,000,000)
☒ **None** 23 NCAC 02E .0402-.0403

CHAPTER 02 – COMMUNITY COLLEGES

SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0300 – STUDENTS

23 NCAC 02C .0305 EDUCATION SERVICES FOR MINORS

- (a) The State Board shall encourage individuals to complete high school before seeking admission to a college.
- (b) A minor, 16 years old or older, may be considered a student with special needs and may be admitted to an appropriate program at a college if the local public or private educational agency determines that admission to the program is the best educational option for the student and the admission of the student to the program is approved by the college. This requirement may be waived if the student has been out of school at least six months and the application is supported by a notarized petition of the student's parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the student's residence, date of birth, date of leaving school, and the petitioner's legal relationship to the student.
- (c) A high school student, 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to any curriculum course one hundred level and above or any continuing education course, except adult high school, concurrently under the following conditions:
- (1) Upon recommendation of the chief administrative school officer and approval of the president of the college;

- (2) Upon approval of the student's program by the Chief Administrative School Officer of the school and the president of the college; and
- (3) Upon certification by the Chief Administrative School Officer that the student is taking the equivalent of one-half of a full-time schedule and is making progress toward graduation.

(d) High school students, taking courses pursuant to Paragraphs (b) and (c) of this Rule, shall not displace adults but may be admitted any semester on a space-available basis to any curriculum or continuing education course. Once admitted, they shall be treated the same as all other students.

(e) Local boards of trustees and local school boards may establish cooperative programs in areas they serve in order to provide college courses to qualified high school students. College credits shall be awarded to those high school students upon successful completion of the courses. Cooperative programs shall be approved, prior to implementation, by the State Board or its designee.

(f) Students less than 16 years old who are mature enough to function well in an adult education setting and are intellectually gifted as evidenced by a score in the range from the 92nd percentile to the 99th percentile on an aptitude and an achievement test selected from a list of tests approved by the System Office may be admitted to community colleges. The student shall be ranked by an official of the student's school in the top 10 percent on the following behavioral characteristics: mature, observant, inquisitive, persistent, innovative, analytical, adaptability, leadership, desire to achieve, self-confidence and communications skills. Students less than 16 years old shall not displace adults but may be admitted any semester on a space-available basis to any curriculum course one hundred level and above.

(g) Except as authorized by G.S. 115D-20(4), colleges shall not start classes, offer summer school courses, or offer regular high school courses for high school students.

(h) A college may make available to persons of any age non-credit, non-remedial, enrichment courses during the summer period. These courses shall be self-supporting and shall not earn credit toward a diploma, certificate, or degree at the college or high school.

(i) At the request of the director of a training school having custody of juveniles committed to the Department of Juvenile Justice and Delinquency Prevention, a college may make available to these juveniles any course offered by that college if they meet the course admission requirements. The director's request shall include the director's approval for each juvenile to enroll in the course.

Authority G.S. 115D-1; 115D-1.1; 115D-5; 115D-20; S.L. 1995, c. 625.

SUBCHAPTER 02E – EDUCATIONAL PROGRAMS

SECTION .0400 – INDUSTRIAL SERVICES

23 NCAC 02E .0402 WORK STATION OCCUPATIONAL SKILLS TRAINING

(a) Training as defined by this Rule is designed to assist manufacturing, service, and/or governmental organizations with in-service training of their employees. The goal is the development of skilled workers to support the continued

economic growth of the North Carolina economy thereby enhancing the quality of life for the citizens of the state. Courses supported with public funds that provide occupational skills training at an individual work station must meet the following conditions:

- (1) Training courses shall be available to all local companies.
- (2) Training shall occur in the facilities or at the sites in which the company normally operates.
- (3) Trainees may be newly-hired employees who need job skills training or existing employees who need job skills up-grading.
- (4) Training shall be conducted at the employee's assigned work station during normal working hours.
- (5) Training shall be directly related to job skills.
- (6) Training shall prepare new or current employees to use technology, equipment, or production processes.
- ~~(7) —~~

(b) Colleges are encouraged to offer work station based courses in those situations where the development of job skills is dependent on technology, equipment or production processes in the work environment which cannot be duplicated in a traditional classroom or laboratory training setting. The purpose of work station based training is to teach the skills of a particular job. The instruction provided shall not duplicate or supplant company training.

(c) Colleges may offer work station based training, as defined in this Rule, in the following ways:

- (1) Occupational Extension at the Work Station: A college may teach an occupational extension course at an individual's work station if the training is provided by a community college instructor, the trainee is in a full-time training capacity, and the training is offered consistent with Rules 23 NCAC 02D.0324 and 23 NCAC 02E.0101(2)(a). The employee shall not be performing any work duties during the training.
- (2) Structured On-the-Job Training: Structured On-the-Job Training shall earn FTE on a contact hour basis for the applied learning component. Structured On-the-Job Training shall meet the following criteria:
 - (A) The applied learning component shall be listed on the State Board approved Continuing Education Master Course List.
 - (B) The number of instructional hours, classroom based and applied learning component, shall not exceed the Continuing Education Master Course List authorized hours.
 - (C) The applied learning component shall be delivered by a community college

instructor to complement classroom-based training.

- (D) All instructional components shall follow a structured training outline. The outline shall be kept on file at the college until released by audit.
- (3) Customized On-the-Job Training: Colleges may offer Customized On-the-Job Training as an occupational extension course when an outline of the proposed training course, including learning objectives and training assessments, has been approved in advance by the System President. Customized On-the-Job Training classes shall be limited to 15 trainees per instructor, consist of no more than 240 hours of total training hours per trainee, and shall be taught by a community college instructor. If these criteria are met, the college will earn budget FTE on a contact hour basis.
- (4) Company-Provided Training: When a college can document that the public purpose is justified, the college may use Occupational Extension funds to reimburse company instructors for providing training. The public purpose shall be justified when the skills taught in the course are transferable to work in other companies involved in the same or similar industry cluster, such that the benefit to the public is the development of a skilled workforce. Company instructors shall operate in a full-time training capacity during the designated instructional periods, and shall follow a structured training outline that is jointly developed by the college and the company. The training outline including the public purpose documentation shall be kept on file at the college until released by audit. Company-Provided Training shall earn the administrative component only of the budget FTE. Company Provided Training shall be limited to no more than 15 trainees per instructor, no more than 240 hours of total training per trainee, and shall be taught by a company instructor.

(d) Content of all courses offered under this Rule shall be supported by an analysis of the job for which training is offered. The job analysis shall designate each separate task within a job and assign a number of hours required to teach each separate task.

- (e) A work station based course shall not be offered on a repetitive or recurring basis to the same employees within the same organization. An employee may not take a given course more than twice. ~~(2) — The college shall retain in its files a course outline and documentation substantiating each course.~~

An instructor conducting training under this Rule ~~of an in-plant course~~, whether an employee of the organization in which the course is offered or an employee of the sponsoring college, shall not, during hours of instruction, be involved in any activity other

than instruction. An instructor shall not engage in any administrative, supervisory, or operational functions of the organization in which a course is offered during those hours when ~~he or she~~ the instructor is partially or totally paid by the college. An ~~appropriate~~ official of the organization in which the course is offered shall agree in writing to these conditions.

Authority G.S. 115D-5.

23 NCAC 02E .0403 INSTRUCTION TO CAPTIVE OR CO-OPTED GROUPS

(a) A college is required to obtain State Board approval prior to providing instruction to students who are classified captive or co-opted. Captive or co-opted groups of students are defined as inmates in a correctional facility; military personnel enrolled in classes open only to military personnel; clients of sheltered workshops, domiciliary care facilities, nursing facilities, mental retardation centers; substance abuse rehabilitation centers; and in-patients of psychiatric hospitals. Approval by the State Board of Community Colleges shall constitute approval of the curriculum program or occupational extension course(s) and the group to be served by the college.

(b) Instruction to captive or co-opted groups may be approved when the State Board determines that the proposed instruction for the group is not a function of the requesting agency, and the instruction is within the purpose of the community college.

(c) Instruction to captive or co-opted groups may be approved in the form of curriculum programs or courses and occupational extension courses. State Board of Community Colleges (SBCC) approved curricula for Captive or co-opted groups shall include changes in programs of study and SBCC approved occupational extension course modifications. Physical education or work experience may not be a part of a curriculum program in a correctional setting.

(d) Basic Skills programs or courses are exempt from prior approval requirements of this Rule.

(e) Policies governing student enrollment in curriculum programs or courses and occupational extension courses shall be consistent with general college policies.

Authority G.S. 115D-1; 115D-5.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rule cited as 25 NCAC 01L .0104. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: January 15, 2002

Time: 10:00 a.m.

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

Reason for Proposed Action: *This Rule is proposed to be amended in order to provide agencies and universities a choice of three options for analyzing their workforce when measuring*

under-representation of each demographic group. Each option will allow agencies and universities to consider a geographical recruiting area in determining the pool of available workers. Modifications by the Office of Federal Contract Compliance to the standard currently in the Rule became effective December 13, 2000.

Comment Procedures: *Written comments may be submitted to Nellie Riley, Hearing Officer, 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 January 16, 2002.*

Fiscal Impact

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

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01L - EQUAL OPPORTUNITY

SECTION .0100 - EQUAL EMPLOYMENT OPPORTUNITY PLANS AND PROGRAMS

25 NCAC 01L .0104 PROGRAM IMPLEMENTATION: AGENCY AND UNIVERSITY LEVEL

(a) Each state agency head and University Chancellor shall develop and implement an agency or university equal employment opportunity program and plan.

(b) Each state agency and university shall submit a plan by March 1 or each year to the Office of State Personnel for review, technical assistance and approval by the Director of State Personnel. The Plan and program will be approved if it complies with the requirements in this rule.

(c) Each state agency's and university's equal employment opportunity plan and program shall include but not be limited to the following elements:

- (1) The State EEO policy and an EEO policy statement applicable to the agency or university. The policy shall commit the agency or university to equal employment opportunity, prohibit discrimination provide equal employment opportunity to applicants and employees without regard to race, color, national origin, religion, creed, sex, age, or disability; list applicable laws, regulations and guidelines pertaining to EEO compliance including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1968 as amended, Executive Order 11246 as amended, the Rehabilitation Act of 1973, the Civil Rights Restoration Act of 1988, the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991, G.S. 126-16 as amended and other state EEO and anti-discrimination laws or statutes; provide a provision prohibiting

- retaliatory actions against employees who file a complaint or charge of employment discrimination, testify, assist or participate in any manner in a hearing, proceeding or investigation of employment discrimination; provide provisions to commit agency or university to non-discriminatory practices in recruitment, selection, hiring, promotion, compensation, performance appraisal, disciplinary and grievance procedures, separations, and reduction in force; describe provisions for providing reasonable accommodation for persons with disabilities; provide a provision for preventing harassment, including sexual harassment; provide provisions describing the accountability of agency head or chancellor, managers, supervisors and others for EEO compliance; provide provisions for monitoring and evaluating the plan and program effectiveness; and include the signature of the agency head or the chancellor and date;
- (2) the assignment of responsibility and accountability. The assignment of responsibility and accountability shall describe the responsibilities of the following:
- (A) the agency head or the university chancellor responsibilities shall include, but are not limited to: the appointment or designation of a management-level official responsible to oversee the EEO program; communication of agency or university commitment to EEO policies, plans, and procedures to all employees, applicants and the general public; providing necessary resources to ensure the successful implementation of the EEO program; and ensuring the development and implementation of policies, procedures, and programs necessary to achieve a workforce in each occupational category that reflects the N.C. State working population as defined by U.S. Census data;
- (B) the managers and supervisors responsibilities shall include, but are not limited to: assisting in the development and implementation of the EEO plan and program; establishing program objectives; maintaining a diverse workforce for the department, division, work unit, or section; assisting the EEO officer in periodic evaluations to determine the effectiveness of the EEO program; and providing a work environment and management practices which support equal opportunity in all terms and conditions of employment;
- (C) the EEO Officer(s) responsibilities shall include, but are not limited to: the interpretation and application of Federal laws, state statutes, policy regulations and guidelines related to discrimination in employment and equal opportunity; reviewing hiring recommendations for compliance with EEO program objectives prior to the final agency or university hiring decision; maintaining and analyzing workforce utilization data for development of the equal employment plan and program in conjunction with management; maintaining and analyzing data on employment practices to monitor and evaluate the effectiveness of the EEO program and make recommendations; advising management of the program's impact and effectiveness on workforce demographics at all occupational levels; providing or coordinating EEO training for management and employees; providing confidential counseling or consultation for management and employees in matters involving EEO concerns or complaints alleging discrimination (formally, informally and within agency or university guidelines); establishing and maintaining effective working relations with groups concerned with equal employment opportunity; coordinating special programs (internally or in cooperation with State Personnel) to achieve program objectives and to provide for management and employee input and assistance in program development and implementation; presenting information on the EEO plan and program to management and employees on a regular basis;
- (D) the EEO Committee responsibilities shall include, but are not limited to: serving as a communication link between managers and employees and the EEO staff on aspects of the EEO plan and program; reviewing and evaluating the equal employment opportunity plan and program; reviewing workforce representation data in each occupational category; surveying the organizational climate, employee attitudes and evaluating the resultant data; meeting with the agency head or university chancellor

- in conjunction with the EEO Officer to discuss EEO programs, report on the employees' concerns, and recommend changes or additions to the EEO policy, plan, or program; identifying recruitment resources and other activities designed to strengthen the EEO program; meeting as a committee at least quarterly;
- (3) the dissemination procedures. These procedures shall include methods for communicating the commitment, intent, and provisions of the EEO plan and program to employees and the general public;
 - (4) the workforce analysis. This analysis shall be used to examine the representation of each demographic group within each occupational category using one of the following three bases for comparison:
 - (A) the N.C. working populations (ages 18-64) as established by the U.S. Census. The statewide NC working population shall be used for the officials and administrators, management related and professional occupational categories and the geographical recruiting area working population shall be used for the other occupational categories; or
 - (B) two factor analysis as defined by the Office of Federal Contract Compliance Programs (OFCCP) regulations; or
 - (C) NC Occupational specific civilian labor force and NC working population (18-64) compromise standard. The occupation specific labor force of each demographic group and the working population by each demographic group will be compared to the agency or university workforce. An average of the underutilization resulting from the comparisons of the two criteria shall be used to determine the workforce underutilization by occupational category for each demographic group. When calculating the underutilization resulting from the occupation specific/working population comparison, the statewide working population and the statewide occupational specific category compromise numbers shall be used for analyzing the officials and administrators, management related and the professional occupational categories. When calculating the underutilization resulting from the occupation specific/working population comparison, the working population in the local geographical recruiting area and the occupation specific category compromise numbers in the local geographical recruiting area may be used for analyzing the other occupational categories. Only one basis or criteria for comparison may be selected for use by an agency head or university chancellor. The analysis shall identify each occupational category in which groups are underutilized, as defined as having fewer employees in a demographic group in a particular occupational category than would be expected based on the selected basis or criteria for comparison. The analysis shall also assess the agency's or university's workforce needs and capability for addressing the identified underutilization;
 - (5) the program objectives. These objectives shall establish specific strategies targeted at eliminating or reducing any underutilization identified in each occupational category;
 - (6) the program activities and strategies. These activities and strategies shall be implemented to accomplish program objectives. These strategies shall include, but are not limited to, the following:
 - (A) recruitment procedures to attract a diverse pool of applicants to each occupational category;
 - (B) disciplinary process designed to provide equitable treatment for all employees in accordance with the State's discipline policy;
 - (C) selection procedures designed to ensure that all of the steps in the process are nondiscriminatory and job related;
 - (D) hiring process designed to include consistent information for new hires regarding employment conditions (e.g. type of appointment, salary, etc.);
 - (E) promotion procedures designed to enhance upward mobility and fully utilize the skills of the existing workforce;
 - (F) training procedures designed to enhance employee development and advancement opportunities;
 - (G) compensation and benefits analysis procedures designed to review benefits; monitor salaries; and analyze practices in order to determine trends; and to ensure that all employees receive compensation and benefits without discrimination;

PROPOSED RULES

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| <p>(H) performance appraisal, a system to hold managers and supervisors accountable for the progress of the agency's or university's EEO program; to establish, maintain, and apply employee performance standards that are free from bias;</p> <p>(I) transfer or separation analysis designed to identify trends and to measure impact on underutilized groups;</p> <p>(J) grievance procedures to ensure fair and equitable review of complaints in accordance with agency or university procedures and State policy on grievance; and</p> <p>(K) a process to enroll managers and supervisors in the Equal Employment Opportunity Institute (EEOI), an EEO educational and diversity training program, as defined by G.S. 126-16.1;</p> <p>(7) an evaluation mechanism. This evaluation mechanism shall be designed to assess overall effectiveness of the equal employment opportunity program and to determine the achievement of agency or university EEO objectives as identified in the EEO plan and program;</p> <p>(8) a reporting mechanism. This reporting mechanism shall be designed to provide agency or university management, on a regular basis throughout the year, with data on the various program activities, workforce trends,</p> | <p>and progress towards achievement of program objectives;</p> <p>(9) procedures to prevent and eliminate harassment. These procedures shall be designed to create an environment that is fair to all employees without regard to race, sex, age, national origin, color, creed, religion, or disability;</p> <p>(10) reduction-in-force procedures. These procedures shall be designed to analyze layoff decisions and to determine their actual or potential adverse impact on underutilized groups; and</p> <p>(11) procedures for monitoring. These procedures shall establish a data management system for maintaining and analyzing data on transactions regarding agency or university trends in compensation, promotion, selection, recruitment, training, separations, performance appraisals, and all other terms and conditions or employment.</p> <p>(d) Each state agency head and university chancellor shall designate an official at the deputy secretary, assistant secretary or vice-chancellor or assistant vice-chancellor level or high level official with a direct reporting relationship to the agency head, or chancellor, to assume responsibility for the operation and implementation of their equal opportunity plan and program.</p> |
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Authority G.S. 126-4(10); 126-16; 126-19.

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 01 – DEPARTMENT OF ADMINISTRATION

Editor's Note: *This publication will serve as Notice of Rulemaking Proceedings for permanent rulemaking and as Notice of Proposed Temporary Rule-making as required by G.S. 150B-21.1(a).*

Rule-making Agency: *NC Department of Administration*

Rule Citation: *01 NCAC 30D .0302*

Authority for the rulemaking: *S.L. 2001-442, Sec. 6(c)*

Reason for Proposed Action: *Under S.L. 2001-442, Sec 6(c), the General Assembly granted authority to the State Building Commission to adopt temporary rules to authorize open-end design agreements for design and construction of wetland, stream, and buffer creation, mitigation, and restoration projects. However, the General Assembly required that the Commission publish a notice of intent to adopt a temporary rule in the North Carolina Register. This filing serves as that notice.*

Comment Procedures: *Written comments may be submitted to T. Brooks Skinner, Jr., General Counsel, North Carolina Department of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301 until January 17, 2002.*

CHAPTER 30 – STATE CONSTRUCTION

SUBCHAPTER 30D - STATE BUILDING COMMISSION DESIGNER AND CONSULTANT SELECTION POLICY

SECTION .0300 - SELECTION OF DESIGNERS OR CONSULTANTS

01 NCAC 30D .0302 PRE-SELECTION

A pre-selection committee shall be established for all projects requiring professional service. On minor projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and one representative from the State Construction Office. On major projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and two representatives from the State Construction Office. At least one member of all pre-selection committees shall be a licensed design professional.

- (1) General Procedure for All Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project. This step should normally take place prior to public advertisement in the Purchase Directory, because designers and consultants have a significant need to know in advance the program intent of a project in order to

demonstrate their qualifications for the project in their letter of interest. The Capital Projects Coordinator shall receive all letters of interest and other qualification information either directly or from the designated contact person. After a pre-selection priority list is prepared, the list will remain confidential except to the Secretary of the SBC. If fewer than three letters of interest are received on major projects, the project will be readvertised in the Purchase Directory. If fewer than three letters of interest are received following the re-advertisement, the Capital Projects Coordinator may proceed with the selection process using the data received or may advertise again.

- (2) Special Procedures for Minor Projects: The Capital Projects Coordinator shall again review with the using agency the requirements of the project and the qualifications of all firms expressing interest in a specific project. The Capital Projects Coordinator and a representative of the using agency shall meet with the representative from the State Construction Office for the evaluation of each firm and development of a list of three firms in priority order to be presented to the SBC. The Capital Projects Coordinator may institute the interview procedures, under major projects, where special circumstances dictate such need. The Capital Projects Coordinator shall submit to the Secretary of the SBC the list of three firms in priority order, including pre-selection information and written recommendations, to be presented to the SBC. The Capital Projects Coordinator shall state in the submission to the SBC that the established rules for public announcement and pre-selection have been followed or shall state full particulars if exceptions have been taken.
- (3) Special Procedures for Major Projects: The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The Capital Projects Coordinator shall state in his submission that the established rules for public announcement and pre-selection have been followed or shall

- state full particulars if exceptions have been taken.
- (4) **Special Procedures for Emergency Projects:** On occasion, emergency design or consultation services may be required for restoration or correction of a facility condition which by its nature poses a significant hazard to persons or property, or when an emergency exists. Should this situation occur, in all likelihood there will not be sufficient time to follow the normal procedures described herein. The Capital Projects Coordinator on these rare occasions is authorized to declare an emergency, notify the State Construction Office and then obtain the services of a competent designer or consultant for consultation or design of the corrective action. In all cases, such uses of these emergency powers will involve a written description of the condition and rationale for employing this special authority signed by the head of the agency and presented to the SBC at its next normal meeting. Timeliness for obligation of funds or other non-hazardous or non-emergency situations do not constitute sufficient grounds for invoking this special authority.
- (5) **Annual Contract:** A Funded Agency or a Using Agency may require the services of designer(s) or consultant(s) for small miscellaneous projects on a routine basis. In such cases, designer(s) or consultant(s) for annual contracts will be selected in accordance with the above procedures for minor projects. In addition, no annual contract fee will exceed fifty thousand dollars (\$50,000.00) in total volume and no single fee shall exceed ten thousand dollars (\$10,000.00). Annual contracts may be extended for one additional year. However, if extended for an additional one-year period, the designer may not be selected for the next annual contract. Total annual fees will not exceed fifty thousand dollars (\$50,000.00) for first year or one hundred thousand dollars (\$100,000.00) for two-year period. If and when these fees are used to limit, the agency must readvertise.
- (6) **Special Procedures for Department of Environment and Natural Resources:** For Division of Water Quality projects under the Wetlands Restoration Program, the Funded Agency may require the services of multiple designer(s) or consultant(s) for design and construction management of wetland, stream and riparian buffer restoration projects on a routine basis. In such cases, designer(s) or consultant(s) for such open-ended contracts will be selected in accordance with the procedures described for major projects. This does not preclude the Funded Agency's use of the designer selection procedures specified for

major or minor projects if it elects to do so. The total volume of business in terms of negotiated design fee shall not exceed seven hundred thousand dollars (\$700,000) for the biannual contract term and no single project fee is to exceed three hundred fifty thousand dollars (\$350,000). In no case will individual projects exceeding one million five hundred thousand dollars (\$1,500,000) in total costs be assigned for design under an open-end agreement. Open-end agreements under this procedure shall not be extended beyond a two-year term. The Funded Agency must readvertise on a biannual basis.

*Authority G.S. 143-135.25; 143-135.26;
S.L. 2001-442, Sec. 6(c).*

Editor's Note: *This publication will serve as Notice of Rulemaking Proceedings for permanent rulemaking and as Notice of Proposed Temporary Rule-making as required by G.S. 150B-21.1(a).*

Rule-making Agency: *NC Department of Administration*

Rule Citation: *01 NCAC 35 .0101, .0103, .0201-.0205, .0301-.0302, .0304-.0306, .0308-.0309*

Authority for the rulemaking: *G.S. 143-340(26)*

Reason for Proposed Action: *The SECC has grown significantly in recent years with more charitable organizations applying to participate every year. More detailed application procedures have become necessary as have clarification of local responsibilities and tightening of pledge processing procedures. The new rules are designed to provide more flexibility in providing financial information for small organizations and an application fee of \$25.00 is needed to help defray the costs of processing applications without having to deduct the costs from employee contributions. There are several technical changes included as well.*

Comment Procedures: *Written comments may be sent to T. Brooks Skinner, Jr., General Counsel, NC Department of Administration, 1301 Mail Service Center, Raleigh, NC 27612-1301 until January 17, 2002.*

CHAPTER 35 - STATE EMPLOYEES COMBINED CAMPAIGN

SECTION .0100 – PURPOSE AND ORGANIZATION

01 NCAC 35 .0101 DEFINITIONS

For purposes of this Chapter, the following definitions apply:

- (1) "Charitable organization." A non-partisan organization that is tax-exempt for both the IRS and N.C. tax purposes. The organization must receive contributions that are tax deductible by the donor.

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| <p>(2) "Audit" or "audited financial statement." An examination of financial statements of an organization by a CPA, conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.</p> <p>(3) "State Employees Combined Campaign" or "SECC." The official name of the state employees charitable fund-raising drive.</p> <p>(4) "Federation" or "Federated Group" means a group of voluntary charitable human health and welfare agencies organized for purposes of supplying common fund-raising, administrative, and management services to its constituent members.</p> <p>(5) "Fund-raising expenses" (supporting activities) means expenses of all activities that constitute, or are an integral and inseparable part of, an appeal for financial support. Fund-raising expenses represent the total expenses incurred in soliciting contributions, gifts, grants, etc.; participating in federated fund-raising campaigns; maintaining donor mailing lists; preparing and distributing fund-raising manuals, instructions and other materials; and conducting other activities involved with soliciting contributions.</p> <p>(6) "Administrative expenses" (supporting activities) means expenses for reporting and informational activities related to business management and administrative activities which are neither educational, nor direct conduct of program services, nor fund-raising services.</p> <p>(7) "Program service expenses" means expenses for those activities that the reporting organization was created to conduct which fulfill the purpose or mission for which the organization exists, exclusive of fund-raising and administrative expenses, and which, along with any activities commenced subsequently, form the basis of the organization's current exemption from tax.</p> <p>(8) "Fund-raising consultant" means any person who meets all of the following:</p> <ul style="list-style-type: none"> (a) Is retained by a charitable organization or sponsor for a fixed fee or rate under a written agreement to plan, manage, conduct, consult, or prepare material for the solicitation of contributions in this State; (b) Does not solicit contributions or employ, procure, or engage any person to solicit contributions; and (c) Does not at any time have custody or control of contributions. | <p>(9) "Fund-raising solicitor" means any person who is not a fund-raising consultant and does either of the following for compensation:</p> <ul style="list-style-type: none"> (a) Performs any service, including the employment or engagement of other persons or services, to solicit contributions for a charitable organization or sponsor; or (b) Plans, conducts, manages, consults, whether directly or indirectly, in connection with the solicitation of contributions for a charitable organization or sponsor. <p>(10) "Review" or "reviewed financial statement." An examination of financial statements of an organization by a CPA. The CPA performs inquiry and analytical procedures that provide the CPA with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.</p> |
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Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0103 ORGANIZATION OF THE CAMPAIGN

The State Employees Combined Campaign is organized as follows:

- (1) Chair. Each year the Governor may appoint a Statewide Combined Campaign Chair from one of the Executive Cabinet, Council of State, System of Community Colleges, or University Administration agencies. The Campaign Chair shall serve as director of the campaign. The responsibilities of the Chair include enlisting the support and cooperation of the head of each state department and university in coordinating an effective campaign, promoting the participation of all employees at all levels of campaign policy and operation, setting the dates and approving the published materials for the Combined Campaign, contracting for the Statewide Campaign Organization, and appointing members to and serving as chair of the SECC Advisory Committee. For the purposes of selecting a Statewide Campaign Organization, the Statewide Combined Campaign Chair will consider the following criteria:
 - (a) The organization must have demonstrated ability to manage large-scale fund-raising campaigns.
 - (b) The organization must have the ability and willingness to work with a statewide system of local organizations capable of effectively managing local combined campaigns

- and relating to the Statewide Campaign Organization.
- (c) The organization must have an audit to demonstrate acceptable financial accountability.
 - (d) The organization must be a tax-exempt organization under the Internal Revenue Code.
 - (e) The organization must be willing and able, if required, to provide a bond in an amount satisfactory to the SECC Advisory Committee to protect the participant organizations and contributors.
- (2) SECC Advisory Committee. This ongoing committee serves as a central application point for all charitable organizations applying to participate in the SECC.
- (a) The committee recommends overall policy for the campaign to the Governor, the Statewide Campaign Chair, and necessary state agencies and recommends the criteria for participation by charitable organizations. The committee reviews the recommendations made by the Statewide Campaign Organization and accepts or rejects its recommendations. Prior to each year's campaign, the SECC Advisory Committee shall approve a budget to cover all of its costs related to the campaign and shall develop an annual work plan. The committee may, in its discretion, require the Statewide Campaign Organization to provide a bond, as provided in Item (1)(e) of this Rule.
 - (b) The committee is composed of at least 20 state employee members appointed by the Statewide Campaign Chair. Members serve four-year staggered terms. If a vacancy occurs, the Statewide Campaign Chair shall appoint a replacement to fill the unexpired term. No member shall serve more than two consecutive terms of four years.
 - (c) The SECC Advisory Committee will meet at the discretion of the Statewide Campaign Chair; however, no fewer than four meetings per year will be held. The SECC Advisory Committee shall conduct business only when a quorum of one-third of the committee membership, including the Statewide Campaign Chair or a designee is present.
 - (d) Any State employee who serves on the SECC Advisory Committee shall not participate in any decision where that employee may have a conflict of interest or the appearance of a conflict of interest, either of a personal nature or with regard to the agency in which the employee works. Any SECC Advisory Committee member who is also a member or a charitable organization's board or serves in a significant leadership role shall recuse himself from taking part in deliberation or voting on matters by which that charitable organization may be impacted.
- (3) Statewide Campaign Organization. The Statewide Campaign Organization shall be selected by the Statewide Campaign Chair. The entity selected to manage the campaign shall conduct its own organization operations separately from duties performed as the Statewide Campaign Organization. The duties of the Statewide Campaign Organization include, but are not limited to, the following:
- (a) serving as the financial administrator of the SECC;
 - (b) determining if the applicant agencies meet the requirements of Rule .0202 of this Chapter;
 - (c) submitting to the Statewide Campaign Chair the name of an organization to serve as Local Campaign Organization;
 - (d) providing centralized pledge processing services in order to process all pledge forms of state employees;
 - (e) compiling reports for the SECC Advisory Committee and notifying federations and independent agencies no later than March 1 following the close of the campaign on December 1 of the amounts designated to them and their member agencies and of the amounts of the undesignated funds allocated to them;
 - (f) transmitting quarterly to each federation and independent agency its share of the state employees funds. Interest earnings will be disbursed to each participating federation and independent agency based on its proportionate share of the campaign's total gross contributions if an interest bearing account is established. Undesignated funds shall be distributed in accordance with the rules in this Chapter;
 - (g) printing and distributing the pledge form, the campaign report form and collection envelopes to the Local Campaign Organization;

- (h) maintaining an accounting of all funds raised and submitting an interim unaudited end-of-campaign report of the following:
 - (i) amounts contributed and pledged;
 - (ii) number of contributions; and
 - (iii) amounts distributed to each participating agency;
 - (i) once applications for acceptance into the campaign have been recommended to the SECC Advisory Committee by the Statewide Campaign Organization, preparing a list of all accepted organizations and distributing them to all applicants;
 - (j) coordinating an annual statewide or regional training session for Local Campaign Organizations and state employee volunteers;
 - (k) serving as liaison to participating charitable organizations;
 - (l) providing staff to administer the SECC in consultation with SECC Advisory Committee;
 - (m) preparing an itemized budget of anticipated campaign and administrative expenses for the SECC;
 - (n) preparing a suggested annual work plan of goals and objectives for the SECC;
 - (o) educating state employees in the services provided through their support;
 - (p) overseeing the operations of the Local Campaign Organizations to ensure that they are performing their duties;
 - (q) deducting, before disbursements are made, direct costs of operating the campaign from the gross contributions and charging each federation or independent agency its proportionate share of the campaign's operational cost. The Statewide Campaign Organization and Local Campaign Organizations shall justify the actual costs of the campaign, which should not exceed 10% respectively of gross contributions;
 - (r) maintaining records related to campaign activities; and.
 - (s) providing such other central management functions as may be agreed upon as essential in its contract with the State Campaign Chair.
- (4) Local Campaign Chair. The Governor, if asked by the local charitable organizations accepted into the Combined Campaign, may appoint an area representative from either state government or the University of North Carolina system to serve as the Local Chair. This person will be responsible for forming a Local Advisory Committee for recruitment of volunteer state employees, **enlisting and** confirming top management support, communicating to area state employees the Chair's support for and participation in the campaign, and providing that the campaign is conducted using the knowledge and expertise of the SECC to insure success.
- (5) Local Advisory Committee. This committee is responsible for the review of past performance, the establishment of local goals as needed, the distribution of any undesignated funds made available for distribution, the development of a budget and campaign plan, the approval of local publicity materials, the conduct of the campaign, and the recognition of volunteers and contributors. (a) The committee is composed of at least 10 state employee members appointed by the Local Campaign Chair. Members serve four-year staggered terms. If a vacancy occurs, the Local Campaign Chair shall appoint a replacement to fill the unexpired term. No member shall serve more than two consecutive terms of four years.
- (b) The Local Advisory Committee will meet at the discretion of the Local Campaign Chair. The Local Advisory Committee shall conduct business only when a quorum of one-third of the committee membership, including the Local Campaign Chair or a designee is present.
- (6) The Campaign Chair shall approve or reject the State Campaign Organization's recommendation for Local Campaign Organization and name an agency as the Local Campaign Organization. The Local Campaign Organization must identify itself on all printed materials as the local SECC organization.
- (a) Any SECC charitable organization wishing to be selected as a Local Campaign Organization must submit a timely application in accordance with the deadline set by the Statewide Campaign Organization that includes:
- (i) A written campaign plan sufficient in detail to allow the SCO to determine if the applicant could administer an efficient and effective SECC. The campaign plan must include a proposed SECC budget that details all estimated costs required to operate the SECC. The

- budget may not be based on the percentage of funds raised in the local campaign.
 - (ii) A statement signed by the applicant's director or equivalent pledging to:
 - (A) administer the SECC fairly and equitably,
 - (B) conduct campaign operations (such as training, kick-off and other events) separate from the applicant's non-SECC operations, and
 - (C) abide by the directions, decisions and supervision of the Statewide Campaign Organization, State Advisory Committee and the Local Campaign Advisory Committee.
 - (iii) A statement signed by the applicant's director or equivalent acknowledging that applicant is subject to the provisions of 01 NCAC 35, State Employees Combined Campaign.
 - (b) For the purpose of selecting a Local Campaign Organization, the Statewide Campaign Chair and Statewide Campaign Organization will consider the following criteria:
 - (i) whether the local organization is willing to conduct a local SECC;
 - (ii) whether the organization agrees to comply with the terms of the State/Local Organizations contract;
 - (iii) whether the organization has community and state employee support and volunteer involvement;
 - (iv) whether the organization has a demonstrated ability and successful history of managing fund-raising campaigns that include:
 - (A) development of campaign strategy;
 - (B) development of campaign materials;
- (C) development of volunteer campaign structures;
- (D) training of volunteer solicitors;
- (E) a financial structure and resources that can efficiently manage, account for, and disburse funds;
- (F) being a participant organization of the campaign;
- (G) ability to develop financial relationships with a network of statewide organizations so as to ensure the orderly transmittal, disbursement, accounting of, and reporting of donations and pledges;
- (v) whether the organization is willing and able to provide a bond, if required, in an amount satisfactory to the SECC Advisory Committee to protect the participant organizations and contributors.
- (c) The Local Campaign Organization shall assist the Local Campaign Chair and Local Campaign Advisory Committee in the training of volunteers, the ordering and distribution of campaign literature, and the collection of pledge reports and envelopes from the state agency volunteers.
- (7) A three-year contract between the state and the Statewide Campaign Organization, and the Statewide and Local Campaign Organizations, will be executed in order to develop an acceptable audit trail. The contracts will allow a reasonable charge for campaign expenses to be claimed by the Statewide Campaign Organization and the Local Organization. All terms and conditions of these contracts are subject to review and approval by the Statewide Campaign Chair.
 - (a) The Statewide Campaign Organization and Local Campaign Organizations shall recover from gross receipts of the campaign their expenses which should reflect the actual costs of administering the

campaign. Actual costs of the campaign must be justified and should not exceed 10% of gross receipts. The campaign expenses shall be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts. The SECC Advisory Committee reserves the right to waive the 10% annual fee. No direct costs associated with the campaign will be borne by the State. All costs shall be borne by the proceeds from the campaign.(b)

The failure of the Statewide Campaign Organization or the Local Campaign Organization to perform any of its respective responsibilities listed in this Section may be grounds for removal and disqualification by the Chair to serve in its capacity for one year. Before deciding on removing or disqualifying an organization, the Chair shall give the organization an opportunity to respond to any allegations of failure to perform its responsibilities. The organization must submit its response to the Chair within 10 days from notification postmark date. The Chair shall issue a written determination based on a review of all of the information submitted.

- (8) Solicitation Campaign Organization. The campaign shall be divided into no more than 15 local administrative regions, and managed within each state department and university according to the following structure:

- (a) State Department Head and University Chancellor. The director or chancellor of each state department and university sets the tone and provides leadership for the campaign. This person shall ensure that voluntary fundraising within the department or university is conducted in accordance with these policies and procedures, communicate support for the campaign to all employees, and appoint Department Executives within the agency's or university's central office.
- (b) Department Executives. Department Executives manage the campaign at the agency or university level. The Department Executives

undertake the official statewide campaign within their agencies or university providing active and essential support. The Department Executives ensure that personal solicitations are organized and conducted in accordance with the procedures set forth in these regulations and appoint local agency coordinators at agency institutions or local offices and provide direction and guidance to the local coordinators.

- (c) Local Agency Coordinators. Local agency coordinators are appointed by their respective Department Executives and manage the campaign in agency institutions or local offices. The local agency coordinators undertake the official campaign within their institution or local office assisting in setting campaign goals and providing active and essential support. The local agency coordinators ensure that personal solicitations are organized and in accordance with the procedures set forth in these regulations and work with solicitors to achieve a successful campaign.
- (d) Local Agency Solicitors. Solicitors work with local agency coordinators to promote the campaign. Solicitors communicate the importance of the campaign to their fellow workers, encourage participation by payroll deduction, explain how to designate gifts and answer questions regarding the campaign. Solicitors personally solicit employees in their assigned area, report all pledges and contributions to the local agency coordinator and ensure that pledge forms are properly distributed, completed and collected. Solicitors also

assist in planning campaign
strategies and events.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

**SECTION .0200 - APPLICATION PROCESS AND
SCHEDULE**

01 NCAC 35 .0201 APPLICATIONS

- (a) To be eligible to participate in the State Employees Combined Campaign, an organization must apply annually for consideration, either as an independent organization or as a federation.
- (b) Independent organizations, federations and each member agency or affiliate seeking inclusion must pay a non-refundable annual application fee of twenty-five dollars (\$25.00).
- (c) Independent organizations and federations wishing to receive an application can do so by making a request in writing to the Statewide Campaign Organization. Such written requests may be made by letter, facsimile or email communication; however, oral, telephone or verbal requests shall not be honored.
- (d) Any independent organization or federation which was eligible to participate in the State Employees Combined Campaign immediately preceding the campaign for which application is currently made shall be required only to submit to the Statewide Campaign Organization its most recent information, which shall specifically update the requirements of 01 NCAC 35 .0202 and include a completed Certificate of Compliance.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0202 CONTENT OF APPLICATIONS

- (a) All organizations seeking inclusion in the State Employees Combined Campaign must submit an application to the state campaign. The application must include a completed State Employees Combined Campaign Certificate of Compliance, provided by the Statewide Campaign Organization. Included in or attached to the Certificate of Compliance must be:
 - (1) A letter from the board of directors requesting inclusion in the campaign.
 - (2) A complete description of services provided, the service area of the organization, and the percentage of its total support and revenue that is allocated to administration and fund-raising or copies of its annual report, newsletters, brochures and fact sheets as long as they include the required information.
 - (3) The most recent audited financial statement prepared by a CPA within the past two years. The SECC Advisory Committee shall permit organizations with annual budgets of less than three hundred thousand dollars (\$300,000) total support and revenue to submit an audited financial statement or review prepared by a CPA. Total support and revenue is determined by the IRS Form 990 covering the organization's most recent fiscal year ending not more than two years prior to the current year's campaign date. The CPA opinion rendered on the financial statement must be

unqualified. The year end of such audited financial statement or review must be no earlier than two years prior to the current year's campaign date. The SECC Advisory Committee may grant an exception to this requirement if an organization has filed its Articles of Incorporation with the Secretary of State's Office since March 1 of the preceding year of the current campaign.

- (4) A completed and signed copy of the organization's IRS 990 form exclusive of other IRS schedules regardless of whether or not the IRS requires the organization to file the form, to indicate program services, administrative and fund-raising expenses. The IRS 990 form and CPA audit or review shall cover the same fiscal year and, if revenue and expenses on the two documents differ, these amounts must be reconciled on an accompanying statement by the CPA who completed the financial audit or review.
- (5) A board statement of assurance of non-discrimination of employment, board membership and client services. The policy must be board approved, in written form, and available to the SECC.
- (6) A description of the origin, purpose and structure of the organization or copies of articles of incorporation and bylaws.
- (7) A list of the current members of the board, including their addresses.
- (8) A letter from the board of directors certifying compliance with the eligibility standards listed in Paragraph (b) of this Rule.
- (9) A federation may submit applications on behalf of its member agencies; however, the application shall include a completed and signed Certificate of Compliance for each member agency. If any member agency is new to the federation, or did not participate in the SECC during the previous year, the federation shall provide a complete application and sufficient documentation to show that the member agency is in compliance with all eligibility criteria. By the submission of such, the federations certify that all of their member agencies comply with all the SECC regulations, unless there are exceptions. If there are exceptions to the requirements, the federations must disclose such and explain to the satisfaction of the Statewide Combined Campaign Advisory Committee the reasons for the exception. The SECC Advisory Committee may elect to review, accept or reject the certifications of the eligibility of the member agencies of the federations. If the Committee requests information supporting a certification of eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 days of the notification postmark date constitutes grounds

for the denial of eligibility of that member agency.

- (10) The SECC Advisory Committee may elect to decertify a federation or independent agency which makes a false certification, subject to the requirement that any federation or independent agency that the Committee proposes to decertify shall be notified by the Statewide Campaign Organization of the Committee's decision stating the grounds for decertification.

The federation or independent agency may file an appeal to the Committee within 10 days of the notification postmark date. False certifications are presumed to be deliberate. The presumption may be overcome by evidence presented at the appeal hearing.

(b) Organizations must meet the following criteria to be accepted as participants in the Combined Campaign:

- (1) Must be licensed to solicit funds in North Carolina if a license is required by law and provide written proof of the same. All organizations applying as domestic or foreign nonprofit corporations must also submit a certificate of existence (for domestic corporations) or a certificate of authorization (for foreign corporations) issued by the office of the North Carolina Secretary of State pursuant to G.S. 55A-1-28.
- (2) Must provide written proof of tax exempt status for both federal income tax under Section 501(c)(3) of the Internal Revenue Code and state tax purposes under G.S. 105-125 and G.S. 105-130.11(3), respectively, but the organization must not be a private foundation as defined in Section 509(a) of the Internal Revenue Code. Organizations must certify that contributions from state employees are tax deductible by the donor under N.C. and federal law.
- (3) Must prepare and make available to the general public an audited financial statement prepared by a CPA within the past two years. The SECC Advisory Committee shall permit organizations with annual budgets of less than three hundred thousand dollars (\$300,000) total support and revenue to submit an audited financial statement or review prepared by a CPA. Total support and revenue is determined by the IRS 990 form covering the organization's most recent fiscal year ending not more than two years prior to the current year's campaign date. The CPA opinion rendered on the financial statements must be unqualified. The year end of such audited financial statement or review must be no earlier than two years prior to the current year's campaign date. The SECC Advisory Committee may grant an exception to this requirement if an organization has filed its Articles of Incorporation with the Secretary of

State's Office since March 1 of the preceding year of the current campaign.

- (4) Must provide a completed and signed copy of the organization's IRS 990 form exclusive of other IRS schedules regardless of whether or not the IRS requires the organization to file the form, to indicate program services, administrative and fund-raising expenses. The IRS 990 form and CPA audit or review shall cover the same fiscal year and, if revenue and expenses on the two documents differ, these amounts must be reconciled on an accompanying statement by the CPA who completed the financial audit or review. If fund-raising and administrative expenses are in excess of 25 percent of total revenue, must demonstrate to the satisfaction of the SECC that those expenses for this purpose are reasonable under all the circumstances of the case. The SECC may reject any application from an agency with fund-raising and administrative expenses in excess of 25 percent of total revenue, unless the agency demonstrates to the satisfaction of the Committee that its actual expenses for those purposes are reasonable under all the circumstances in its case. The Committee reserves the right to waive the 25 percent excess rule.
- (5) Must certify that all publicity and promotional activities are truthful and non-deceptive and that all material provided to the SECC is truthful, non-deceptive, includes all material facts, and makes no exaggerated or misleading claims.
- (6) Must agree to maintain the confidentiality of the contributor list.
- (7) Must permit no payments of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fund-raising, and permit no paid solicitations by a fund-raising consultant or solicitor in the SECC.
- (8) Must have a written board policy of non-discrimination on the basis of race, color, religion, sex, age, national origin or physical or mental disability for clients of the agency, employees of the agency and members of the governing board. Nothing herein denies eligibility to any voluntary agency which is otherwise eligible because it is organized by, on behalf of or to serve persons of a particular race, color, religion, sex, age, national origin or physical or mental disability.
- (9) Must provide benefits or services to state employees or their families within a solicitation area and be available through a telephone number to respond to inquiries from state employees. However, an international organization which provides health and welfare services overseas, whose activities do not require a local

presence and which meet the other eligibility criteria in these Rules, may be accepted for participation in the campaign.

- (10) If included in the previous year's campaign, must have received a minimum of two hundred and fifty dollars (\$250.00) in designated funds. If this minimum level is not attained, the organization is ineligible to apply for inclusion in the campaign for the next three years. Undesignated money shall not be used to meet the minimum requirement. This provision applies to all member agencies of federations as well as independent organizations.
- (11) Must not be created specifically to take advantage of the opportunity to participate in the SECC.
- (12) Must not use SECC contributions for lobbying activities.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0203 REVIEW AND SCHEDULE

(a) Complete applications must be submitted to the Statewide Campaign Organization by February 15 annually to be included in the fall campaign. Incomplete applications shall not be considered by the Committee. The Statewide Campaign Organization will report to the Committee its recommendation on each application within four weeks of the closing deadline. The Committee shall affirm or reject each recommendation by the Statewide Campaign Organization and shall inform the Statewide Campaign Organization of its decisions.

(b) The Statewide Campaign Organization and the Committee shall review the application materials for accuracy, completeness and compliance with these regulations. The Committee may reject an application for failing to meet any of the criteria outlined in these Rules. Failure to supply any of the information required by the application may be judged a failure to comply with the requirements of public accountability, and the applicant may be ruled ineligible for inclusion.

(c) The Statewide Campaign Organization or the Committee may request such additional information required by these Rules as they deem necessary to complete these reviews. An organization that fails to comply with such requests within 10 days of the notification postmark date may be judged ineligible.

(d) The burden of demonstrating eligibility shall rest with the applicant.

(e) If the due date in Paragraph (a) of this Rule falls on a Saturday, Sunday or a legal holiday, then the information must be received by the Statewide Campaign Organization or postmarked by the end of the next day which is not a Saturday, Sunday or a legal holiday.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0204 RESPONSE

All applicants will be notified by the Statewide Campaign Organization of the Committee's decision within 45 days of the closing deadline. An applicant who is dissatisfied with the determination of its application may file an appeal to the State Advisory Committee within 10 days of the notification postmark

date. An applicant who is dissatisfied with either the Committee's decision or the appeal determination of the Committee may commence a contested case by filing a petition under G.S. 150B-23 within 60 days of notification postmark date of the Committee's decision.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0205 AGREEMENTS

(a) Following acceptance into the SECC, federations and independent agencies shall execute a contract with the State. The parties shall agree to abide by the terms and conditions of the rules. The contract shall be signed by the State Chair, the Statewide Campaign Organization, the organization's board chair and the organization's chief executive officer.

(b) Each federation shall accept responsibility for the accuracy of the distribution amount to their member agencies. Each federation must be able to justify amounts deducted from their disbursements to participating agencies. These deductions shall not exceed 10% of gross receipts. Each federation must be willing and able to provide a bond, if required, in an amount satisfactory to the SECC Advisory Committee to protect the participant organizations and contributors.

(c) Each federation is expected to disburse on the basis of actual funds received, both designated and undesignated, rather than the amount pledged. Each federation shall disburse contributions quarterly to participating member agencies.

(d) The SECC Advisory Committee at its discretion may discontinue distribution of funds to any independent agency that ceases to comply with the criteria and procedures as set forth in these Rules. The remainder of the agency funds will be distributed as the SECC Advisory Committee may designate.

(e) In the event a federation ceases to comply with the criteria and procedures as set forth in these Rules, the SECC Advisory Committee will distribute the designated and undesignated funds contributed to the federation equally among the SECC charitable organizations under said federation.

(f) In the event a SECC charitable organization in a federation ceases to comply with the criteria and procedures as set forth in these Rules, the SECC Advisory Committee will distribute the funds contributed to that organization, designated and undesignated, to the federation for distribution in accordance with federation policy.

(g) In the event a SECC charitable organization or any of its directors, officers or employees are the subject of any investigation or legal proceeding by any federal, state or local law enforcement authority based upon its charitable solicitation activities, delivery of program services, or use of funds, the organization must disclose the same to the SECC within 10 days of its learning of the investigation or proceeding. It must also disclose within 10 days the outcome of any such investigation or proceeding.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

SECTION .0300 - GENERAL PROVISIONS

01 NCAC 35 .0301 OTHER SOLICITATION PROHIBITED

No charitable organization shall engage in any direct monetary solicitation activity at any state employee work site, except as a

participant in the State Employees Combined Campaign and in accordance with 01 NCAC 35. The prohibition does not include Red Cross sponsored Bloodmobiles or employee association solicitations.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0302 COERCIVE ACTIVITIES PROHIBITED

(a) In order to insure that donations are made on a voluntary basis, actions that do not allow free choice or that create an impression of required giving are prohibited. Peer solicitation is encouraged. Employee gifts shall be kept confidential, except that employees may opt to have their designated contributions acknowledged by the recipient organizations.

(b) All activities of the campaign shall be conducted in a manner that promotes a unified solicitation on behalf of all participants. While it is permissible to individually identify, describe or explain the charitable organizations in the campaign for informational purposes, no person affiliated with the campaign shall engage in any campaign activity that is construed to either advocate or criticize any specific charitable organization.

(c) The following activities are not permitted:

- (1) The providing and using of contributor lists for purposes other than the routine collection, forwarding, and acknowledgement of contributions. Recipient organizations that receive the names and addresses of state employees must segregate this information from all other lists of contributors and only use the lists for acknowledgement purposes. This segregated list may not be sold or in any way released to anyone outside of the recipient organization. Failure to protect the integrity of this information may result in penalties up to expulsion from the campaign.
- (2) The establishment of personal dollar goals or quotas.
- (3) The developing and using of lists of non-contributors.

(d) Violations of these Rules by a participant organization may result in the decertification of the organization. The organization shall be given notice of an opportunity to be heard prior to any action being taken by the Committee. Any organization who is dissatisfied with the determination of its decertification may file an appeal to the Committee within 10 days of the notification postmark date. An organization who is dissatisfied with either the Committee's decision or the appeal determination of the Committee may commence a contested case by filing a petition under G.S. 150B-23 within 60 days of notification postmark date of the Committee's decision.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0304 METHODS OF GIVING AND TERMS OF CONTRIBUTION

(a) Payment may be made by payroll deduction, cash, personal check or credit card. If an employee chooses to use the payroll deduction method of contributing, he/she must agree to have the deduction continue for one year with equal amounts deducted

from each check (monthly, semi-monthly or biweekly depending on the payroll). If the employee authorizes payroll deduction, the minimum amount of the deduction is five dollars (\$5.00) per month. All deductions will start with the January payroll and continue through December. If the employee discontinues employment, or actively chooses to discontinue payment, the state will not be responsible for the collection of the unpaid pledge. No deduction will be made for any period in which the employee's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustments will be made in subsequent periods to make up for deductions missed. An employee who wishes to participate in a subsequent campaign must file a new pledge form valid for the subsequent campaign.

(b) The State of North Carolina will provide new employees the opportunity to contribute to the SECC when any State or university human resources office is reviewing the final details of employment with each new employee. There shall be no implication that a contribution is a requirement for employment, but material and an interpretation of the state policy and SECC shall be provided.

(c) An employee transferred from one state agency to another must request a copy of the employee's payroll deduction authorization form from the first state agency and submit the copy to the second state agency or complete and submit an additional form if required by the second state agency.

(d) Temporary, contract and retired state employees shall be eligible to participate in the SECC.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0305 CAMPAIGN LITERATURE

(a) Each charitable organization accepted as a part of the campaign:

- (1) Shall provide adequate information about its services including administrative/fund-raising costs, to the Local Campaign Organization for use in the local campaign;
- (2) Shall not be listed more than one time in the campaign literature unless the SECC Advisory Committee, in consultation with the Statewide Campaign Organization, determine the following:
 - (A) It is in contributors' interests to more specifically direct their gifts to separate geographic locations; and
 - (B) The organization maintains records that determine that gifts so designated to that geographic area accrue only to the benefit and purposes of the organization in that designated area; and
- (3) Shall not be permitted to distribute agency material that is a solicitation or that in any way provides revenue to such charitable organization.

(b) The State Employees Combined Campaign shall provide a campaign brochure designed by the SECC Advisory Committee and all publicity will be subject to the State Chair's approval and free of undue or disproportionate publicity in favor of any one agency or federation of agencies.

(c) The State Chair shall approve, prior to distribution, the content of any campaign pledge/designation card to ensure that the information contained is accurate and complies with the State Controller's requirements for format and substance.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0306 DESIGNATION CAMPAIGN

(a) Each employee shall be given the opportunity to designate which agency or group of agencies shall benefit from his or her contribution to the State Employees Combined Campaign. Each employee will be given a list of the approved agencies in the campaign in order to help them make the decision. The state employee may only designate the federations and agencies that are listed. Write-ins are prohibited.

(b) Designations made to organizations not listed are not invalid, but will be treated as undesignated funds and distributed accordingly.

(c) Contributions designated to a federation will be shared in accordance with the federation's policy.

(d) All designated contributions shall be a minimum contribution of ten dollars (\$10.00) annually per agency designated. If a designation does not comply with the minimum required, the designation is invalid, and will be treated as undesignated funds and distributed accordingly.

(e) An employee may not change the designated agency or group of agencies designated to receive amounts pledged outside the time the campaign is being conducted.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0308 EFFECTIVE DATE OF AMENDED RULES

~~These amended rules shall be effective for the 1994 SECC and thereafter.~~

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35 .0309 CAMPAIGN OPERATION

(a) The official name of the state employee giving system of North Carolina is the State Employees Combined Campaign.

(b) The campaign solicitation period shall be conducted annually during the period after August 1 and before November 30; in any event it shall not extend beyond December 1. The Statewide Campaign Chair may specify the campaign period to be uniform statewide.

(c) The fiscal year for the State Employees Combined Campaign will be January 1 through December 31.

Authority G.S. 143-3.3; 143-340(26); 143B-10.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Commission for MHDDSAS*

Rule Citation: *10 NCAC 14V .5601-.5604*

Effective Date: *January 1, 2002*

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

Authority for the rulemaking: *G.S. 143B-147*

Reason for Proposed Action: *House Bill 387 of the 2001 Session of the General Assembly requires that the licensure of a group home for developmentally disabled adults pursuant to G.S. 131D, Article 1 be transferred to licensure as a supervised living facility for developmentally disabled adults under G.S. 122C-(3)(14)(e). The proposed amendments also clarify the populations served and staff ratios required in supervised living situations. In addition, an adoption is proposed to specify requirements for state/county Special Assistance.*

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Commission for MHDDSAS intends to adopt the rule cited as 10 NCAC 14V .5604 and amend the rules cited as 10 NCAC 14V .5601-.5603. Notice of Rule-making Proceedings was published in the Register on August 1, 2001.*

Proposed Effective Date: *August 1, 2002*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any interested person may request a public hearing by submitting a written request within 15 days after publication of this notice. The request should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012, telephone 919-881-2446, and will be accepted through January 16, 2002.*

Comment Procedures: *Written comments should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012, telephone 919-881-2446.*

Fiscal Impact

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

CHAPTER 14 – MENTAL HEALTH: GENERAL

SUBCHAPTER 14V - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .5600 - SUPERVISED LIVING FOR INDIVIDUALS OF ALL DISABILITY GROUPS

10 NCAC 14V .5601 SCOPE

(a) Supervised living is a 24-hour facility which provides residential services to individuals in a home environment where the primary purpose of these services is the care, habilitation or rehabilitation of individuals who have a mental illness, a developmental disability or disabilities, or a substance abuse disorder, and who require supervision when in the residence.

(b) A supervised living facility shall be licensed if the facility serves either:

- (1) one or more minor clients; or
- (2) two or more adult clients.

Minor and adult clients shall not reside in the same facility.

(c) Each supervised living facility shall be licensed to serve a specific population as designated below:

- (1) "A" designation means a facility which serves adults whose primary diagnosis is mental illness but may also have other diagnoses;
- (2) "B" designation means a facility which serves minors whose primary diagnosis is a developmental disability but may also have other diagnoses;
- (3) "C" designation means a facility which serves adults whose primary diagnosis is a developmental disability but may also have other diagnoses;
- (4) "D" designation means a facility which serves minors whose primary diagnosis is substance abuse dependency but may also have other diagnoses;
- (5) "E" designation means a facility which serves adults whose primary diagnosis is substance abuse dependency but may also have other diagnoses;
- (6) "F" designation means a facility in a private residence, which serves no more than three adult clients or three minor clients whose primary diagnosis is developmental disabilities who live with a family, and the family provides the service; and
- (7) "G" designation means a facility which serves minors whose primary diagnosis is a mental illness but may also have other diagnoses.

*History Note: Authority G.S. 143B-147;
Eff. May 1, 1996;
Temporary Amendment Eff. January 1, 2002.*

10 NCAC 14V .5602 STAFF

(a) Staff-client ratios shall be determined so as to enable staff to respond to individualized client needs.

(b) A minimum of one staff member shall be present at all times when any adult client is on the premises, except when the client has been assessed and deemed capable of remaining in the home or community without supervision for a specified time by a qualified mental health, developmental disabilities or substance abuse professional of the operating agency or area program. The approval shall be documented and reviewed as needed but not less than annually to ensure the client remains capable of remaining on the premises without supervision for specified periods of time.

(c) Staff shall be present in a facility in the following client-staff ratios when more than one child or adolescent client is present:

- (1) children or adolescents with substance abuse disorders shall be served with a minimum of one staff present for every five or fewer minor clients present. However, only one staff need be present during sleeping hours if specified

- (2) by the emergency back-up procedures determined by the governing body;
- (3) children or adolescents with developmental disabilities shall be served with one staff present for every one to three clients present and two staff present for every four or more clients present. However, only one staff need be present during sleeping hours if specified by the emergency back-up procedures determined by the governing body; or
- (3) children or adolescents with mental illness shall be served with one staff present for every four or fewer minor clients present. However, only one staff need be present during sleeping hours if specified by the emergency back-up procedures determined by the governing body.

(d) In facilities which serve clients whose primary diagnosis is substance abuse dependency:

- (1) at least one staff member who is on duty shall be trained in alcohol and other drug withdrawal symptoms and symptoms of secondary complications to alcohol and other drug addiction; and
- (2) the services of a certified substance abuse counselor shall be available on an as-needed basis for each client.

*History Note: Authority G.S. 143B-147;
Eff. May 1, 1996;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. January 1, 2002.*

10 NCAC 14V .5603 OPERATIONS

(a) Capacity:

- (1) A facility shall serve no more than six clients when the clients have mental illness or developmental disabilities.
- (2) Any facility licensed on June 15, 2001, and providing services to more than six clients at that time, may continue to provide services at no more than the facility's licensed capacity as of June 15, 2001.

(b) Service Coordination. Coordination shall be maintained between the facility operator and the qualified professional who is responsible for treatment/habilitation or case management.

(c) Participation of the Family or Legally Responsible Person:

- (1) Each client shall be provided the opportunity to maintain an ongoing relationship with her or his family through such means as family visits to the facility and visits outside the facility.
- (2) Reports to the parent of a minor resident, or the legally responsible person of an adult resident, shall be submitted at least annually. Reports may be in writing or take the form of a conference and shall focus on the client's progress toward meeting individual goals.

TEMPORARY RULES

(d) Program Activities. Each client shall have activity opportunities based on her or his needs and choices.

History Note: Authority G.S. 143B-147;
Eff. May 1, 1996;
Temporary Amendment Eff. January 1, 2002.

10 NCAC 14V .5604 REQUIREMENTS FOR STATE/COUNTY SPECIAL ASSISTANCE RECIPIENTS

The following applies to facilities under Rule .5601(A), (C) and (F) of this Subchapter that admit clients who participate in the Special Assistance Program administered by the Division of Social Services:

- (1) the facility shall be in compliance with the rules of this Subchapter prior to admitting Special Assistance Program recipients and receiving payment through the Special Assistance Program;
- (2) forms required by the Secretary which have been signed by a qualified professional shall be filed in the client's record and renewed annually; and
- (3) the facility shall submit a signed DSS-1464 (Civil Rights Compliance Form) upon request and comply with the legal requirements as set forth in the Civil Rights Act of 1964.

History Note: Authority G.S. 143B-147;
Temporary Adoption Eff. January 1, 2002.

Rule-making Agency: *Commission for MHDDSAS*

Rule Citation: *10 NCAC 45H .0205*

Effective Date: *January 1, 2002*

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

Authority for the rulemaking: *G.S. 90-88; 90-92; 143B-147*

Reason for Proposed Action: *With the issuance of this final rule, the Acting Administrator of the DEA specifically lists the substance dichloralphenazone, including its salts, isomers and salts of isomers in Schedule IV of the Controlled Substances Act (CSA, 21 U.S.C. 801 et seq.). As a result of this Rule, the regulatory controls and criminal sanctions of Schedule IV will be applicable to the manufacture, distribution, dispensing, importation and exportation of dichloralphenazone and products containing dichloralphenazone. The final rule became effective*

History Note: Authority G.S. 90-88; 90-92; 143B-147;
Eff. June 30, 1978;
Amended Eff. July 1, 1993; January 1, 1989; December 1, 1987;
August 1, 1987;
Temporary Amendment Eff. May 28, 1998;
Temporary Amendment Expired March 12, 1999;

August 16, 2001. It is necessary to amend the current rule to reflect the addition as specified in the federal requirement.

Comment Procedures: *Written comments should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Development Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012, telephone 919-881-2446.*

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MHDDSAS intends to amend the rule cited as 10 NCAC 45H .0205. Notice of Rule-making Proceedings is not applicable.

Proposed Effective Date: *August 1, 2002*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any interested person may request a public hearing by submitting a written request within 15 days after publication of this notice. The request should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012, telephone 919-881-2446.*

Fiscal Impact

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

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

SUBCHAPTER 45H - DRUG TREATMENT FACILITIES

SECTION .0200 - SCHEDULES OF CONTROLLED SUBSTANCES

10 NCAC 45H .0205 SCHEDULE IV

(a) Schedule IV shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name designated and as specified in G.S. 90-92. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.14.

(b) The Commission for MH/DD/SAS may add, delete or reschedule substances within Schedules I-VI as specified in G.S. 90-88.(c) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substance within Schedule IV for Depressants: Dichloralphenazone.

*Amended Eff. August 1, 2000;
Temporary Amendment Eff. January 1, 2002; February 15, 2001.*

Rule-making Agency: *DHHS/Division of Public Health*

Rule Citation: *15A NCAC 19A .0401*

Effective Date: *April 1, 2002*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 130A-134; 130A-135; 130A-139; 130A-141*

Reason for Proposed Action: *CDC recommends a varicella vaccine requirement. Senate Bill 736 has appropriated funds for a childhood varicella vaccine program.*

Comment Procedures: *Written comments concerning this rule-making action may be submitted within 60 days after the date of the publication in this issue of the North Carolina Register. Comments must be submitted to Chris Hoke, Rule-Making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001.*

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0400 – IMMUNIZATION

15A NCAC 19A .0400 was transferred from the Department of Human Resources, 15A NCAC 19A .0401 - .0403 recodified from 10 NCAC 07A .0401 - .0403, 15A NCAC 19A .0404 - .0405 recodified from 10 NCAC 07A .0405 - .0406, effective April 4, 1990.

Note: Text changes shown in bold are changes effective by temporary rulemaking effective August 1, 2001.

15A NCAC 19A .0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

- (1) Diphtheria, tetanus, and whooping cough vaccine -- five doses: three doses by age seven months and two booster doses, one by age 19 months and the second on or after the fourth birthday and before enrolling in school (K-1) for the first time. The requirements for booster doses of diphtheria, tetanus, and whooping cough vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987. However:
 - (a) An individual who has attained his or her seventh birthday without having been immunized against whooping cough shall not be required to be immunized with a vaccine preparation containing whooping cough antigen;

- (b) Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose;
 - (c) Individuals attending school, college or university or who began their tetanus/diphtheria **toxoid** series on or after the age of seven years shall be required to have three doses of tetanus/diphtheria **toxoid**.
- (2) Poliomyelitis vaccine--four doses: two doses of trivalent type by age five months; a third dose trivalent type before age 19 months, and a booster dose of trivalent type on or after the fourth birthday and before enrolling in school (K-1) for the first time. However:
- (a) An individual attending school who has attained his or her 18th birthday shall not be required to receive polio vaccine;
 - (b) Individuals who receive the third dose of poliomyelitis vaccine on or after the fourth birthday shall not be required to receive a fourth dose;
 - (c) The requirements for booster doses of poliomyelitis vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.
- (3) Measles (rubeola) vaccine--two doses of live, attenuated vaccine administered at least 30 days apart: one dose on or after age 12 months and before age 16 months and a second dose before enrolling in school (K-1) for the first time. However:
- (a) An individual who has been documented by serological testing to have a protective antibody titer against measles shall not be required to receive measles vaccine;
 - (b) An individual who has been diagnosed prior to January 1, 1994, by a physician licensed to practice medicine as having measles (rubeola) disease shall not be required to receive measles vaccine;
 - (c) An individual born prior to 1957 shall not be required to receive measles vaccine;
 - (d) The requirement for a second dose of measles vaccine shall not apply to individuals who enroll in school (K-1) or in college or university for the first time before July 1, 1994.
- (4) Rubella vaccine--one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:
- (a) An individual who has been documented by serologic testing to

- have a protective antibody titer against rubella shall not be required to receive rubella vaccine;
 - (b) An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine;
 - (c) An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 shall not be required to meet the requirement for rubella vaccine.
- (5) Mumps vaccine--one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months. However:
 - (a) An individual born prior to 1957 shall not be required to receive mumps vaccine;
 - (b) The requirements for mumps vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987 or in college or university before July 1, 1994. An individual who has been documented by serological testing to have a protective antibody titer against mumps shall not be required to receive mumps vaccine.
- (6) Haemophilus influenzae, b, conjugate vaccine--three doses of HbOC or two doses of PRP-OMP before age seven months and a booster dose of any type on or after age 12 months and by age 16 months. Individuals born before October 1, 1988 shall not be required to be vaccinated against Haemophilus influenzae, b. Individuals who receive the first dose of Haemophilus influenzae, b, vaccine on or after 12 months of age and before 15 months of age shall be required to have only two doses of HbOC or PRP-OMP. Individuals who receive the first dose of Haemophilus influenzae, b, vaccine on or after 15 months of age shall be required to have only one dose of any of the Haemophilus influenzae conjugate vaccines, including PRP-D. However, no individual who has passed their fifth birthday shall be required to be vaccinated against Haemophilus influenzae, b.
- (7) Hepatitis B vaccine--three doses: one dose by age three months, a second dose before age five months and a third dose by age 19 months. Individuals born before July 1, 1994 shall not be required to be vaccinated against hepatitis B.
- (8) Varicella vaccine--1 dose administered on or after age 12 months and before age 19 months. However:
 - (a) an individual with a laboratory test indicating immunity or with a history of varicella disease, documented by a health care provider, parent, guardian or person in loco parentis shall not be

required to receive varicella vaccine. Serologic proof of immunity or documentation of previous illness must be presented whenever a certificate of immunization is required by North Carolina General Statute. The documentation shall include the name of the individual with a history of varicella disease and the approximate date or age of infection. Previous illness shall be documented by:

- (i) a written statement from a health care provider documented on or attached to the lifetime immunization card or certificate of immunization; or
 - (ii) a written statement from the individual's parent, guardian or person in loco parentis attached to the lifetime immunization card or certificate of immunization.
- (b) an individual born prior to April 1, 2001 shall not be required to receive varicella vaccine.

History Note: Authority G.S. 130A-152(c); 130A-155.1; Eff. February 1, 1976; Amended Eff. July 1, 1977; Readopted Eff. December 5, 1977; Filed as a Temporary Amendment Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Amended Eff. October 1, 1995; October 1, 1994; January 1, 1994; January 4, 1993; Filed as a Temporary Amendment Eff. May 21, 1999; Temporary Amendment Eff. February 23, 2000; August 20, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. April 1, 2002; July 18, 2001.

Rule-making Agency: DHHS/Division of Public Health

Rule Citation: 15A NCAC 21A .0815-.0822

Effective Date: December 1, 2001

Findings Reviewed and Approved by: Julian Mann, III

Authority for the rulemaking: G.S. 130A-131.15A

Reason for Proposed Action: The 2001 Session of the North Carolina General Assembly approved Session Law 2001-424 on September 21, 2001. Governor Easley signed it into law on the 26th of September, repealing G.S. 130A-131.15, the statutes that served as the authority for the rules for Adolescent Pregnancy Prevention activities. There are 71 on-going pregnancy prevention programs, as well as numerous applicant agencies,

seeking guidance on issues affected by the proposed rules. It is vital that new, temporary rules be put into place as quickly as possible.

Comment Procedures: *Written comments concerning this rule-making action may be submitted within 60 days after the date of publication in this issue of the North Carolina Register. Comments must be submitted to Chris Hoke, Rule-making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001.*

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21A - WOMEN'S PREVENTIVE HEALTH

SECTION .0800 - TEEN PREGNANCY PREVENTION

15A NCAC 21A .0815 GENERAL

(a) The Teen Pregnancy Prevention Initiatives shall be administered by the Division of Public Health, North Carolina Department of Health and Human Services, Mail Service Center 1929, Raleigh, North Carolina, 27699-1929, (919) 733-7791. (b) In order to implement recently approved legislative actions in a timely fashion, the Division of Public Health will take the following actions prior to the end of State Fiscal Year 2001-2002. All currently funded Teen Pregnancy Prevention Projects will be notified that they have been assigned to one of four groups, based upon the date that their Teen Pregnancy Prevention funding was initiated. This grouping will allow the Division to phase out, in an orderly manner, those projects funded under the former rules of operation. Some of the projects, the Adolescent Parenting Programs, have operated under the assurance of continued funding from year to year without a requirement of reapplication. These projects will be grouped as follows:

- (1) Group one will be informed that they have one year of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2002 for grants beginning on July 1, 2003.
- (2) Group two will be informed that they have two years of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2003 for grants beginning on July 1, 2004.
- (3) Group three will be informed that they have three years of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2004 for grants beginning on July 1, 2005.
- (4) Group four will be informed that they have four years of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2005 for grants beginning on July 1, 2006.

(c) Notwithstanding Paragraph (b) of this Rule, Adolescent Pregnancy Prevention Program Projects that were approved for funding prior to December 1, 2001 will receive their annually decreasing funding amount until the end of the original five-year agreement. These projects shall be placed in the groups described in Paragraph (b) of this Rule according to the years

remaining on their original agreements. Any existing project that decides to forgo its remaining years of APPP funding and to submit an application for stable funding under the revised program rules, may do so only after submission of a notice of voluntary program termination no later than six months prior to the start of the next fiscal year.

History Note: Authority G.S. 130A-124; S.L. 1989, c. 752, s. 136; Eff. August 1, 1990; Temporary Amendment Eff. December 1, 2001.

- 15A NCAC 21A .0816 DEFINITION**The following definitions shall apply throughout this Subchapter: (1) "TPPI" means the Teen Pregnancy Prevention Initiatives which covers the Adolescent Pregnancy Prevention Program and Adolescent Parenting Program administered by the Division of Public Health. (2) "DPH" means the Division of Public Health, Department of Health and Human Services. (3) "Contractor" means a county or district health department or department of social services or other public or private agency receiving Teen Pregnancy Prevention Initiatives funding. (4) "Adolescent" means any individual 19 years of age and under. (5) "Major Equipment" means any fixed asset that has a unit cost of two thousand dollars (\$2,000) or more. (6) "Minor Remodeling" means any building or facility reconstruction project having a total cost of two thousand dollars (\$2,000) or less. (7) "Primary pregnancy prevention" means prevention of first pregnancy. (8) "Department" means the Department of Health and Human Services. (9) "The Commission" means the Commission for Health Services. (10) "Secondary pregnancy prevention" means prevention of second and higher order pregnancies.

History Notes: Authority G.S. 130A-124; 130A-131.15; Eff. August 1, 1990; Amended Eff. January 4, 1994; Temporary Amendment Eff. December 1, 2001.

15A NCAC 21A .0817 GRANT APPLICATIONS(a)

Grants shall be awarded through a request for applications (RFA) process that includes notification of potential applicant agencies of the eligibility criteria and requirements for funding. (b) Any local agency or organization or combination of agencies and organizations may apply to the DPH for an allocation of money to operate a project aimed at preventing primary or secondary adolescent pregnancy.

(c) The application shall contain an analysis of adolescent pregnancy and related problems in the locality the project would serve, and a description of how the funded project would attempt to prevent the problems. (d) The application shall state how much money is needed to operate the project and how the money shall be spent. (e) The Department shall conduct annually a pre-application conference that shall be attended by a representative

of any agency that wishes to apply for funding; that session shall define the criteria for accountability and evaluation that the Department requires of funded projects. That session shall also provide information about additional funding sources to which agencies might turn.

(f) Application Requirements – The Department shall apply the following minimum standards to agencies applying for first-year funding:

- (1) Each agency shall have a plan of action that extends throughout their funding cycle.
- (2) Each agency shall have realistic, specific, and measurable goals and objectives for the prevention of adolescent pregnancy.
- (3) Each agency, before submitting its application, shall send a representative to the pre-application conference held by the Department.

*History Note: Authority G.S. 130A-124; 130A-131.15;
Eff. August 1, 1990;
Amended Eff. January 4, 1994; August 1, 1991;
Temporary Amendment Eff. December 1, 2001.*

15A NCAC 21A .0818 MAXIMUM FUNDING LEVEL

The maximum level of funding for any one project shall be seventy-five thousand dollars (\$75,000). Local projects are required to contribute a minimum of \$10,000 match annually. This match may consist of cash and/or in-kind contributions.

*History Note: Authority G.S. 130A-124; 130A-131.15;
Eff. August 1, 1990;
Amended Eff. January 4, 1994;
Temporary Amendment Eff. December 1, 2001.*

15A NCAC 21A .0819 OPERATING STANDARDS

- (a) Upon approval of an application for grant funds a budget shall be negotiated and a contract shall be signed between the Contractor and the DPH.
- (b) Project funds shall be used solely for the purposes detailed in the approved application and budget. Expenditures for equipment require prior DPH approval.
- (c) Contractors shall not use TPPI funds for purposes that are prohibited by statute, or for the following purposes:
 - (1) purchase of inpatient care;
 - (2) purchase or improvement of land;
 - (3) purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;
 - (4) purchase of major equipment without prior approval of DPH;
 - (5) purchase or prescriptions of contraceptives;
 - (6) transportation to or from abortion services; or
 - (7) abortions.
- (d) TPPI projects shall not impose charges on clients for services.
- (e) Staff qualifications, training, and experiences shall be appropriate for implementing project activities.
- (f) Each project shall participate in required trainings with state staff and other project staff.
- (g) The start-up period before project activities are implemented shall not exceed six months.

(h) Each project shall obtain approval from the DPH prior to making changes in program goals, objectives, and target populations. .

(i) Each project shall have an advisory group composed of members both within and outside the sponsoring agency of the project. These groups shall meet at least quarterly and advise project staff on project policies and operations.

(j) Each project shall comply with reporting, contracting, and evaluation requirements of the Department. This shall include entering data on the TPPI internet-based database.

(k) Each project shall define and maintain cooperative ties with other community institutions.

(l) Each project shall demonstrate its ability to attract financial support from sources other than the State, including sources in the local community.

*History Note: Authority G.S. 130A-124;
S.L. 1989, c. 752, s. 136;
Eff. August 1, 1990.
Amended Eff. July 1, 1992.
Temporary Amendment Eff. December 1, 2001.*

15A NCAC 21A .0820 EVALUATION AND MONITORING

(a) The DPH shall make site reviews of Contractors to assess program performance.

(b) The DPH shall make periodic site visits to contractors to provide technical assistance and consultation.

(c) The Contractor shall submit in a format established by the DPH regular progress reports, including requested evaluation data, on a schedule to be determined by the DPH.

*History Note: Authority G.S. 130A-124;
S.L. 1989, c. 752, s. 136;
Eff. August 1, 1990;
Temporary Amendment Eff. December 1, 2001.*

15A NCAC 21A .0821 RENEWAL OF GRANT FUNDS

(a) Contracts for TPPI projects are subject to annual renewal for a year period based upon criteria established by the program and contingent upon the availability of funds for this purpose.

(b) A contractor that violates any of the provisions of these rules may have TPPI funding reduced or discontinued. The Department shall make the final decision to reduce or discontinue funding based upon the advice of the Commission.

*History Note: Authority G.S. 130A-124;
S.L. 1989, c. 752, s. 136;
Eff. August 1, 1990;
Temporary Amendment Eff. December 1, 2001.*

15A NCAC 21A .0822 CRITERIA FOR PROJECT SELECTION

(a) The Department shall make funding recommendations to the Commission from among the applicants that meet the minimum standards in Rule .0817 of this Subchapter. Recommendations shall also be based upon the best selection of projects according to the following criteria:

- (1) Degree of need of the locality, including that the service area has a significant adolescent

- pregnancy problem as evidenced by its adolescent pregnancy rate, attributable risk score, and/or percentage of repeat adolescent births.
- (2) Adequacy of agency and staff to meet project objectives;
 - (3) Level of community support. There should be sufficient documentation such as letters or statements of commitment from partnering organizations to show strong support for the application; and
 - (4) Existing or formerly TPPI-funded projects shall demonstrate that they have provided an effective intervention for reducing adolescent pregnancy rates among their participants.

(b) The Department shall make its recommendations for funding to the Commission. The Commission shall make the final determination of which projects are to be funded. The Commission shall consider the recommendations of the Department, but shall not be bound by them. The Department shall notify the projects that are to be funded by June 1 of each year.

*History Note: Authority G.S. 130A-131.15;
S.L. 2001-424, s. 21.89;
Temporary Adoption Eff. December 1, 2001.*

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, December 20, 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, December 14, 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

December 20, 2001
January 17, 2002

February 21, 2002
March 21, 2002

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

The Rules Review Commission met on Thursday morning, November 15, 2001, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jennie Hayman, Jeffrey Gray, Laura Devan, George Robinson, Robert Saunders and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Elizabeth L. Oxley	NC Department of Justice
Jim Hayes	DENR/DEH
Cindy Kornegay	DHHS/DMH/DD/SAS
Susan Collins	DHHS/DMH/DD/SAS
Jessica Gill	DENR/Coastal Resources Commission
Mike Lopazanski	DENR/Coastal Resources Commission
Jean Stanley	NC Board of Nursing
Howard Kramer	NC Board of Nursing
Sally Malek	DHHS
Deborah Bryan	Lung Association of NC
Harry Wilson	State Board of Education
John Randall	Board of Speech & Language Pathologists & Audiologists
Thomas Allen	DENR-Division of Air Quality
Mark Benton	DHHS/Division of Facility Services
Lee Hoffman	DHHS/ Division of Facility Services
Jeff Manning	DENR/Division Medical Assistance
Portia Rochelle	DHHS/Division Medical Assistance
Dedra Alston	DENR
Warren Savage	Board of Pharmacy
Christine Heinberg	Carolina Legal Assistance/NAMI-NC

APPROVAL OF MINUTES

The meeting was called to order at 10:01 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the October 18, 2001, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

7 NCAC 4S .0104: NC Department of Cultural Resources – No action was taken.
10 NCAC 45H .0203, .0204: Commission for Mental Health – The Commission approved the rewritten rules submitted by the agency.
10 NCAC 50B .0101: DENR/Division of Medical Assistance – The Commission approved the rewritten rule submitted by the agency.
12 NCAC 9G .0307; .0407: Criminal Justice Education & Training Standards Commission –No action was taken.
12 NCAC 9G .0401; .0405; .0406: Criminal Justice Education & Training Standards Commission – No action was taken.
15A NCAC 2B .0311: DENR/ Environmental Management Commission - The Commission approved the rewritten rule submitted by the agency.
15A NCAC 2D .1420: DENR/Environmental Management Commission – No action was taken.
15A NCAC 18A .1311; .1321: DENR/Commission for Health Services – The Commission approved the rewritten rules submitted by the agency with Commissioners Futch and Robinson opposed to approving .1311. The Chairman did not vote.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

10 NCAC 3R .1615: DHHS/Division of Facility Services – The Commission objected to the rule due to ambiguity. In (d)(1), it is not clear what is meant by “each eight hours per week.”

10 NCAC 3R .1616: DHHS/Division of Facility Services – The Commission objected to the rule due to ambiguity. Because the use of the word “may” in the waiver provision in (b), it is not clear what standards the agency will use in determining whether to waive the 30-minute transport requirement.

10 NCAC 3R .3703: DHHS/Division of Facility Services – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

10 NCAC 3R .6320: DHHS/Division of Facility Services – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

10 NCAC 3R .6321: DHHS/Division of Facility Services – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

10 NCAC 3R .6336: DHHS/Division of Facility Services – The Commission objected to the rule due to ambiguity. In (g), it is not clear what would constitute “appropriate” services.

10 NCAC 14J .0201; .0204; .0205; .0207: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 14P .0102: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 14Q .0303: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 14R.0101; .0105: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 45H .0205: DHHS/MH/DD/SAS – The Commission objected to the rule due to ambiguity. This rule tracks, and to a certain extent repeats, N.C.G.S. 90-92 Schedule IV Controlled Substances. However it is not consistent in either the identical listing or terminology. And the rule does not indicate that it presumably controls over the statute (which the legislature authorized) in the event of an inconsistency.

15A NAC 2Q .0102: DENR/Environmental Management Commission - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

15A NAC 7H .0209: DENR/Environmental Management Commission – The rule was withdrawn by the agency.

21 NCAC 36 .0217: NC Board of Nursing – The Commission objected to the rule due to ambiguity. In (g) it is not clear if the staff may issue a “Letter of Charges” without formal Board action or whether the Board must officially determine that such a letter is warranted. It would seem that the former may be the preferred course, otherwise the Board may be subject to an accusation that it has judged the merits of the case without having a hearing. If it is either not necessary or not desirable for the Board to take formal action, then the rule should be rewritten to delete any reference to or mention of the Board. In (m) it is unclear whether the rule intends to require pre-hearing conferences to be conducted before “a majority of Board members” or does it mean that if the Board conducts such a conference, then it is to be held in Wake County. The previous rule at (l)(2) designated an administrative law counsel to conduct the hearing. At (l)(1) it also specifies that it can be held anywhere by mutual agreement. It seems that (m) is most likely directed to the contested case hearing. In (q) it is unclear what the differences in roles are between the presiding officer, a board member, and the administrative law counsel who is to “conduct the proceedings.” Note that there is provision for a separately designated “prosecuting attorney” with functions that are distinct and different from those of the administrative law procedural officer.

21 NCAC 64 .0210: NC Examiners for Speech and Language Pathologists and Audiologists - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

21 NCAC 64 .0211: NC Examiners for Speech and Language Pathologists and Audiologists – The Commission objected to this rule due to lack of statutory authority. There is no authority cited to waive the statutory identification badge required for “any reason deemed sufficient” by the Board. The statute in (d) restricts the waiver to two reasons: (1) necessary for the practitioner’s safety or (2) therapeutic concerns.

COMMISSION PROCEDURES AND OTHER BUSINESS

No new business was discussed.

The next meeting will be on Thursday, December 20, 2001.

The meeting adjourned at 11:35 a.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules
Log of Filings (Log #182)
October 22, 2001 through November 20, 2001

DENR/SOIL AND WATER CONSERVATION COMMISSION

Allocation guidelines and procedures	15 NCAC 06E .0103	Amend
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DENR/COASTAL RESOURCES COMMISSION

Planning Options	15 NCAC 07B .0701	Adopt
Elements of CAMA Core and Advanced Core	15 NCAC 07B .0702	Adopt
Intergovernmental	15 NCAC 07B .0703	Adopt
State Technical Assistance, Review and Comment	15 NCAC 07B .0800	Adopt
Public Hearing and Local Adoption	15 NCAC 07B .0801	Adopt
Presentation to Coastal Resources	15 NCAC 07B .0802	Adopt
CAMA Land Use Plan Amendments	15 NCAC 07B .0901	Adopt
Required Periodic Implementation Status Reports	15 NCAC 07B .0904	Adopt
Installation and Maintenance of Sand Fencing	15 NCAC 07H .0311	Adopt
Installation and Maintenance of Sand Fencing	15 NCAC 07K .0212	Adopt
Authority	15 NCAC 07L .0101	Amend
Purpose	15 NCAC 07L .0102	Amend
Eligible Applicants	15 NCAC 07L .0201	Repeal
Priorities for Funding	15 NCAC 07L .0202	Repeal
Eligible Projects	15 NCAC 07L .0203	Repeal
Project Duration	15 NCAC 07L .0204	Repeal
Consistency with Plans and Guidelines	15 NCAC 07L .0205	Repeal
Relation to Other Funding	15 NCAC 07L .0206	Repeal

RULES REVIEW COMMISSION

Application Form	15 NCAC 07L .0301	Repeal
Submittal	15 NCAC 07L .0302	Repeal
Procedure for Preliminary Approval or Disapproval	15 NCAC 07L .0303	Repeal
Assistance in Completing Applications	15 NCAC 07L .0304	Repeal
Contract Agreement	15 NCAC 07L .0401	Repeal
Accountability	15 NCAC 07L .0402	Repeal
Payment	15 NCAC 07L .0403	Repeal
Progress Reports and Grant Monitoring	15 NCAC 07L .0404	Repeal
Project Completion Report	15 NCAC 07L .0405	Repeal
Eligible Applicants	15 NCAC 07L .0501	Adopt
Consistency with Plans and Rules	15 NCAC 07L .0502	Adopt
Priorities for Funding CANA	15 NCAC 07L .0503	Adopt
Eligible Projects	15 NCAC 07L .0504	Adopt
Scoping of Planning Needs	15 NCAC 07L .0505	Adopt
Public Participation	15 NCAC 07L .0506	Adopt
Minimum CAMA Land Use Planning and Funding	15 NCAC 07L .0507	Amend
State Technical Assistance, Review and Comment	15 NCAC 07L .0508	Amend
Intergovernmental Coordination	15 NCAC 07L .0509	Amend
Public Hearing and Local Adoption Requirements	15 NCAC 07L .0510	Adopt
Required Periodic Implementation Status Reports	15 NCAC 07L .0511	Adopt
Sustainable Communities Component of the Planning	15 NCAC 07L .0512	Adopt
Project Duration	15 NCAC 07L .0513	Adopt
Relation to Other Funding	15 NCAC 07L .0514	Adopt
Application Form	15 NCAC 07L .0601	Adopt
Assistance In Completing Applications and Submit	15 NCAC 07L .0602	Adopt
Procedure for Approval or Disapproval	15 NCAC 07L .0603	Amend
Contract Agreement	15 NCAC 07L .0701	Amend
Progress Reports and Grant Monitoring	15 NCAC 07L .0702	Amend
Payment	15 NCAC 07L .0703	Amend
Project Completion Report	15 NCAC 07L .0704	Amend
Accountability	15 NCAC 07L .0705	Amend
DENR/COMMISSION FOR HEALTH SERVICES		
Definitions	15 NCAC 18A .2601	Amend
DENR/DHHS		
Reportable Diseases and Conditions	15 NCAC 19A .0101	Amend
Method of Reporting	15 NCAC 19A .0102	Amend
Duties of Local Health Director:	15 NCAC 19A .0103	Amend
Control Measures-HIV	15 NCAC 19A .0202	Amend
Control Measures-Hepatitis B	15 NCAC 19A .0203	Amend
Control Measures-Tuberculosis	15 NCAC 19A .0205	Amend
HIV and Hepatitis B Infected Health Care Workers	15 NCAC 19A .0207	Amend
Laboratory Testing	15 NCAC 19A .0209	Amend
Communicable Disease Financial Grants and Contracts	15 NCAC 19A .0801	Amend
Eligibility for Tuberculosis Hospitalization Ser	15 NCAC 19A .0802	Repeal
Eligibility for Tuberculosis Nursing Home Service	15 NCAC 19A .0803	Repeal
TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES		
Issuing of original certificate	19 NCAC 03G .0205	Amend
STATE BOARDS/N C LICENSING BOARD FOR GENERAL CONTRACTORS		
Structure of Board	21 NCAC 12 .0103	Amend
Classification	21 NCAC 12 .0202	Amend
Renewal of License	21 NCAC 12 .0503	Amend
Request for Hearing	21 NCAC 12 .0818	Amend
STATE BOARDS/N C PSYCHOLOGY BOARD		
Continuing Education	21 NCAC 54 .2104	Adopt

AGENDA
RULES REVIEW COMMISSION
December 20, 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) No response expected until April/May 2002
 - B. DHHS/Division of Facility Services – 10 3R NCAC .1615; .1616; .6336 Objection on 11/15/01 (Bryan)
 - C. DHHS/Commission for MH/DD/SAS – 10 NCAC 14J .0201; .0204; .0205; .0207 Continued on request of agency 11/15/01 (DeLuca)
 - D. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14P .0102 Continued on request of agency 11/15/01 (DeLuca)
 - E. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14Q .0303 Continued on request of agency 11/15/01 (DeLuca)
 - F. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14R .0101; .0105 Continued on request of agency 11/15/01 (DeLuca)
 - G. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002 Continued on request of agency 11/15/01 (DeLuca)
 - H. DHHS/ Commission for MH/DD/SAS – 10 NCAC 45H .0205 Objection on 11/15/01 (DeLuca)
 - I. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0307; .0407 Objection on 9/20/01 (Bryan)
 - J. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0401; .0405; .0406 Objection on 9/20/01 and 10/18/01 (Bryan)
 - K. DENR/Environmental Management Commission – 15A 2D .1420 Objection on 10/18/01 (DeLuca)
 - L. NC Board of Nursing – 21 NCAC 36 .0217 Objection on 11/15/01 (DeLuca)
 - M. NC Examiners for Speech and Language Pathologists & Audiologists – 21 NCAC 64 .0211 Objection on 11/15/01 (DeLuca)
- IV. Review of rules (Log Report #182)
- V. Commission Business
- VI. Next meeting: Thursday, January 17, 2001

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

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

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

*James L. Conner, II
Beryl E. Wade
A.B. 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>				
Georgina Joyner v. NC Crime Victims Compensation Commission	95 CPS 0359	Gray	10/23/01	
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	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	
<u>Child Support Enforcement Section</u>				
Sandra Ferrell Miller v. Department of Health & Human Services	99 CSE 1390	Gray	10/24/01	
Asuncion I. Crawford v. Department of Health & Human Services	99 CSE 1398	Mann	11/16/01	
Rafael Leon Garcia v. Department of Health & Human Services	99 CSE 1460	Mann	10/31/01	
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	

CONTESTED CASE DECISIONS

Steven D Hamrick v. Department of Health & Human Services	00 CSE 0383	Lassiter	09/17/01
Gregory Kent Cranford v. Department of Health & Human Services	00 CSE 0392	Chess	11/30/01
Theilie 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
Robert D Goodman v. Department of Health & Human Services	00 CSE 1083	Conner	11/26/01
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
Ronnie Chapman v. Department of Health & Human Services	00 CSE 1367	Conner	11/20/01
Gerald L. Coker v. Department of Health & Human Services	00 CSE 1396	Morrison	08/29/01
Sharon Tucker v. Department of Health & Human Services	00 CSE 1530	Morrison	11/27/01
William E Kurn v. Department of Health & Human Services	00 CSE 1544	Morrison	11/16/01
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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
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Judy Woods Days Care v. DHHS, Div. of Child Development	01 DHR 0084	Wade	10/05/01
Shirley Campbell, Shirley's Development Center v. State of NC Dept. of Human Resources, Div. of Child Development	01 DHR 0125	Chess	11/08/01
Anna Daley v. DHHS, Div. of Child Development	01 DHR 0386	Morrison	11/07/01

Division of Medical Assistance

Littleton Pharmacy, Inc. James A King v. DHHS, Division of Medical Assistance, Mary J Coward	01 DHR 0835	Conner	07/12/01
Dr. Mitchell James Lequire, PharmD Realo Drug v. DHHS, Division of Medical Assistance	01 DHR 0989	Chess	07/12/01

Division of Facility Services

Donna Kay Pittman v. DHHS, Division of Facility Services	00 DHR 0086	Overby	06/29/01
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
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

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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
Christhana 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
Nora Michell Trafton v. DHHS, Division of Facility Services	01 DHR 1057	Gray	09/04/01
Rossie Nicole Horne v. DHHS, Division of Facility Services	01 DHR 1198	Gray	10/11/01
Tiffany L Wilkerson v. NC DHHS, Div. of Facility Services (Rosemary H. Harrell, RN, BSN)	01 DHR 1279	Chess	09/07/01
Henry Monroe v. NC DHHS, Division of Facility Services	01 DHR 1306	Wade	11/16/01
Antonio Ray v. NC DHHS, Division of Facility Services	01 DHR 1344	Gray	09/24/01
Michelle Peebles v. NC DHHS, Division of Facility Services	01 DHR 1345	Lassiter	10/19/01
Katie V Parker, RN v. NC DHHS, Div. of Fac. Svcs., Adult Care Lic. Sec.	01 DHR 1423	Wade	10/17/01
Courtrina Dawson v. NC DHHS Division of Facility Services	01 DHR 1623	Wade	11/14/01

Division of Social Services

Delie L. Anthony v. Edgecombe Co. Dept. of Social Services Child Abuse and Neglect Dept. Tarsha McCray	01 DHR 0324	Wade	06/18/01
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
Kishja Marlin v. NC DHHS, Social Svcs. Program Integrity Section	01 DHR 0634	Elkins	07/11/01
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

ADMINISTRATION

Fordion Packaging, Ltd., Bird Bailey v. Dept. of State Purchasing, J. Arthur Leaston	01 DOA 1001	Gray	08/24/01
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JUSTICE

Deona Renna Hooper v. Co. Police Program, Co. Police Administrator	00 DOJ 2177	Wade	06/22/01
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Alarm Systems Licensing Board

Edward James Summers v. Alarm Systems Licensing Board	01 DOJ 0352	Morrison	06/13/01
Joseph Brian Moses v. Alarm Systems Licensing Board	01 DOJ 0582	Wade	06/01/01
Arthur Eugene Corpening v. Alarm Systems Licensing Board	01 DOJ 0789	Morrison	06/13/01
Donny Lamor Phillips v. Alarm Systems Licensing Board	01 DOJ 0997	Lassiter	07/24/01
Stephen Wayne Farmer v. Alarm Systems Licensing Board	01 DOJ 0998	Lassiter	07/24/01
Lisa Nichols Caviness v. Alarm Systems Licensing Board	01 DOJ 1258	Conner	10/08/01
Benjamin Sabbath Krizon v. Alarm Systems Licensing Board	01 DOJ 1303	Conner	09/14/01
Michael Bullard v. NC Alarm Systems Licensing Board	01 DOJ 1310	Gray	10/30/01
James Kevin Hightower v. Alarm System Licensing Board	01 DOJ 1351	Gray	10/12/01

16:10 NCR 947

Private Protective Services Board

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
Adonte Mekail Macon v. Private Protective Services Board	01 DOJ 0999	Lassiter	07/05/01
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
Donald Walter Thompson, Jr. v. Private Protective Services Board	01 DOJ 1495	Elkins	11/14/01
Ricky (Richard struck) Derrick Johnson v. Private Protective Services Bd.	01 DOJ 1550	Elkins	11/15/01

Sheriffs' Education & Training Standards Commission

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 Sherriffs' 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
Gregory Rayvon Wood v. NC Criminal Justice Ed. & Trng. Stds. Comm.	01 DOJ 0478	Morrison	11/08/01
Marcus O Clark v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0500	Gray	10/12/01
Horace H. Lane v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0557	Conner	11/07/01
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

STATE BOARD OF EDUCATION

Phase Academy of Jacksonville, Inc., dba Phase Academy Public Charter School v. Public Schools of North Carolina, State Board of Education	00 EDC 2119	Elkins	11/07/01
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16:12 NCR 1252

CONTESTED CASE DECISIONS

Carolyn H. Lancaster v. NC Department of Public Instruction	01 EDC 0054	Morrison	11/08/01		
<u>ENVIRONMENT AND NATURAL RESOURCES</u>					
Leahman Coday, Jr. v. NC DENR	99 EHR 1651	Wade	06/21/01		
Hawley Farms, Inc. v. NC DENR, Div. of Water Quality	99 EHR 1740	Conner	10/25/01		
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 Hickie 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		
Wyatt A Gordon v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0554	Conner	08/17/01		
Chris Conder v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0555	Conner	08/17/01		
E Dennis Spring v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0698	Conner	08/17/01		
David T. Stephenson, owner, John P. Williams, Agent, Lot 86 v. NC DENR (Brunswick County Health Department)	00 EHR 0769 ¹	Gray	08/07/01	16:05 NCR	463
Anson County Citizens Against Chemical Toxins in Underground Storage, Blue Ridge Environmental Defense League, Inc., Mary Gaddy, Bobby Smith and Emma Smith v. DENR	00 EHR 0938	Conner	06/05/01	16:01 NCR	40
Larry Dale McKeel and Robert Morrison Getchell v. NC DENR, Division of Water Quality and NC Dept. of Transportation	00 EHR 1225	Conner	10/19/01	16:11 NCR	1043
Acreage Brokers, Inc., Doug Golightly, Officer, James T. Guley Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214	Gray	08/07/01	16:05 NCR	463
Albert Galluzzo, James T. Guley, Jr. (Agent) v. NC DENR	00 EHR 1245	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department)	00 EHR 1249	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department)	00 EHR 1250	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department)	00 EHR 1251	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 69 +½ 68 v. NC DENR, (Brunswick County Health Department)	00 EHR 1252	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, (Brunswick County Health Dept.)	00 EHR 1253	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 90 v. NC DENR, (Brunswick County Health Department)	00 EHR 1254	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 66 v. NC DENR (Brunswick County Health Department)	00 EHR 1255	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, Lot 66					
Sammie Williams and Williams Seafood, Inc. v. NC DENR, Division of Coastal Management	00 EHR 1288	Gray	08/02/01	16:05 NCR	484
Floyd Robertson d/b/a Parson's Well Drilling v. NC DENR, Division of Water Quality	00 EHR 1656	Conner	09/19/01		
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1876	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1877	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1878	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1879	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1880	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1881	Gray	08/07/01	16:05 NCR	463
Martin Properties, Mr. David Martin v. Town of Cary, Development Services Dept. Erosion Control Office	01 EHR 0088	Morrison	09/06/01		
Barbara Barham, Angels at Play v. Alamance Co. Health Dept.	01 EHR 0142	Morrison	08/16/01		
Paul J Williams v. NC Dept.of Env. Man. Comm. and Keith Overcash, PE Deputy Director	01 EHR 0212	Lassiter	07/12/01		
Laura Walters v. Environmental Management Commission	01 EHR 0230	Lassiter	07/19/01		
Brandon H Clewis, Christy Swails Clewis v. Chatham County Health Dept., Office of Environmental Health	01 EHR 0305	Lassiter	06/04/01		
James L. Horton v. NC DENR, Division of Land Resources	01 EHR 0310	Conner	08/30/01		
Robin R Moore v. NC DENR	01 EHR 0441	Conner	09/17/01		
David R Wells v. NC DENR, Division of Air Quality	01 EHR 0555	Morrison	10/05/01		
M/I Homes, Donald Fraley v. Durham County	01 EHR 0687	Conner	07/10/01		

¹ Combined Cases

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Country Lake Estates, by & through David T. Hawks, Manager v. Wm G Ross, Sec. NC Dept of Env. & Natural Resources	01 EHR 0697	Conner	08/17/01
Earnest F.D. Collier v. Wilson Co. Dept. of Public Health	01 EHR 0699	Mann	10/05/01
Marc P Walch v. Haywood Co. Health Dept. c/o Daniel F McLawhorn NC DENR	01 EHR 0730	Morrison	06/26/01
Richard W Brannock v. NC DENR, Div. of Waste Management	01 EHR 0767	Elkins	07/30/01
Billy James Miller, Jr., Peggy Matthews Miller v. NC Dept. of Health/ Environmental Health Inspections, John Stucky (Inspector)	01 EHR 0934	Elkins	08/02/01
Mercer Glass v. NC DENR	01 EHR 0935	Conner	09/11/01
James A Brown v. NC DENR	01 EHR 1197	Elkins	09/17/01
Southside Mobile Home Park, Southside Trust v. NC DENR	01 EHR 1313	Chess	10/22/01
NC Real Estate Services Corp, v. NC DENR, Div. of Air Quality	01 EHR 1503	Elkins	11/20/01

ENGINEERS AND LAND SURVEYORS

NC Bd. of Examiners for Engineers and Surveyors v. C. Phil Wagoner	01 ELS 0078	Overby	07/11/01
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HUMAN RELATIONS COMMISSION

NC Human Relations Commission on behalf of Jeanette Guffey and Harvey Myers	99 HRC 1383	Wade	08/06/01
Sara E. Parker v. NC Human Relations Commission	01 HRC 1284	Chess	10/04/01

DEPARTMENT OF INSURANCE

Wellpath Select, Inc. v. NC Teachers' & State Employees' Comp.	01 INS 0388	Morrison	07/03/01
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LICENSING BOARD FOR GENERAL CONTRACTORS

NC Licensing Bd. for Gen. Con. v. Alderman Brothers Construction, Inc. License No. 34455	01 LBC 1146	Elkins	10/10/01
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MISCELLANEOUS

Tony L. Arnett v. Administrative Office of the Courts	00 MIS 0424	Wade	06/26/01
Donald Jason Biles v. W-S/Forsyth Zoning Dept et.al., Forsyth Cty District Atty., et.al.	01 MIS 0905	Chess	10/04/01
Sara Parker v. NC State Bar, Calvin E. Murphy	01 MIS 1714	Lassiter	11/06/01

OFFICE OF ADMINISTRATIVE HEARINGS

James Spencer, Jr. v. Office of Administrative Hearings	01 OAH 1115	Chess	10/22/01
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OFFICE OF STATE PERSONNEL

Debbie Whitley v. Wake County Department of Health	96 OSP 1997	Chess	05/22/01	
Larry R Lane v. NC DOT, G.F. Neal, Cty. Maintenance Engineer	99 OSP 0105	Lassiter	07/16/01	
Timothy Ramey v. NC Department of Correction	99 OSP 1085	Chess	06/27/01	
Richard W. Lee v. NC Department of Transportation	99 OSP 1145	Wade	08/29/01	
Miriam Dukes v. Albemarle Mental Health Center Bd. of Directors	00 OSP 0234	Wade	05/22/01	
Angela Ellen Jones v. Mr. Weldon Freeman, Personnel Director, NC Dept. of Crime Control & Public Safety	00 OSP 0345	Lassiter	07/03/01	
Ivan Williams v. DOC, Division of Prisons	00 OSP 0877	Wade	09/17/01	
Ricky N Faircloth v. NC Department of Transportation	00 OSP 0994	Wade	11/14/01	
Andreas K. Dietrich v. NC Highway Patrol; NC Department of Crime Control & Public Safety	00 OSP 1039	Gray	08/13/01	16:06 NCR 550
A. Mark Esposito v. Dept. of Transportation	00 OSP 1333	Gray	06/13/01	
Bobbie D Sanders v. UNC-CH	00 OSP 1806	Chess	06/21/01	16:03 NCR 271
Robert J Lane v. NC Department of Correction, Central Engineering	00 OSP 1841	Elkins	06/26/01	
Natalynn P. Tollison v. NCSU et al	00 OSP 1909	Wade	06/01/01	
Jerrelle B Jones v. DHHS, O'Berry Center	01 OSP 0003	Lassiter	06/26/01	
Kit Locklear v. NC Department of Correction	01 OSP 0106	Elkins	07/17/01	
Andrew E Chambers v. NC Department of Corrections	01 OSP 0172	Morrison	07/12/01	
Roy Kevin Tripp v. NC Department of Correction	01 OSP 0231	Morrison	10/04/01	16:09 NCR 864
Lonnie Sessions v. Columbus Correction Inst.	01 OSP 0240	Gray	05/23/01	
Lee Woodburn v. NC State University	01 OSP 0275	Lassiter	06/21/01	
Marsha A Early v. County of Durham, Dept. of Social Services	01 OSP 0279	Lassiter	10/26/01	
Jamel O. Frazier v. NC Department of Transportation	01 OSP 0334	Anderson	07/06/01	
Arlene R. Burwell v. Warren Correctional Institute	01 OSP 0448	Mann	07/18/01	
Alecia M York v. Fayetteville State University	01 OSP 0598	Mann	10/04/01	
James H. Montayner v. NC Department of Correction	01 OSP 0637	Gray	08/16/01	
Leon Lewis, Jr. v. NC School of Science & Math	01 OSP 0639	Conner	08/17/01	
Lisa Scopee Lewis v. Carteret Correctional Facility	01 OSP 0801	Gray	07/17/01	
Antonio J Ballard Sr. v. Morrison Youth Institution (DOC)	01 OSP 0807	Elkins	10/05/01	
Margaret V Carroll v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0851	Conner	08/14/01	
Wanda Lou Mitchell v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0852	Conner	08/14/01	
William David Fox v. NC Department of Transportation	01 OSP 0853	Morrison	07/02/01	
Rita D Wilkins v. WNC Reg. Economic Dev. Commission	01 OSP 0857	Morrison	09/21/01	
Lisa M Franklin v. D.A.R.T. Program in DOC	01 OSP 0909	Gray	09/12/01	
Nancy T. Rimmer v. UNC School of Medicine	01 OSP 0952	Gray	08/24/01	
Jeffrey Scott Zaccari v. NC Department of Transportation	01 OSP 0970	Conner	08/17/01	
John A Smith v. Department of Corrections, State of NC	01 OSP 0984	Chess	07/25/01	
Faith J Jackson v. NC Department of Correction	01 OSP 0986	Lassiter	07/12/01	
Sharon Locklear Dean v. Dept. of Juvenile Justice & Delinquency Prevention	01 OSP 1063	Mann	09/17/01	
Steven Swearingen v. NC Department of Correction	01 OSP 1066	Wade	10/17/01	

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Lisa C. Wells v. Hyde County	01 OSP 1113	Gray	09/04/01	
Earla Kate Simmons v. WIC Nutrition Program, Brunswick County Health Department, Bolivia, NC	01 OSP 1114	Lassiter	10/30/01	
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	11/02/01	
Calvia Lynn Hill v. Lumberton Correctional Inst., DOC	01 OSP 1205	Conner	08/07/01	
Rose Beam v. Cabarrus County Board of Education	01 OSP 1233	Elkins	09/27/01	
Darryl Burr v. NC Department of Correction	01 OSP 1282	Morrison	11/13/01	16:12 NCR 1263
Thomas H Glendinning v. Chatham County	01 OSP 1287	Chess	09/07/01	
James L Ragland v. The Harnett Co. Board of Education	01 OSP 1337	Gray	10/15/01	
Annie Karampatos v. UNC at Charlotte	01 OSP 1456	Mann	11/20/01	
Ronnie McCoy v. Michael Munns, Polk Youth Inst.	01 OSP 1469	Morrison	11/14/01	
Michael T. Bingham v. Harold Seegars, Skilled Trade, NCA&T St. Univ.	01 OSP 1476	Mann	11/20/01	

UNIVERSITY OF NORTH CAROLINA

Tammie Davis v. UNC Hospitals & UNC Physicians	01 UNC 0506	Mann	07/13/01	
Jerelle L Perry v. UNC Hospital	01 UNC 0800	Conner	09/18/01	
Lonnie D Watson v. UNC Hospitals	01 UNC 0837	Conner	09/18/01	
Susan Coan v. Secretary of Revenue	01 UNC 0977	Conner	11/08/01	

WELL CONTRACTORS

Floyd V. Robertson v. Well Contractor's Certification Commission	01 WCC 0147	Conner	09/19/01	
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STATUTES IN ISSUE

N.C. Gen. Stat. 115C-238.29A - N.C. Gen. Stat. 115C-238.29J
Particularly - N.C. Gen. Stat. 115C-238.29G(a)(2)
N.C. Gen. Stat. 150B-22, 150B-23

PRELIMINARY MATTERS

Pursuant to Respondent's Motion for Summary Judgment filed in the Office of Administrative Hearings on February 9, 2001; and both parties having had the opportunity to present matters before Augustus B. Elkins II, the Administrative Law Judge, a hearing on the Summary Judgment Motion was conducted on May 4, 2001 in Raleigh, North Carolina. Based on the evidence presented it was found that multiple material and factual issues were in dispute, including but not limited to the understanding and acceptance and contractually binding nature of the Charter and attachments, and, financial facts and issues relating to the amount and timing of monies owing into the health system. Such discrepancies in material facts, including disagreement over the facts and issues in at least seven other items when applied to the standard of review for Summary Judgment led to the Order that Respondent's Motion for Summary Judgment was denied.

BASED UPON careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. The authenticity and admissibility of each exhibit was stipulated to by the Petitioner and the Respondent. It was also stipulated that Petitioner received Respondent's Exhibit #7 on November 28, 2000. In making the findings of fact, the undersigned has weighed the evidence and has assessed the credibility of the witnesses by taking into account the appropriate and traditional factors for judging credibility, such as the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. As stipulated to by the parties, PHASE Academy (PHASE) was chartered by the State Board of Education, effective 1 July 1998, to operate as a Charter School pursuant to N.C.G.S. § 115C-238.29D. (Resp. Ex. 12)
2. N.C.G.S. § 115C-238.29G(a)(2) authorizes the State Board of Education to terminate a charter on grounds that the chartered entity has failed to meet generally accepted standards of fiscal management. Pursuant to the Charter School Law, N.C.G.S. §§ 115C-238.29A *et seq.*, the State Board of Education is the sole authority charged both with approving charter schools and with revoking charters when circumstances warrant revocation. N.C.G.S. §§ 115C-238.29C; 115C-238.29G.
3. Every Charter Agreement entered into between the State Board of Education and a charter school contains the language of the statute regarding grounds for revocation. *See* Respondents' Ex. 12 (Charter Agreement W1). The Charter Agreement also specifies the procedures that are to be followed when the State Board of Education initiates the charter termination process. *Id.* (Charter Agreement W2). Those procedures are as follows:

Procedures

The parties will comply with the following procedures in the event the SBE (State Board of Education) decides to terminate this Charter.

- a. The SBE shall give the School written notice of its intent to terminate this Charter. The notice shall be sent by certified mail, return receipt requested, and shall state in reasonable detail the grounds for the SBE's intent to terminate. If the SBE determines that the School's current operation poses an immediate threat to the education, health, safety, or welfare of the School's students or employees or the public, the SBE may take appropriate protective action pending a final decision on the termination of the Charter.
- b. If the School objects to the termination of its Charter, it must, within ten days of receipt of notice, deliver to the Office of Charter Schools a written request for a review by the SBE. If the School fails to deliver a timely request for review, the Charter shall terminate on the eleventh day after the School's receipt of the notice. The Office of Charter Schools will transmit the request to the appropriate Review Panel appointed by the Chair of the SBE. The Review Panel may review the matter with or without a formal hearing. If the Review Panel elects to conduct a hearing, the hearing shall be held within 30 days of receipt of the written request, unless otherwise agreed to by

the parties. At the conclusion of its review, the Review Panel shall submit a written recommendation to the SBE. Unless the SBE and the School otherwise agree, the SBE shall make a final decision at its next regularly-scheduled meeting.

4. The statutes establishing charter schools provide that the State Board of Education “may establish a Charter School Advisory Committee to assist with the implementation of” the Act, including participation in the approval of charter school applications as well as in making “recommendations as to whether the State Board should terminate or not renew a charter.” N.C.G.S. § 115C-238.29I(d). (Tpp. 372). The State Board of Education has established such an Advisory Committee and has appointed its members. The Charter School Advisory Committee may only make recommendations to the State Board of Education. The State Board of Education relies upon the work and expertise of the Charter School Advisory Committee, but the State Board of Education independently considers each matter on its own merits. (Tpp. 375-382).

5. The Charter School Advisory Committee acts as the review panel for purposes of the pre-termination due process procedures set forth in the Charter Agreement. Pursuant to those procedures, when the State Board of Education votes to initiate revocation, the affected charter school may internally appeal the initiation of proceedings to the Charter School Advisory Committee. That Committee will conduct its review and then make a recommendation to the State Board of Education whether to finally revoke the school’s charter. After the State Board of Education has made its decision, the charter school then may appeal the State Board’s agency decision to the Office of Administrative Hearings. N.C.G.S. §§ 150B-22, 23.

6. N.C.G.S. § 115C-238.29G(b) states that the State Board of Education shall develop and implement a process to address contractual and other grievances between a charter school and its chartering entity or the local board of education during the time of its charter.

7. On April 6, 2000, the State Board of Education passed a Financial and Governance Noncompliance Policy for Charter Schools. The Policy represents the North Carolina Department of Public Instruction’s (NC DPI) internal operating procedures and does not preclude the Deputy Superintendent of the NC DPI, the Chief Financial Officer of NC DPI, after consultation with the Charter School Advisory Committee, from making any recommendations to the State Board of Education with regards to a Charter School, if so warranted, regardless of the charter schools financial and governance noncompliance status. Under the Policy, a charter school may be placed on financial or governance warning status under certain circumstances. (Resp. Ex. 10) (Tpp. 382-385)

8. By letter dated April 28, 2000, PHASE was placed on Financial Cautionary Status due to PHASE’s failure to submit required audits. PHASE was given notice that failure to take appropriate action would result in additional disciplinary steps. (Resp. Ex. 1) (Tpp.386-387)

9. By letter dated March 7, 2000, Priscila L. Dingle, Director of PHASE, explained the reason for the audit not being complete and apologized for it not being done. (Pet. Ex. 3). By letter dated March 31, 2000, Ms. Dingle wrote Mr. Hank Hurd, Associate Superintendent, Financial & Business Services at NC DPI and apologized “for the inefficient procedures performed towards” the audit and the “untimely manner” it was taking to complete. (Pet. Ex. 3). On May 4, 2000, Ms. Dingle provided a “PHASE Academy Audit Update” to NC DPI and stated she would give weekly updates until the procedures were finalized. (Pet. Ex. 3).

10. The Advisory Board of PHASE Academy met during the summer (of 2000) to “basically reorganize and restructure the organization in order to make sure that we were practicing in a sound business manner.” (Tp. 39). They were also informed of the importance of having a stronger sense of governance as far as the charter school was concerned and the PHASE Board had more governance over internal control. (Tp. 39-42) (Pet. Exhs. 7 and 8). PHASE also “restructured the organization through our corrective action plan for internal control because that seemed to be the major problem that was cited by DPI was internal control.” (Tp. 39-40). There were also administrative changes made with a separate administrative staff person handling all cash receipts. (Tp. 41).

11. By letter dated August 14, 2000 from Nancy Harris, Interim Section Chief, Division of School business to Priscilla Dingle a review of PHASE’s State Public School Fund/Federal Programs Expenditures for the month indicated no problems were found in the areas listed in the letter which included no data being submitted after the closing date, no invalid budget codes being used and expenditures were keyed to liability codes. (Pet. Ex. 12). This same type letter was sent on 6/13/00 except showing “no data was submitted after the closing date” as the only box checked. (Pet. Ex. 13). Also this same type letter was sent on October 18, 2000 but with “An invalid budget code was used,” as the box checked. (Pet. Ex. 14).

12. By letter dated September 1, 2000 from Jennifer S. Bennett, Director, Division of School Business in the NC DPI, PHASE Academy was placed on Financial Probationary Status based on five specifically enumerated grounds. Among those grounds were that PHASE was operating with a deficit of \$124,003, and that it was delinquent in remitting payroll taxes to state and federal governments. (Resp. Ex. 2) (Tpp. 286-309; 404-414). In that same letter the Director of PHASE was notified that NC DPI had received the Annual Independent Audit for fiscal year ending June 30, 1999 on July 30, 1999 and the Annual Financial Report for fiscal year ending June 30, 1999 and that the audit report had been reviewed by the Division of School Business. (Resp. Ex. 2). Also,

in that same letter, it was stated that PHASE would remain on Financial Probationary Status for 60 days until October 30, 2000. This is in accordance with the State Board of Education Financial and Governance Noncompliance Policy for Charter Schools.

13. When Petitioner PHASE Academy was placed on Financial Probationary Status in September 2000 it had corrected those items that were the subject of the earlier Financial Cautionary Status. (Tpp. 600-601).

14. On September 5, 2000, Ms. Dingle (for PHASE Academy) completed and swore to a Record of Complaint against Stephen Newkirk, CPA regarding the fiscal year audit report for PHASE Academy. She filed her complaint and all documentation with the "Accounting Board." (Tpp. 97) Ms. Dingle lists as the attorney for PHASE Academy, Mr. Jerome Willingham. (Pet. Ex. 4).

15. On September 22, 2000, staff from DPI conducted a review of PHASE's financial records and found a variety of financial and accounting problems. As a result of that audit, and of PHASE's failure to explain and clarify its financial activities, PHASE was notified on October 10, 2000, that it was being placed on Financial Disciplinary Status. (Resp. Ex. 3) (Tpp. 286-309; 404-414). PHASE was further notified in the October 10, 2000 letter, of nine specific instances of failure to follow sound business practices. (Resp. Ex. 3) Among those failures were failure to make required payments to the State Health Plan for PHASE employee health insurance premiums, missing checks, absence of receipts or invoices for funds paid out, absence of documentation for salary payments, failure to balance bank accounts for several months, and failure to provide an accurate list of outstanding debts/accounts payable. These practices are all inconsistent with generally accepted standards of fiscal management. (Resp. Ex. 3) (Tpp. 399-417)

16. PHASE Academy was placed on Disciplinary Status on October 10, 2000 which was 20 days prior to the time of October 30, 2000, given to PHASE in a September 1, 2000 letter and prior to that time frame (60 days) set out in the North Carolina State Board of Education Policy Manual. In the October 10, 2000 letter PHASE Academy was given until October 24, 2000 to respond to the nine concerns set forth and provide information and/or take the steps detailed in the letter. (Resp. Ex. 3).

17. In the North Carolina State Board of Education Policy Manual under Impact of Financial Noncompliance, it is stated that; "This policy does not preclude the Deputy Superintendent of NC DPI, the CFO of NC DPI, or the Charter School Advisory Committee from making any recommendations to the State Board of Education with regards to a charter school if so warranted, regardless of the charter schools financial noncompliance status." (Resp. Ex. 10). The October 10, 2000 letter was signed by Bradford L. Sneeden, Deputy State Superintendent and H. Hank Hurd, Associate State Superintendent. (Resp. Ex. 3).

18. In the same October 10, 2000 letter cited above, PHASE was notified that it must send representatives to a October 27, 2000, meeting of the Charter Schools Advisory Committee (Advisory Committee), an advisory group created by the State Board of Education to assist it with the implement of the Charter School Law. PHASE was notified that failure to attend the meeting, or failure to resolve the nine concerns, could result in a recommendation that its charter be terminated. (Resp. Ex. 3.).

19. After hearing from DPI staff and PHASE representatives on October 27, 2000, the Advisory Committee recommended that the State Board of Education initiate revocation of PHASE's charter as a result of PHASE's failure to meet generally accepted standards of fiscal management. (Resp. Ex. 3A). Ms. Dingle provided responses to the issues in the noncompliance report including but not limited to explanations regarding the PHASE Academy State Health Plan concerns (See generally Pet. Ex. 5) but was not persuasive in halting the recommendation for revocation. (Resp. Ex. 3A) and (Tpp. 74-76).

20. By letter dated November 3, 2000, DPI notified PHASE that the North Carolina State Board of Education ("the Board") had, based on the Advisory Committee's recommendation, and initiated action to terminate PHASE's charter. (Resp. Ex. 3A; Ex. 4) The letter also set out the appeal procedures. The letter was sent certified as required by SBE's procedures governing revocation. The return receipt "green card" indicates that PHASE received the letter on November 9, 2000. (Tpp. 254-262). The letter stated the Advisory Committee cited issues and concerns regarding PHASE Academy's business practices presented at the October 27, 200 interview with PHASE Academy as reasons for its passing the motion for revocation of the charter. As known to Ms. Dingle and PHASE Academy those issues were set out in writing in the October 10, 2000 letter to Ms. Dingle from Mr. Sneeden and Mr. Hurd. (Resp. Ex. 3 and 4).

21. The November 3, 2000 letter to Ms. Dingle from Mr. Hurd also cited the failure of PHASE Academy personnel to respond persuasively to the concerns of the Advisory Committee and in parenthesis following that comment was "(see attached)." (Resp. Ex. 4). That same letter stated that if PHASE wished to pursue a review of the decision to initiate revocation it must give written notice of appeal to the Office of Charter Schools within ten (10) days of receipt of the letter and include in the notice all of the grounds PHASE asserts to support a decision contrary to the Board's decision. (Resp. Ex. 4).

22. By a letter dated November 17, 2000, PHASE, through its counsel, N. Jerome Willingham, indicated a desire to appeal the decision to initiate revocation. PHASE also represented that the November 3, 2000 letter from DPI had not enclosed various attachments that had been referred to in the letter. No substantive grounds were submitted by Petitioner in the November 17, 2000 letter to support a decision contrary to the Board's decision but Mr. Willingham requested review and demanded a hearing and

“participation at said hearing.” (Resp. Ex. 5). Counsel for PHASE did protest generally of procedural matters in support of a decision contrary to the Board’s decision but was not specific in that letter. (Resp. Ex. 5).

23. On November 22, 2000, DPI resent the November 3, 2000 letter and the attachments as well as a Memorandum dated November 22, 2000 from Grova L. Bridgers, by facsimile transmission to PHASE and PHASE’s counsel. The materials had to be re-faxed on Monday, November 27, 2000 at 15:30. Some of the materials faxed had failed to go through and the administrative assistant in the Office of Charter Schools faxed them again on November 28, 2000 at 9:51. The delay in refaxing the materials was due to the intervening Thanksgiving holiday and weekend. (Resp. Ex. 6A) (Tpp. 254-265). In the above-cited Memorandum, PHASE was informed that, Mr. Willingham’s letter of November 17, 2000 was accepted as a notice of appeal on behalf of PHASE Academy and that he would be notified as soon as possible of the date the appeal would be considered by a review panel. (Resp. Ex. 6)

24. The record reflects that the attachments to the November 3, 2000 letter documented in detail all of the serious deficiencies in PHASE’s financial and business practices, including failure to document or support numerous expenditures, writing checks manually, no policies governing petty cash, checks unaccounted for, lack of bank reconciliations, failure to pay employee health premiums, failure to pay payroll taxes, outstanding debts. (Resp. Ex. 6) (Tpp. 518-523). The November 3, 2000 letter and attachments were resent to PHASE by certified mail and were received by PHASE on November 27, 2000. (Resp. Ex. 6).

25. The issues of concern in the attachment to the November 3, 2000 letter are the exact same issues as set forth to Petitioner in the October 10, 2000 letter. The attachment document does contain PHASE’s response to each item number under a section after each issue entitled, “PHASE’s response-file received October 24, 2000.” And following that section, under each issue is a section entitled, “DPI’s response.” Virtually all responses by DPI include the phrase, “no persuasive documentation has been provided.” (Resp. Exhs 3 and 6). These same responses were provided to the Charter School Advisory Committee members by the Petitioner at their October 27, 2000 meeting where after hearing PHASE Academy’s presentation, a motion was made and carried for revocation of PHASE’s charter. (Resp. Ex. 3A).

26. By letter dated November 27, 2000, NC DPI gave PHASE Academy notice of a hearing before a review panel of the State Board of Education on December 5, 2000 at 4:00 p.m., for the purpose of considering PHASE’s appeal. (Resp. Ex. 7) and (Tpp. 79-82) (See also requests for continuances at Tpp. 442-444). It was stipulated to by Petitioner and Respondent that Respondent received the November 27th letter (Resp. Ex. 7) on November 28, 2000. The letter set out in great detail all the concerns that DPI staff still had concerning PHASE’s financial and business practices and made reference to “the specific issues which remain unresolved from the October 10, 2000 letter and October 27, 2000 meeting with the Charter School Advisory Committee.” (Resp. Ex. 7)

27. On November 28, 2000, counsel for PHASE, Mr. Willingham, asked that the December 5, 2000 hearing scheduled before a panel from the State Board be continued due to a personal conflict. (Tpp. 441-442). No request was ever made in writing and no request was ever presented to or considered by the review panel of the State Board of Education or the Board. Mr. Ziko, attorney for Respondent spoke with Ms. Crumpler, attorney for Respondent stating that neither he nor her had the authority to grant a continuance and that “PHASE Academy needed to bring that to the attention of people who had authority to do that.” (Tpp. 442-444 and 524-525). Dr. Grova L. Bridgers who was Director of the Office of Charter Schools within NC DPI during this time informed Mr. Willingham by telephone conversation that the hearing before the Board regarding PHASE could “not be changed because of the nature of it.” Further, by faxing the notification documents of November 3, 2000 (including a cover page Memorandum) on November 28, 2000 to Mr. Willingham, Dr. Bridgers believed he conveyed two items to him. First, “that the hearing would continue” and second, that “the particulars that he needed to work on” were “those issues that were outlined in Jennifer Bennett’s letter.” (Tpp. 128-130, 159, 162).

28. The State Board of Education consists of citizens appointed by the Governor and only meets once a month. For the convenience of the Review Panel members, hearings are normally scheduled the Tuesday before the Board meeting on the first Wednesday of the month. In the case of the hearing in this case, that Tuesday was December 5, 2000. (Resp. Ex. 7) (Tpp. 527-546). The Review Panel met as scheduled on Tuesday, December 5, 2000 in the 7th floor Boardroom at the State Board of Education Building. (Resp. Ex. 8) (Tp. 526). During the December 5, 2000 hearing there was no mention of Petitioner’s request for a continuance. (Tp. 332-333 and 443).

29. On December 5, 2000, Ms. Dingle, Director of PHASE Academy, sent a fax to Dr. Grova Bridgers regarding Mr. Willingham’s continuance request. She also took a hard copy of the same fax and hand delivered it to Dr. Bridgers’ office on Dec 5th. A Petition for a Contested Case Hearing was hand delivered by Ms. Dingle to and filed in the Office of Administrative Hearings in Raleigh, North Carolina on December 5, 2000 at 9:43 a.m. which was prior to the Review Panel of the Board meeting and taking action. Also on December 5, 2000, Ms Dingle personally delivered a copy of the Petition for a Contested Case Hearing to Dr. Bridgers’ office in Raleigh, North Carolina. Neither Ms. Dingle nor anyone on her staff nor any representative attended the hearing held by the Review Panel regarding PHASE Academy on December 5, 2000. (Tpp. 97-98 and 668-669).

30. The Review Panel of the State Board of Education was called to order at 4:15 p.m. on December 5, 2000 to discuss the matter of PHASE Academy of Jacksonville. At that time the Chair of the Panel, Kathy Taft began hearing evidence on the charges that PHASE had failed to meet generally accepted standards of fiscal management. The Panel continued to receive evidence from NC DPI

“witnesses until approximately 6:00 p.m.” As recorded in the Report of the Panel, “at no time during the hearing did any representative of PHASE appear at the hearing or contact the panel.” (Resp. Ex. 8).

31. After hearing from DPI staff and considering the documentation provided, the Review Panel issued a report finding that PHASE was, in a number of respects, failing to operate in accordance with generally accepted standards of fiscal management. The “particularly egregious” grounds for this finding included the following:

- PHASE’s budget was “seriously defective” in that it had underestimated available revenues.
- Although PHASE had withheld money from Employees’ paycheck for health insurance, PHASE had failed to make health insurance payments, and as of early December, 2000, was in arrears approximately \$2,640.04.
- Although PHASE had withheld money for taxes from employees’ paychecks, PHASE had failed to pay that money to federal and state taxing authorities, and was in arrears tens of thousands of dollars.

(Resp. Ex. 8)

32. The Panel also found that PHASE had failed to produce invoices for \$16,245.79 in funds that it had paid out; it had not reconciled its bank account for three months; it had issued checks for amounts over \$1,000 (and up to \$5,000) without any documentation to support issuance; the director of PHASE had received two payroll checks in August 2000, without producing any evidence that the director was owed that money or that the Board of Directors of PHASE had authorized the payment to the director. (Resp. Ex. 8)

33. All of those findings were supported by a preponderance of evidence in the record of this hearing. (T pp. 399-417; 606-612). Petitioner presented to the Undersigned evidence addressing the discrepancies identified in Respondent’s Exhibit 7 (the November 27, 2000 letter to Ms Dingle informing her of the December 5, 2000 meeting and the specific items that were to be addressed at the meeting). Such presentation was not made to the Board but some of the explanations to the clarifications had been made at various times from September 2000 to November 2000 to staff of NC DPI and/or the Advisory Committee of the State Board and those explanations/clarifications submitted to the State Board from the Review Panel continued to be unpersuasive in halting the revocation process. (T pp. 40-55 and 92-93).

34. As a result of the December 5, 2000 meeting, the Review Panel recommended, on December 6, 2000, that the State Board of Education terminate PHASE Academy’s charter. (Resp. Ex. 8) (Tpp. 527-528). The State Board of Education’s regularly scheduled monthly meeting was held December 6-7, 2000. (Resp. Ex. 9).

35. On December 7, 2000, the State Board of Education (SBE) discussed the panel’s report and voted to terminate PHASE’s charter. Ms. Taft, Chair of the Review Panel in the PHASE Academy matter expressed commendation in front of the SBE to Mr. Hurd, Ms. Bennett and Dr. Bridgers for their excellent presentations during the hearing on the matter. (Resp. Ex. 9)

36. By a letter dated December 7, 2000 to Ms. Pricilla L. Dingle, Director of PHASE Academy, PHASE was given formal notice of the action of the SBE to terminate the Charter of PHASE Academy at its December 2000 meeting “based upon information provided to the Board and the recommendation of the Board appointed review panel.” That same letter stated that the Review panel had been informed of documentation provided by PHASE Academy to staff. (Resp. Ex. 11). Also in that letter, Petitioner was informed that if they wished to pursue a review of the decision, they could initiate administrative proceedings by filing a petition with the Office of Administrative Hearings. (Resp. Ex. 11).

37. At the time of the revocation of the Charter, Ms. Dingle, Director of PHASE Academy did not believe there were any material violations of any of the conditions of the PHASE charter. She believed PHASE was “meeting the standards and working towards making whatever changes were needed.” Further she did not believe there were any standing material violations of any standards or procedures of the Charter at the time of the revocation. (Tp. 99-100).

38. On December 11, 2000, PHASE Academy of Jacksonville, Inc. filed a Supplemental Petition for a Contested Case Hearing in the Office of Administrative Hearings.

STANDARDS OF REVIEW

N.C.G.S. § 150B-23 states a contested case shall be commenced by filing a petition with the Office of Administrative Hearing. Further, the petition shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner’s rights. N.C.G.S. § 150B-23 goes on to state that the time limitation for filing shall commence when notice is given by personal delivery or by

mail of the agency decision to all persons aggrieved who are known to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition.

A contract is the agreement of minds, upon a sufficient consideration, that something specified shall be done, or shall not be done. Edwards v. Kearzey, 96 U.S. 595 (1877). The heart of a contract is the intention of the parties, which is to be ascertained from the expressions used, the subject matter, the end view, the purpose sought, and the situation of the parties at that time. Electric Co. v. Insurance Co., 229 N.C. 518, 520, 50 S.E.2d 295, 297 (1948). The heart of a contract encompasses not only its express provisions but also all such implied provisions as are necessary to effect the intention of the parties unless express terms prevent such inclusion. Lane v. Scarborough, 284 N.C. 407, 200 S.E.2d 622 (1973).

The United States Supreme Court, in Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18, sets forth a three-part balancing test to determine the appropriate procedures required to comply with procedural due process protection in any given situation. The Supreme Court in Mathews reiterated that procedural due process protection is a flexible, not fixed, concept governed by the unique circumstances and characteristics of the interest sought to be protected. The Court there identified three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335, 96 S.Ct. at 903, 47 L.Ed.2d at 33.

There is no dispute that the initial Mathews-Eldridge factor, the private interest affected by the official action, is of significant importance. The ability to obtain and retain employment is of utmost concern to individuals as they strive to provide support for themselves and their families, as well as in seeking to achieve their aspirations and goals. The United States Supreme Court has emphasized that the private interest in continued employment cannot be denied." Cleveland Bd. of Education v. Loudermill, 470 U.S. 532, 545, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). However, an individual employee's interest in retaining employment is not absolute and must be evaluated in the light of additional factors. See Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18; Arnett v. Kennedy, 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974).

The second factor discussed by the Mathews Court requires an objective evaluation of the risk of erroneous deprivation of the protected interest under the present procedures, as well as the potential value of additional safeguards. The Mathews-Eldridge analysis places emphasis upon the fairness and reliability of the currently utilized procedures. However, procedural due process protection clearly does not prescribe or require a failsafe process that totally precludes any possibility of error. Walters v. National Ass'n of Radiation Survivors, 473 U.S. 305, 320, 105 S.Ct. 3180, 3188-89, 87 L.Ed.2d 220, 233 (1985). While the United States Supreme Court has consistently held that some type of hearing is required prior to the deprivation of a "property" interest, in only one case, Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), has the Supreme Court held that an evidentiary hearing is mandated. See also Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18. The Goldberg Court carefully considered the potential impact of the deprivation of welfare benefits and placed considerable emphasis on the unique fact that welfare recipients live on the margin of existence. Goldberg, 397 U.S. at 264, 90 S.Ct. at 1018-19, 25 L.Ed.2d at 297. A temporary, but erroneous, deprivation of benefits to a welfare recipient would often have major consequences, depriving "an eligible recipient of the very means by which to live." *Id.*

The third and final factor set out by the Mathews-Eldridge Court focuses on the government's interest in the dispute, including the government function involved. The State of North Carolina, through each of its agencies, must remain a responsible steward of the public trust by maintaining an efficient and productive government. In order to provide for efficient administration, State officials must promote and encourage productivity and discipline. It is imperative that agency officials maintain adequate supervision and control over those matters under its control such as personnel matters. See Arnett v. Kennedy, 416 U.S. at 168, 94 S.Ct. at 1651, 40 L.Ed.2d at 41. Normally, government has "wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment." Connick v. Myers, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983). However, constitutional rights are balanced against the "government's interest in effective and efficient fulfillment of its responsibilities to the public." *Id.* In personnel issues for example, government employers do not have to let the situation degenerate into a hostile working environment before taking action. The First Amendment does not require an employer to "tolerate action which he reasonably believe[s] would disrupt the office, undermine his authority, and destroy close working relationships." *Id.* at 154, 75 L.Ed.2d at 724. However, the more substantially the employee's "rights" touch or involve a matter of public concern, the stronger the showing and the heavier the burden is for the State to prove justification for terminating the plaintiff. *Id.* at 152, 75 L.Ed.2d at 723.

A party who is unprepared for trial as a result of changed conditions may be entitled to a continuance as a matter of right. See Watson v. Black Mountain Railway Co., 164 N.C. 176, 181, 80 S.E. 175, 177 (1913). Our Supreme Court has found error in the denial of motions for continuance where a party, for reasons not of its own making, was unprepared for trial. It has held such parties entitled to a continuance, and has awarded new trials in such situations when "the ends of justice" required it. Shankle v. Shankle, 289 N.C. 473, 482-83, 223 S.E.2d 380, 386 (1976). Though the refusal of a continuance is within the sound discretion of the trial court and ordinarily will not be interfered with on appeal, State v. Rhodes, 202 N.C. 101, 161 S.E. 722 (1932), any discretionary ruling that is "manifestly unsupported by reason," White v. White, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985), is an abuse of discretion and

subject to reversal; and the record in this case shows no reason whatever for refusing the continuance and a compelling reason for granting it. Freeman v. Monroe, 92 N.C. App. 101, 373 S.E.2d 443 (1988).

In accord with Painter v. Wake County Bd of Ed., 288 N.C. 165, 217 S.E.2d 650 (1975), absent evidence to the contrary, it will always be presumed that “public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption.” See also Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961). The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. See Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971). Further in accord with N.C.G.S. § 150B-34, “the administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency.”

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Petitioner bears the burden of proving the claims alleged in the petition by a preponderance of evidence in this case. Peace v. Employment Sec. Comm'n, 349 N.C. 315, 507 S.E.2d 272 (1998).
2. The Office of Administrative Hearings had jurisdiction of this contested case pursuant to Chapter 150B of the North Carolina General Statutes as of the filing of Petitioner’s Supplemental Petition on December 11, 2000.
3. A contested case is commenced by filing a petition with the Office of Administrative Hearing after notice is given by an agency by personal delivery or by mail of the agency decision to all persons aggrieved who are known to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. N.C.G.S. § 150B-23. When the Petitioner filed its Petition for a contested case hearing on December 5, 2000, the Respondent, State Board of Education had not made its agency decision and had not notified Petitioner in writing of that action as required in N.C.G.S. § 150B-23. The action of termination of the Charter and notification of the agency’s decision to the Petitioner occurred on December 7, 2000. The Office of Administrative Hearings was not statutorily empowered to hear or in any way act upon Petitioner’s December 5, 2000 Petition.
4. However, Petitioner did file a “Supplemental Petition” with the Office of Administrative Hearings on December 11, 2000, which was after the agency action and notification of December 7, 2000. That Supplemental Petition is deemed by the Undersigned as incorporating all information found in the December 5th document and is found to be a proper and timely Petition.
5. The Respondent State Board of Education did not exceed its jurisdiction in taking action regarding the Charter of the Petitioner on December 7, 2000. PHASE Academy’s filing of a Petition for a Contested Case Hearing on December 5, 2000 in the Office of Administrative Hearings (OAH) was premature and the OAH lacked subject matter jurisdiction as well as personal jurisdiction at that time.
6. The Charter Agreement entered into between the North Carolina State Board of Education and PHASE Academy of Jacksonville, Inc. constitutes a binding agreement between the two parties and contains the language of the statute regarding grounds for terminating the Charter of the Petitioner. Further, the State Board of Education passed a Financial and Governance Noncompliance Policy for Charter Schools. The Policy represents the North Carolina Department of Public Instruction’s (NC DPI) internal operating procedures and does not preclude the Deputy Superintendent of the NC DPI, the Chief Financial Officer of NC DPI, after consultation with the Charter School Advisory Committee, from making any recommendations to the State Board of Education with regards to a Charter School, if so warranted, regardless of the charter schools financial and governance noncompliance status.
7. Prior to the SBE’s notice of intent to terminate, PHASE Academy was placed on Financial Disciplinary Status on October 10, 2000 which was 20 days prior to the time of October 30, 2000, given to PHASE in a September 1, 2000 letter placing it in Financial Probationary Status and prior to that time frame (60 days) set out in the North Carolina State Board of Education Policy Manual. In the October 10, 2000 letter PHASE Academy was given until October 24, 2000 to respond to the nine concerns set forth and provide information and/or take the steps detailed in the letter. In the same North Carolina State Board of Education Policy Manual under Impact of Financial Noncompliance, it is stated that; “This policy does not preclude the Deputy Superintendent of NC DPI, the CFO of NC DPI, or the Charter School Advisory Committee from making any recommendations to the State Board of Education with regards to a charter school if so warranted, regardless of the charter schools financial noncompliance status.”
8. The October 10, 2000 letter was signed by Bradford L. Sneed, Deputy State Superintendent and H. Hank Hurd, Associate State Superintendent. The Undersigned therefore finds that no procedural violations occurred as a result of the shortened Financial Probationary Status period given the exception cited above.

9. The Charter Agreement specifies the procedures that are to be followed when the State Board of Education initiates the charter termination process. Those procedures are as follows:

a. The SBE shall give the School written notice of its intent to terminate this Charter. The notice shall be sent by certified mail, return receipt requested, and shall state in reasonable detail the grounds for the SBE's intent to terminate. If the SBE determines that the School's current operation poses an immediate threat to the education, health, safety, or welfare of the School's students or employees or the public, the SBE may take appropriate protective action pending a final decision on the termination of the Charter.

b. If the School objects to the termination of its Charter, it must, within ten days of receipt of notice, deliver to the Office of Charter Schools a written request for a review by the SBE. If the School fails to deliver a timely request for review, the Charter shall terminate on the eleventh day after the School's receipt of the notice. The Office of Charter Schools will transmit the request to the appropriate Review Panel appointed by the Chair of the SBE. The Review Panel may review the matter with or without a formal hearing. If the Review Panel elects to conduct a hearing, the hearing shall be held within 30 days of receipt of the written request, unless otherwise agreed to by the parties. At the conclusion of its review, the Review Panel shall submit a written recommendation to the SBE. Unless the SBE and the School otherwise agree, the SBE shall make a final decision at its next regularly-scheduled meeting.

10. By letter dated November 3, 2000, the North Carolina State Board of Education ("the Board") notified the Petitioner of the Board's intent to terminate the Charter of PHASE Academy, based on the recommendation from the North Carolina Charter School Advisory Committee. This letter further stated the Advisory Committee had "cited issues and concerns regarding PHASE Academy's business practices presented at the October 27, 2000 interview with PHASE Academy, and also upon the failure of PHASE Academy personnel to respond persuasively to those concerns (see attachment)." The letter was sent certified as required by SBE's procedures governing revocation. The return receipt "green card" indicates that PHASE Academy received the letter on November 9, 2000.

11. By a letter dated November 17, 2000, PHASE Academy, through its counsel, N. Jerome Willingham, indicated a desire to appeal the decision to initiate revocation. By Memorandum dated November 22, 2000 from Dr. Grova L. Bridgers and faxed to Petitioner on November 28, 2000, PHASE Academy was informed that Mr. Willingham's letter of November 17, 2000 was accepted as a notice of appeal on behalf of PHASE Academy and that Petitioner would be notified as soon as possible of the date the appeal would be considered by a review panel.

12. Also in his November 17, 2000 letter, Mr. Willingham represented that the November 3, 2000 letter from NC DPI had not enclosed the attachment that had been referred to in the November 3rd letter.

13. The undersigned finds that although the November 3, 2000 letter received by PHASE Academy on November 9, 2000 did not have the attachment, that it nonetheless constituted proper and lawful written notice of the State Board of Education's intent to terminate PHASE's Charter. The notice was sent by certified mail, return receipt requested, and did state in reasonable detail the grounds for the SBE's intent to terminate, even absent the attachment. Reference in the SBE's November 3, 2000 letter to the Advisory Committee's issues and concerns regarding PHASE Academy's business practices presented at the October 27, 2000 interview with PHASE Academy, constituted and incorporated by reference reasonable detail for the grounds for the SBE's intent to terminate. Further these were virtually the same issues known by Ms. Dingle and PHASE Academy that were set out in writing in an October 10, 2000 letter to Ms. Dingle from Mr. Bradford L. Sneed, Deputy State Superintendent and Mr. Hank Hurd, Associate State Superintendent; and which were the focus of the October 27, 2000 interview referred to in the November 3, 2000 notification letter. Further, any doubt of the reasonableness of the details of the grounds were alleviated when, by November 27, 2000, Petitioner had received the resent November 3, 2000 letter and the attachments as well as a Memorandum from Dr. Grova L. Bridgers and could compare the grounds in the attachment with those grounds known in the October 10th letter and the October 27th interview (referred to in the November 3, 2000 letter received by PHASE on November 9, 2000).

14. Considering the grounds for termination as known by Petitioner on November 9, 2000 and reaffirmed on November 27, 2000, and given the time frame over which the issues involved in termination occurred, and considering the three-part balancing test set out by The United States Supreme Court, in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18, The Undersigned finds appropriate procedures required to comply with procedural due process protection were in place to hold a Review Panel hearing on December 5, 2000 and forward recommendations to the State Board of Education on December 6-7, 2000.

15. The Supreme Court in *Mathews* reiterated that procedural due process protection is a flexible, not fixed, concept governed by the unique circumstances and characteristics of the interest sought to be protected. The Court there identified three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest,

including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews* at 335, 96 S.Ct. at 903, 47 L.Ed.2d at 33.

16. There is no dispute that the initial Mathews-Eldridge factor, the private interest affected by the official action, is of significant importance in this matter and is met with the termination of a charter which effected not only the lives and interests of children attending PHASE but also the employment interests of PHASE's employees. In the second factor, The Mathews-Eldridge analysis places emphasis upon the fairness and reliability of the currently utilized procedures. However, procedural due process protection clearly does not prescribe or require a failsafe process that totally precludes any possibility of error. *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 320, 105 S.Ct. 3180, 3188-89, 87 L.Ed.2d 220, 233 (1985). The Mathews-Eldridge analysis requires careful consideration of the protections and procedures available under current administrative and judicial review system. The appeal and review guidelines and procedures mandated by the North Carolina General Assembly provide ample protection against potential erroneous decisions accompanying charter terminations and the State Board of Education complied with the established scheme in the above captioned matter including the time frame requirement.

17. Though the grounds for the SBE's intent to terminate in reasonable detail was known by the Petitioner by November 9, 2000, an examination of the seven to eight day time frame from yet another confirmation of those issues known by the Petitioner to the Review Panel hearing is in order using the third and final factor set out by the Mathews-Eldridge Court. That factor focuses on the government's interest in the dispute, including the government function involved. Consideration of this factor, the government interest involved, supports the conclusion that due process was followed in this case. The State of North Carolina, through each of its agencies, must remain a responsible steward of the public trust by maintaining an efficient and productive government. The maintenance of an efficient and productive government requires the availability and utilization of appropriate procedures balanced with fiscal responsibility. The State Board's interest in safeguarding the public tax dollars, by allocating funds to fiscally sound charter schools rather than to financially failing schools, outweighs the private interest PHASE might have in any more elaborate procedural protections than PHASE received in this case.

18. The final procedural matter in this case concerns itself with the failure of Respondent to grant Petitioner a continuance in the hearing of the Review Panel as well as a continuance for a hearing at the Board meeting. As cited in the case law and in the above Standards of Review, the granting or refusal of a continuance is within the sound discretion of the forum hearing the matter and ordinarily will not be interfered with on appeal, unless it is manifestly unsupported by reason. Though the Undersigned is unimpressed by the failure to grant a continuance to Petitioner, the record shows no legal grounds to find that due process was violated or that there was a failure by Respondent to act as required by law or rule. Understanding the Respondent's duty to safeguard tax dollars and uphold fiscal responsibility, the Undersigned finds those duties could have still been met under the charter agreement language that states, "If the SBE determines that the School's current operation poses an immediate threat to the education, health, safety, or welfare of the School's students or employees or the public, the SBE may take appropriate protective action pending a final decision on the termination of the Charter;" and a continuance granted that would have allowed Petitioner's attorney to appear at the appropriate hearings at a later time. However, as stated above failure to grant the continuance does not violate rule or law and is and was in the discretion of the Respondent.

19. In the absence of state constitutional or statutory direction, the appropriate burden of proof must be "judicially allocated on considerations of policy, fairness and common sense." 1 Kenneth S. Broun, *Brandis & Broun on North Carolina Evidence* § 37 (4th ed.1993). Two general rules guide the allocation of the burden of proof outside the criminal context: (1) the burden rests on the party who asserts the affirmative, in substance rather than form; and (2) the burden rests on the party with peculiar knowledge of the facts and circumstances. The North Carolina courts have generally allocated the burden of proof in any dispute on the party attempting to show the existence of a claim or cause of action, and if proof of his claim includes proof of negative allegations, it is incumbent on him to do so. *Johnson v. Johnson*, 229 N.C. 541, 544, 50 S.E.2d 569, 572 (1948). Applying these general principles to this case it is clear that Petitioner should bear the burden of proof in an action contesting the validity of the termination of the Petitioner's charter. Petitioner is the party attempting to alter the status quo and the burden rests upon the Petitioner PHASE Academy, even if the proof of that position requires the demonstration of the absence of certain events or causes.

2. In accord with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will always be presumed that "public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption." See also *Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619. The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. See *Styers v. Phillips*, 178 S.E.2d 583, 277 N.C. 460 (1971). Further in accord with N.C.G.S. § 150B-34, "the administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency."

21. The Petitioner PHASE Academy has failed to overcome the presumption by a preponderance of the evidence that the State Board of Education's decision to terminate its charter was done arbitrarily or capriciously or erroneously. The evidence supports that PHASE Academy failed to maintain a balanced budget, failed to make required tax payments and failed to make required payments to other government agencies for their employees' benefits. Particularly, the failure to make required tax and employment benefit

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payments to other governmental entities is directly attributable to PHASE's failure to meet generally accepted standards of fiscal management.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the undersigned makes the following:

RECOMMENDED DECISION

Based on the foregoing, the undersigned Administrative Law Judge recommends that the State Board of Education find that it did act as required by law and rule in the procedures followed in revoking the Charter of the Petitioner. Further, it is recommended that the State Board of Education find that there was just cause to terminate the Charter of the Petitioner PHASE Academy for failure to meet generally accepted standards of fiscal management pursuant to N.C.G.S. § 115C-238.39G(a)(2).

It is also further recommended that Petitioner, if they so request, be given the opportunity to present oral presentation and argument before the State Board of Education or a designated panel as well as the written arguments afforded by N.C.G.S. § 150B-36(a) and that the State Board of Education allow for meaningful interchange before making the final decision.

NOTICE

Before making its FINAL DECISION, the agency making that final decision in this contested case is required to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision. N.C.G.S. § 150B-36(a).

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

The agency that will make the final decision in this contested case is the North Carolina State Board of Education.

IT IS SO ORDERED.

This the 7th day of November, 2001.

Augustus B. Elkins II
Administrative Law Judge

5. The Memorandum was entirely false. There had been no report of alcohol abuse by Mr. Cummings received in the Director's Office. Mr. Godwin had not directed or authorized a workplace alcohol abuse test of Cummings or the use of official State stationery for the communication. Mr. Godwin directed Mr. Baldwin and Ms. Gail Harrington, CED Personnel Technician, to conduct an official investigation into this misconduct. R. Ex. 1, Baldwin Aff., ¶ 5; R. Ex. 2, Affidavit of James G. Godwin ("Godwin Aff."), ¶ 6.

6. During the course of this investigation, CED uncovered and documented what it concluded was a pattern of harassment and misconduct directed toward Mr. Cummings, a Native American. In addition to the alcohol testing incident, at least one other incident, the "Indian Princess" poster, was considered racially discriminatory by CED. R. Ex. 1, Baldwin Aff., ¶ 5.

7. During the investigation, Mr. Cummings produced a "poster" making fun of him as "Truck Driver of the Year." The poster included pictures of Mr. Cummings and his immediate supervisor, Mr. Napier, superimposed on a photocopied picture of a forklift slipping off the back of a truck. It also included a written text insinuating that Mr. Cummings did not know how to safely operate a forklift. Mr. Cummings stated that these posters had been posted in numerous places throughout the MPP and he had to remove them himself. This included in the plain view of the inmates, over whom Mr. Cummings was required to exercise discipline and control. R. Ex. 1, Baldwin Aff., ¶ 7.

8. Petitioner admitted that he had participated in this harassment incident in two ways: (a) he had helped construct the "Truck Driver of the Year" poster in that the writing on the poster was his; and (b) he had placed a copy of the poster on Mr. Cummings' desk at the MPP. Petitioner admitted this during the NCDOD internal investigation and also in his grievance hearing before the ERC. Petitioner did not deny this participation at the hearing on Respondent's Motion for Summary Judgment. Respondent does not claim that Petitioner otherwise "posted" this poster. R. Ex. 1, Baldwin Aff., ¶ 8; R. Ex. 3, Aikens Aff., Ex. A. thereto, ERC Hearing Report, p. 4.

9. Petitioner offers three reasons why Respondent NCDOD should be precluded from treating his participation in this harassment event as UPC: (a) in Petitioner's opinion, he did not have "major culpability" in the incident; (b) he did not "post" the poster "in numerous places;" and (c) the harassment was intended as a "lighthearted joke." Petitioner's verified Opposition to Summary Judgment, p. 6.

10. During the investigation, Mr. Cummings also produced evidence of a second harassment incident against him, i.e., a "poster" making racially derogatory remarks about him as a Native American. This "Indian Princess" poster was constructed from a photocopied magazine page advertising purchase of a Native American Bride for two payments of \$19.99. The words "An Exotic Indian Princess" and "Yes! Please enter my reservation for Swirling Waters" were highlighted. Using a technique similar to that used to construct the "Truck Driver of the Year" poster, a photograph of Mr. Cummings' head and neck had been cut out and superimposed on the shoulders of the pictured Indian princess. Mr. Cummings told investigators that this racial poster had been posted throughout MPP, including on the inmate bulletin board, and he alone had removed six copies from various locations. He also stated that, during the time that the poster was up on the inmate bulletin board, he saw a group of inmates gathered around it laughing and, when he went to remove the poster, an inmate called out "Hey squaw." R. Ex. 1, Baldwin Aff., ¶ 9.

11. During the investigation, Mr. Darrell Martin told investigators that he saw Inmate William Linker making copies of the "Indian Princess" poster. In response to the investigators' question "Do you know who did place the photograph of Mr. Cummings over the face of this (poster) prior to Inmate Linker making copies of it?", Mr. Martin responded "Yes sir, it was Darryl Burr (Petitioner)." At the ERC hearing, when asked on what this answer was based, Mr. Martin stated that, when he questioned Inmate Linker about who had put Cummings' picture on the poster, Linker told him it was the Petitioner and Mr. Martin believed Linker when he said that. Mr. Martin stated there was another reason he knew the Petitioner had aided the construction of this poster. He (Martin) was the one who had come up with the Indian princess magazine advertisement and he gave it to Petitioner to use in the harassment. The ERC noted that this was consistent with Mr. Martin's testimony during the internal NCDOD investigation regarding this incident. R. Ex. 1, Baldwin Aff., ¶ 10; R. Ex. 3, Aiken Aff., Exhibit A thereto, ERC Hearing Report, p. 5.

12. As to his participation in this harassment event, Petitioner simply denies any participation in "preparation of" the "Indian Princess" poster. He does not offer any explanation why Inmate Linker would name him to Mr. Martin as the one pasting Cummings' picture on the poster. Neither does he explain how the underlying Indian princess magazine article got from him to the person who incorporated it into the poster. Petitioner's verified Opposition to Summary Judgment, Facts in Dispute, ¶ 3.

13. As to the third harassment event, the NCDOD/CED investigation revealed that a number of MPP personnel had participated in creating the false alcohol testing memorandum and in attempting to convince Mr. Cummings that it was a legitimate directive from the Director, CED. Among other things, the investigation revealed that the memorandum was passed around among several MPP co-workers of Cummings for suggestions regarding authenticity before it was finalized and presented to Mr. Cummings. Mr. Cummings, a Native American, was the only MPP employee to whom this "fake" alcohol test demand was presented. R. Ex. 1, Baldwin Aff., ¶ 11.

14. During the investigation, Mr. William Hanna admitted to investigators that he was a participant in the fake “Alcohol Memorandum.” He identified Petitioner to investigators as one of those who read the memorandum during its circulation for authenticity suggestions prior to it being presented to Mr. Cummings. Mr. Hanna further told investigators that he initiated the incident by asking Mr. Cummings if he had taken his alcohol test yet. Mr. Hanna told investigators that he then called Petitioner and told him to tell Mr. Martin that “the ball was rolling . . .,” meaning that everything was set to actually give the false Memorandum to Cummings. R. Ex. 1, Baldwin Aff., ¶ 12 and R. Ex. 3, Affidavit of Fred Aikens (“Aiken Aff.”), Exhibit A thereto, ERC Hearing Report, p.2.

15. During the investigation, a second witness, Mr. Darrell Martin, told investigators that Petitioner had participated in this harassment. During his ERC hearing, Mr. Martin told NCDOC representatives that Petitioner had aided in the deception of Cummings regarding the Memorandum by positioning a drug testing kit identical to the one presented to Cummings on his desktop at a strategic time. The significance of this was that, as the only other CDL licensed employee subject to random drug testing, Cummings was likely to check the authenticity of the directive with Petitioner. R. Ex. 1, Baldwin Aff., ¶ 14.

16. Petitioner admitted participating in this “hoax” in two ways to NCDOC investigators and later at his ERC hearing. He admitted that he passed Mr. Hanna’s message on to Mr. Martin to have the Memorandum presented to Cummings. Petitioner admitted that, before the false Memorandum was presented to Cummings, he had been given a test kit identical to the one later given to Cummings with the Memorandum. He had received this test kit on the previous Friday. When the Memorandum was presented to Cummings on Monday morning, Petitioner admitted that he positioned his identical test kit in plain view on his desk. Later in the morning, Cummings came to Petitioner to check and see if the Memorandum was genuine. Petitioner knew that was what Cummings was doing. Petitioner admitted that, when Cummings made this inquiry: (a) “his” test kit was in plain view on his desk; and (b) he told Cummings that he, too, had been given the same test kit. R. Ex. 1, Baldwin Aff., ¶ 13; R. Ex. 3, Aiken Aff., Exhibit A thereto, ERC Hearing Report, pp.2 and 4; Petitioner verified Opposition to Summary Judgment, Facts in Dispute, ¶ 5.

17. At the ERC hearing, Mr. Cummings testified that, after his “discussion” with the Petitioner, he (Cummings) still was not convinced that the Memorandum was genuine, so he went to ask his supervisor, Mr. Napier, about it. When Mr. Napier told him that it was not and that his “co-workers” were playing a joke on him, Mr. Cummings became very upset and immediately reported the incident to Mr. Baldwin. R. Ex. 3, Aiken Aff., Exhibit A thereto, ERC Hearing Report, p.4. See R. Ex. 2, Godwin Aff., Exhibit A thereto, Dismissal Letter, p. 2.

18. At the ERC hearing, Petitioner also admitted that he “knew about” the False Memorandum “joke” and the falsified memorandum as they were being “developed.” However, he denied that he actually “saw” the memorandum “before it was given to” Cummings. Petitioner also stated that he never actually told Cummings that “he had to take the test.” Petitioner also stated, for the first time, that he told Cummings that “he thought the memo was bull.” Petitioner offers no explanation as to why Mr. Cummings subsequently went to his supervisor, Mr. Napier, still inquiring about the memorandum’s legitimacy and waited to report the incident until Napier told him it was a co-worker prank. R. Ex. 3, Aiken Aff., Exhibit A thereto, ERC Hearing Report, p.4.

19. During the investigation, Mr. Napier, Mr. Cummings’ immediate supervisor, also provided investigators a certified statement about a fourth incident, the threat charge against Petitioner. Mr. Napier stated that, at approximately 12 Noon on 1/30/01, Petitioner approached Mr Napier on the work site, the MPP, and asked if he was Cummings’ supervisor. This was immediately after Mr. Cummings’ complaint about the three harassing incidents had caused the CED/Director Godwin to start the internal NCDOC/CED investigation into harassment of Cummings. When Mr. Napier confirmed that he was Cummings’ supervisor, his certified statement quotes Petitioner as saying “I want you to tell Cummings that he so much as raises his voice to me, I go upside his head.” Mr. Napier told investigators that he told Petitioner “that he couldn’t do that because it would jeopardize his (Petitioner’s) job.” Mr. Napier told investigators that Petitioner acknowledged this, but said that “he wanted me (Napier) to tell Cummings what he (Petitioner) said.” Mr. Napier then went to Mr. Cummings at the work site and repeated Petitioner’s threat directly to him. R. Ex. 1, Baldwin Aff., ¶ 15; R. Ex. 3, Aiken Aff., Exhibit A thereto, ERC Hearing Report, p. 3.

20. Mr. Cummings, who was concerned about the threat, immediately reported it to Mr. Baldwin, who was at the MPP that day conducting the CED investigation into the harassment of Mr. Cummings. Mr. Baldwin immediately questioned Mr. Napier and directed him to write a certified investigatory statement setting out what had occurred. R. Ex. 1, Baldwin Aff., ¶ 16.

21. Mr. Baldwin then called both Petitioner and Mr. Napier in to question them together. After Mr. Baldwin advised Petitioner about the consequences of communicating a threat in the workplace, Petitioner told Mr. Baldwin that Mr. Napier had “misinterpreted” what he said. While Petitioner was in the room, Mr. Napier stated it was “possible” that he had “misinterpreted.” R. Ex. 1, Baldwin Aff., ¶ 17.

22. At that point, Petitioner was excused from the room and Mr. Baldwin again questioned Mr. Napier. Mr. Baldwin asked Mr. Napier if he had misinterpreted what Petitioner had said and, if so, did he want to rewrite his certified statement. Mr. Napier replied to Mr. Baldwin that he: (a) knew what he had heard; and (b) would stand by his original statement. Mr. Baldwin

concluded that Mr. Napier's actions, in response to Petitioner's words to him, showed that Napier understood Petitioner's words as: (a) intended for Cummings; and (b) a threat against Cummings. R. Ex. 1, Baldwin Aff., ¶¶ 18 - 19.

23. Plaintiff's ERC hearing occurred almost five months after the threat and these interviews, i.e., on June 26, 2001, and after Mr. Napier himself had been dismissed over these events at MPP. At this ERC hearing and after Mr. Napier's change in status, Petitioner called Mr. Napier as a supporting witness. Mr. Napier stated that, as of the ERC hearing (June 26, 2001), he believed that the words he had quoted in his contemporaneous written statement and his immediate transmittal to Cummings were "not what Burr said," but was Napier's "interpretation of what was said." R. Ex. 3, Aiken Aff., Exhibit A thereto, ERC Hearing Report, p. 5. There is no evidence in the record that Mr. Napier believed that he had misinterpreted the essence of the message conveyed by Petitioner's words to him.

24. In response to ERC questioning, Mr. Napier confirmed that he had repeated Petitioner's words to Mr. Cummings almost immediately after Petitioner spoke them to him on January 30, 2001. Mr. Napier also reviewed his written statement and confirmed, again in response to ERC questioning, that he had written and certified this statement on the same day, five months previously, that Petitioner had spoken the words to him. In determining that Petitioner had stated a threat of harm to Cummings, the ERC further noted that, in Cummings' statement, also written on the same day that Mr. Napier had repeated Petitioner's words to him, Mr. Cummings had certified a version of the words that was essentially the same as Mr. Napier's same day written statement, i.e., that "he (Petitioner) would hit me up side the head" compared to Napier's version that Petitioner would "go upside Cummings head." R. Ex. 3, Aiken Aff., Exhibit A thereto, ERC Hearing Report, p. 5.

25. In response to this evidence, Petitioner admits that he did not approach Mr. Napier until after the investigation into Cummings' complaints had begun. He claims that the words Napier relayed to Cummings and reported to investigators are not the precise words he stated, but only Napier's interpretation of what he said. Petitioner states that what he told Napier was that if management at MPP did not take corrective action against Cummings for Petitioner's previous reports of harassment, then "he (Petitioner) would stop it." Petitioner's verified Opposition to Summary Judgment, Facts in Dispute, ¶ 6.

26. The NCDOC investigation did not find any evidence that Petitioner had previously complained to CED management about alleged harassment of him by the victim, Mr. Cummings. There was no evidence of any complaint from Petitioner regarding racial discrimination by Mr. Cummings. R. Ex. 1, Baldwin Aff., ¶ 20; R. Ex. 2, Godwin Aff., ¶ 9.

27. All these matters were reported to Mr. Godwin, Director, CED, after the close of the investigation. It was this information, as supplemented by the detailed investigation (including the verbatim transcripts of witness interviews and the certified witness statements), from which Mr. Godwin determined that: (a) Petitioner had committed one or more acts amounting to UPC; and (b) what discipline was appropriate for Petitioner. Mr. Godwin also took into consideration the disciplinary and operational needs of the CED, as he uniquely understood them based on his many years of correctional enterprise experience and from his vantage point as Director, CED. Prominent in that consideration were: (a) the unique role and responsibilities of CED employees (like Mr. Cummings) as supervisors and managers of inmates; and (b) the need to emphasize that CED had zero tolerance for racial harassment, co-worker intimidation or communication of threats in a penological environment. R. Ex. 2, Godwin Aff., ¶¶ 16, 20.

28. Mr. Godwin, as Director, CED, determined that, in these "incidents" in which Petitioner participated, the posters involved were prepared and posted for the purpose of humiliating and degrading a co-worker, Mr. Cummings. He determined that at least the "Indian Princess" poster was directly derogatory to, and discriminatory against, Native Americans, i.e., racial harassment. He determined that Petitioner's conduct violated written and known work rules against harassment, intimidation and threats, and that each such work rule provided clear notice that resultant discipline could include dismissal without prior warning. Based on the composite of all these considerations, including specifically the importance of the work rules violated, Mr. Godwin determined that important CED needs could only be met if Petitioner was dismissed from State employment for his misconduct. He also determined that any lesser, "progressive" disciplinary response was not appropriate. R. Ex. 2, Godwin Aff., ¶¶ 17 - 20.

29. Following Petitioner's internal grievance appeal of his dismissal and receipt of the NCDOC ERC recommendation that the dismissal be upheld, Mr. Fred Aikens, Deputy Secretary, NCDOC, in the normal course of his duties and acting on behalf of the Secretary, NCDOC, approved the ERC recommendation and confirmed Petitioner's dismissal. In doing so, he approved and adopted Director Godwin's conclusions that the Petitioner's conduct had violated work rules and constituted UPC, and that the needs of CED in regard to this particular misconduct required that dismissal be the discipline, rather than any lesser response by management. R. Ex. 3, Aikens Aff., ¶¶ 4 - 7.

30. N.C.G.S. § 126-35 imposes the requirement that Respondent have "just cause" prior to dismissing Petitioner. The statute does not define the term "just cause."

31. Published regulations of the State Personnel Commission ("SPC") define the terms "unsatisfactory job performance" ("UJP") and "unacceptable personal conduct" ("UPC"), 25 N.C.A.C. 11.2301. In 25 N.C.A.C. 11.2301(c), they also state that employee action which meets one of the SPC definitions of UPC in 25 N.C.A.C. 11.2304(b) "constitutes just cause for discipline or

dismissal.” In 25 N.C.A.C. 11.2304(a), the SPC provides that “Employees may be dismissed for a current incident of unacceptable personal conduct,” and, in 25 N.C.A.C. 11.2301(a), states that “The degree and type of [personnel] action taken shall be based upon the sound and considered judgment of the [State employer] in accordance with the provisions of this Rule.”

32. SPC regulations define UPC by listing, in the disjunctive, several descriptions of employee action which each constitute UPC. These definitions include: “(1) conduct for which no reasonable person should expect to receive prior warning;” or (2) “job related conduct which constitutes a violation of state or federal law;” or . . . (4) “the willful violation of known or written work rules;” or (5) “conduct unbecoming an employee that is detrimental to the agency’s service . . .” 25 N.C.A.C. 11.2304(b).

33. At the time of the events in question, the NCDOC and BCCI (of which the MPP was a part) had written and published work rules prohibiting harassment of co-workers, intimidation of co-workers, and the communication of threats to physically harm co-workers. These work rules applied to Petitioner as an MPP employee. R. Ex. 2, Godwin Aff., ¶¶ 5, 11 - 14.

34. The NCDOC has implemented the SPC regulations regarding UPC through a general, written work rule, which states:

All employees of the Department of Correction shall maintain personal conduct of an acceptable standard as an employee and member of the community. Violations of this policy may result in disciplinary action including dismissal without prior warning. In general, unacceptable personal conduct includes:

- #1. Conduct for which no reasonable person should expect prior warning; or
- #2. Job-related conduct that constitutes a violation of state or federal law; or
- #4. The willful violation of known or written work rules; or
- #5. Conduct unbecoming a state employee that is detrimental to state service; or

R. Ex. 2, Godwin Aff., Exhibit B thereto, The NCDOC Personnel Manual (“NCDOC PM”), Section 6, Appendix C, “Personal Conduct,” (hereinafter “Appendix C”), Page 38, Subparagraph A, “Policy.”

35. As further explanation and definition of UPC, this NCDOC written work rule, Appendix C, Pages 38-41, Subparagraph B, “Examples” states:

The following causes are examples of [Unacceptable] Personal Conduct. Each situation/incident will be considered on a case-by-case basis. This is by no means an all inclusive list:

- #4. Participating in any action that would in any way seriously disrupt or disturb the normal operation of . . . any subunit of the Department of Correction [CED or the MPP]. . . #16. Discriminatory practices . . . or intimidation of fellow employees.
- #27. Disorderly conduct; . . . threatening . . . to inflict bodily injury to another; engaging in horseplay.

R. Ex. 2, Godwin Aff., Exhibit B thereto.

36. NCDOC also has published a more specific, written work rule expressly defining as UPC, and prohibiting employees from engaging in, “Violence In The Workplace,” as defined in that work rule. That work rule states:

It shall be a violation of this policy to: Engage in workplace violence as defined in this policy. . . . Violations of this policy shall be considered unacceptable personal conduct and shall result in discipline up to and including dismissal . . .

DEFINITIONS

- 1. Workplace Violence: Includes, but is not limited to, intimidation, threats, physical attack or property damage.
- 2. Threat: The expression of an intent to cause physical or mental harm. An expression constitutes a threat without regard to whether the party communicating the threat has the present ability to carry it out and without regard to whether the expression is contingent, conditional, or future. . . .
- 5. Intimidation: Includes, but is not limited to . . . engaging in actions intended to . . . induce stress.

R. Ex. 2, Godwin Aff., Exhibit C thereto, NCDOC PM, Section 3, pp. 22-30.

37. The MPP is located within BCCI. For that reason, MPP employees also are subject to written BCCI work rules. As a matter of standard NCDOC practice, these local work rules often are copied in memorandum form and each employee is required to

sign a copy acknowledging that he has received a copy of the rule and that it applies to him. Thus, NCDOC procedure documents such local work rule as “known” to the employee, as well as being “written,” for purposes of the SPC definitions of UPC. R. Ex. 2, Godwin Aff., ¶ 5.

38. Prior to and during the time of the incidents referred to in the Dismissal Letter, BCCI had a written, specific work rule entitled “Human Relations in the Workplace” and making violation of its prohibitions UPC. This written work rule states:

It is the Department of Correction goal and my commitment to create a work force climate that is harassment free for all employees Harassment includes . . . threats, . . . derogatory comments, . . . teasing, or inappropriate verbal . . . conduct . . . Harassment is considered to be deliberate unsolicited and unwelcome verbal . . . conduct which creates an intimidating and hostile or offensive environment. . . . Comments of a . . . racial nature are inappropriate and are considered to be unacceptable personal conduct. Employees shall not intentionally insult others or make derogatory comments to others with total disregard for others feelings. . . . This memorandum is to serve notice to every employee at [BCCI] that conduct of the kind described above is unacceptable and employees who fail to adhere . . . will be disciplined to the fullest extent in accordance with . . . Department Policy governing personal conduct. . . .

R. Ex. 2, Godwin Aff., ¶ 14 and Exhibit D thereto.

39. In accordance with this NCDOC standard practice, Petitioner received a copy of this BCCI written specific work rule, which he signed and acknowledged on September 17, 1996. R. Ex. 2, Godwin Aff., ¶ 15 and Exhibit D thereto.

CONCLUSIONS OF LAW

1. Petitioner is a “career state employee” within the meaning of N.C. Gen. Stat. § 126-1.1 and, pursuant to N.C.G.S. § 126-5, is subject to and governed by the provisions of the State Personnel Act, N.C.G.S. § 126-1, *et seq.* Findings of Fact (“FOF”) 1.

2. N.C.G.S. § 126-35 sets out the only cause of action within OAH subject matter jurisdiction which Petitioner, as a State employee, has against Respondent requiring “just cause” prior to his dismissal from State employment. FOF 30.

3. The Office of Administrative Hearings (“OAH”) has jurisdiction over the Parties and over Petitioner’s “just cause” claim. FOF 1 - 3, 30.

4. As this contested case was filed after January 1, 2001, Respondent has the burden of proof and must prove by the preponderance of the evidence in the record that Petitioner engaged in at least one action that constituted UPC and, therefore, provided Respondent “just cause” to dismiss Petitioner from State employment without prior warning. N.C.G.S. §§ 150B-23(a) and 150B-29(a).

5. North Carolina is an “employment-at-will” State. The requirement that “just cause” exist prior to the dismissal of a State employee is created solely in statute, i.e., N.C.G.S. § 126-35. Because this statute is in derogation of the sovereign immunity that the State otherwise would enjoy against suits by its employees, and because of the plenary discretion in employment decisions inherent in employment-at-will, the scope of this statutory exception and cause of action must be construed narrowly. *Meyer v. Wall*, 347 N.C. 97, 489 S.E.2d 880, 884 (1997). Thus, N.C.G.S. § 126-35 requires only that the State employer have a “good or adequate reason having a basis in fact under [the] particular circumstances” of the case at issue to dismiss the State employee. *Amanini v. D.H.R.*, 114 N.C. App. 668, 679, 443 S.E.2d 114 (1994).

6. In regulations having the force and effect of law, *Amanini v. D.H.R.*, 114 N.C. App. at 678-79, 443 S.E.2d at 18-20, the State Personnel Commission (“SPC”) has created and defined the disciplinary concept of “unacceptable personal conduct,” or “UPC,” and determined that employee conduct which amounts to UPC, as defined in 25 N.C.A.C. 11.2304(b), will constitute “just cause” for dismissal. 25 N.C.A.C. 11.2301. In that same regulation, the SPC expressly states that, if the employee has taken action that amounts to UPC, the decision on whether dismissal without prior warning is the appropriate discipline in the particular circumstance shall, to the extent not expressly restricted by SPC regulation, “be based on the sound and considered judgment of the [State employer].” 25 N.C.A.C. 11.2301(a).

7. The concept of UPC is defined two ways in written and published State regulations that apply to the Petitioner: (a) SPC regulations list, in the disjunctive, several definitions of categories of employee misconduct which each constitute UPC; and (b) agency regulations, such as the Respondent’s published Personnel Policy and Procedure Manual, adopt these general definitions and provide employees a nonexhaustive list of examples of specific conduct which the Respondent will treat as meeting these definitions and constituting UPC. FOF 31 - 38.

8. Included among the categories of conduct defined as UPC in 25 N.C.A.C. 11.2304(b) are: “(1) conduct for which no reasonable person should expect to receive prior warning; or . . . (4) the willful violation of known or written work rules; or (5) conduct unbecoming an employee that is detrimental to the agency’s service . . .” A reasonable employee should not expect a prior warning, if the conduct at issue constitutes either (4) willful violation of a written work rule or (5) conduct unbecoming. Likewise, whatever is required to make conduct “detrimental to agency service,” is not required to constitute UPC under definitions (1) or (4). None of these three definitions require actual harm to State interests to establish UPC and no showing of even potential adverse impact is required except as to definition (5). *Eury v. N.C. Employment Security Comm.*, 115 N.C. App. 500, 610-11, 446 S.E.2d 383 (1994). Even if the employee’s conduct fits only under definition (5), the requisite impact is present, if conduct such as the employee’s, either alone or if unchecked in its spread, has a potential to affect adversely, even indirectly, the mission or interests of the State agency employer. *In Re Gregory v. N.C. Dept. of Revenue*, 93 N.C. App. 785, 379 S.E.2d 51 (1989); *Lynch v. PPG Industries*, 105 N.C. App. 223, 412 S.E.2d 163 (1992). Definition (4) requires that the work rule be either “known” or “written,” not both. A willful violation occurs when the employee willfully does the acts at issue and does not require that the employee also willfully violate a known work rule. See *N.C. Dept. of Correction v. McNeely*, 135 N.C. App. 587, 592-93, 521 S.E.2d 730, 734 (1999).

9. The more specific, nonexhaustive examples provided in Appendix C, “Personal Conduct,” to Respondent’s Disciplinary Policy and Procedures, together with Respondent’s specific written work rules regarding “Violence in the Workplace” and “Human Relations in the Workplace,” include and encompass the two grounds (from four incidents) upon which Respondent dismissed Petitioner, i.e., (a) participating in harassing or intimidating actions directed toward a co-worker at the job site that, if unchecked, have the potential to seriously disrupt or disturb the normal and necessary operation of a CED operation such as the MPP, including especially the maintenance of good order and discipline among the supervised inmates; and (b) uttering words amounting to, or reasonably understood as, threats against co-workers in violation of specific written work rules and with the potential, if unchecked, to seriously impact good order and discipline among Respondent’s work force. These sources establish that such employee actions are UPC, within the meaning of SPC and NCDOC regulations, and a violation of written NCDOC work rules. FOF 4 - 38.

10. Petitioner had notice of these UPC definitions and work rules through Respondent’s Personnel Policies and Procedure Manual, as well as its other written work rules. Each source informed employees that violation would subject one to discipline up to and including dismissal for a first violation. In addition, Petitioner was provided a copy of at least one written, specific BCCI work rule, which provided the same warning and which he signed as applicable to him prior to the events and conduct at issue. All the actions taken by Petitioner violated these known and written work rules. All the actions taken by Petitioner were willful and deliberate. FOF 31 - 39.

11. Petitioner’s actions, alone or if unchecked, had the potential to undermine three fundamental areas of legitimate concern to Respondent: (a) maintenance of an MPP workplace environment without harassment of co-workers; (b) the maintenance of good order and discipline within the ranks of the inmates supervised and controlled by the workforce, including preserving the necessary respect and dignity of co-workers (like Cummings) charged with exercising that control; and (c) avoiding the interjection into the workplace of threats or the actual occurrence of physical violence between co-workers, and especially not as reaction to reporting of suspected misconduct for internal investigation. *Oates v. NCDOC*, 114 N.C. App. 597, 604, 442 S.E.2d 542, 546 (1994) (“officers must lead by example when dealing with convicts and once you lose integrity and credibility you lose control.”) Thus, Petitioner’s undisputed actions had at least the potential to affect adversely Respondent’s accomplishment of important components of its mission and disrupt its operations at MPP. FOF 4 - 39.

12. Petitioner’s actions as set out in the Dismissal Letter and addressed in his ERC grievance hearing, each separately violated specific NCDOC examples of UPC 4, 16, and 27 and other more specific work rules regarding “Violence in the Workplace” and “Human Relations in the Workplace.” Any one incident of conduct violating any one of these work rules is sufficient to constitute UPC under SPC definitions 1, 4 or 5 thereof and, therefore, was “just cause” for Petitioner’s dismissal from State employment within the meaning and requirement of N.C.G.S. § 126-35. FOF 4 - 39.

13. Specifically, the undisputed facts show that Petitioner participated in, or aided and abetted, the “Truck Driver of the Year” and “False Alcohol Memorandum” harassment incidents. Each incident separately violated one or more of Respondent’s written work rules, i.e.,: (a) in Appendix C, giving examples of UPC ; (b) against “Violence in the Workplace”; or (c) on “Human Relations in the Workplace.” It is undisputed that Petitioner willfully did the acts that comprised his participation in these events. It also is undisputed that these types of harassment activities had the potential, if not the actual impact, of causing a serious disruption of the necessary relationship between the inmates and the MPP staff members, and specifically that it had that potential, if not actual impact, on Mr. Cummings’ ability to function effectively as a supervisor of inmates at MPP. The False Alcohol Memorandum incident involved abuses of NCDOC property and authority that had especially disruptive potential. It involved a false claim that the Director’s office had evidence of alcohol abuse, attempted false use of the authority of the Director to order a drug test, and misappropriation of State property, official NCDOC stationery, to effect this abuse of authority. Among other things, this had a potential to undermine employee confidence in, and respect for, the Director’s investigations and the CED alcohol/drug testing program. Thus, Petitioner’s participation in either harassment event alone satisfied SPC definitions of UPC (1), (4) and (5) and constituted UPC sufficient to support his dismissal. 25 N.C.A.C. 11.2304(b). FOF 4 - 9, 13 - 18, 31 - 39.

14. To be entitled to summary judgment, Respondent need only proffer sufficient evidence to show that there is no “genuine issue” of “material” fact as to at least one basis for its dismissal that is “just cause.” Not all disputed facts are “material.” Summary judgment may not be avoided by a mere scintilla of evidence. Only those disputes over even material facts that are supported by sufficient proof that a reasonable trier of fact could resolve them in the nonmoving party’s favor are genuine issues for trial and avoid summary judgment.. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Bone International, Inc. v. Brooks*, 304 N.C. 371, 283 S.E.2d 518 (1981).

15. The dispute offered by Petitioner as to the words of the “threat” that he spoke to Mr. Napier does not demonstrate a dispute of “material” fact or one that raises a “genuine issue for trial.” Respondent interpreted Petitioner’s words as a threat to do physical harm to Cummings. As such, those words violated Respondent’s “Violence in the Workplace” and on “Human Relations in the Workplace,” and constituted UPC under one or more SPC definitions. Thus, this action provided yet a third independent “just cause” ground for Petitioner’s dismissal. Petitioner offers no proof that he told Napier what he meant when he said he would “stop Cummings.” He offers no proof as to how he intended to “stop” Cummings or that it was not a reasonable interpretation of his version of the wording that he meant to do so by exerting physical force or some threat of violence. The specifics about how that force would be applied, i.e., “come upside Cummings head”, or “stop him” is not a dispute over a “material” fact. Based on the proffers of evidence on summary judgment, no reasonable trier of fact could find for Petitioner on whether his words reasonably conveyed a threat to Cummings and, thus, the only dispute of fact is not “material” and does not raise a “genuine issue for trial.” FOF 19 - 29, 31 - 39.

16. Only one employee action that is UPC is enough to uphold Petitioner’s dismissal as based on “just cause.” Viewing the proffered evidence as a whole, including: (a) Petitioner’s admitted involvement in the “Truck Driver of the Year” and “False Alcohol Memorandum” incidents; (b) the investigation testimony of Messrs. Hanna and Martin; (c) Petitioner’s admitted involvement in other “jokes” for the purpose of getting back at Cummings; and (d) the similarities in construction of the “Indian Princess” poster with the technique used for the “Truck Driver of the Year” poster, there is no genuine issue for trial as to the “Indian Princess” incident. Petitioner does not deny that Mr. Martin gave him the magazine advertisement from which this poster was constructed. No reasonable trier of fact could find for Petitioner, as to whether, despite his bald denial, he participated, or aided and abetted, in the “Indian Princess” harassment incident. There is no dispute of fact that he willfully took the actions he is accused of, such conduct violated one or more of Respondent’s written work rules, and constituted UPC under one or more SPC definitions. FOF 10 - 12, 31 - 39.

Based on the foregoing Conclusions of Law, the undersigned makes the following

DECISION

That the State Personnel Commission deny the Petition and **AFFIRM** Respondent’s dismissal of Petitioner from State employment for unacceptable personal conduct in that Respondent had “just cause” for such disciplinary decision within the meaning of N.C.G.S. § 126-35.

NOTICE

Before the agency makes the FINAL DECISION, it is required by N.C.G.S. § 150B-36(a) to give each party an opportunity to file exceptions to this DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by N.C.G.S § 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties’ attorneys of record.

This the 13th day of November, 2001.

Fred G. Morrison Jr.
Senior Administrative Law Judge