



REGISTER

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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

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.

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

Carl W. Johnson & the Carl W. Johnson Family Trust

Pursuant to N.C.G.S. 130A-310.34, Carl W. Johnson & the Carl W. Johnson Family Trust ("Prospective Developer") have filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Greensboro, Guilford County, North Carolina. The Property, also known as Cotton Mill Square, consists of 29.45 acres and is located at 801 Merritt Drive. The Property is bounded by Spring Garden Street on the north, Blunt Street and the Southern Railroad on the south, Merritt Drive on the west, and a parcel in use as a salvage yard on the east. Environmental contamination known to exist on the Property in soil and groundwater is being investigated by Lucent Technologies, Inc., successor to the Western Electric Company who formerly owned the Property and operated an electronic circuit board and components manufacturing facility in the former cotton mill buildings from 1950 until 1976. Prospective Developer acquired the Property in 1981 and has committed itself to mixed office, retail, and residential redevelopment on the Property. DENR has determined that the Property is or can be made safe for the Prospective Developer's committed redevelopment. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Prospective Developer, 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) 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 Greensboro Public Library, 219 Church St., Greensboro, NC 27401, 2nd floor reference desk by contacting Sherry Antonowicz at that address or at (336) 373-5878, 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 effective date of the Notice of Intent. Written requests for a public meeting may be submitted to DENR within 30 days of the effective date of the Notice of Intent. 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

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of)
Controlled Substance Tax)
dated January 22, 1997 by the)
Secretary of Revenue)
)
vs.)
)
Cynthia Delores Demarest)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 371

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina on Wednesday, August 15, 2001, upon Cynthia Delores Demarest's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on August 8, 1997, sustaining the assessment of unauthorized substance tax for the period of January 22, 1997.

Chairman Richard H. Moore, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

The Taxpayer did not appear at the hearing. David J. Adinolfi, II, Assistant Attorney General, represented the Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Controlled Substance Tax Assessment was issued to the Taxpayer on January 22, 1997 proposing an assessment of tax, penalty and interest in the total sum of \$1,211.20. The assessment was based upon the possession of 13 dosage units of crack cocaine. Taxpayer filed a timely objection to the assessment and requested a hearing before the Secretary of Revenue. On August 8, 1997, the Assistant Secretary entered his decision that sustained the proposed assessment. Taxpayer timely filed notice and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issue presented to the Board on administrative review of this matter is stated as follows:

1. Is the controlled substance tax assessment proposed against the taxpayer lawful and proper?

EVIDENCE

The evidence presented at the hearing before the Secretary consisted of Exhibits CS-1 through CS-6.

The Board considered the decision of the Assistant Secretary stated as follows:

1. An assessment of tax is presumed to be correct.
2. The burden is upon the taxpayer who takes exception to an assessment to overcome that presumption.
3. Notice of the time and place of the scheduled hearing was mailed to taxpayer's last known address by first class mail, postage prepaid, on April 24, 1997.
4. Neither the taxpayer nor anyone representing the taxpayer appeared at the hearing.
5. Taxpayer offered no evidence or argument at the hearing that would tend to contradict the assessment or overcome the presumption of correctness.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

IN ADDITION

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on to the Taxpayer to rebut that presumption. The Taxpayer failed to provide any evidence to overcome the presumption, thus the assessment is correct.

The Board having conducted a hearing in this matter and having considered the petition, the brief, and the final decision, concludes that the Assistant Secretary properly sustained the proposed assessment against the Taxpayer in this matter.

WHEREFORE, THE TAX REVIEW BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 1st day of October 2001.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The denial of individual income tax)
refund for taxable year 1994 by the)
Secretary of Revenue)
)
vs.)
)
John F., Jr. and Jerra D. Hotchkiss)
Taxpayers)

ADMINISTRATIVE DECISION

Number: 372

This matter was heard before the Regular Tax Review Board in the City of Raleigh, Wake County, North Carolina, on Wednesday, August 15, 2001, upon Taxpayers' petition for administrative review of the Final Decision of the Secretary of Revenue entered on May 26, 2000, sustaining the denial of individual income tax refund for the taxable year 1994 by the Secretary of Revenue.

The Taxpayers did not appear at the hearing. Kay Linn Miller Hobart, Assistant Attorney General appeared at the hearing on behalf of the Secretary of Revenue.

Chairman Richard H. Moore, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

On April 15, 1998, Mr. and Mrs. Hotchkiss (hereinafter "Taxpayers") filed amended 1993 and 1994 individual income tax returns with the Department of Revenue. The amended returns decreased depreciation expenses for real estate that had been mistakenly included in the basis of rental property on the original returns. The Taxpayers paid the additional tax and interest due in the amounts of \$116.00 and \$155.00 for the tax years at issue. When the Taxpayers filed the amended returns, the statute of limitations for assessing additional tax for those years had expired. The Taxpayers also filed amended federal returns and paid the additional tax. Subsequently, the Internal Revenue Service notified the Taxpayers that since the period for which the Internal Revenue Service could charge and collect tax had expired, the additional tax would not be charged and that a request for a refund must be filed within two years of the payment. Thereafter, the Taxpayers filed a request for a refund of the amounts paid to the Department of Revenue. The Department issued a refund for the 1993 tax year but denied a refund for taxable year 1994. The Taxpayers protested the denial and requested a hearing. On May 26, 2000, the Assistant Secretary entered a final decision sustaining the denial of the individual income tax refund for taxable year 1994. Pursuant to G.S. 105-241.2, the Taxpayers timely filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issues presented to the Board on administrative review of this matter are stated as follows:

1. Is the Secretary of Revenue authorized to refund tax that is properly determined but paid after the expiration of the statute of limitation for assessing additional tax?
2. Is the denial of refund for the taxable year 1994 lawful and proper?
3. Was the additional tax paid with the amended State income tax return for the taxable year 1993 refunded to the Taxpayers in error?

EVIDENCE

The evidence presented at the hearing before the Secretary of Revenue and included in the record for the Board's review is stated as follows:

1. Memorandum dated April 18, 1996, from the Muriel K. Offerman, Secretary of Revenue to Michael A. Hannah, Assistant Secretary of Revenue, designated as Exhibit PT-1.
2. Taxpayers' North Carolina individual income tax return for taxable year 1993, designated as PT-2.
3. Taxpayers' North Carolina individual income tax return for taxable year 1994, designated as PT-3.
4. Taxpayers' amended North Carolina individual income tax return for taxable year 1993, designated as PT-4.
5. Taxpayers' amended North Carolina individual income tax return for taxable year 1994, designated as PT-5.
6. Notice of Individual Income Tax Adjustment for taxable year 1993 dated July 5, 1999, designated as Exhibit PT-6.
7. Letter from Husband to the Department of Revenue dated December 29, 1998, with related attachments, copies of which are collectively designated as Exhibit PT-7.
8. Letter from the Office of Examination Division to Taxpayers dated January 18, 1999, designated as Exhibit PT-8.

IN ADDITION

9. Letter from the Office of Examination Division to Taxpayers, dated January 18, 1999, designated as Exhibit PT-9. Due to a typographical error, the letter referenced tax year 1998 instead of the correct taxable year 1993.
10. Letter from Husband to M. A. Bedard, Tax Auditor, dated March 31, 1999, with related attachments, copies of which are collectively designated Exhibit PT-10.
11. Letter from M. A. Bedard, Tax Auditor, to Taxpayers dated May 6, 1999, designated as Exhibit PT-11.
12. Letter from Husband to M. A. Bedard, Tax Auditor, dated May 10, 1999, designated as Exhibit PT-12.
13. Letter from Husband to M. A. Bedard, Tax Auditor, dated July 8, 1999, designated as Exhibit PT-13.
14. Letter from M. A. Bedard, Tax Auditor, to Husband dated August 5, 1999, designated as Exhibit PT-14
15. Letter from Husband to Department dated August 23, 1999, designated as Exhibit PT-15.
16. Letter from W. Edward Finch, Jr., to Husband dated October 6, 1999, designated as Exhibit PT-16.
17. Letter from Husband to W. Edward Finch, Jr., dated October 10, 1999, designated as Exhibit PT-17.
18. Letter from Michael A. Hannah to Taxpayers, dated October 28, 1999, designated as Exhibit PT-18.
19. Letter from Husband to Michael A. Hannah, dated November 5, 1999, designated as Exhibit PT-19.
20. Letter from Michael A. Hannah to the Taxpayers, dated November 15, 1999, designated as Exhibit PT-20.
21. Letter from Michael A. Hannah to the Taxpayers dated January 21, 2000, designated as Exhibit S-1.
22. Letter from Husband to Michael A. Hannah dated February 23, 2000, with related attachments, designated as Exhibit S-2.

FINDINGS OF FACT

The Board reviewed the following findings of fact in the Assistant Secretary's final decision regarding this matter:

1. Taxpayers are and at all material times were natural persons, sui juris, and citizens and residents of North Carolina.
2. Taxpayers filed their North Carolina individual income tax return for the taxable year 1993 on August 12, 1994, under an approved four-month extension of time for filing the return. The return reflected an overpayment of \$778.00, which was refunded to Taxpayers.
3. Taxpayers timely filed their North Carolina individual income tax return for the taxable year 1994. The return reflected an overpayment of \$1,879.00, which was refunded to the Taxpayers.
4. Taxpayers filed amended 1993 and 1994 North Carolina individual income tax returns on April 15, 1998, to decrease depreciation expense for land inadvertently included in the basis of rental property. The amended returns reflected additional tax and interest of \$116.00 and \$155.00 for the tax years 1993 and 1994 respectively, payment of which Taxpayers included with the amended returns. The amended returns and payments were received by the Department after the expiration of the three-year statute of limitation for assessing tax due.
5. Because land is not a depreciable asset, Taxpayers correctly determined the tax shown on the amended North Carolina individual income tax returns for the taxable years 1993 and 1994.
6. Taxpayers also amended their federal individual income tax returns for the taxable years 1993 and 1994 to report the same adjustments to depreciation. Taxpayers subsequently received notification from the Internal Revenue Service that because they paid the additional federal income tax after the expiration of the statute of limitation for assessments, they were due refunds from the Internal Revenue Service.
7. Taxpayers subsequently requested refunds of the additional North Carolina individual income tax paid with their amended State returns. Only July 6, 1999, the Department refunded the tax of \$116.00 plus interest of \$11.15 paid with the 1993 amended State income tax return. The Department denied Taxpayers' refund request for the taxable year 1994.
8. The Taxpayers filed a timely protest to the denial of refund and requested a hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in his final decision regarding this matter:

1. An assessment of tax due from a taxpayer must be proposed within three years after the date the taxpayer filed the return or the date the return was required to be filed, whichever is later.
2. There is no provision in the law prohibiting the Secretary from accepting and retaining tax that has been properly determined by the taxpayer but was not paid until after the expiration of the statute of limitation for assessing the tax.
3. The law requires that if a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, and the taxpayer, within two years of being notified by the federal government, files a North Carolina return reflecting the federal change, the Secretary must refund any overpayment of tax. Because the statute of limitation for assessment of State tax is controlled by State law, the Secretary is not bound by the federal law as to when tax can be assessed or collected.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

IN ADDITION

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The Taxpayers contend that the Secretary of Revenue must refund the tax paid since the Secretary of Revenue was prohibited from assessing the tax shown due on the amended returns because of the three-year statute of limitation for the assessments. This statute serves to limit the time that the Secretary may assess a tax. There is no provision in the law prohibiting the Secretary from accepting and retaining tax that has been properly determined by the taxpayer but was not paid until after the expiration of the statute of limitation for assessing the tax. Thus, the Board after considering the petition, the brief, the record and the final decision, confirms the Assistant Secretary's final decision that sustained the denial of individual income tax refund for tax year 1994.

WHEREFORE, the Tax Review Board Orders that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 1st day of October 2001.

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of)
Unauthorized Substance Tax)
dated October 9, 1996 by the)
Secretary of Revenue)
)
vs.)
)
Steven A. Nelon,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 373

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina on Wednesday, August 15, 2001, upon Steven A. Nelon's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on November 10, 1997, sustaining the assessment of unauthorized substance tax for the period of October 9, 1996.

Chairman Richard H. Moore, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

The Taxpayer waived his right to appear at the hearing. David J. Adinolfi, II, Assistant Attorney General represented the Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Controlled Substance Tax Assessment was issued to the Taxpayer by R.E. Johnson, Enforcement Officer, assessing \$7,840.00 tax, \$3,920.00 penalty and \$58.80 interest. The assessment resulted from a report of arrest issued by the Isothermal Narcotics Task Force and was based upon the possession of marijuana without tax stamps being affixed thereto as required by G.S. 105-113.108. Taxpayer filed a timely objection to the assessment and requested a hearing before the Secretary of Revenue. On November 10, 1997, the Assistant Secretary entered his decision that sustained the proposed assessment. Thereafter, the Taxpayer timely filed notice and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issues presented to the Board on administrative review of this matter are stated as follows:

1. Did the Taxpayer have unauthorized possession of the controlled substance?
2. Is the Taxpayer subject to the assessment in the sum of \$11,818.80?

EVIDENCE

The evidence presented at the hearing before the Secretary of Revenue and submitted to the Board for review is listed below as follows:

1. Letter to the Taxpayer's attorney dated December 30, 1996, informing him of the administrative tax hearing, scheduled for February 5, 1997, designated as Exhibit CS-1.
2. Letter from the Taxpayer's attorney requesting a hearing dated November 6, 1996, designated as Exhibit CS-2.
3. Notice of Controlled Substance Tax Assessment (BD-10) dated October 9, 1996, in the name of Steven Allen Nelon, designated as Exhibit CS-3.
4. Report of Arrest and/or Seizure Involving Nontaxpaid Controlled Substances and Counterfeit Controlled Substances (Form BD-4) dated October 7, 1996, against Steven Allen Nelon for possession of 2,240 grams of marijuana designated as Exhibit CS-4.
5. Isothermal Narcotics Task Force's arrest narrative, designated Exhibit CS-5.
6. State Bureau of Investigation Laboratory Report, designated as Exhibit CS-6.
7. Certificate of Tax Liability filed with the Clerk of Court in Rutherford County on October 9, 1996, by Ralph E. Johnson, Enforcement Officer for the Controlled Substance Tax Division, designated as CS-7.
8. Memorandum from Muriel K. Offerman, Secretary of Revenue, dated April 18, 1996, delegating Michael A. Hannah the authority to hold any hearing required or allowed under Chapter 105 of the General Statutes designated as Exhibit CS-8.
9. The brief submitted on behalf of the Taxpayer, designated as Exhibit TP-1.

FINDINGS OF FACT

The Board reviewed the following findings of fact in the Assistant Secretary's decision in this matter:

1. Assessment of controlled substance tax was made against the Taxpayer on October 9, 1996, in the sum of \$7,840.00 tax, \$3,920.00 penalty and \$58.80 interest based on possession of 2,240 grams of marijuana.
2. The Taxpayer made a timely objection and application for hearing.
3. The Department of Revenue and the Taxpayer agreed to submit this matter to the hearing officer on briefs and the decision was based upon the briefs.
4. On October 7, 1996, law enforcement officers found 1,310.8 grams of marijuana at the taxpayer's residence and property. The taxpayer was found to be inside the homemade structure in which most of the marijuana was located.
5. There were no stamps attached to the controlled substance as required by law.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. The Taxpayer had unauthorized possession of 1,310.8 grams of marijuana and was therefore a dealer as that term is defined in G.S. 105-113.106.
2. Marijuana is a controlled substance.
3. That the Taxpayer is liable for the tax in the sum of \$4,588.50, penalty in the sum of \$2,294.25 and interest to date.
4. That this hearing officer does not have the authority to rule on constitutional issues.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on to the Taxpayer to rebut that presumption.

From a review of the record, the Taxpayer failed to furnish any evidence to overcome this presumption. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the briefs, the record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed. Regarding Taxpayer's claim that the Unauthorized Substance Tax Act is unconstitutional, the Tax Review Board, which is an administrative board, does not have the authority or jurisdiction to determine the constitutionality of a statute. *Great American Insurance Company v. Gold, 254 N.C. 168, 118 S.E. 2d 792 (1961)*. Thus, the Taxpayer's constitutional challenge is not an issue that the Tax Review Board is empowered to determine. If the Taxpayer desires to pursue the issue of the constitutionality of the statute, then a suit must be filed in the appropriate court.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 1st day of October 2001.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Additional)
Tax for taxable years 1988 through 1992)
by the Secretary of Revenue of)
North Carolina)
)
vs.)
)
Leandros Mathis,)
Taxpayer)

ADMINISTRATIVE DECISION

Number: 374

This matter was heard before the Regular Tax Review Board in the City of Raleigh, Wake County, North Carolina, on Wednesday, August 15, 2001, upon Leandros Mathis' (hereinafter "Taxpayer") petition for administrative review of the Final Decision of the Secretary of Revenue entered on August 10, 1999, sustaining the proposed assessment of additional tax for taxable years 1988 through 1992 by the Secretary of Revenue.

The Taxpayer did appear at the hearing. Alexandra M. Hightower, Assistant Attorney General appeared at the hearing on behalf of the Secretary of Revenue.

Chairman Richard H. Moore, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Based upon information received from the Internal Revenue Service, the North Carolina Department of Revenue assessed the Taxpayer additional taxes for tax years 1988 through 1992 inclusive, together with interest and fraud penalties. Taxpayer contested the assessment and was granted a hearing before the Assistant Secretary of Revenue on August 25, 1998. The Assistant Secretary issued a decision on August 10, 1999 upholding the Department's assessment. Pursuant to G.S. 105-241.2, the Taxpayer timely filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issue presented to the Board on administrative review of this matter is stated as follows:

1. Are the individual income tax assessments proposed against Taxpayer for the taxable years 1988 through 1992 lawful and proper?

EVIDENCE

The evidence presented at the hearing before the Secretary of Revenue and included in the record for the Board's review is stated as follows:

1. Memorandum dated April 18, 1996, from the Muriel K. Offerman, Secretary of Revenue to Michael A. Hannah, Assistant Secretary of Revenue, designated as Exhibit PT-1.
2. Taxpayer's North Carolina individual income tax return for taxable year 1988, designated as Exhibit PT-2.
3. Taxpayer's North Carolina individual income tax return for taxable year 1989, designated as Exhibit PT-3.
4. Taxpayer's North Carolina individual income tax return for taxable year 1990, designated as Exhibit PT-4.
5. Taxpayer's North Carolina individual income tax return for taxable year 1991, designated as Exhibit PT-5.
6. Taxpayer's North Carolina individual income tax return for taxable year 1992, designated as Exhibit PT-6.
7. Notice of Individual Income Tax Assessment for taxable year 1988, dated January 4, 1998, designated as Exhibit PT-7.
8. Notice of Individual Income Tax Assessment for taxable year 1989, dated February 5, 1998, designated as Exhibit PT-8.
9. Notice of Individual Income Tax Assessment for taxable year 1990, dated December 7, 1997, designated as Exhibit PT-9.
10. Notice of Individual Income Tax Assessment for taxable year 1991, dated December 7, 1997, designated as Exhibit PT-10.
11. Notice of Individual Income Tax Assessment for taxable year 1982, dated December 7, 1997, designated as Exhibit PT-11.
12. Revenue Agent's Report from the Internal Revenue Service for the tax years 1988 through 1992, designated as Exhibit PT-12.
13. Taxpayer's Internal Revenue Service transcript for the taxable years 1998 through 1992, designated as Exhibit PT-13.
14. Title 17, North Carolina Administrative Code, Subchapter 6B, Rule .3206, designated as Exhibit PT-14.
15. Letter from Taxpayer, with attachments, to the North Carolina Department of Revenue dated December 11, 1997, copies of which are collectively designated Exhibit PT-15.

IN ADDITION

16. Letter from Caroline A. Smith, Administrative Officer in the Personal Taxes Division, to the Taxpayer dated January 27, 1998, designated as Exhibit PT-16.
17. Letter from Taxpayer to the North Carolina Department of Revenue dated February 18, 1998, designated as Exhibit PT-17.
18. Letter from Caroline A. Smith to Taxpayer dated March 3, 1998, designated as Exhibit PT-18.
19. Letter from Caroline A. Smith to Taxpayer dated April 7, 1998, designated as Exhibit PT-19.
20. Letter from Caroline A. Smith to Taxpayer dated May 14, 1998, designated as Exhibit PT-20.
21. Letter from Michael A. Hannah to Taxpayer dated July 17, 1998, designated as Exhibit PT-21.
22. Letter from Michael A. Hannah to Taxpayer dated August 25, 1998, designated as Exhibit PT-22.

The Taxpayer submitted the following evidence:

1. Taxpayer's analysis of bank deposits for the taxable years 1988 through 1992, designated as TP-1.
2. United States District Court Decision Number 93-12-CIV-4-H, designated as TP-2.
3. United States District Court Decision Number 4:93CR00032-17, designated as TP-3.
4. Letter from James M. Ayers, II, Taxpayer's attorney to the Internal Revenue Service dated June 15, 1994, designated as TP-4.
5. Letter from Trawick H. Stubbs, Jr., Taxpayer's attorney to the Clerk of Court for the United States District Court, dated December 13, 1994, designated as TP-5.

Subsequent to the hearing, the Assistant Secretary allowed the Taxpayer to submit for the record any additional arguments, documents or other evidence in support of his objections to the proposed assessments. The Assistant Secretary entered the following into the record:

1. Letter from Michael A. Hannah to Taxpayer dated August 31, 1998, designated as Exhibit S-1.
2. Letter from Michael A. Hannah to Taxpayer dated November 2, 1998, designated as Exhibit S-2.
3. Letter from Michael A. Hannah to Taxpayer dated January 15, 1999, designated as Exhibit S-3.
4. Letter from Michael A. Hannah to Taxpayer dated March 4, 1999, designated as Exhibit S-4.
5. Letter from Michael A. Hannah to Taxpayer dated April 14, 1999, designated as Exhibit S-5.
6. Letter from Michael A. Hannah to Taxpayer dated May 10, 1999, designated as Exhibit S-6.
7. Letter from Taxpayer to Michael A. Hannah dated May 28, 1999, designated as Exhibit S-7.
8. Letter from Michael A. Hannah to Taxpayer dated June 2, 1999, designated as Exhibit S-8.
9. Letter from Michael A. Hannah to Taxpayer dated June 14, 1999, designated as Exhibit S-9.

FINDINGS OF FACT

The Board reviewed the following findings of fact in the Assistant Secretary's decision in this matter:

1. Taxpayer is and at all material times was a natural person, sui juris, and citizen and resident of North Carolina.
2. Taxpayer timely filed his North Carolina individual income tax returns for the taxable years 1988 through 1992.
3. The Department of Revenue received information from the Internal Revenue Service indicating that Taxpayer's federal gross income had been increased by the amounts set forth in Finding of Fact Number 3, of the Assistant Secretary's final decision, dated August 10, 1999.
4. Upon examination, the auditor adjusted Taxpayer's returns for the changes applicable to his State income tax returns.
5. For the tax years 1989 through 1992, a twenty-five percent penalty was proposed because the Taxpayer did not report the federal changes to the State within two years of receiving the report from the Internal Revenue Service. In error, the auditor did not assert this penalty for the tax year 1988. Since the penalty for failure to report federal changes is due for the tax year 1988, a penalty of \$1,761.24 has been added.
6. The auditor also asserted the fifty percent fraud penalty as required by G.S. 105-236(6) for the tax years 1988 through 1992. The Internal Revenue Service assessed the fraud penalty for the tax years 1988 through 1992 pursuant to Internal Revenue Code Section 6653(b)(1) and 6663 because all of the underpayment of tax was due to fraud.
7. Pursuant to G.S. 105-159 and G.S. 105-241.1, Notices of Individual Income Tax Assessment reflecting the auditor's adjustments were mailed to Taxpayer on January 4, 1998, for tax year 1988; February 5, 1998 for tax year 1989; and December 7, 1997, for tax years 1990, 1991 and 1992.
8. The Taxpayer filed a timely protest to the proposed assessment and requested a hearing before the Secretary of Revenue.
9. On October 28, 1998, Taxpayer met with the Hearings Officer and two Departmental Field Auditors. No additional information was provided by Taxpayer to establish that the assessments proposed against him were in error.
10. The Assistant Secretary allowed the Taxpayer until June 1, 1999, to submit additional information for the record in support of his objections to the proposed assessments; however, no additional information was furnished by the Taxpayer to establish that the proposed assessments were in error.

CONCLUSIONS OF LAW

IN ADDITION

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. The requirements for reporting income and deductions are similar for State and federal income tax purposes; therefore, the changes to Taxpayer's federal income tax returns are applicable to his State income tax returns.
2. Upon receipt of the information from the Internal Revenue Service reflecting adjustments to a taxpayer's federal income tax return, the Secretary of Revenue is required to consider all facts or evidence including any information shown on the federal report in proposing an assessment against the taxpayer.
3. A taxpayer whose federal taxable income is changed, corrected, or otherwise determined by the Internal Revenue Service is required to file a return with the State reporting the change or determination of federal taxable income within two years after receipt of the Internal Revenue Agent's report. A taxpayer who fails to report changes within two years is subject to the penalties in G.S. 105-236, including the failure to file penalty of five percent of the additional tax per month, maximum twenty-five percent.
4. Under Title 17 of the North Carolina Administrative Code, when an audit is based upon a federal audit report and the fraud penalty has been assessed for federal purposes, the fifty percent fraud penalty will be assessed for State purposes.
5. When a taxpayer does not report a federal change to the State and the State obtains a copy of the federal report from the Internal Revenue Service, an assessment may be proposed within three years of being notified by the Internal Revenue Service of the change.
6. If a taxpayer does not provide adequate and reliable information upon which the Department can accurately compute his liability, an assessment may be made upon the basis of the best information available.
7. The proposed assessments are based on a report obtained from the Internal Revenue Service reflecting changes to Taxpayer's 1988 through 1992 federal income tax returns and are presumed to be correct.
8. The Notices of Individual Income Tax Assessment for the taxable years 1988 through 1992 were timely issued and are, under the facts, lawful and proper except to the extent herein modified.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. Subsequent to the administrative hearing, the Board allowed the Taxpayer additional time to submit any documents or other evidence in support of his objections to the proposed assessments. Upon review of the record, including the documents submitted by the Taxpayer after the administrative hearing, the Board concludes that the Taxpayer failed to furnish any evidence to show that the assessment is not proper. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the whole record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 2nd day of November 2001.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of)
Controlled Substance Tax)
dated May 17, 1999, by the)
Secretary of Revenue)
)
vs.)
)
Travis Antwon Jefferson,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 375

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina on Tuesday, September 25, 2001, upon Travis Antwon Jefferson's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on July 19, 2000, sustaining the assessment of unauthorized substance tax for the period of May 17, 1999.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

The Taxpayer did not appear at the hearing. David J. Adinolfi, II, Assistant Attorney General represented the Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer by R.A. Hughes, Enforcement Officer of the Unauthorized Substance Tax Division, assessing \$50,000.00 tax, \$20,000.00 penalty and \$333.33 interest. The assessment alleged that on May 13, 1999, the Taxpayer possessed 1000 grams of cocaine without the proper tax stamps affixed thereto as required by G.S. 105-113.108. Taxpayer filed a timely objection to the assessment and requested a hearing before the Secretary of Revenue. On July 19, 2000, the Assistant Secretary entered his decision that sustained the proposed assessment. Thereafter, the Taxpayer timely filed notice and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issues presented to the Board on administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of cocaine?
2. Is the Taxpayer subject to the assessment of unauthorized substance tax?

EVIDENCE

The evidence presented at the hearing before the Secretary of Revenue and submitted to the Board for review is listed below as follows:

1. Form BD-10, "Notice of Unauthorized Substance Tax Assessment," dated May 17, 1999, designated as Exhibit US-1.
2. Letter from the Taxpayer's attorney requesting a hearing dated June 10, 1999, designated as Exhibit US-2.
3. Letter to the Taxpayer's attorney, dated July 2, 1999, informing him that his client's Administrative Hearing is scheduled for September 1, 1999, designated as Exhibit US-3.
4. Letter from the Taxpayer's attorney, dated August 27, 1999, requesting that the hearing be conducted by written communication, designated as Exhibit US-4.
5. Letter to Taxpayer's attorney, dated August 30, 1999, granting the request to conduct the hearing by written communication, designated Exhibit US-5.
6. Form BD-4, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances and Counterfeit Substances," dated May 13, 1999, which names the Taxpayer as the possessor of the controlled substance, designated as US-6.
7. Case report by the Iredell County Sheriff's Office, designated as US-7.
8. Memorandum from Muriel K. Offerman, Secretary of Revenue, dated April 18, 1996, delegating to Michael A. Hannah, Assistant Secretary for Legal and Administrative Services, the authority to hold any hearing required or allowed under Chapter 105 of the General Statutes, designated as Exhibit US-8.

FINDINGS OF FACT

The Board reviewed the following findings of fact in the Assistant Secretary's decision in this matter:

1. Assessment of Unauthorized Substance Tax was made against the Taxpayer on May 17, 1999, in the sum of \$50,000.00 tax, \$20,000.00 penalty and \$333.33 interest, for a total proposed liability of \$70,333.33 based on possession of 1000 grams of cocaine.
2. The Taxpayer made a timely objection and application for hearing.
3. On May 13, 1999, the Taxpayer had constructive possession of 1000 grams of cocaine.
4. The Taxpayer and codefendant traveled to Statesville, North Carolina, for the purpose of buying cocaine. In the Brief for the Tax Hearing, Exhibit US-7 makes it clear that the Taxpayer was willingly, intentionally and knowingly involved in the possession of cocaine.
5. No tax stamps were purchased for or affixed to the cocaine as required by law.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. An assessment of tax is presumed to be correct.
2. The burden is upon the Taxpayer who objects to an assessment to overcome that presumption.
3. Neither the Taxpayer nor his representative offered any evidence or arguments that would tend to contradict the assessment or overcome the presumption correctness.
4. Assessment and collection of this tax does not require a prior judicial determination with regard to any concomitant criminal charges.
5. The Taxpayer had unauthorized possession of 1000 grams of cocaine on May 13, 1999.
6. The Taxpayer was a dealer as that term is defined in G.S. 105-113.106(3).
7. The Taxpayer is liable for \$50,000.00 tax, \$20,000.00 penalty and interest until date of full payment.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on to the Taxpayer to rebut that presumption.

From a review of the record, the Taxpayer failed to furnish any evidence to overcome this presumption. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 2nd day of November 2001.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of)
Unauthorized Substance Tax)
dated January 19, 1999 by the)
Secretary of Revenue)
)
vs.)
)
Larry Fitch Clark, Sr.)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 376

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina on Wednesday, August 15, 2001, upon petition by Larry Fitch Clark, Sr., (hereinafter "Taxpayer") for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on April 10, 2000, sustaining the proposed assessment of unauthorized substance tax for the period of January 19, 1999.

Chairman Richard H. Moore, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Thomas Edward Hodges, Attorney at Law appeared at the hearing on behalf of the Taxpayer. David J. Adinolfi, II, Assistant Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer by J.S. Powell, Enforcement Officer of the Unauthorized Substance Tax Division, assessing \$32,006.40 tax, \$3,200.64 penalty and \$213.38 interest, for a total proposed liability of \$35,420.42. The assessment was based upon information contained in Form BD-4L, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Illicit Liquor," which was prepared by the Harnett County Sheriff's Office on January 15, 1999. The assessment alleged that on January 15, 1999, the Taxpayer possessed 9,485 gallons of mash and 1,552 gallons of moonshine without the proper tax stamps affixed. The tax was paid in full within forty-eight (48) hours of possession, therefore no penalty or interest is due. The Taxpayer filed an objection to the assessment and requested a hearing before the Secretary of Revenue that was conducted on July 23, 1999. On April 10, 2000, the Assistant Secretary entered his decision that sustained the proposed assessment and denied Taxpayer's request for a refund of the tax paid in the amount of \$32,006.40.

ISSUES

The issues considered by the Assistant Secretary of Revenue and reviewed by the Board on administrative review of the final decision in this matter are stated as follows:

1. Did the Taxpayer have actual or constructive possession of 9,485 gallons of mash and 1,552 gallons of moonshine?
2. Is the Taxpayer subject to the assessment of unauthorized substance tax?

EVIDENCE

The evidence presented at the hearing before the Assistant Secretary of Revenue and included in the record for the Board's review is stated as follows:

1. Brief for Tax Hearing submitted by the Unauthorized Substance Tax Division with the following attachments:
2. Letter to the Taxpayer's attorney, dated March 1, 1999, advising that his client's Administrative Tax Hearing is scheduled for May 6, 1999, designated as US-1.
3. Letter from the Taxpayer's attorney, dated February 18, 1999, requesting a hearing, designated as US-2.
4. Form BD-4L, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Illicit Liquor", dated January 15, 1999, which names the Taxpayer as the possessor of the unauthorized substances, designated as US-3.
5. Form BD-10, Notice of Unauthorized Substance Tax Assessment, dated January 19, 1999, designated as US-4.
6. Department of Crime Control and Public Safety, Alcohol Law Enforcement's arrest narrative dated January 21, 1999, designated as US-5.
7. Memorandum dated April 18, 1996, from Muriel K. Offerman, Secretary of Revenue, delegating to Michael A. Hannah, Assistant Secretary of Revenue for Legal and Administrative Services, the authority to hold any hearing required or allowed under Chapter 105 of the North Carolina General Statutes, designated as US-6.

IN ADDITION

8. Signed affidavit from Ron Starling, Director of the Unauthorized Substance Tax Division, stating that no record could be found that the Taxpayer had made application for illicit liquor stamps or paid the tax, designated as US-7.

The Taxpayer submitted the following evidence at the hearing before the Assistant Secretary of Revenue:

1. Enforcement Agent J.S. Powell's tax warrant for collection of money seized by the Harnett County Sheriff's Department, designated as T-1.
2. Forms AL-50, ALE's property report, designated as T-2.
3. Copy of N.C.G.S. 105-113.106(6a), definition of mash, designated as T-3.
4. A description and flow chart of the process of making liquor, designated as T-4.
5. A calculation of the Taxpayer's contentions as to the quantity of mash, designated as T-5.
6. Drawings and computations prepared by Massengill Associates, P.A. a consulting engineering firm located in Benson, North Carolina, dated July 22, 1999, designated as T-6.

In addition to the above-referenced evidence, the Assistant Secretary considered oral testimony from the following individuals:

1. Agent John Adorjan, Division of Alcohol Law Enforcement.
2. Supervisory Agent Vance Jackson, Division of Alcohol Law Enforcement.

Subsequent to the hearing, the Assistant Secretary allowed the Department of Revenue and the Taxpayer to submit additional arguments, documents or other evidence for the record. The Assistant Secretary entered the following into the record:

1. Affidavit from Junius P. "Junior" Byrd, a resident of Johnston County, was submitted on August 18, 1999 by the Taxpayer.
2. The Department of Revenue submitted a Crime Lab Report from the State Bureau of Investigation on November 18, 1999.

FINDINGS OF FACT

The Board considered the following findings of fact made by the Assistant Secretary of Revenue in his final decision concerning this matter:

1. Assessment of Unauthorized Substance Tax was made against the Taxpayer on January 19, 1999, in the sum of \$32,006.40 tax, \$3,200.64 penalty and \$213.38 interest, for a total of \$35,420.42, based upon possession of 9,485 gallons of mash and 1,552 gallons of moonshine.
2. The principal amount of tax was paid in full within forty-eight (48) hours of possession.
3. The Taxpayer made timely objection and application for a hearing.
4. The material found in the "440" cookers and the "1550" plastic containers at the time of the seizure was "mash" as that term is defined by G.S. 105-113.106(6a).
5. On January 15, 1999, the Taxpayer was in possession of 9,485 gallons of mash and 1,552 gallons of moonshine.
6. There were no tax stamps affixed to the mash or moonshine as required by law.

CONCLUSIONS OF LAW

The Board considered the following conclusions of law made by the Assistant Secretary in his final decision concerning this matter:

1. The Taxpayer had unauthorized possession of 9,485 gallons of mash and 1,552 gallons of moonshine on January 15, 1999, and was therefore a dealer as that term is defined in G.S. 105-113.106.
2. The Taxpayer is liable for tax in the sum of \$32,006.40, a sum which was paid within forty-eight (48) hours of possession and therefore not subject to penalty or interest.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. The Board having conducted a hearing in this matter and having considered the petition, the briefs, the arguments, the whole record and the final decision of the Assistant Secretary of Revenue, concludes that the Taxpayer did not carry his burden of proof in this matter. The Taxpayer failed to furnish any evidence to show that the assessment is not proper. Thus, the Board concludes that the findings of

IN ADDITION

fact made by the Assistant Secretary were fully supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the final decision of the Assistant Secretary should be confirmed.

In light of these findings of fact and conclusions of law, the Taxpayer's other claims regarding the timeliness of the Assistant Secretary's final decision and the administrative hearing by the Board are rejected in the absence of any showing of prejudice or statutory relief.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 9th day of November 2001.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of)
Unauthorized Substance Tax)
dated January 19, 1999 by the)
Secretary of Revenue)

ADMINISTRATIVE DECISION

Number: 377

vs.)

Delmon Lee, Jr.)
Taxpayer)

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina on Wednesday, August 15, 2001, upon petition by Delmon Lee, Jr. (hereinafter "Taxpayer") for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on April 10, 2000, sustaining the proposed assessment of unauthorized substance tax for the period of January 19, 1999.

Chairman Richard H. Moore, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Thomas Edward Hodges, Attorney at Law appeared at the hearing on behalf of the Taxpayer. David J. Adinolfi, II, Assistant Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer by J.S. Powell, Enforcement Officer of the Unauthorized Substance Tax Division, assessing \$32,006.40 tax, \$3,200.64 penalty and \$213.38 interest, for a total proposed liability of \$35,420.42. The assessment was based upon information contained in Form BD-4L, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Illicit Liquor," which was prepared by the Harnett County Sheriff's Office on January 15, 1999. The assessment alleged that on January 15, 1999, the Taxpayer possessed 9,485 gallons of mash and 1,552 gallons of moonshine without the proper tax stamps affixed. The tax was paid in full within forty-eight (48) hours of possession, therefore no penalty or interest is due. The Taxpayer filed an objection to the assessment and requested a hearing before the Secretary of Revenue that was conducted on July 23, 1999. On April 10, 2000, the Assistant Secretary entered his decision that sustained the proposed assessment and denied Taxpayer's request for a refund of the tax paid in the amount of \$32,006.40.

ISSUES

The issues considered by the Assistant Secretary of Revenue and reviewed by the Board on administrative review of the final decision in this matter are stated as follows:

1. Did the Taxpayer have actual or constructive possession of 9,485 gallons of mash and 1,552 gallons of moonshine?
2. Is the Taxpayer subject to the assessment of unauthorized substance tax?

EVIDENCE

The evidence presented at the hearing before the Assistant Secretary of Revenue and included in the record for the Board's review is stated as follows:

1. Brief for Tax Hearing submitted by the Unauthorized Substance Tax Division with the following attachments:
2. Letter to the Taxpayer's attorney, dated March 1, 1999, advising that his client's Administrative Tax Hearing is scheduled for May 6, 1999, designated as US-1.
3. Letter from the Taxpayer's attorney, dated February 18, 1999, requesting a hearing, designated as US-2.
4. Form BD-4L, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Illicit Liquor," dated January 15, 1999, which names the Taxpayer as the possessor of the unauthorized substances, designated as US-3.
5. Form BD-10, Notice of Unauthorized Substance Tax Assessment, dated January 19, 1999, designated as US-4.
6. Department of Crime Control and Public Safety, Alcohol Law Enforcement's arrest narrative dated January 21, 1999, designated as US-5.
7. Memorandum dated April 18, 1996, from Muriel K. Offerman, Secretary of Revenue, delegating to Michael A. Hannah, Assistant Secretary of Revenue for Legal and Administrative Services, the authority to hold any hearing required or allowed under Chapter 105 of the North Carolina General Statutes, designated as US-6.

IN ADDITION

8. Signed affidavit from Ron Starling, Director of the Unauthorized Substance Tax Division, stating that no record could be found that the Taxpayer had made application for illicit liquor stamps or paid the tax, designated as US-7.

The Taxpayer submitted the following evidence at the hearing before the Assistant Secretary of Revenue:

1. Enforcement Agent J.S. Powell's tax warrant for collection of money seized by the Harnett County Sheriff's Department, designated as T-1.
2. Forms AL-50, ALE's property report, designated as T-2.
3. Copy of N.C.G.S. 105-113.106(6a), definition of mash, designated as T-3.
4. A description and flow chart of the process of making liquor, designated as T-4.
5. A calculation of the Taxpayer's contentions as to the quantity of mash, designated as T-5.
6. Drawings and computations prepared by Massengill Associates, P.A. a consulting engineering firm located in Benson, North Carolina, dated July 22, 1999, designated as T-6.

In addition to the above-referenced evidence, the Assistant Secretary considered oral testimony from the following individuals:

1. Agent John Adorian, Division of Alcohol Law Enforcement.
2. Supervisory Agent Vance Jackson, Division of Alcohol Law Enforcement.

Subsequent to the hearing, the Assistant Secretary allowed the Department of Revenue and the Taxpayer to submit additional arguments, documents or other evidence for the record. The Assistant Secretary entered the following into the record:

1. Affidavit from Junius P. "Junior" Byrd, a resident of Johnston County, was submitted on August 18, 1999 by the Taxpayer.
2. The Department of Revenue submitted a Crime Lab Report from the State Bureau of Investigation on November 18, 1999.

FINDINGS OF FACT

The Board considered the following findings of fact made in the Assistant Secretary's final decision in this matter:

1. Assessment of Unauthorized Substance Tax was made against the Taxpayer on January 19, 1999, in the sum of \$32,006.40 tax, \$3,200.64 penalty and \$213.38 interest, for a total of \$35,420.42, based upon possession of 9,485 gallons of mash and 1,552 gallons of moonshine.
2. The principal amount of tax was paid in full within forty-eight (48) hours of possession.
3. The Taxpayer made timely objection and application for a hearing.
4. The material found in the "440" cookers and the "1550" plastic containers at the time of the seizure was "mash" as that term is defined by G.S. 105-113.106(6a).
5. On January 15, 1999, the Taxpayer was in possession of 9,485 gallons of mash and 1,552 gallons of moonshine.
6. There were no tax stamps affixed to the mash or moonshine as required by law.

CONCLUSIONS OF LAW

The Board considered the following conclusions of law made by the Assistant Secretary in his final decision concerning this matter:

1. The Taxpayer had unauthorized possession of 9,485 gallons of mash and 1,552 gallons of moonshine on January 15, 1999, and was therefore a dealer as that term is defined in G.S. 105-113.106.
2. The Taxpayer is liable for tax in the sum of \$32,006.40, a sum which was paid within forty-eight (48) hours of possession and therefore not subject to penalty or interest.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. The Board having conducted a hearing in this matter and having considered the petition, the briefs, the arguments, the whole record and the final decision of Assistant Secretary, concludes that the Taxpayer did not carry his burden of proof in this matter. The Taxpayer failed to furnish any evidence to show that the assessment is not proper. Thus, the Board concludes that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record; that based upon the findings of fact, the Assistant

IN ADDITION

Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

In light of these findings of fact and conclusions of law, the Taxpayer's other claims regarding the timeliness of the Assistant Secretary's final decision and the administrative hearing by the Board are rejected in the absence of any showing of prejudice or statutory relief.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 9th day of November 2001.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

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 12 – DEPARTMENT OF JUSTICE

CHAPTER 07 - PRIVATE PROTECTIVE SERVICES

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

Citation to Existing Rule Affected by this Rule-making: 12 NCAC 07D .0700 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 74C-5

Statement of the Subject Matter: The Board proposes to modify its rules regarding training requirements for unarmed security guards.

Reason for Proposed Action: The Board is modifying its training program for unarmed security officers and proposes to adopt or amend various rules to implement the proposed changes.

Comment Procedures: Written comments should be submitted to Director Wayne Woodard, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

American National Standard Safety Code for Elevator and Escalators, A17.1-1990.

Reason for Proposed Action: The North Carolina Department of Labor proposes to amend this Rule in order to modify the new retrofitting of hydraulic elevators provision(s) of the American National Standard Safety Code for Elevator and Escalators, A17.1-1990. The new code mandates retrofitting of hydraulic elevators that predate current regulations – generally pre-1973. The Department proposes to eliminate the mandate, except where evidence of leaking exists and require owners of hydraulic elevators to perform two pressure tests per year.

Comment Procedures: All interested and potentially affected persons are encouraged to make their views known by submission of written comments to Barbara A. Jackson, North Carolina Department of Labor, 4 West Edenton St., Raleigh, NC 27601. Comments will be accepted through February 15, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 33 – MIDWIFERY JOINT COMMITTEE

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

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

Authority for the Rule-making: G.S. 90-178.1-7

Statement of the Subject Matter: Practice of midwifery in North Carolina

Reason for Proposed Action: The purpose of the rule change is to clarify and simplify the process of applying for approval to practice in North Carolina as a Certified Nurse-Midwife, to bring the application process up to date in accordance with national trends, and to more clearly delineate the disciplinary process.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Jean H. Stanley, APA Coordinator, Midwifery Joint Committee, PO Box 2129, Raleigh, NC 27602-2129.

TITLE 13 – DEPARTMENT OF LABOR

CHAPTER 15 - ELEVATOR AND AMUSEMENT DEVICE DIVISION

Notice of Rule-making Proceedings is hereby given by the North Carolina Department of Labor 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: 13 NCAC 15 .0201 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 95-110.5

Statement of the Subject Matter: The North Carolina Department of Labor proposes to amend this Rule to modify the new retrofitting of hydraulic elevators provision(s) of the

CHAPTER 36 – BOARD OF NURSING

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

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

Authority for the Rule-making: G.S. 90-171.19-47; 90-171.55; 90-171.80-.94

Statement of the Subject Matter: Nursing licensure and practice, Nurse Aide Registry, and Nurse Licensure Compact

Reason for Proposed Action: The purpose of the rule change is to clarify and simplify the process of applying for licensure, to clarify practice parameters, to list with the nurse aide registry, and to clarify nursing practice requirements under the Nurse Licensure Compact.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Jean H. Stanley, APA Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129.

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

Citation to Existing Rule Affected by this Rule-making: 25 NCAC 01D .1945, .1951 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 126-4

Statement of the Subject Matter: These Rules set forth guidelines and requirements for state agencies for implementing hours at work of work and overtime compensation procedures.

Reason for Proposed Action: Eric L. Tolbert, Director of Emergency, pointed out that the Federal Emergency Management Agency (FEMA) would approve disbursement of funds to eligible states during times of disaster response and recovery so long as they have a pre-existing statewide policy that provides for overtime compensation for FLSA-exempt employees during times of disaster. Providing overtime compensation only when a Presidential Major Disaster Declaration is issued is unacceptable. Tolbert requested that the Agency amend rules and policies to permit compensation to FLSA-exempt employees during major disasters.

Comment Procedures: Written comments may be submitted on the subject matter of the proposed rule-making to Peggy Oliver, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

CHAPTER 01 – OFFICE OF STATE PERSONNEL

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 North Carolina Pesticide Board intends to adopt the rules cited as 02 NCAC 09L .1305-.1306 and amend the rules cited as 02 NCAC 09L .1303. Notice of Rule-making Proceedings was published in the Register on November 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 30, 2002, to James W. Burnette, Jr., Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: To prevent unauthorized persons from gaining access to restricted use pesticides, and to provide for records of restricted use pesticide sales.

Comment Procedures: Written comments may be submitted no later than February 14, 2002, to James W. Burnette, Jr., Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, PO Box 27647, Raleigh, NC 27611.

Fiscal Impact

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

CHAPTER 09 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09L - PESTICIDE SECTION

SECTION .1300 - AVAILABILITY OF RESTRICTED USE PESTICIDES

02 NCAC 09L .1303 EXEMPTIONS

(a) Restricted use pesticides may be made available to an employee under the supervision of a certified private or licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee provided the employee is acting under the direction and supervision of said applicators and provided further that said employee is 16 years of age or older.

(b) This exemption applies to restricted use pesticides in channels of trade prior to making them available for end use.

(c) Prior to making available restricted use pesticides to an employee under the supervision of a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee, all persons shall require the employee to sign his name and list the certification number of employer under whose direction and supervision the employee is acting. Such information shall be available for routine inspection by the North Carolina Pesticide Board or its agent.

Authority G.S. 143-437; 143-440; 143-466.

02 NCAC 09L .1305 RECORD KEEPING REQUIREMENTS

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (1) date of sale;
(2) initials of sales clerk;
(3) name of certified or licensed applicator as defined in 02 NCAC 09L .1302 or employees as defined in 02 NCAC 09L .1303;
(4) certification or license number of certified or licensed applicator as defined in 02 NCAC 09L .1302;
(5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
(6) product brand name;
(7) EPA registration number;
(8) number of individual containers;
(9) size of individual containers; and
(10) total quantity sold.

Authority G.S. 143-437; 143-440; 143-466.

02 NCAC 09L .1306 RECIPIENT IDENTIFICATION

Prior to making restricted use pesticides available to those identified in 02 NCAC 09L .1302 or the employee as identified in 02 NCAC 09L .1303, the pesticide dealer or the designated representative of the pesticide dealer must verify the identity of the recipient.

Authority G.S. 143-437; 143-440; 143-466.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Structural Pest Control Committee intends to amend the rules cited as 02 NCAC 34 .0102, .0501, .0503, .0505-.0506, .0601, .0604-.0605, .0703, .0803, .0805-.0806, .0904. Notice of

PROPOSED RULES

Rule-making Proceedings was published in the Register on November 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 30, 2002, to Carl Falco, Secretary, NC Structural Pest Control Committee, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action:

02 NCAC 34 .0102 - Proposed change would clarify several definitions.

02 NCAC 34 .0501 - Proposed change would require written proposal to property owner/agent before work is performed. Clarify guarantee/warranty requirements.

02 NCAC 34 .0503 - Proposed change would delete impractical requirements for treatment.

02 NCAC 34 .0505 - Proposed change would clarify timing of treatment and modify treatment requirements.

02 NCAC 34 .0506 - Proposed change would permit use of physical barriers for subterranean termite control.

02 NCAC 34 .0601 - Proposed change would establish special requirements for written agreements with builders for pre-construction treatments.

02 NCAC 34 .0604 - Proposed change would add applicator name to the current requirements and, for pre-construction termite treatment, add the volume and concentration of each liquid termiticide application.

02 NCAC 34 .0605 - Proposed change would simplify information required to be in contracts.

02 NCAC 34 .0703 - Proposed change would simplify records requirements.

02 NCAC 34 .0803 - Proposed change would simplify records requirements.

02 NCAC 34 .0805-.0806 - Proposed changes would bring language into compliance with current terminology and pesticide label requirements.

02 NCAC 34 .0904 - Proposed change would permit the use of more than one company name when pest control company has acquired other companies.

Comment Procedures: Written comments may be submitted no later than February 14, 2002, to Carl Falco, Secretary, NC Structural Pest Control Committee, PO Box 27647, Raleigh, NC 27611.

Fiscal Impact

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

CHAPTER 34 – STRUCTURAL PEST CONTROL DIVISION

SECTION .0100 – INTRODUCTION AND DEFINITIONS

02 NCAC 34 .0102 DEFINITIONS

In addition to the definitions contained in the Act, the following definitions apply:

- (1) "Act or law" means the Structural Pest Control Act of North Carolina of 1955.
- (2) "Active infestation of a specific organism" means evidence of present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (3) "Active ingredient" means an ingredient which will or is intended to prevent, destroy, repel, or mitigate any pest.
- (4) "Acutely toxic rodenticidal baits" means all baits that, as formulated, are classified as Toxicity Category I or II (Signal Word "Danger" or "Warning") under 40 CFR Part 156.10.
- (5) "Board of Agriculture" means the Board of Agriculture of the State of North Carolina.
- (6) "Commercial certified applicator" shall mean any certified applicator employed by a licensed individual.
- (7) "Commercial structure" means any structure which is not a residential structure; including but not limited to shopping centers, offices, nursing homes, and similar structures.
- (8) "Complete surface residual spray" means the over-all application of any pesticide by spray or otherwise, to any surface areas within, on, under, or adjacent to, any structure in such a manner that the pesticide will adhere to surfaces and remain toxic to household pests and rodents or other pests for an extended period of time.
- (9) "Continuing education units" or "CEU" means units of noncredit education awarded by the Division of Continuing Studies, North Carolina State University or comparable educational institution, for satisfactorily completing course work.
- (10) "Continuing certification unit" or "CCU" means a unit of credit awarded by the Division upon satisfactory completion of one clock hour of approved classroom training.
- (11) "Crack and crevice application" means an application of pesticide made directly into a crack or void area with equipment capable of delivering the pesticide to the target area.
- (12) "Deficient soil sample" shall mean any soil sample which, when analyzed, is found to contain less than 25 percent, expressed in parts per million (ppm), of the termiticide applied by a licensee which would be found if the termiticide had been applied at the lowest concentration and dosage recommended by the labeling.
- (13) "Department" means the Department of Agriculture and Consumer Services of the State of North Carolina.
- (14) "Disciplinary action" means any action taken by the Committee as provided under the provisions of G.S. 106-65.28.

PROPOSED RULES

- (15) "Division" means the Structural Pest Control Division of the Department of Agriculture and Consumer Services of the State of North Carolina.
- (16) "Enclosed space" means any structure by whatever name known, including household structures, commercial buildings, warehouses, docks, vacant structures, and places where people congregate, such as hospitals, schools, churches, and others; railroad cars, trucks, ships, aircraft, and common carriers. It shall also mean vaults, tanks, chambers, and special rooms designed for use, being used, or intended to be used for fumigation operations.
- (17) "EPA" means the Environmental Protection Agency of the United States Government.
- (18) "EPA registration number" means the number assigned to a pesticide label by EPA.
- (19) "Flammable pesticidal fog" means the fog dispelled into space and produced:
- (a) from oil solutions of pesticides finely atomized by a blast of heated air or exhaust gases from a gasoline engine, or from mixtures of water and pesticidal oil solutions passed through a combustion chamber, the water being converted to steam, which exerts a shearing action, breaking up the pesticidal oil into small droplets (thermal fog); or
- (b) from oil solutions of pesticides which are forced through very narrow space by centrifugal force and atomized as they are thrown off into the air (mechanical or cold fogs).
- (20) "Fog or fogging" means micron sized particles of pesticide(s) dispersed by means of a thermal or centrifugal fogger or a pressurized aerosol pesticide.
- (21) "Fumigation" means the use of fumigants within an enclosed space, or in, or under a structure, in concentrations which may be hazardous to man.
- (22) "Fumigation crew" or "crew" means personnel performing the fumigation operation.
- (23) "Fumigation operation" means all details prior to application of fumigant(s), the application of fumigant(s), fumigation period, and post fumigation details as outlined in these Rules.
- (24) "Fumigation period" means the period of time from application of fumigant(s) until ventilation of the fumigated structure(s) is completed and the structure or structures are declared safe for occupancy for human beings or domestic animals.
- (25) "Fumigator" means a person licensed under the provisions of G.S. 106-65.25(a)(3) or certified under the provisions of G.S. 106-65.25(e)(1) to engage in or supervise fumigation operations.
- (26) "Gas-retaining cover" means a cover which will confine fumigant(s) to the space(s) intended to be fumigated.
- (27) "General fumigation" means the application of fumigant(s) to one or more rooms and their contents in a structure, at the desired concentration and for the necessary length of time to control rodents, insects, or other pests.
- (28) "Household" means any structure and its contents which are used for man.
- (29) "Household pest" means any undesirable vertebrate or invertebrate organism, other than wood-destroying organisms, occurring in a structure or the surrounding areas thereof, including but not limited to insects and other arthropods, commensal rodents, and birds which have been declared pests under G.S. 143-444.
- (30) "Household pest control" means that phase of structural pest control other than the control of wood-destroying organisms and fumigation and shall include the application of remedial measures for the purpose of curbing, reducing, preventing, controlling, eradicating, and repelling household pests.
- (31) "Inactive license" shall mean any structural pest control license held by an individual who has no employees and is not engaged in any structural pest control work except as a certified applicator or registered technician.
- (32) "Infestation of a specific organism" means evidence of past or present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (33) "Inspection for a specific wood-destroying organism" means the careful visual examination of all accessible areas of a building and the probing of accessible structural members adjacent to slab areas, chimneys, and other areas particularly susceptible to attack by wood-destroying organisms to determine the presence of and the damage by that specific wood-destroying organism.
- (34) "Inspector" means any employee of the Structural Pest Control Division of the Department of Agriculture and Consumer Services of the State of North Carolina.
- (35) "Licensed structural pest control operation," or "pest control operation," or "operator," or "licensed operator" means any person licensed under the provisions of G.S. 106-65.25(a) or unlicensed who, for direct or indirect hire or compensation is engaged in the business of controlling, destroying, curbing, mitigating, preventing, repelling, offering advice on control methods and procedures, inspecting and identifying infestations and populations of insects, rodents, fungi, and other pests within, under and on structures of any kind, or the nearby surrounding ground areas or where people may assemble or congregate including

PROPOSED RULES

- work defined under G.S. 106-65.24(23).
- (36) "Liquefied gas aerosol" means the spray produced by the extreme rapid volatilization of a compressed and liquefied gas, to which has been added a nonvolatile oil solution containing a pesticide.
- (37) "Noncommercial certified applicator" shall mean any certified applicator not employed by a licensed individual.
- (38) "Open porch" means any porch without fill in which the distance from the bottom of the slab to the top of the soil beneath the slab is greater than 12 inches.
- (39) "Physical barrier" as used in 02 NCAC 34 .0500, means a barrier, which, by its physical properties and proper installation, is capable of preventing the passage of subterranean termites into a structure to be protected from subterranean termites.
- (40) "Residential structure" means any structure used, or suitable for use, as a dwelling such as a single- or multi-family home, house trailer, motor home, mobile home, a condominium or townhouse, or an apartment or any other structure, or portion thereof, used as a dwelling.
- (41) "Secretary" means the Secretary to the North Carolina Structural Pest Control Committee.
- (42) "Service vehicle" means any vehicle used regularly to transport the licensee or certified applicator or registered technician or other employee or any equipment or pesticides used in providing structural pest control services.
- (43) "Slab-on-ground" means a concrete slab in which all or part of that concrete slab is resting on or is in direct contact with the ground immediately beneath the slab.
- (44) "Solid masonry cap" means a continuous concrete or masonry barrier covering the entire top, width and length, of any wall, or any part of a wall, that provides support for the exterior or structural parts of a building.
- (45) "Space spray" means any pesticide, regardless of its particle size, which is applied to the atmosphere within an enclosed space in such a manner that dispersal of the pesticide particles is uncontrolled. Pesticidal fogs or aerosols, including those produced by centrifugal or thermal fogging equipment or pressurized aerosol pesticides, shall be considered space sprays.
- (46) "Spot fumigation" means the application of a fumigant to a localized space or harborage within, on, under, outside of, or adjacent to, a structure for local household pest or rodent control.
- (47) "Spot surface residual spray" means the application of pesticidal spray directly to a surface and only in specific areas where necessary and in such a manner that the pesticidal material will largely adhere to the surface where applied and will remain toxic to household pests or rodents or other pests for which applied for an extended period of time.
- (48) "Structure" means all parts of a building, whether vacant or occupied, in all stages of construction.
- (49) "Structural pests" means all pests that occur in any type of structure of man and all pests associated with the immediate environs of such structures.
- (50) "Sub-slab fumigation" means the application of a fumigant below or underneath a concrete slab and is considered spot fumigation.
- (51) "Supervision," as used in 02 NCAC 34 .0325, shall mean the oversight by the licensee of the structural pest control activities performed under that license. Such oversight may be in person by the licensee or through instructions, verbal, written or otherwise, to persons performing such activities. Instructions may be disseminated to such persons either in person or through persons employed by the licensee for that purpose.
- (52) "Termiticide(s)" (as used in these Rules) means those pesticides specified in 02 NCAC 34 .0502, Pesticides for Subterranean Termite Prevention and/or Control.
- (53) "Termiticide barrier" shall mean an area of soil treated with an approved termiticide, which, when analyzed, is not deficient in termiticide.
- (54) "To use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling. Provided that, the term shall not include:
- (a) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency;
 - (b) applying a pesticide against any target pest not specified on the labeling if the application is to the site specified on the labeling, unless the EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling; or
 - (c) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified by the labeling.
- (55) "Type of treatment" means the method used to apply a pesticide formulation to a specific location, including but not limited to: space spray, crack and crevice, complete surface residual, spot surface residual, bait placement, or fog.
- (56) "Unauthorized personnel" means any

- individual or individuals not given specific authorization by the licensee or certified applicator to enter areas to which access is restricted by these Rules.
- (57) "Waiver" means a standard form prescribed by the Committee which will, when completed correctly, permit the licensee to deviate from or omit one or more of the minimum treatment methods and procedures for structural pests which are set forth in the Committee rules, definitions, and requirements.
- (58) "Wood-destroying insect report" means any written statement or certificate issued, by an operator or his authorized agent, regarding the presence or absence of wood-destroying insects or their damage in a structure.
- (59) "Wood-destroying organism" is an organism such as a termite, beetle, other insect, or fungus which may devour or destroy wood or wood products and other cellulose material found in, on, under, in contact with, and around structures.
- (60) "Wood-destroying organism report" means any written statement or certificate issued, by an operator or his authorized agent, regarding the presence or absence of wood-destroying organisms or their damage in a structure.

Where holes alone are found in wood members, this should encourage the licensee, certified applicator, or his representative(s) to check the property during the optimum time for adult emergence--May 1 to August 31. It should be pointed out that Anobiid beetles usually confine themselves to softwoods such as pine while Lyctid beetles confine themselves to hardwoods such as oak or pecan.

- (C) If a licensee provides a guarantee, warranty or service agreement in connection with a treatment for powder post beetles, the period of initial liability with regards to active infestation shall be 18 months from the original treatment date.
- (D) If an active infestation of powder post beetles is found by the Division in any structure treated for said beetles, during or after the first complete adult beetle emergence period within 18 months of the treatment date, the licensee or certified applicator responsible for said treatment shall retreat the infested areas of the structure within 30 days of written notice from the Division. Retreatment shall be performed, upon request of the Division, in the presence of a structural pest control inspector.

Authority G.S. 106-65.29.

SECTION .0500 - WOOD-DESTROYING ORGANISMS

02 NCAC 34 .0501 WOOD-DESTROYING INSECTS: EXCLUDING SUBTERRANEAN TERMITES

(a) Determining Active Infestations of Wood-Destroying Beetles. The licensee, certified applicator, and his representative(s) making the inspection for wood-destroying beetles shall each be responsible for determining the presence or absence of an active infestation(s). Before any work is performed for the treatment of wood-destroying insects under Paragraphs (a) and (b) of this Rule, the licensee or his or her employee shall provide the property owner or agent a written proposal including, in addition to that information in 02 NCAC 34 .0605, the name(s) of the wood-destroying insects(s) to be controlled, that part of the structure to be covered under the agreement (entire structure, understructure only, entire interior of the garage, etc.), and the basis on which the licensee, certified applicator, or his representative(s) determined the infestation to be active or inactive as set forth herein below:

- (1) Powder Post Beetle(s) (Anobiidae, Bostrichidae and Lyctidae)
- (A) The presence of frass, the color of fresh cut wood, will be acceptable as evidence of an active infestation of powder post beetles.
- (B) The presence of holes alone or holes and dull colored frass will not be acceptable evidence of an active infestation of powder post beetles except in such cases where live larvae or pupae are found in wood members.

(2) Old House Borer (*Hylotrupes bajulus*). The presence of old house borer or oval exit holes with sawdust-like frass consisting of fine powder with tiny pellets in oval galleries in pine or other softwoods will be evidence of an active infestation of the old house borer. It should be pointed out that feeding larvae of the old house borer can be detected by sound; however, other long-horned borer and flatheaded borer larvae make similar sounds. Therefore, frass and insect characteristics should be used to confirm identity.

- (b) Identifying Other Wood-Destroying Insects. There are other species of wood-destroying insects which occur in structures. Before recommending treatment or selling a service for the prevention or control of wood-destroying insects, other than powder post beetles or old house borer, the licensee, certified applicator, and/or their representative(s) shall identify the wood-destroying insect(s) in question and inform the property owner or his authorized representative of the identity and habits of the wood-destroying insect(s) in question.
- (c) Any reapplication of pesticides under this Rule shall be in accordance with the label of the pesticide used.
- (d) Pesticide applications for the prevention of wood-boring beetles may only be performed after informing the property owner or their authorized agent in writing of the biology and conditions supporting the infestation and survival of said insects.

Such notice shall include an evaluation of the condition of the structure(s) to be treated and a statement as to whether or not such condition will support an infestation by wood-boring beetles.

Authority G.S. 106-65.29.

**02 NCAC 34 .0503 SUBTERRANEAN TERMITE
CONTROL: BUILDINGS AFTER CONSTRUCTED**

(a) Basement or Crawl Space Construction:

- (1) Access openings shall be provided to permit inspection of all basement and crawl space areas of a building and all open porches.
- (2) Clean up and remove all wood debris and cellulose material, such as wood, paper, cloth, etc., contacting soil in all crawl space areas. This excludes shavings or other cellulose material too small to be raked with the tines of an ordinary garden rake. Remove all visible stumps from all crawl space areas. Remove all visible form boards in contact with soil.
- (3) Remove all earth which is within 12 inches of the bottom edges of floor joists or within eight inches of the bottom edges of subsills or supporting girders, but not below footings of foundation walls. If foundation footings are less than 12 inches below the bottom edges of joists or subsills or supporting girders, a bank of soil 12 inches to 18 inches wide shall be left adjacent to footings for the purpose of support. Clearance shall be adequate to provide passage of a person to all crawl space areas of a building.
- (4) All visible termite tubes or tunnels on pillars, pilasters, foundation walls, chimneys, step buttresses, sills, pipes, and other structures below the sill line shall be removed.
- (5) Eliminate all wooden parts making contact with the building and soil, both outside and inside, except those which appear to be pressure treated:
 - (A) No wood of any access opening shall be in contact with the soil.
 - (B) Where wood parts such as door frames, partition walls, posts, stair carriages, or other wood parts can be reasonably ascertained to be making direct soil contact through concrete or where there is evidence of termite activity or damage they shall be cut off above the ground or floor level and the wood removed from the concrete; and the hole shall be filled with concrete or covered with a metal plate, after the point of contact has been treated with a termiticide.
 - (C) Where wood parts such as vertical wood supports or other wood parts under a building or steps outside a building are not resting on solid masonry or concrete bases extending

at least two inches above the soil surface or are in direct soil contact and such supports or steps are not removed, the supports and steps shall be cut off and set on a solid masonry or concrete footing extending at least two inches above the ground after the point of contact has been treated with a termiticide.

- (D) When wood skirting and lattice work are suspended, there shall be at least a two-inch clearance between the top of the soil and the bottom edges of the wood skirting or lattice work. If the two-inch clearance is not acceptable to the property owner, it may be closed with solid masonry or concrete but a minimum clearance of one-fourth of one inch shall be provided between the masonry and wood.
- (E) Where houses or decks are built on pressure treated wood pilings, pillars, or all-weather wood foundations, such pilings, pillars, and wood foundation members, including wood step supports, shall not be subject to Parts (a)(5)(A), (B), or (C) of this Rule.
- (6) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in multiple masonry foundation and bearing walls and all voids created by their placement at and a minimum distance of four feet in all directions from such evidence. Porch foundation walls shall be drilled to a distance of three feet from the main foundation wall and the point of contact with any wooden members.
 - (A) The distance between drill holes shall not exceed 16 lineal inches and holes shall be no more than 16 inches above the footing or immediately above the lowest soil level whichever is closest to the footing.
 - (B) Test drill the main foundation wall behind any porch or slab area to determine if the porch or slab is supported by a wall whose placement creates a void between itself and the main foundation wall. If test reveals that a void exists, drill and treat all voids therein as specified in this Rule.
- (7) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in all multiple masonry pillars, pilasters, chimneys, and step buttresses associated or in contact with such evidence, and any void created by their placement:
 - (A) The distance between drill holes shall

- not exceed 16 lineal inches and shall be no more than 16 inches above the footing or immediately above the lowest soil level, whichever is closest to the footing.
- (B) Drilling shall not be required if solid concrete masonry footings of pillars, pilasters, chimneys, or step buttresses extend eight inches or more above top of soil surface.
- (8) Where concrete slabs over dirt-filled areas are at the level of, above the level of, or in contact with, wood foundation members treat dirt-filled areas with a termiticide as follows:
- (A) Drill vertically three-eighths of one inch or larger holes in the slab, no more than six inches from the building foundation, at no more than 12-inch intervals and treat soil below slab from the bottom of the slab to the top of the footing; or
- (B) Drill horizontally three-eighths of one inch or larger holes in the foundation wall of the concrete slab, no more than six inches from the building foundation, every 16 vertical inches starting immediately below the bottom of the slab and rod treat all soil adjacent to building foundation from the bottom of the slab to the lowest outside grade.
- (9) Trench or trench and rod treat soil to establish a continuous termiticide barrier in the soil adjacent to, but not more than six inches from, all pillars, pilasters, chimneys, pressure treated wood supports, and step buttresses; inside of foundation walls; outside of foundation walls; the outside of foundation walls of concrete slabs over dirt-filled areas and the entire perimeter of a slab foundation wall from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where outside concrete slabs adjacent to the foundation prevent trenching of soil, drill three-eighths of one inch or larger holes, not more than 12 inches apart and within six inches of the foundation wall, through slabs or through adjoining foundation wall, and rod treat soil below slabs as indicated above to establish a continuous termiticide barrier at all known points of entry. The soil immediately around pipes and other utility conduits making contact with the structure shall be treated.
- (10) Where stucco on wood or similar type materials, including extruded or expanded rigid foam insulation or similar materials, extend to or below grade, trench soil to a depth below and under the edge of the stucco or similar type materials and treat soil to establish a continuous termiticide barrier in the soil. After the soil has been treated, a masonry barrier wall may be erected to hold back the soil from making direct contact with the stucco or similar type materials. Where outside slabs on grade adjacent to foundation prevent trenching of soil, drill three-eighths of one inch or larger holes through slabs within six inches of the foundation wall, or through adjoining foundation wall, not more than 12 inches apart and rod treat soil below slabs. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (11) Paragraph (b) of this Rule shall be followed if applicable to basement or crawl space construction.
- (b) Slab-on-Ground Construction:
- (1) Treat soil to establish a continuous termiticide barrier in, under, and around, all traps and openings in the slab.
- (2) Drill vertically three-eighths inch or larger holes, at all visible or known expansion and construction joints, cracks, and crevices in slab and around all utility conduits in the slab at no more than 12-inch intervals and rod treat soil below slab to establish a continuous termiticide barrier from the bottom of the slab to a depth of 30 inches or to the top of the footing, whichever is less, at all known points of entry. Where wooden structural members are in contact with concrete or masonry floors which have joints or cracks beneath the wooden structural members, including wall plates in utility or storage rooms adjoining the main building, the concrete or masonry shall be drilled and treated in order to achieve treatment of the soil beneath them. As an exception, expansion and construction joints at the perimeter of the exterior wall may be rod treated by drilling through the foundation wall at no more than 12-inch intervals directly below the bottom of the slab.
- (3) Paragraph (a) of this Rule shall also be followed.
- (c) Reapplication of Pesticide(s) to a Structure Previously Treated for Subterranean Termite Control:
- (1) A reapplication of termiticide shall be required if soil test by the Division reveals that the soil is deficient in the termiticide which was applied to the soil.
- (2) Any reapplication of pesticides under this Rule shall be in accordance with the label of the pesticide used.
- (d) A licensee may enter into a written agreement for the control

or prevention of subterranean termites in a building after it has been constructed without having to abide by Paragraphs (a) and (b) of this Rule provided that:

- (1) The licensee has written proof, satisfactory to the Committee, that he or his authorized agent treated the entire building for subterranean termites at the time of its construction as required in 02 NCAC 34 .0505 or 02 NCAC 34 .0506 (or comparable rules by the Committee at the time of treatment); and
 - (2) A written agreement is issued in compliance with 02 NCAC 34 .0605.
- (e) Paragraphs (a) and (b) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee provides a warranty for the control of subterranean termites on the entire structure.

Authority G.S. 106-65.29.

02 NCAC 34 .0505 SUBTERRANEAN TERMITE PREVENTION/RES BLDGS UNDER CONST

(a) All treatments performed pursuant to this Rule shall be performed at the label recommended rate and concentration only.

(b) Basement or Crawl Space Construction

- (1) Establish a vertical barrier in the soil by trenching or trenching and rodding along inside of the main foundation wall; the entire perimeter of all multiple masonry chimney bases, pillars, pilasters, and piers; and both sides of partition or inner walls with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. Trench shall be no less than six inches in depth or to the top of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (2) After a building or structure has been completed and the excavation filled and leveled, so that the final grade has been reached along the outside of the main foundation wall, establish a vertical barrier in the soil by trenching or trenching and rodding adjacent to the outside of the main foundation wall with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing and not below the bottom of the footing. Trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other

- foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
 - (3) Establish a horizontal termiticide barrier in the soil within three feet of the main foundation, under slabs, such as patios, walkways, driveways, terraces, gutters, etc., attached to the building. Treatment shall be performed before slab is poured, but after fill material or fill dirt has been spread.
 - (4) Establish a horizontal termiticide barrier in the soil under the entire surface of floor slabs, such as basements, porches, entrance platforms, garages, carports, breezeways, sun rooms, etc. The treatment shall be performed before slab is poured but after fill material or fill dirt has been spread.
 - (5) Establish a vertical termiticide barrier in the soil around all critical areas, such as expansion and construction joints and plumbing and utility conduits, at their point of penetration of the slab or floor or, for crawl space construction, at the point of contact with the soil.
 - (6) If concrete slabs are poured prior to treatment, treatment of slabs shall be performed as required by 02 NCAC 34 .0503(a) or (b); Except that; the buyer of the property and/or his authorized agent may release the licensee from further treatment of slab areas under this Rule provided such release is obtained in writing on the form prescribed by the Division. This form may be obtained by writing the North Carolina Department of Agriculture and Consumer Services, Structural Pest Control Division, PO Box 27647, Raleigh, NC 27611 or by calling (919) 733-6100.
- (c) Slab-on-Ground Construction. All parts of Paragraph (a) of this Rule shall be followed, as applicable, in treating slab-on-ground construction.
- (d) All treating requirements specified in this Rule shall be completed within 60 days following the completion of the structure, as described in Subparagraph (b)(2) of this Rule.
- (e) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee provides a warranty for the control of subterranean termites on the entire structure.
- (f) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using EPA registered topically applied wood treatment termiticides labeled for the protection of the entire structure when the licensee applies the material according to labeled directions and provides a warranty for the control of subterranean termites on the entire structure.

Authority G.S. 106-65.29.

02 NCAC 34 .0506 MIN REQUIRE/ SUBTERRANEAN TERMITE PREV/ COMMERCIAL

BLDGS UNDER CONST

(a) All treatments performed pursuant to this Rule shall be performed at the label recommended rate and concentration only.

(b) Minimum Treatment Requirements:

- (1) Establish a vertical barrier in the soil by trenching or trenching and rodding along inside of the main foundation wall; the entire perimeter of all multiple masonry chimney bases, pillars, pilasters, and piers; and both sides of partition or inner walls with a termiticide from the top of the grade to the bottom of the footing or a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. Trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (2) After a building or structure has been completed and the excavation filled and leveled, so that the final grade has been reached along the outside of the main foundation wall, establish a vertical barrier in the soil adjacent to the outside of the main foundation wall by trenching or trenching and rodding with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing and not below the bottom of the footing. Trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (3) Establish a horizontal termiticide barrier in the soil within three feet of the main foundation, under slabs, such as patios, walkways, driveways, terraces, gutters, etc. Treatment shall be performed before slab is poured but after fill material or fill dirt has been spread.
- (4) Establish a vertical termiticide barrier in the soil around all critical areas, such as expansion and construction joints and plumbing and utility conduits, at their point of penetration of the slab of floor, or for crawl space construction, at the point of contact with the soil.
- (5) If concrete slabs are poured prior to treatment, treatment of slabs shall be performed as required by 02 NCAC 34 .0503(a) or (b).

(c) Paragraph (b) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee provides a warranty for the control of subterranean termites on the entire structure.

(d) Paragraph (b) of this Rule shall not apply to subterranean termite treatments using EPA registered topically applied wood treatment termiticides labeled for the protection of the entire structure and the licensee applies the material according to labeled directions and provides a warranty for the control of subterranean termites on the entire structure. When foundation areas contain no wood or cellulose components and the wood treatment termiticide cannot be applied according to label directions then applications specified in Paragraph (b) or (c) of this Rule would be required.

Authority G.S. 106-65.29.

SECTION .0600 - WOOD-DESTROYING ORGANISMS AGREEMENTS

02 NCAC 34 .0601 AGREEMENTS

(a) Before any treatment is started, the licensee or his authorized agent shall execute, and furnish to the property owner or his authorized agent, a written proposal informing the property owner or his authorized agent, in detail, as to the type and quality of work that is to be performed. The written proposal shall contain that information specified in 02 NCAC 34 .0605 and, upon written acceptance by the property owner or authorized agent, shall suffice as a written agreement.

(b) Except as specified in Paragraph (c) of this Rule, the licensee or his authorized agent shall, within 14 days of beginning a treatment, execute a written agreement with the property owner or his authorized agent in conformance with 02 NCAC 34 .0605. During the 14 day period, the Division will use the written proposal as its standard of enforcement. Following the 14 day period and in the absence of an executed written agreement, the Division will apply 02 NCAC 34 .0503, 02 NCAC 34 .0505 or 02 NCAC 34 .0506, as applicable, as its standard of enforcement.

(c) If the licensee provides preventive treatment(s) for subterranean termites to a structure(s) for someone who is contracting the project for a third party or with the purpose of offering the building(s) for sale, such as a builder or construction company, the proposal shall contain that information specified in 02 NCAC 34 .0605(d)(2) through (d)(10) and (d)(14), shall be binding upon the written or verbal acceptance by the builder and initiation of work to be performed.

Authority G.S. 106-65.29.

02 NCAC 34 .0604 WOOD-DESTROYING ORGANISMS RECORDS

(a) A duplicate of each written agreement and waiver (if applicable) for the control or prevention of any wood-destroying organism shall be kept by the licensee for a minimum of two years beyond the expiration date of the written agreement. The duplicate of each written agreement shall contain, in addition to the information specified under 02 NCAC 34 .0605(a) or (d), the following:

- (1) EPA approved brand name of pesticide used;

- | | |
|--|--|
| <p>(2) Names of all employees who applied pesticide;</p> <p>(3) Information required by EPA;</p> <p>(4) For restricted use pesticides:</p> <p style="padding-left: 20px;">(A) concentration and approximate total volume of each pesticide applied; and</p> <p style="padding-left: 20px;">(B) Subparagraphs (a)(1) and (2) and Part (a)(4)(A) of this Rule shall also be included on the customer's copy of the written agreement; and</p> <p>(5) In addition, for all treatments performed pursuant to 02 NCAC 34 .0505 or 02 NCAC 34 .0506, the following records shall be made and maintained:</p> <p style="padding-left: 20px;">(A) the date of each termiticide application;</p> <p style="padding-left: 20px;">(B) the portion or portions of the structure treated;</p> <p style="padding-left: 20px;">(C) the approximate volume of termiticide applied during each treatment; and</p> <p style="padding-left: 20px;">(D) the concentration at which the termiticide is applied.</p> <p>(b) A duplicate of each wood-destroying insect or wood-destroying organism report shall be kept by the licensee for a minimum of two years beyond the date of issuance.</p> <p>(c) Noncommercial certified applicators shall maintain the following records for two years beyond the last date of treatment:</p> <p style="padding-left: 20px;">(1) EPA approved brand name of all pesticides used;</p> <p style="padding-left: 20px;">(2) Concentration and approximate total volume of pesticide applied;</p> <p style="padding-left: 20px;">(3) Names of all employees that applied pesticide;</p> <p style="padding-left: 20px;">(4) Target pest;</p> <p style="padding-left: 20px;">(5) Site of application;</p> <p style="padding-left: 20px;">(6) Date of application; and</p> <p style="padding-left: 20px;">(7) Information required by EPA.</p> <p>(d) If the pesticide used to control any wood-destroying organism requires or recommends monitoring or inspecting for the pest to be controlled, the licensee, certified applicator, or their employees shall make and maintain records of all such inspection or monitoring activities. Such records shall be made available for inspection as provided for in 02 NCAC 34 .0328.</p> | <p>(6) Signature of licensee or his authorized agent;</p> <p>(7) A foundation diagram or, if required or recommended by the label of the pesticide used, a site plan of the structure(s) or portions of such structure(s) inspected. The diagram or site plan shall clearly indicate and make full disclosure of:</p> <p style="padding-left: 20px;">(A) The location of individual water sources;</p> <p style="padding-left: 20px;">(B) Any visible evidence of wood-destroying organism infestation;</p> <p style="padding-left: 20px;">(C) Whether the infestation is active or inactive;</p> <p style="padding-left: 20px;">(D) The location of any visibly damaged timbers;</p> <p style="padding-left: 20px;">(E) Portions of the structure treated and not treated;</p> <p style="padding-left: 20px;">(F) The approximate number and proposed location(s) of bait or monitoring device placements, if applicable. Upon completion of the installation the property owner or agent shall be provided with a diagram or site plan showing the actual number and locations of all stations; and</p> <p style="padding-left: 20px;">(G) For treatment of wood-decay fungus infestations, the location and result of all moisture meter readings obtained pursuant to 02 NCAC 34 .0508;</p> <p>(8) The date upon which the written agreement is entered into and the period of time covered by the written agreement;</p> <p>(9) The written agreement must clearly indicate, by complete not abbreviated common name(s), the wood-destroying organism(s) to be controlled or prevented and the complete terms of the service agreement or warranty to be issued, if any;</p> <p>(10) Whether or not reinspections are to be made and, if so, approximate time interval between, and renewal fees for same;</p> <p>(11) Conditions under which retreatments will be made;</p> <p>(12) Total price to be charged for treatment service and for repairs or excavations, where such are to be performed;</p> <p>(13) The written agreement, waiver (if applicable), and Wood-Destroying Insect Report or Wood-Destroying Organism Report, shall not show or include the address and telephone number of any licensee's representative or employee other than the address and telephone number of those specified in Subparagraphs (a)(3), (4), and (5) of this Rule;</p> <p>(14) Any licensee or business entity advertising to be bonded shall advise each customer, in writing, in the proposal, whether or not the warranty or written agreement will be covered by a bond of any type;</p> <p>(15) If the performance of the work is guaranteed</p> |
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Authority G.S. 106-65.29.

02 NCAC 34 .0605 CONTRACTUAL AGREEMENTS FOR WOOD-DESTROYING ORGANISMS

(a) All agreements for the control or prevention of wood-destroying organisms in existing structures shall be in writing and shall clearly set forth and include the following:

- (1) Date property was inspected and full name of the inspector;
- (2) Exact location of property inspected or treated;
- (3) Complete name and address of the property owner or his authorized agent;
- (4) Complete name and address of the company proposing or performing the treatment;
- (5) License number and phase(s) of the licensee and under whose license the work is to be performed;

by a bond, the agreement shall set forth those performance guarantees in wording identical to that in the bond itself;

- (16) 02 NCAC 34 .0501(a) shall also be followed;
- (17) Whether the written agreement or warranty may be transferred to subsequent owners of the property and the terms of any such transfer.

(b) A structure or structures covered by a written agreement or warranty for wood-destroying organism(s) treatment shall not knowingly be placed under an additional written agreement or warranty for the same treatment while the first written agreement or warranty is still in effect without first obtaining a separate written acknowledgment of such signed by the property owner or authorized agent.

(c) When periodic reinspections or retreatments are specified in written agreements for the control or prevention of wood-destroying organisms, the licensee shall issue to the property owner or his authorized agent, after each reinspection or retreatment, a signed report of each reinspection or retreatment showing the condition of the property with respect to the presence or absence of wood-destroying organisms. A record of such reinspections and retreatments shall be kept in the file of the licensee. Such reports shall be subject to inspection by the enforcement agency or committee.

(d) All agreements for the control or prevention of wood-destroying organisms in buildings under construction shall be in writing and shall clearly set forth and include the following:

- (1) Date of final treatment and period of time covered by the written agreement;
- (2) Exact location of the treated property;
- (3) Complete name and address of the property owner or his authorized agent;
- (4) Complete name and address of the licensee;
- (5) License number and phase(s) of the licensee and full name of company licensee represents;
- (6) Signature of licensee or his authorized agent;
- (7) The written agreement must clearly indicate, by complete not abbreviated common name(s), the wood-destroying organism(s) to be controlled or prevented and the complete terms of the warranty to be issued, if any;
- (8) Whether or not reinspections are to be made and, if so, approximate time interval between, and renewal fees, if any, for same;
- (9) Conditions under which retreatments will be made;
- (10) Total price to be charged for treatment service;
- (11) Any licensee or business entity advertising to be bonded shall advise each customer, in writing, in the proposal, whether or not the warranty or written agreement will be covered by a bond of any type;
- (12) If the performance of the work is guaranteed by a bond, the agreement shall set forth those performance guarantees in wording identical to that in the bond itself;
- (13) 02 NCAC 34 .0604(a) shall also be followed;
- (14) Whether the written agreement or warranty may be transferred to subsequent owners of

the property and the terms of any such transfer.

(e) If the licensee provides preventive treatment(s) for subterranean termites to a structure(s) for someone such as a builder or construction company who is constructing the building(s) for someone else or with the purpose of offering the building(s) for sale, the licensee may enter into a single master agreement with the builder to provide the preventive treatment(s) for subterranean termites. This single master agreement shall include the following:

- (1) Complete name and address of the builder or his authorized agent;
- (2) That information required in Subparagraphs (d)(4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) of this Rule.

(f) When a structure is treated under an agreement with a builder, the licensee shall:

- (1) Following completion of the treatment and upon notification by the builder or buyer, issue a written agreement to the initial buyer. The written agreement issued to the buyer shall include the following:
 - (A) Complete name and address of the builder or his authorized agent as it appears on the builder's agreement;
 - (B) That information required in Subparagraphs (d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (11), and (14) of this Rule. The builder shall be issued a copy of any written agreement issued the buyer.
- (2) Maintain a record of each treatment performed on each structure to include the following information:
 - (A) Exact location of the structure treated;
 - (B) Date each treatment was performed;
 - (C) The portion(s) of the structure treated.

Authority G.S. 106-65.29.

SECTION .0700 – HOUSEHOLD PESTICIDES

02 NCAC 34 .0703 WRITTEN RECORDS OF HOUSEHOLD PEST CONTROL

(a) Written records on the treatment for the control of all household pests shall be maintained by the licensee and made available for inspection at any time during regular business hours upon request from the Division. Such records shall include the following information:

- (1) Complete name(s) and address(es) of the property owner(s) or his authorized representative(s);
- (2) Name and address of company represented by the certified applicator or licensee or their authorized representatives and the license number of licensee responsible for the treatment;
- (3) Address(es) of property(ies) treated, type(s) of treatment(s), and date(s) treatment(s) performed;
- (4) Common name(s) of pest(s) to be controlled or

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covered by the initial agreement or any subsequent treatments;

- (5) EPA approved brand name of pesticide used;
- (6) Information required by EPA;
- (7) Name of licensee, certified applicator, or registered technician making the application; and
- (8) For restricted use pesticides, Subparagraphs (a)(5), (6), and (7) of this Rule shall also be included on the customer's copy of the written agreement or service record.

(b) Noncommercial certified applicators shall maintain and make available for inspection the following records of pesticides applied:

- (1) EPA approved brand name of all pesticides applied;
- (2) Target pest(s);
- (3) Site of application;
- (4) Date of application;
- (5) Name of certified applicator or registered technician making the application; and
- (6) Information required by EPA.

(c) Records must be retained for two years beyond the last date of treatment.

Authority G.S. 106-65.29.

SECTION .0800 - FUMIGATION

02 NCAC 34 .0803 WRITTEN RECORDS OF FUMIGATION

(a) Written records shall be maintained on all fumigation operations and be made available for inspection, upon request, by the enforcement agency or Committee anytime during regular business hours. Such records shall include the following information for each fumigation performed:

- (1) Complete name(s) and address(es) of the property owner(s) or his authorized representative(s);
- (2) Name and address of company represented by the licensee or certified applicator or their authorized representative and the license number of the licensee responsible for the treatment;
- (3) Address of property(ies) to be fumigated;
- (4) Common name(s) of pest(s) to be fumigated;
- (5) EPA approved common name of fumigant used;
- (6) EPA registration number of fumigant applied;
- (7) If a restricted use pesticide is used, that information required by EPA;
- (8) Total amount of fumigant applied;
- (9) Name of licensee or certified applicator performing the fumigation;
- (10) For restricted use pesticides, Subparagraphs (a)(5), (6), (8), and (9) of this Rule shall also be included on the customer's copy of the written agreement or service record;
- (11) If the pest to be fumigated is a wood-destroying organism, all of 02 NCAC 34 .0605 shall be followed.

(b) Noncommercial certified applicators shall maintain the following records of pesticides applied:

- (1) EPA approved brand name of all fumigants applied;
- (2) EPA registration number of fumigant applied;
- (3) Total amount of fumigant applied;
- (4) Name of certified applicator performing the fumigation;
- (5) Target pest(s);
- (6) Exact site of application;
- (7) Date of application; and
- (8) Any information required by EPA.

(c) Records must be retained for two years beyond the last date of treatment or the expiration of the written agreement, if applicable.

Authority G.S. 106-65.29.

02 NCAC 34 .0805 FUMIGATION REQUIREMENTS: SAFETY AND SAFETY EQUIPMENT

(a) It shall be the duty and responsibility of the certified applicator or the licensed fumigator in charge of the fumigation, general fumigation, and fumigation operation, to carry out the following:

- (1) instruct each person working with fumigants to know the location, purpose, use and maintenance of personal protective equipment and when and how to use this equipment;
- (2) instruct each employee and each guard assigned to fumigation work to report immediately to the certified applicator or licensed fumigator, any irregularities or emergencies beyond his control.

(b) Each certified applicator or licensed fumigator, when engaged in fumigation work, shall maintain at his business location up-to-date information on the handling and use of fumigants, devices and materials for testing for the presence of fumigants; and safety and testing devices, such as respirators, canisters, self-contained breathing devices, and gas detectors, which are in serviceable condition, as required by the labeling of the fumigant(s) being used.

(c) Certified applicators, licensed fumigators, and all other persons working with fumigants, must be able to apply proper methods of artificial respiration and have in their possession a chart of instructions for artificial respiration.

(d) Each certified applicator and each licensed fumigator, shall be outfitted with a fumigation safety kit, which shall be maintained in completely serviceable condition and shall be continuously and immediately available at the fumigation site during the fumigation period of each fumigation job in progress. Each member of the fumigation crew shall be familiar with the contents and use of a safety kit. The safety kit shall contain a serviceable respirator or self-contained breathing apparatus, as required by the label of the fumigant being used, a gas detector and a flashlight. The respirator or breathing apparatus shall be of a type approved by the United States Mining Enforcement and Safety Administration or National Institute for Occupational Safety and Health with correct canister and gas detector for the type of fumigant used.

(e) If there is an approved antidote first aid kit, as referred to in 02 NCAC 34 .0403 for the fumigant involved and the antidote

may be legally administered by the fumigator, such an antidote-first aid kit shall be assembled and maintained in sanitary and serviceable condition and shall be continuously and immediately available at the fumigation site during the application of fumigant(s) and during the ventilation period. It shall contain the specific items required for each and every fumigant in the conduction of business at each business location of the certified applicator or the licensed fumigator and shall otherwise conform to all specifications prescribed by the North Carolina State Board of Pharmacy or the manufacturer. Antidote-first aid kit items shall be labeled individually, and kept in a single, sturdy box marked "Antidote-First Aid Kit."

(f) All exhausted or expired respirator canisters shall be destroyed. No fumigant shall be used in any fumigation operation unless there is a respirator canister for said fumigant approved by the United States Mining Enforcement and Safety Administration or National Institute for Occupational Safety and Health or by the manufacturer of such equipment; or unless a serviceable, protective, self-contained oxygen breathing apparatus or air unit is used.

(g) All fumigants shall be safely stored with regard to fire, explosion, leakage or other hazards to the health and safety of human beings and domestic animals under conditions specified by the manufacturer or supplier or North Carolina State and/or federal label registration.

Authority G.S. 106-65.29.

02 NCAC 34 .0806 FUMIGATION REQUIREMENTS FOR FUMIGATION CREW

(a) A fumigation crew shall consist of not less than two individuals. One of said individuals shall be either a certified applicator or a licensed fumigator as defined in 02 NCAC 34 .0102(23), and the second individual shall be trained in fumigation.

(b) No fumigation operation shall be conducted unless and until at least two individuals, as specified in 02 NCAC 34 .0806(a) shall work together, jointly and concurrently, during release or application of the fumigant(s) and during initial ventilation of the structure(s) fumigated.

(c) At least two members of the fumigation crew shall be equipped with a serviceable respirator or self-contained breathing apparatus of a type approved by the United States Mining Enforcement and Safety Administration or National Institute for Occupational Safety and Health with correct canister for the type of gas used, and shall wear such masks while in the enclosed space during and after liberation of the fumigant, until initial ventilation is completed, except in those cases specifically excluded by label registration.

(d) For residential structures, no one other than the certified applicator or licensed fumigator shall be permitted to re-enter the fumigated structure(s) or premise(s) until the certified applicator or licensed fumigator shall have ascertained, by personal inspection, without a respirator and by suitable tests, that the structure(s) or premise(s) is safe for re-occupancy. For commercial structures, no one other than the certified applicator or licensed fumigator or a person trained in fumigation shall be permitted to re-enter the fumigated structure(s) or premise(s) until the certified applicator or licensed fumigator or a person trained in fumigation shall have ascertained, by personal inspection, without a respirator and by suitable tests, that the

structure(s) or premise(s) is safe for re-occupancy.

(e) Requirements pertaining to spot fumigation are set forth under 02 NCAC 34 .0801.

Authority G.S. 106-65.29.

SECTION .0900 – DUTIES AND RESPONSIBILITIES OF LICENSEE

Version 1

02 NCAC 34 .0904 PROHIBITED ACTS

(a) No reference shall be made by any certified applicator, licensee, business establishment, or business entity in any form of advertising that would indicate approval, endorsement, or recommendation by the Committee or by any agency of the federal government or North Carolina State, county, or city government.

(b) The use of a structural pest control license(s), certified applicator's identification card(s), registered technician's identification card(s), or licensee identification card(s) for any purpose other than identification is prohibited.

(c) In solicitation of structural pest control business, no licensee or his employees shall claim that inspections or treatments are required, authorized, or endorsed by any agency of the federal government or North Carolina State, county, or city government unless said agency states that an inspection or treatment is required for a specific structure.

(d) No licensee shall advertise, in any way or manner, as a contractor for structural pest control services, in any phase(s) of work for which he does not hold a valid license(s) as provided for under G.S. 106-65.25(a), unless said licensee shall hold a valid certified applicator's identification card or registered technician's identification card, as provided for under G.S. 106-65.31, as an employee of a person who does hold a valid state license(s) covering phases of structural pest control work advertised.

(e) The impersonation of any North Carolina State, county, or city inspector or any other governmental official is prohibited.

(f) No licensee, certified applicator or registered technician's identification card holder shall advertise or hold himself out in any manner in connection with the practice of structural pest control as an entomologist, plant pathologist, horticulturist, public health engineer, sanitarian, unless such person shall be qualified in such field(s) by required professional and educational standards for the title used.

(g) No certified applicator, licensee, or his employees shall represent to any property owner or his authorized agent or occupant of any structure that any specific pest is infesting said property, structure, or surrounding areas thereof, unless strongly supporting visible evidence of such infestation exists.

(h) No certified applicator or licensee or their employees shall authorize, direct, assist, or aid in the publication, advertisement, distribution, or circulation of any material by false statement or representation concerning the licensee's structural pest control business or business of the company with which he is employed.

(i) No certified applicator or licensee or their employees shall advertise or contract in a company name style contradictory to that shown on the certified applicator's identification card or license certificate; provided, however, when there is a sale of a business or other name change the company may use both names

together for a period not to exceed two years from the date of the name change or sale of business.

(j) No certified applicator shall use any name style on his certified applicator's identification card which contains the words "exterminating", "pest control," or any other words which imply that he provides pest control services for a valuable consideration unless he is a licensee or a duly authorized agent or employee of a licensee.

(k) No licensee issued an inactive license shall engage in any phase of structural pest control under such inactive license.

(l) No licensee, certified applicator, or registered technician shall indicate on any foundation diagram prepared pursuant to 02 NCAC 34 .0601 or 02 NCAC 34 .0605 that hidden damage or possible hidden damage due to any wood-destroying organism exists in a structure unless there is visible evidence of infestation or damage present in the immediate area of the alleged hidden damage.

(m) No pesticide shall be applied for the purpose of performing structural pest control when the conditions at the site of application favor drift or runoff from the target site.

Authority G.S. 106-65.29.

Version 2

02 NCAC 34 .0904 PROHIBITED ACTS

(a) No reference shall be made by any certified applicator, licensee, business establishment, or business entity in any form of advertising that would indicate approval, endorsement, or recommendation by the Committee or by any agency of the federal government or North Carolina State, county, or city government.

(b) The use of a structural pest control license(s), certified applicator's identification card(s), registered technician's identification card(s), or licensee identification card(s) for any purpose other than identification is prohibited.

(c) In solicitation of structural pest control business, no licensee or his employees shall claim that inspections or treatments are required, authorized, or endorsed by any agency of the federal government or North Carolina State, county, or city government unless said agency states that an inspection or treatment is required for a specific structure.

(d) No licensee shall advertise, in any way or manner, as a contractor for structural pest control services, in any phase(s) of work for which he does not hold a valid license(s) as provided for under G.S. 106-65.25(a), unless said licensee shall hold a valid certified applicator's identification card or registered technician's identification card, as provided for under G.S. 106-65.31, as an employee of a person who does hold a valid state license(s) covering phases of structural pest control work advertised.

(e) The impersonation of any North Carolina State, county, or city inspector or any other governmental official is prohibited.

(f) No licensee, certified applicator or registered technician's identification card holder shall advertise or hold himself out in any manner in connection with the practice of structural pest control as an entomologist, plant pathologist, horticulturist, public health engineer, sanitarian, unless such person shall be qualified in such field(s) by required professional and educational standards for the title used.

(g) No certified applicator, licensee, or his employees shall represent to any property owner or his authorized agent or

occupant of any structure that any specific pest is infesting said property, structure, or surrounding areas thereof, unless strongly supporting visible evidence of such infestation exists.

(h) No certified applicator or licensee or their employees shall authorize, direct, assist, or aid in the publication, advertisement, distribution, or circulation of any material by false statement or representation concerning the licensee's structural pest control business or business of the company with which he is employed.

(i) No certified applicator or licensee or their employees shall advertise or contract in a company name style contradictory to that shown on the certified applicator's identification card or license certificate; provided, however, when there is a sale of a business, the company may use either name for a period not to exceed three years from the date of the sale of business.

(j) No certified applicator shall use any name style on his certified applicator's identification card which contains the words "exterminating", "pest control," or any other words which imply that he provides pest control services for a valuable consideration unless he is a licensee or a duly authorized agent or employee of a licensee.

(k) No licensee issued an inactive license shall engage in any phase of structural pest control under such inactive license.

(l) No licensee, certified applicator, or registered technician shall indicate on any foundation diagram prepared pursuant to 02 NCAC 34 .0601 or 02 NCAC 34 .0605 that hidden damage or possible hidden damage due to any wood-destroying organism exists in a structure unless there is visible evidence of infestation or damage present in the immediate area of the alleged hidden damage.

(m) No pesticide shall be applied for the purpose of performing structural pest control when the conditions at the site of application favor drift or runoff from the target site.

Authority G.S. 106-65.29.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Plant Conservation Board intends to amend the rule cited as 02 NCAC 48F .0305. Notice of Rule-making Proceedings was published in the Register on March 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 rule by submitting a request in writing no later than January 30, 2002, to Marj Boyer, Secretary, NC Plant Conservation Board, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: Due to increasing export sales of ginseng root, there is concern about over-harvest of wild ginseng. The proposed rule changes would prohibit harvest of plants less than five years old and require that seed from collected plants be replanted in the immediate vicinity.

Comment Procedures: Written comments may be submitted no later than February 14, 2002, to Marj Boyer, Secretary, NC Plant Conservation Board, PO Box 27647, Raleigh, NC 27611.

Fiscal Impact

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

(b) Purpose. The purpose of this Rule is to regulate trade in ginseng in North Carolina to obtain federal approval for the export of ginseng from the state, to support the ginseng trade within the state and to protect the species from over-collection and extinction.

CHAPTER 48 – PLANT INDUSTRY

SUBCHAPTER 48F – PLANT CONSERVATION

**SECTION .0300 - ENDANGERED PLANT SPECIES LIST:
THREATENED PLANT SPECIES LIST: LIST OF
SPECIES OF SPECIAL CONCERN**

**02 NCAC 48F .0305 COLLECTION AND SALE OF
GINSENG**

(a) Definitions:

- (1) Department. The North Carolina Department of Agriculture and Consumer Services.
- (2) Ginseng. Any plant of the species *Panax quinquefolius* including cuttings, roots, fruits, seeds, propagules or any other plant part.
- (3) Ginseng Dealer. Any person who purchases or otherwise obtains ginseng roots which have been collected or cultivated in North Carolina in any quantity for commercial use. This definition does not include those persons who directly collect or cultivate ginseng roots, or who obtain ginseng roots for their own personal use.
- (4) Export Certificate. A document issued to allow the export or shipment of ginseng out of the state by certifying that the ginseng covered by the document was legally collected or grown in North Carolina.
- (5) Five Year Old Wild Ginseng Plant. Any wild ginseng plant having at least three prongs (five-leaflet leaves) or, in the absence of leaves, having at least four clearly discernible bud scars plus a bud on the neck (rhizome).
- (6) Inspector. An employee of the Department or any other person authorized by the Commissioner to enforce the Plant Protection and Conservation Act and the rules promulgated thereunder.
- (7) Person. Individual, corporation, partnership, firm, or association.
- (8) Record of Ginseng Purchases. A document completed by a ginseng dealer on a form provided by the Department to record ginseng purchases.
- (9) Record of Harvest Season Collection. A document completed and signed by a collector of wild ginseng and by an Inspector, certifying that the ginseng covered by the document was legally collected during the harvest season.
- (10) Statement Indicating Legal Collection of Ginseng from One's Own Land. A document completed and signed by a person verifying that the wild collected ginseng being sold was collected from that person's own land.

(c) Collection of Ginseng:

- (1) Harvest Season for the Collection of Ginseng. The ginseng harvest season shall be from September 1 through April 1. Harvesting ginseng outside of this period is prohibited except when the plants are dug from one's own land.
- (2) Collectors Harvesting or Selling Outside of the Harvest Season. Any person collecting wild ginseng outside of the harvest season must complete a Statement Indicating Legal Collection of Ginseng from One's Own Land before selling the ginseng. This form shall be available from ginseng dealers. Any person collecting ginseng within the harvest season but wishing to sell the ginseng outside of the season must complete a Record of Harvest Season Collection and have it signed by an Inspector before the end of the harvest season; the form is available from Inspectors.
- (3) Size of Collected Plants. Collection of any wild ginseng plant not meeting the definition of a five year old wild ginseng plant is prohibited except for the purpose of replanting.
- (4) The Replanting of Ginseng. All persons collecting ginseng from the wild are required to plant the seeds of collected plants in the immediate vicinity of where the plants are located. Ginseng seeds may be collected from the wild for replanting to a different location only if the plant bearing the seeds is not also collected in the same harvest season.
- (5) Any person collecting wild ginseng on the lands of another for any purpose shall, at time of collection, have on their person written permission from the landowner, as required under G.S. 106-202.19(1).
- (6) Possession of freshly dug ginseng on the lands of another shall constitute prima facie evidence that the ginseng was taken from the same land on which the collector was found.

(d) Purchase and Sale of Ginseng:

- (1) Ginseng Dealer Permits. All ginseng dealers shall obtain a permit from the Plant Industry Division of the Department prior to purchasing ginseng. Permits shall be valid from July 1 or the date of issue, whichever is later, to the following June 30. No ginseng shall be purchased by a ginseng dealer without a current permit.
- (2) Buying Season for Ginseng. The buying season for wild collected ginseng shall be from September 1 through the following April 1 for green ginseng and from September 15 through the following April 1 for dried ginseng. To

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buy wild collected ginseng outside of this buying season a ginseng dealer must obtain from the collector either:

- (A) a completed Statement Indicating Legal Collection of Ginseng from One's Own Land; or
 - (B) a Record of Harvest Season Collection completed by the collector and signed by an Inspector.
- (3) Purchase Records. Every ginseng dealer shall keep a record of each purchase of ginseng collected or grown in North Carolina on the applicable Record of Ginseng Purchases provided by the Department. Forms from previous years, copies, or any forms other than those provided by the Department for the current permit period shall not be used. Records of Ginseng Purchases shall be made available for inspection by an Inspector and shall be surrendered to an Inspector upon issuance of an Export Certificate or on a periodic basis. The applicable Statement Indicating Legal Collection of Ginseng from One's Own Land or Record of Harvest Season Collection shall be attached to any Record of Ginseng Purchases recording a purchase of wild collected ginseng collected outside of the harvest season or bought outside of the buying season.
- (4) Purchase of Ginseng from Other Ginseng Dealers. All ginseng dealers who purchase ginseng from other ginseng dealers located in North Carolina shall purchase only from those ginseng dealers that have valid dealer permits. Such purchases shall be recorded in a Record of Dealer-Dealer Transactions. Ginseng purchased from ginseng dealers who lack valid permits shall not be certified for export or shipment out of the state.
- (5) Exportation and Shipment of Ginseng. All persons who have ginseng in any quantity and wish to export or ship any amount out of the state shall obtain an export certificate from an Inspector. To obtain an export certificate a person must have accurate records of his purchases, present and surrender the original Record of Ginseng Purchases upon issuance of an export certificate and possess a valid ginseng dealer's permit.

.0209, .0211 and repeal the rules cited as 10 NCAC 41F .0403, .0703, .0804. Notice of Rule-making Proceedings was published in the Register on August 1, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: February 14, 2002

Time: 10:00 a.m.

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

Reason for Proposed Action: *The Social Services Commission intends to amend rules on a permanent basis in 10 NCAC 41F governing the licensure of family foster homes and 10 NCAC 41N governing the licensure of child-placing agencies. The proposed changes resulted for several reasons. Proposed changes are to update rules to be consistent with current child welfare practice, as it pertains to the home assessment and group selection process (10 NCAC 41F .0401-.0402, .0404-.0406, .0502, .0705, .0801), reporting abuse/neglect to the licensing authority (10 NCAC 41N .0209), training in first aid, CPR and Universal Precautions (10 NCAC 41F .0814) and home-schooling (10 NCAC 41N .0217). Several rule changes are technical to update language or terminology (10 NCAC 41F .0501, .0504, .0802, .0805, .0808, .0810-.0811, .0813 and 41N .0211). In addition, for the past several years, a group of service providers, Division of Social Services staff and Division of Mental Health/Developmental Disabilities/Substance Abuse Services staff have been reviewing these Rules to enhance the placement of children in family settings, as well as promote the recruitment and retention of families to care for children. Recommendations of this group also resulted in changing the period of time of a license from annual to biennial (10 NCAC 41F .0407, .0501, .0803, .0806, .0809 and 41N .0102).*

Comment Procedures: *Anyone wishing to comment on these proposed rules should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919) 733-3055. Comments will be accepted through February 14, 2002. Verbal comments may be presented at the public hearing.*

Fiscal Impact

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

CHAPTER 41 – CHILDREN'S SERVICES

SUBCHAPTER 41F - LICENSING OF FAMILY FOSTER HOMES

SECTION .0400 - MUTUAL HOME ASSESSMENT

10 NCAC 41F .0401 PURPOSE

(a) A mutual home assessment of the family foster home shall be made to determine if the home meets the basic requirements

Authority G.S. 106-202.15; 106-202.21.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

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 41N .0217, amend the rules cited as 10 NCAC 41F .0401-.0402, .0404-.0407, .0501-.0502, .0504, .0702, .0705, .0801-.0803, .0805-.0806, .0808-.0811, .0813-.0814; 41N .0102,

of the agency, and if the home is suitable for foster family care of a child.

(b) The mutual home assessment aims to protect the child from harmful experiences, including unnecessary replacements, to promote permanency and to make sure the child has the most favorable conditions for development. The mutual home assessment shall also provide reliable data on which the family and worker will be able to mutually determine the family's skills and abilities to meet the needs of children and provide care for children in accordance with licensing requirements.

(c) The agency shall provide information to applicants that will make it possible for the applicants to make a knowledgeable decision about their interest in pursuing licensure. The agency shall learn enough about the applicants to determine whether they can meet the needs of children, provide and care for children in accordance with licensing requirements, and the kind of child they can best serve.

Authority G.S. 131D, Art. 1A; 143B-153.

10 NCAC 41F .0402 METHOD OF MUTUAL HOME ASSESSMENT

The mutual home assessment shall be carried out in a series of planned discussions between agency staff, the prospective foster parent applicants and other members of the household. The family shall be seen by the worker in the family's home and in the office. For two parent homes, separate as well as joint discussions with both parents must be arranged.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0403 INFORMATION TO BE GIVEN AND OBTAINED
~~There must be exchange of such information about the agency and the applicants as the applicants need to decide whether they are prepared to serve as foster parents, and the agency needs to evaluate whether the home is suitable for placement of children who require foster family care.~~

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0404 ASSESSMENT PROCESS

(a) Applications. When the applicants first contact the agency, an assessment must be made through a discussion with the applicants of the licensing requirements to determine eligibility in terms of the agency's non-negotiable requirements. A decision whether to continue a mutual home assessment must be made as soon as possible.

(b) Exchange of Information. Applicants shall be informed about the services, policies, procedures, standards, and expectations of the agency, so that they may weigh the responsibilities entailed in foster family care, decide whether they are able to and wish to undertake such responsibilities, and be prepared for them if they become foster parents.

(c) Mutual Assessment of Home and the family:

- (1) The mutual home assessment of the family must be presented and recorded in such a way that other members of the agency staff can make optimum use of the family as a resource for children. The assessment of the home must indicate whether the home is in compliance with licensing standards.

- (2) A mutual home assessment must be made of the applicants' skills and abilities to provide care for children.
- (3) All members of the household must be assessed with respect to their commitment to providing care for children.
- (4) The home must be assessed to determine if there is adequate space to accommodate the number of children recommended for the license capacity.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0405 USE OF REFERENCES

References shall be used to supplement the information obtained through interviews and observation regarding the applicants. All adult members of the family foster home shall provide references who can attest to their suitability to care for children.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0406 PERIODIC REASSESSMENT OF HOME

- (a) A family foster home shall be reassessed at least biennially.
- (b) Reassessment shall include a mutual assessment with the foster parents of their skills and abilities to provide care for children, including ways in which they have been able to meet the needs of children placed in their and home areas in which they need further development.
- (c) Any changes in physical set up and in the foster parents' capacities for providing child care since the original home assessment or previous reassessment shall be documented in the family's record.
- (d) Reassessment shall be used as a tool in assessing the home for relicensing.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0407 AGENCY FOSTER PARENT AGREEMENT

A written agreement such as the agency Foster Parents Agreement, defining each party's rights and obligations must be reviewed and signed by the foster parents and the licensing worker at the time of the initial licensing and biennially thereafter.

Authority G.S. 131D-10.5; 143B-153.

SECTION .0500 – FORMS

10 NCAC 41F .0501 LICENSE APPLICATION

Application for a license shall be made on a form which gives identifying information about the home, and lists forms which are attached to the application. The agency director or designee shall sign the form and thereby indicate both that the home meets the licensing standards, and that the agency intends to use the home in accordance with the license and to provide services to the foster parents. The form shall be submitted to the licensing authority biennially.

Authority G.S. 131D, Art. 1A; 143B-153.

10 NCAC 41F .0502 AGENCY FOSTER PARENTS' AGREEMENT

(a) The agency and the foster parents shall sign a written agreement under which the foster parents agree:

- (1) to allow the representative of the agency to visit the home in conjunction with licensing procedures, foster care planning, and placement;
- (2) to accept children into the home only through the agency and not through other individuals, agencies, or institutions;
- (3) to treat a child placed in the home as a member of the family, and when so advised by the agency, to make every effort to support, encourage, and enhance the child's relationship with the child's birth parents;
- (4) that there will be continuous contact and exchange of information between the agency and the foster parents about matters affecting the adjustment of any child placed in the home. The parents shall agree to keep these matters confidential and to discuss them only with the appropriate agency staff members, or with other professional people designated by the agency;
- (5) to obtain the permission of the agency if the child is out of the home for a period exceeding two nights;
- (6) to report to the agency any changes in the composition of the household, change of address, or change in the employment status of any adult member of the household;
- (7) to make no independent plans for a child to visit the home of the child's birth parents or relatives without prior consent from the agency;
-)(8) to adhere to the agency's plan of medical care, both for routine care and treatment and for emergency care and hospitalization; and
-)(9) to provide any child placed in the home with appropriate and responsible supervision at all times while the child is in the home, and not leave the child unsupervised or in the charge of inappropriate persons.

(b) Under the agreement, the agency shall agree:

- (1) to assume responsibility for the overall planning for the child, and to assist the foster parents in meeting their day-to-day responsibility toward the child;
- (2) to inform the foster parents concerning the agency's procedures and financial responsibility for obtaining medical care and hospitalization;
- (3) to pay the foster parents a monthly room and board payment, and if applicable, a difficulty of care payment or respite care payment for children placed in the home;
- (4) to discuss with the parents any plans to remove a child from the family foster home, and to

give the foster parents reasonable notice before removing a child;

- (5) to visit the family foster home and child regularly, and to be available to give needed services and consultation concerning the child's welfare;
- (6) to respect to the extent possible the foster parents' preferences in terms of sex, age range, and number of children placed in the home;
- (7) to provide or arrange for training for the foster parents; and
- (8) to include foster parents as part of the decision-making team for a child.

(c) The agreement shall also contain any special provisions of agreement. The foster parents and a representative of the agency shall sign and date the agreement. The foster parents shall retain a copy of the agreement, as shall the agency.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0504 DEPARTMENT OF SOCIAL SERVICES INTERCOUNTY AGREEMENT

(a) When children are placed in a family foster home in a county (the supervising county) other than the county of their home (the responsible county), the two county departments of social services shall agree in writing that the supervising county will:

- (1) accept full responsibility for supervising the child;
- (2) not initiate placement planning for the child without prior agreement from the responsible county, except where emergency replacement is necessary;
- (3) immediately inform the responsible county when emergency replacement precludes prior approval;
- (4) engage in no treatment or planning relationship with the child's birth parents or relatives, except upon request of the responsible county;
- (5) not use unlicensed foster care placements for the child;
- (6) keep the case confidential; and
- (7) submit to the responsible county, at intervals specified in the agreement, a written evaluation of the child's adjustment.

(b) In the agreement the responsible county shall agree to:

- (1) make payments for room and board, difficulty of care or respite care, if applicable, to the supervising county, in amounts and at times specified in the agreement;
- (2) take responsibility for placement of the child;
- (3) make restitution, in accordance with a plan specified in the agreement, for damage that the child causes to the foster parents' property;
- (4) inform the supervising county concerning future planning for the child; and
- (5) write the room and board check in a manner specified in the agreement, in order to protect confidentiality.

(c) The agreement shall specify the manner in which payment for clothes, medical costs, and allowances will be made.

(d) The agreement shall specify the dates between which the agreement will be effective. The agreement shall be signed by the directors of the two county departments. The responsible county shall have one signed copy, and the supervising county shall ~~shall~~ have the other copy. The responsible county shall provide the children's services program representative with a signed copy.

Authority G.S. 131D, Art. 1A; 143B-153.

SECTION .0700 - STANDARDS FOR LICENSING

10 NCAC 41F .0702 CRITERIA FOR THE FOSTER FAMILY

(a) Qualities. Foster parents shall be persons whose behaviors, circumstances and health are conducive to the safety and well being of children. Foster parents shall be selected on the basis of demonstrating strengths in the skill areas of Subparagraphs (1) through (12) of this Rule which will permit them to undertake and perform the responsibilities of meeting the needs of children, in providing continuity of care, and in working with the agency. Persons who have been found to have abused or neglected a child by any agency duly authorized by law to investigate allegations of abuse or neglect may not be eligible for licensure as foster parents. Foster parents shall be persons who demonstrate:

~~family living, when it is needed;~~

- (9) ~~(1)~~ skills in assessing individual and family strengths and needs and building on strengths and meeting needs;
- (2) skills in using and developing effective communication;
- (3) skills in identifying the strengths and needs of children placed in the home;
- (4) skills in building on children's strengths and meeting the needs of children placed in the home;
- (5) skills in developing partnerships with children placed in the home, birth families, the agency and the community to develop and carry out plans for permanency;
- (6) skills in helping children placed in the home develop skills to manage loss and skills to form attachments;
- (7) skills in helping children placed in the home manage their behaviors;
- (8) skills in helping children placed in the home maintain and develop relationships that will keep them connected to their pasts;
- (9) skills in helping children placed in the home build on positive self-concept and positive family, cultural and racial identity;
- (10) skills in providing a safe and healthy environment for children placed in the home which keeps them free from harm;
- (11) skills in assessing the ways in which providing foster care affects the family; and
- (12) skills in making an informed decision regarding providing foster care.

(b) Age. A new family foster home license may be issued to persons 21 years of age and older. (c) Health. The foster family shall be in good physical and mental health as evidenced by:

- (1) a physical examination completed by a physician, physician's assistant or a certified nurse practitioner on each member of the family foster home within at least the three months prior to the initial licensing and biennially thereafter;
- (2) documentation that each adult member of the household has had a TB skin test or chest x-ray prior to initial licensure and a TB skin test biennially thereafter, unless contraindicated by a physician or religious beliefs. The foster parents' children shall be required to be tested only if one or more of the parents tests positive for TB; and
- (3) a medical history form must be completed on each member of the household at the time of the initial licensing and on any person who subsequently becomes a member of the household;

(d) Agency Employees, Social Services Board Members, County Commissioners as FosterParents. These persons may be licensed as a family foster home if such licensure does not constitute a conflict of interest regarding supervision of children placed in the home. The agency's decision shall be documented in the family's record.

(e) Day Care and Baby Sitting Services in the Home. With prior approval from the agency, a foster parent may keep day care children or provide baby-sitting services: provided: the home is not overcrowded according to the definition of capacity for family foster homes as set forth in Section .0600 of this Subchapter.

(f) Day Care Centers Operated by Foster Parents. If a foster parent operates or plans to operate a day care center, the following criteria must be met:

- (1) The family foster home living quarters can not be part of the day care operation.
- (2) There must be a separate entrance to the day care operation.
- (3) Adequate staff in addition to the foster parents must be available to provide care for the day care children.

(g) Relationship to Responsible Agency. Foster parents must agree to work constructively with the agency in the following ways:

- (1) Work with the child and the child's birth family in the placement process when appropriate, return to birth family, adoption, or replacement process;
- (2) Consult with social workers, mental health personnel and physicians and other authorized persons who are involved with the child;

- (3) Maintain confidentiality regarding children and their birth parent(s);
- (4) Keep records regarding the child's illness, behavior, social needs, school, family visits, etc.; and
- (5) Report to the agency immediately any significant changes in their situation, or that of any child placed in their care.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0703 LOCATION AND SURROUNDINGS

- ~~(a) The foster home shall be located so that it is readily accessible to schools, recreational facilities, medical facilities, and churches.~~
- ~~(b) The home shall be of sufficient size to provide adequate living accommodations for the persons caring for the children, as well as proper accommodations for the children placed.~~
- ~~(c) The home shall have adequate outdoor space for play that is free from hazards. Play equipment appropriate to the child's age shall be available.~~

Authority G.S. 131D, Art. 1A; 143B-153.

10 NCAC 41F .0705 LICENSING COMPLIANCE VISITS

Quarterly Visits. Agency staff shall visit with the foster family on at least a quarterly basis each year for the specific purpose of assessing licensing requirements. Two of the quarterly visits each year shall be made in the home for the purpose of discussing with the foster parents matters related to their skills and abilities to meet the needs of children in the home, any services needed by the foster family and to ensure that minimum licensing standards continue to be met.

Authority G.S. 131D-10.5; 143B-153.

SECTION .0800 - LICENSING REGULATIONS AND PROCEDURES

10 NCAC 41F .0801 RESPONSIBILITY

Each agency providing family foster home services has the responsibility for studying and mutually assessing its applicants and licensees. Completed information and reports which are used as the basis of either issuing or continuing to issue licenses shall be submitted to the licensing authority, in accordance with licensing standards.

Authority G.S. 131D, Art. 1A; 143B-153.

10 NCAC 41F .0802 NEW LICENSES

- (a) All licensing material must be completed and dated within 90 days prior to submitting material for licensure.
- (b) All licensing information and reports required for a license must be submitted at one time.
- (c) A new license shall be issued effective the date the application and all required licensing materials are received by the ~~Division of Social Services.~~ licensing authority.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0803 RENEWAL

- (a) Licenses must be renewed at least biennially in accordance with the expiration date on the license. Materials for renewing a license are due prior to the date the license expires.
- (b) All relicensing material must be completed and dated within 90 days prior to the date the agency submits material for licensure.
- (c) All relicensing material must be submitted at one time.
- (d) If materials are submitted after the family foster home license expires, , a license, if approved, will be issued effective the date the licensing materials are received by the licensing authority.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0804 90 DAY GRACE PERIOD

- ~~(a) A license is automatically provided a 90 day grace period after the license expiration date.~~
- ~~(b) If the license is not renewed by the end of the 90 day grace period, the license is terminated.~~

Authority G.S. 131D, Art. 1A; 143B-153.

10 NCAC 41F .0805 CHANGE IN FACTUAL INFORMATION ON THE LICENSE

- (a) A license may be changed during the time it is in effect if the change is in compliance with minimum licensing standards.
- (b) Supportive data must be submitted to the licensing authority for the following:
 - (1) changes in age range, number of children and sex; or
 - (2) change in residence.
- (c) A family foster home license cannot be changed to a residential child-care facility license. The family foster home license must be terminated and materials must be submitted in accordance with 10 NCAC 41S or 10 NCAC 41T in order to be licensed as a residential child-care facility.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0806 TERMINATION

Licenses are automatically terminated at the end of the license period unless all licensing materials have been received by the licensing authority prior to the license expiration date.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0808 LICENSING AUTHORITY FUNCTION

When the licensing authority receives licensing materials, the licensing materials are reviewed relative to standards, policies, and procedures for licensing. The licensing authority will communicate with the agency submitting the materials if additional information, clarification or materials are needed to make an appropriate decision.

- (1) A new license, if approved, shall be issued effective the date the license application and

- (2) all licensing materials are received by the licensing authority.
- (2) A license shall be approved in accordance with the expiration date shown on the license or the date relicensing materials are received.
- (3) A license shall be valid for the period of time stated on the license for the number of children specified and for the place of residence identified on the license.
- (4) When a family supervised by a county department of social services moves from one county to another county with a child placed for foster care, a notice of termination of the license must be submitted to the licensing authority and may be kept for a maximum of three months in order to give the supervising county time to complete a mutual home assessment. Within the three-month time period of the foster parents' move from one county to another county, licensing materials must be submitted by the new county department of social services and the procedure for issuing a new license shall be followed.
- (5) When a family supervised by an agency transfers licensure from one agency to another agency, a license application and mutual home assessment must be submitted by the new agency and the procedure for transferring a license shall be followed.

- (2) The county department of social services shall monitor the relicensing of the out-of-state residential child-care facility or family foster home to ensure that no child for whom they have responsibility is placed in an unlicensed residential child-care facility or family foster home.
- (3) The county department of social services shall submit to the licensing authority written documentation that an out-of-state group home, child caring institution, maternity home or residential child-care facility or family foster home has been licensed and that an Interstate Compact for the Placement of Children Form 100-A for the child to be placed out of state has been signed by both states in order for the group home, child caring institution, maternity home or residential child-care facility or family foster home to be issued a license identification number for foster care reimbursement purposes.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0809 KINDS OF LICENSES

- (a) Full License. A full license is issued for a maximum of two years when all minimum licensing requirements are met.
- (b) Provisional License.
 - (1) A provisional license is issued for a maximum of six months while some below standard component is being corrected.
 - (2) A provisional license for the same below standard program component cannot be renewed.

Authority G.S. 131D, Art. 1A; 143B-153.

10 NCAC 41F .0810 OUT-OF-STATE FACILITIES AND FAMILY FOSTER HOMES

The use of out-of-state residential child-care facilities and family foster homes for the placement of children in the custody of a North Carolina agency shall be in accordance with the following:

- (1) Prior to placement into an out-of-state family foster home, group home, child caring institution, maternity home or any other residential child-care facility, the county department of social services must determine that the group home, child caring institution, maternity home or residential child-care facility or family foster home is licensed according to the standards of that state.

Authority G.S. 131D, Art. 1A; 143B-153.

10 NCAC 41F .0811 REPORTS OF ABUSE AND NEGLECT

- (a) When an agency receives a report alleging abuse or neglect in a family foster home, the agency shall immediately notify the legal custodian and the licensing authority.
- (b) The agency shall submit to the licensing authority, within 30 days of the case decision, a detailed report on the circumstances of the allegation and results of the investigation of the allegation of abuse or neglect. This report, along with other information the licensing authority may require, shall be reviewed and evaluated by the licensing authority and used in consultation and technical assistance with the agency and the county department of social services conducting the investigation to assist them in providing services to protect children in foster care.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0813 CRIMINAL HISTORY CHECKS

The agency shall carry out the following for all foster parents applying for relicensure of a family foster home, new foster parent applicants and any member of the foster parents' or prospective foster parents' household 18 years of age or older:

- (1) furnish the written notice as required by G.S. 131D-10.3A(e);
- (2) obtain a signed consent form for a criminal history check and submit the signed consent form to the licensing authority;
- (3) obtain two sets of fingerprints on SBI identification cards and forward both sets of fingerprints to the licensing authority. Once an individual's fingerprints have been submitted to the licensing authority, additional fingerprints shall not be required; and
- (4) conduct a local criminal history check through accessing the Administrative Office of the

Courts and the Department of Corrections Offender Population Unified System and submit the results of the criminal history checks to the licensing authority on the application form.

(5) Each agency shall document in the foster parent record the type of activity the foster parent has completed in pursuance of this Section.

(d) In order for a foster family caring for a child with HIV (human immunodeficiency virus) or AIDS (acquired immunodeficiency syndrome) to receive the HIV supplemental payment, that family shall attend six hours of advanced medical training annually. This training shall consist of issues relevant to HIV or AIDS. This training shall count toward the training requirements of Paragraph (c) of this Rule.

Authority G.S. 131D-10.3; 131D-10.5; 143B-153.

Authority G.S. 143B-153; S.L. 1993, c. 769, s. 25.11.

10 NCAC 41F .0814 TRAINING REQUIREMENTS

(a) In order to provide improved services to children and families, each agency shall provide, or cause to be provided, preservice training for all prospective foster parents. Training shall be subject to the specifications of Paragraph (b) of this Rule.

(b) As a condition of licensure for foster parent applicants, each applicant shall successfully complete 30 hours of preservice training. Preservice training shall include the following components:

- (1) General Orientation to Foster Care and Adoption Process;
- (2) Communication Skills;
- (3) Understanding the Dynamics of Foster Care and Adoption Process;
- (4) Separation and Loss;
- (5) Attachment and Trust;
- (6) Child and Adolescent Development;
- (7) Behavior Management;
- (8) Working with Birth Families and Maintaining Connections;
- (9) Lifebook Preparation;
- (10) Planned Moves and the Impact of Disruptions;
- (11) The Impact of Placement on Foster and Adoptive Families;
- (12) Teamwork to Achieve Permanence;
- (13) Cultural Sensitivity;
- (14) Confidentiality; and
- (15) Health and Safety.

(c) Prior to licensure renewal, each foster parent shall successfully complete at least twenty hours of inservice training. This training may be child-specific or may concern issues relevant to the general population of children in foster care. In order to meet this requirement:

- (1) During the first year following initial licensure, the parent identified as the primary parent shall receive training in the following:
 - (A) First Aid;
 - (B) CPR; and
 - (C) Universal Precautions.

- (2) Each agency shall provide, or cause to be provided, at least 10 hours of inservice training for foster parents annually.
- (3) Such training shall include subjects that would enhance the skills of foster parents and promote stability for children.
- (4) A foster parent may complete relevant training provided by: a community college, a licensed child placing agency, or other departments of State or county governments and, upon approval by the agency, such training shall count toward meeting the requirements specified in this Section.

**SUBCHAPTER 41N - CHILD PLACING AGENCIES:
MATERNITY HOMES AND CHILDREN'S CAMPS**

SECTION .0100 – GENERAL

10 NCAC 41N .0102 LICENSURE

Licenses issued shall be in effect for a maximum of two years unless suspended or revoked. Appeal procedures specified in 10 NCAC 41A .0107 shall apply for persons seeking an appeal to the licensing authority's decision to deny, suspend, or revoke a license.

Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153.

**SECTION .0200 - ORGANIZATION AND
ADMINISTRATION**

**10 NCAC 41N .0209 RESPONSIBILITY TO
LICENSING AUTHORITY**

(a) The agency shall annually submit to the licensing authority the required information and materials to document compliance and to support issuance of a license.

(b) The agency shall submit to the licensing authority an annual statistical report of program activities.

(c) The agency shall provide written notification immediately to the licensing authority of a ~~of~~ change in the administrator.

(d) When the agency receives a report alleging abuse or neglect in a home supervised or a facility operated by the agency, the agency shall immediately notify the licensing authority.

(e) The agency will then submit to the licensing authority, within 30 days of the case decision, a detailed report on the circumstances of the allegation and results of the investigation of the allegation of abuse or neglect. This report, along with other information the licensing authority may require, shall be reviewed and evaluated by the licensing authority and used in consultation and technical assistance with the agency and the county department of social services conducting the investigation to assist them in providing services to protect children in placement.

(f) When there is a death of a child in placement in a home supervised by the agency, the director or his designee shall immediately notify the licensing authority.

Authority G.S. 131D-1; 131D-10.5; 143B-153.

10 NCAC 41N .0211 STAFF

PROPOSED RULES

(a) The agency shall verify prior to employment the personal qualifications of employees through at least three character references.

(b) The agency shall require that each applicant provide a signed statement that the applicant has no criminal, social or medical history which would adversely affect the applicant's capacity to work with children and adults.

(c) The agency shall employ qualified staff to perform administrative, supervisory, care, and placement services.

(d) The agency shall have staff to keep correspondence, records, bookkeeping and files current and in good order. The staff must maintain strict confidentiality concerning contents of the case records.

(e) The agency shall maintain a roster of members of the staff listing position, title, and qualifications and a current organizational chart showing administrative structure and staffing, including lines of authority. The organizational chart must be submitted prior to initial licensure and annually thereafter.

(f) An agency which uses volunteers to work directly with clients on a regular basis shall:

- (1) have written job descriptions and select only those persons qualified to meet the requirements of those jobs;
- (2) require personal references;
- (3) designate a staff member to supervise and evaluate volunteers; and
- (4) develop and implement a plan for the orientation and training of volunteers in the philosophy of the agency and the needs of the clients and their families.

(g) Abuse and Neglect. The agency shall have and follow procedures for handling any suspected incidents of child or adult abuse and neglect involving staff, foster or adoptive parents. The procedure must include:

- (1) a provision for recording any suspected incident of abuse or neglect and for immediately reporting it to the executive director or to the governing body or advisory board;
- (2) a provision for promptly reporting any allegations of abuse or neglect to the appropriate county department of social services for investigation;
- (3) a provision for promptly notifying the licensing authority of any allegations of abuse or neglect of any child or disabled adult in care;
- (4) a provision for preventing a recurrence of the alleged incident pending investigation;
- (5) a provision for notifying the licensing authority of any findings of such an investigation of child or disabled adult abuse or neglect; and
- (6) a policy concerning personnel action to be taken when the incident involves a staff member.

Authority G.S. 131D-1; 131D-10.5; 143B-153.

10 NCAC 41N .0217 HOME-SCHOOLING

(a) The agency shall have written policies and procedures regarding foster parents providing home-schooling to children placed in their home that shall be discussed with each child, the child's birth parents or legal custodians prior to or upon placement.

(b) The foster parents shall provide documentation of home-schooling certification.

(c) The home-schooling policies and procedures shall include:

- (1) a requirement for the foster parents to meet the Department of Non-Public Education's legal requirements for a home school;
- (2) an educational assessment of the child that establishes the need for home-schooling;
- (3) qualifications of the foster parents to meet the requirements of the educational assessment;
- (4) expectation of the child's placement to remain stable for the time period of home-schooling; and
- (5) parental consent, if the birth parents' consents can be obtained.

Authority G.S. 131D-10.5; 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rules cited as 10 NCAC 41O .0206-.0209 and amend the rules cited as 10 NCAC 41F .0401, .0404, .0601-.0602, .0701-.0702, .0814; 41O .0101-.0102. Notice of Rule-making Proceedings was published in the Register on August 1, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: February 14, 2002

Time: 10:00 a.m.

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

Reason for Proposed Action: *The proposed rule amendments and adoptions will ensure that rules governing family foster homes and child placing agencies for foster care are in compliance with recent State statutory changes. Not only will the revision of these Rules enhance the placement of children in family settings and promote the recruitment and retention of families who care for them, the amendment and adoption of rules in 10 NCAC 41F and 10 NCAC 41O will ensure the most cost effective services for children in need of out of home placement are implemented while ensuring that the responsible agencies share the costs of these services.*

Comment Procedures: *Should you desire to comment on the proposed rules please contact Ms. Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919) 733-3055, fax (919) 733-9386. Verbal comments may be expressed at the Commission meeting. Any written comments must be received by 10:00 a.m. on February 14, 2002.*

Fiscal Impact

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

(4) Physical facilities must be evaluated in terms of adequacy and suitability.

Authority G.S. 131D-10.5; 143B-153.

CHAPTER 41 – CHILDREN'S SERVICES

SECTION .0600 - DEFINITION

SUBCHAPTER 41F - LICENSING OF FAMILY FOSTER HOMES

SECTION .0400 - FOSTER HOME STUDY

10 NCAC 41F .0401 PURPOSE

- (a) The agency shall conduct a study of the foster home to determine if the home meets the basic requirements of the agency, and if the home is suitable for foster family care of a child or behavioral health treatment services for a child.
- (b) The study aims to protect the child from harmful experiences, including unnecessary replacements, and to make sure he has the most favorable conditions for his development. The study shall also provide reliable data on the basis of which it will be possible to evaluate whether a family is able to provide acceptable care for children in accordance with requirements established for licensing of family foster homes.
- (c) The agency shall provide information to applicants that will make it possible for the applicants to make a knowledgeable decision about their interest in becoming foster parents. The agency shall learn enough about the persons being studied to determine whether they can be successful foster parents, and what kind of child they can best serve.

Authority G.S. 131D, Art. 1A; 143B-153.

10 NCAC 41F .0404 STUDY PROCESS

- (a) Screening of Applications. When the prospective foster parents first contact the agency, a screening must be made to determine eligibility in terms of agency requirements. A decision whether to continue the study must be made as soon as possible.
- (b) Exchange of Information. Prospective foster parents shall be informed about the services, policies, procedures, standards, and expectations of the agency, so that they may weigh the responsibilities entailed in foster family care and behavioral health treatment services, decide whether they are able to and wish to undertake such responsibilities, and be prepared for them if they become foster parents.
- (c) Evaluation of Home
 - (1) Evaluation of the family must be presented and recorded in such a way that other staff of the agency can make optimum use of this family as a resource for children needing foster home care. Evaluation of the home must indicate whether the home is in compliance with licensing standards.
 - (2) An evaluation must be made of the personalities of the applicants, and of the way in which they are likely to perform as foster parents.
 - (3) All members of the household must be evaluated with respect to their commitment to being part of a foster family.

10 NCAC 41F .0601 FAMILY FOSTER HOME

- (a) As used in this Subchapter, a family foster home is a place of residence of a family, person or persons who are licensed to provide full time foster care services to children under the supervision of a county department of social services or a licensed private agency, and which meets the regulations regarding capacity set forth in Rule .0602 of this Section.
- (b) As used in this Subchapter, a therapeutic foster home means a family foster home where in addition to the provision of foster care as set forth in G.S. 131D-10.2, Subsection (9), the foster parent has received appropriate training in providing care to children with behavioral health or substance abuse problems under the supervision of a county department of social services, area mental health authority or child placing agency, and which meets the regulations regarding capacity set forth in Rule .0602 of this Section.

Authority G.S. 131D, Art. 1A; 143B-153.

10 NCAC 41F .0602 FAMILY FOSTER HOME: QUALIFICATIONS

- (a) Not more than seven children may be provided care in any foster home at any given time. These seven children shall include the foster parent's own children, children placed for foster or therapeutic care, day care children or any other children.
- (b) Not more than five foster children shall reside in a family foster home at any one time. Not more than three children placed for therapeutic care shall reside in a foster home at any given time. With prior approval from Children's Services Branch, Foster Care Services, an exception to this standard may be made if the following factors are verified:
 - (1) The family foster home residence meets the fire and building safety standards in Section 510 of the residential building code, as set forth in 10 NCAC 41E .0700.
 - (2) Documentation is presented regarding the foster parents' skill, stamina, and capacity to care for the children.
- (c) There shall be no more than:
 - (1) Two children under two years of age;
 - (2) Four children under four years of age;
 - (3) Six children under 12 years of age, in a foster home at any one time.
- (d) Members of the natural family 18 years old and over are not included in capacity, but physical accommodations in the home must be adequate.

Authority G.S. 131D, Art. 1A; 143B-153.

SECTION .0700 - STANDARDS FOR LICENSING

10 NCAC 41F .0701 CRITERIA FOR THE CARE OF FOSTER CHILDREN

PROPOSED RULES

(a) The foster family shall help every child to feel accepted and to develop the conviction that he is a worthwhile person. Experiences of play, learning or group activities must be tailored especially for him. The child shall have objective evidence that he is valued as an individual with special circumstances and special needs.

(b) The foster family shall give every child the opportunity to express his feelings about his past and present situation.

(c) Foster parents shall in no way violate within the community the confidential nature of the child's situation or the circumstances of his parents.

(d) Foster parents shall encourage every child to maintain close relationships with natural family when the responsible agency feels this is in the best interest of the child and appropriate with the permanent plan for the child.

(e) Child training and discipline shall be handled by foster parents with kindness and understanding and must be appropriate for the child's age, intelligence, emotional makeup and past experience.

- (1) No child shall be subjected to cruel, severe, or unusual punishment.
- (2) Corporal punishment should be avoided.
- (3) No child shall be deprived of a meal for punishment or placed in isolation for longer than one hour.
- (4) No child shall be subjected to verbal abuse, threats, or humiliating remarks about him or his family.

(f) The daily routine in the family foster home shall be such as to promote good mental health and provide an opportunity for normal activities with time for rest and play.

(g) Foster parents shall give each child training in good health habits, including proper eating, frequent bathing and good grooming. The foster child shall be provided food with appropriate nutritional content for normal growth and health. Any special diets recommended by a physician must be provided to the foster child.

(h) Foster parents shall be alert to each child's medical needs and shall adhere to treatment prescribed for the child.

(i) In case of sickness or accident, the foster parents shall promptly notify the agency responsible for the care of the child.

(j) Foster parents shall see that every child of mandatory school age maintains regular school attendance unless the child has been officially excused by the proper authorities.

(k) Foster parents shall give every child the opportunity for normal social relationships and shall encourage the child to participate in neighborhood and group activities, such as 4-H Clubs, Boy Scouts, School Clubs, etc. The child shall be given permission to invite his friends to the foster home and to visit in the homes of his friends.

(l) Foster parents shall give every child the opportunity to assume some responsibility for himself and the household duties in accordance with his age, health and ability. Household tasks shall not interfere with school, sleep, play or study periods.

(m) Foster parents shall permit no child to do any task which is in violation of child labor laws or not appropriate for a child of that age.

(n) Foster parents shall provide supervision for foster children in accordance with each child's age, intelligence, emotional makeup and past experience.

(o) Every foster parent transporting a child of less than two years of age, shall have such child properly secured in a child passenger restraint system which is of a type and which is installed in a manner approved by the Commissioner of Motor Vehicles.

(p) Foster parents shall be responsible for the following requirements regarding medication:

- (1) Medication administration:
 - (A) retain the manufacturer's label with expiration dates clearly visible on non-prescription drug containers not dispensed by a pharmacist;
 - (B) administer prescription drugs to a child only on the written order of a person authorized by law to prescribe drugs;
 - (C) allow prescription medications to be self-administered by children only when authorized in writing by the child's physician. When a child is taking prescription medications, allowing non-prescription medications to be self-administered by a child only when authorized in writing by the child's physician;
 - (D) allow non-prescription medications to be administered to a child, not on prescription medication, when authorized by the legal custodian;
 - (E) allow medications, including injections, to be administered only by licensed persons, or by unlicensed persons trained by a registered nurse, pharmacist or other legally qualified and privileged person to prepare and administer medications;
 - (F) immediately record after administration in a Medication Administration Record (MAR), all drugs administered, discontinued, and disposed of regarding each child, and document medications at the times of discontinuation or disposal. The MAR is to include the following:
 - (i) child's name;
 - (ii) name, strength, and quantity of the drug;
 - (iii) instructions for administering the drug;
 - (iv) date and time the drug is administered, discontinued or disposed of; and
 - (v) name or initials of person administering or disposing of the drug;
 - (G) record and maintain child requests for medication changes or checks in the MAR file, and followed up with an appointment or consultation with a physician;

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- (2) Medication disposal: Return controlled substances to the agency;
- (3) Medication Storage:
- (A) store medications in a securely locked cabinet in a clean, well-lighted, ventilated room between 59° and 86° F.;
 - (B) if required, store medications in a refrigerator between 36° and 46° F. If the refrigerator is used for food items, store medications in a separate, locked compartment or container;
 - (C) store separately for each child; and
 - (D) store in a secure manner if approved by a physician for a child to self-medicate;
- (4) Medication review:
- (A) If the child receives psychotropic drugs, coordinate the review by the child's physician of each child's drug regimen at least every six months;
 - (B) report the findings of the drug regimen review to the agency; and
 - (C) document the drug review in the MAR along with corrective action, if applicable.
- (5) Medication errors:
- (A) report drug administration errors and significant adverse drug reactions immediately to a physician or pharmacist;
 - (B) document the drug administered and the drug reaction in the MAR; and
 - (C) if the child refuses, document the child's refusal of a drug in the MAR.
- (q) Foster parents who utilize physical restraints shall not engage in discipline or behavior management, which includes:
- (1) Mechanical restraints;
 - (2) Drug used as a restraint, except as outlined in Paragraph (r) of this Rule;
 - (3) Seclusion; or
 - (4) Physical restraints except when the physical restraint of a child is physically holding a child who is at imminent risk of harm to himself or others until the child is calm.
- (r) Drug used as a restraint means a medication used to control behavior or to restrict a child's freedom of movement and is not a standard treatment for the child's medical or psychiatric condition. A drug used as a restraint shall be employed only if required to treat a medical condition. It shall not be employed for the purpose of punishment, foster parent convenience or as a substitute for adequate supervision
- (s) Only foster parents trained in the use of physical restraint holds shall administer physical restraint holds. No child or group of children shall be allowed to participate in the physical restraint of another child.
- (1) Before employing a physical restraint, the foster parent shall take into consideration the child's medical condition and any medications the child may be taking.
- (2) No child shall be physically restrained utilizing a protective or mechanical device. Physical restraint holds shall:
- (A) not be used for purposes of discipline or convenience;
 - (B) only be used when there is imminent risk of harm to the child or others and less restrictive approaches have failed;
 - (C) be administered in the least restrictive manner possible to protect the child or others from imminent risk of harm; and
 - (D) end when the child becomes calm.
- (3) The foster parent shall:
- (A) Ensure that any physical restraint hold utilized on a child is administered by a trained foster parent with a second foster parent in attendance. Concurrent with the administration of a physical restraint hold and for a minimum of 15 minutes subsequent to the termination of the hold, a foster parent shall:
 - (i) monitor the child's breathing;
 - (ii) ascertain that the child is verbally responsive and motorically in control; and
 - (iii) shall ensure that the child remains conscious without any complaints of pain.
- If at any time during the administration of a physical restraint hold the child complains of being unable to breathe or loses motor control, the foster parent administering the physical restraint hold shall immediately terminate the hold or adjust the position to ensure that the child's breathing and motor control are not restricted. If at any time the child appears to be in distress, the foster parent shall immediately seek medical attention for the child. Following the use of a physical restraint hold, the foster parent shall conduct an interview with the child about the incident, and the foster parent administering the physical restraint hold shall be interviewed about the incident.
- (B) The foster parent shall document each incident of a child being subjected to a physical restraint hold on an incident report. This report shall include:
 - (i) the child's name, age, height and weight;
 - (ii) the type of hold utilized;
 - (iii) the duration of the hold;

- (iv) the parent administering the hold;
 - (v) the parent witnessing the hold;
 - (vi) agency staff who reviewed the incident report;
 - (vii) less restrictive alternatives that were attempted prior to utilizing physical restraint;
 - (viii) the child's behavior which necessitated the use of physical restraint; (ix) whether the child's condition necessitated medical attention;
 - (x) planning and debriefing conducted with the child and the foster parent to eliminate or reduce the probability of reoccurrence; and
 - (xi) the total number of restraints of the child since placement.
- (9) who are able to accept the child relationship with his parents and with the agency.
 - (b) Family Attitude Toward Foster Care. All members of the foster family must be in agreement with the decision to provide foster care services.
 - (c) Length of Marriage. Foster parents must have been married for a minimum of one year before a foster home license will be issued. Exception may be made based upon documentation submitted by the applicant agency that the family's situation is such that they should be exempted from this standard.
 - (d) Age.
 - (1) A new foster home license may be issued to persons between the ages of 21 and 65 inclusive.
 - (2) No additional children will be placed in a foster home after either foster parent reaches age 70.
 - (3) Relicensing of homes where one or both parents has reached age 70 will be considered only as long as it is in the best interest of the foster children currently living in the home.
 - (e) Health. The foster family shall be in good physical and mental health as evidenced by:
 - (1) a physical examination completed by a physician, physician's assistant or a certified nurse practitioner on each member of the foster family household within at least three months prior to the initial licensing and every other year thereafter;
 - (2) documentation that each member of the household has had a TB skin test or chest x-ray prior to initial licensure and a TB skin test annually thereafter;
 - (3) a medical history form must be completed on each member of the foster family household at the time of the initial licensing and on any person who subsequently becomes a member of this household;
 - (4) on years that a physical examination is not required a health questionnaire addressing the current physical and mental health of each household member must be completed by the foster family.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 41F .0702 CRITERIA FOR THE FOSTER FAMILY

(a) Personal Qualities. Foster parents shall be selected on the basis of having personal characteristics and relationships which will permit them to undertake and perform the responsibilities of caring for children, in providing continuity of care, and in working with a social agency. Persons who have been found to have abused or neglected a child by any agency duly authorized by law to investigate allegations of abuse or neglect shall not be eligible for licensure as foster parents. Foster parents shall be persons:

- (1) who give a feeling of caring about others and being responsive to them;
- (2) who are able to give affection and care to a child in order to meet the child's needs;
- (3) who can enjoy being parents;
- (4) who have the capacity to give, without expectation of return;
- (5) who have worked out between themselves a satisfactory and stable marital relationship, without severe problems in their sexual identification, or in their relationship with each other;
- (6) who are able to maintain meaningful relationships, free from severe conflicts, with members of their own families as well as with others outside the families;
- (7) who have reputable characters, acceptable values and ethical standards conducive to the well being of children;
- (8) who give evidence of flexibility in their expectations, attitudes, and behavior in relation to the needs and problems of children, and the ability to use help to meet the problems of family living, when it is needed;

- (f) Income. The foster family shall have a stable income sufficient for their needs without dependency upon board payments. The supervising agency shall discuss the family's income and expenditures and shall document on each licensing application/reapplication that this standard is met.
- (g) Religion. The foster parents shall not deny the child the opportunity for spiritual development and the right to practice his religious belief.
- (h) Employment of Foster Parent. Both foster parents may be employed if a suitable child care plan has been approved by the supervising agency.
- (i) Adoption. With special permission from the Children's Services Branch, Foster Care Services, a foster home license may remain valid while foster parents are adopting a child:
 - (1) Such permission must be obtained through a written request from the licensing agency and may include a request to continue placement

PROPOSED RULES

of children in the home while the foster parents are adopting a child.

- (2) Written request for a foster home license to remain valid must document that the agency has given careful consideration to the effect new children will have on the child being adopted as well as how the new child or children will be affected.

(j) County Department of Social Services Employees, Social Services Board Members, County Commissioners as Foster Parents: (j) County Department of Social Services Employees, Social Services Board Members, County Commissioners as Foster Parents:

- (1) cannot be licensed as foster parents by the county department of social services in the county where he works or is a board member or serves as county commissioner;
- (2) may apply to be a foster parent through a private agency in North Carolina;
- (3) may apply to be a foster parent through another county department of social services;
- (4) may not be considered or used as a placement resource for children from the county in which the foster parents reside, and may not be supervised by the county agency of which they are employed or serve on the Commission or board;
- (5) if a licensed foster parent becomes a social services employee, board member or county commissioner, special consideration may be given to the home to remain licensed for the children already in care, and approval must be requested in writing from the Children's Services Branch, Foster Care Services.

(k) Foster Family Vacations Relative to Foster Children. Foster parents shall be allowed to take foster children on trips away from the foster home in accordance with the following:

- (1) If the foster child will be away from the home longer than overnight, the supervising agency must be notified.
- (2) If the child will be away longer than a week, permission must be given by the supervising agency.
- (3) If in cases where natural parents remain in contact with their children, the parents are informed of the child's situation.

(l) Day Care and Baby Sitting Services in the Foster Home. With prior approval from the supervising agency, a licensed foster parent may keep day care children or provide baby sitting services under the following conditions:

- (1) The foster home is not overcrowded according to the definition of capacity for family foster homes as set forth in Section .0600 of this Subchapter.
- (2) The foster parent continues to meet the requirements of Rule .0701 of this Subchapter.

(m) Day Care Centers Operated by Foster Parents. If a licensed foster parent operates or plans to operate a day care center, the following criteria must be met:

- (1) The foster family living quarters can not be part of the day care operation.

- (2) There must be a separate entrance to the day care operation.
- (3) Adequate staff in addition to the foster parents must be available to provide care for the day care children.
- (4) The foster parents continue to meet the requirements of Rule .0701 of this Subchapter.

(n) Relationship to Responsible Agency. Foster parents must agree to work constructively with the supervising agency in the following ways:

- (1) Work with the child and the child's natural family in the placement process when appropriate, return to natural family, adoption, or replacement process;
- (2) Work with direct service social worker in developing plans and meeting the needs of the child and the child's family;
- (3) Accept consultation from social workers, mental health personnel and physicians and other authorized persons who are involved with the foster child;
- (4) Use staff development opportunities effectively;
- (5) Maintain confidentiality regarding children and natural parent(s);
- (6) Keep records regarding foster child's illness, behavior, social needs, school, family visits, etc.;
- (7) Report to the agency immediately any significant changes in their and/or child's situation.
- (8) In addition to Paragraphs (n)(1) through (n)(7) of this Rule, the foster parents who provide behavioral mental health treatment services shall:
 - (A) be trained to work with children who have mental health, developmental disability or substance abuse needs in accordance with 10 NCAC 41F .0814 of this Section;
 - (B) provide for children with intensive living, social, therapeutic and skill learning needs; and
 - (C) accept weekly supervision and support from a professional.

Authority G.S. 131D-10.5; 143B-153.

SECTION .0800 - LICENSING REGULATIONS AND PROCEDURES

10 NCAC 41F .0814 TRAINING REQUIREMENTS

(a) In order to provide improved services to children and families, each agency shall provide, or cause to be provided, preservice training for all prospective foster parents. Training shall be subject to the specifications of Paragraph (b) of this Rule.

(b) As a condition of licensure for foster parent applicants, each applicant shall successfully complete 30 hours of preservice training. Preservice training shall include the following components:

- (1) General Orientation to Foster Care and Adoption Process;
- (2) Communication Skills;
- (3) Understanding the Dynamics of Foster Care and Adoption Process;
- (4) Separation and Loss;
- (5) Attachment and Trust;
- (6) Child Development;
- (7) Behavior Management;
- (8) Working with Birth Families and Maintaining Connections;
- (9) Lifebook Preparation;
- (10) Planned Moves and the Impact of Disruptions;
- (11) The Impact of Placement on Foster and Adoptive Families;
- (12) Teamwork to Achieve Permanence;
- (13) Cultural Sensitivity;
- (14) Confidentiality;
- (15) Health and Safety.

(c) The individual identified as the primary therapeutic care parent in the family foster home shall receive specific training in treatment services which shall include, but not be limited to the following:

- (1) Dynamics of emotionally disturbed and substance abusing youth and families;
- (2) Symptoms of substance abuse;
- (3) Needs of emotionally disturbed and substance abusing youth in family settings;
- (4) Development of the treatment plan;
- (5) Medication administration; and
- (6) Crisis intervention.

(d) Prior to licensure renewal, each foster parent shall successfully complete 10 hours of inservice training. This training may be child-specific or may concern issues relevant to the general population of children in foster care. In order to meet this requirement:

- (1) Each agency shall provide, or cause to be provided, 10 hours of inservice training for foster parents annually.
- (2) Such training shall include subjects that would enhance the skills of foster parents and promote stability for children.
- (3) A foster parent may complete relevant training provided by: a community college, a licensed child placing agency, or other departments of State or county governments and, upon approval by the placing agency, that training shall count toward meeting the requirements specified in this Paragraph.
- (4) Each agency shall document in the foster parent record the type of activity the foster parent has completed in pursuance of this Section.

(e) In order for a foster family caring for a child with HIV (human immunodeficiency virus) or AIDS (acquired immunodeficiency syndrome) to receive the HIV supplemental payment, that family shall attend six hours of advanced medical training annually. This training shall consist of issues relevant to HIV or AIDS. This training shall count toward the training requirements of Paragraph (d) of this Rule.

(f) In order for a parent to utilize physical restraint holds, each parent shall complete at least 16 hours of training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of vital indicators and debriefing children and parents involved in physical restraint holds. Thereafter, parents authorized to use physical restraint holds shall annually complete at least eight hours of behavior management training, including techniques for de-escalating problem behavior. This training shall count toward the training requirements of Paragraph (d) of this Rule.

Authority G.S. 143B-153; S.L. 1993, c. 769, s. 25.11.

**SUBCHAPTER 410 - CHILD PLACING AGENCIES:
FOSTER CARE**

SECTION .0100 – GENERAL

10 NCAC 410 .0101 SCOPE

The rules in this Subchapter apply to persons defined by governing bodies in 10 NCAC 41N .0202(b) who receive children for the purpose of placement in family foster homes, including those homes that provide therapeutic care.

Authority G.S. 131D-10.5; 143B-153.

10 NCAC 410 .0102 ORGANIZATION AND ADMINISTRATION

Persons licensed or seeking a license to provide foster care or behavioral mental health treatment services for children shall comply with 10 NCAC, 41F, , 41K, 41N, and 41O.

Authority G.S. 131D-10.5; 143B-153.

SECTION .0200 - MINIMUM LICENSING STANDARDS

10 NCAC 410 .0206 ASSESSMENT AND TREATMENT/HABILITATION OR SERVICE PLAN

(a) When behavioral mental health treatment services are provided, the agency shall complete an assessment for each child prior to the delivery of services that shall include, but not be limited to:

- (1) the child's presenting problem;
- (2) the child's needs and strengths;
- (3) the provisional or admitting diagnosis with an established diagnosis determined within 30 days of placement,
- (4) a social, family and medical history; and
- (5) evaluations or assessments, such as psychiatric, psychological, substance abuse, medical, vocational and educational, as appropriate to the child's needs.

(b) When services are provided prior to the establishment and implementation of the treatment/habilitation or service plan, hereafter referred to as the "plan", strategies to address the child's presenting problem shall be documented.

(c) The plan shall be developed based on the assessment, in partnership with the child, if age appropriate, and the legal custodian. A preliminary treatment plan shall be developed within 24 hours following placement. A comprehensive treatment plan shall be developed within 30 days of placement

for children who are expected to receive services beyond 30 days of placement.

(d) The plan shall include:

- (1) outcomes that are anticipated to be achieved by the provision of the service and a projected date of achievement;
- (2) strategies for achieving the outcomes;
- (3) staff responsibilities;
- (4) foster parent responsibilities;
- (5) a schedule for review of the plan at least annually in consultation with the child and the legal custodian;
- (6) basis for an evaluation or assessment of outcome achievement; and
- (7) written consent or agreement by the child and legal custodian or a written statement by the agency stating the reason such consent could not be obtained.

Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237.

10 NCAC 410 .0207 CLIENT RECORDS FOR CHILDREN RECEIVING MENTAL HEALTH TREATMENT SERVICES

(a) A client record shall be maintained for each child accepted for behavioral mental health treatment services. This record shall contain, but need not be limited to:

- (1) an identification face sheet that includes:
 - (A) name (last, first, middle);
 - (B) client record number;
 - (C) Social Security Number;
 - (D) date of birth;
 - (E) race;
 - (F) gender;
 - (G) placement date; and
 - (H) discharge date;
- (2) documentation of mental illness, developmental disabilities or substance abuse diagnosis coded according to the Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition - Revised (DSM IV);
- (3) documentation of screening and assessment;
- (4) treatment/habilitation or service plan;
- (5) emergency information for each child that shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the child's preferred physician;
- (6) a signed statement from the child and legal custodian granting permission to seek emergency care from a hospital or physician;
- (7) documentation of services provided;
- (8) documentation of progress toward outcomes;
- (9) educational assessments, records and reports of school age children;
- (10) incident reports, including name of child or children involved, date and time of the incident, brief description of the incident, action taken by foster parents and the agency, need for medical attention, name of staff or

- (11) foster parent completing the report, name of child's legal custodian, date and time of notification to the legal custodian and signature of agency staff reviewing the report; documentation of searches, including date and time of the search, action taken by foster parents and the agency, name of foster parent informing the agency, the time the agency is informed of the search, the name of the child's legal custodian and the date and time of notification to the legal custodian and signature of agency staff reviewing the report; and
- (12) if applicable:
 - (A) documentation of physical disorders diagnosis according to International Classification of Diseases (ICD-9-CM);
 - (B) medication orders and Medication Administration Record (MAR);
 - (C) orders and copies of lab tests;
 - (D) documentation of medication and administration errors;
 - (E) documentation of adverse drug reactions;
 - (F) legal documents; or
 - (G) record of prior placements.

(b) Each agency shall ensure that information relative to AIDS or related conditions is disclosed only in accordance with the communicable disease laws as specified in G.S. 130A-143.

Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237.

10 NCAC 410 .0208 MEDICATION REQUIREMENTS

(a) Medication disposal. The agency shall dispose of controlled substances in accordance with the North Carolina Controlled Substances Act, G.S. 90, Article 5, including any subsequent amendments.

(b) Medication education:

- (1) The agency shall ensure that each child started or maintained on a medication by a physician receives either oral or written education regarding the prescribed medication by the physician or their designee. In instances where the ability of the child to understand the education is questionable, the agency shall ensure that a responsible person receives either oral or written education regarding the prescribed medication by the physician or their designee and provides either oral or written instructions to the client.
- (2) The agency shall ensure that the medication education provided is sufficient to enable the child or other responsible person to make an informed consent, to safely administer the medication and to encourage compliance with the prescribed regimen.

Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237.

10 NCAC 410 .0209 BEHAVIOR MANAGEMENT

AND DISCIPLINE

When an agency has policies and procedures regarding physical restraints, the agency shall:

- (1) Within 48 hours of each physical restraint hold, review the incident report to ensure that correct steps were followed and forward the report to the legal custodian and the licensing authority on a report form developed by the licensing authority. If a child dies as a result of a physical restraint hold, the agency shall immediately report the death of the child to the legal custodian and to the licensing authority.
(2) Submit a summary report to the licensing authority by the 10th day of each month indicating the number of physical restraint holds used during the previous month on each child and any injuries that resulted.
(3) For foster parents who utilize physical restraint holds, provide or arrange for at least 16 hours of training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of vital indicators, and debriefing children and parents involved in physical restraint holds. Thereafter, the agency shall ensure that foster parents authorized to use physical restraint holds annually complete at least eight hours of behavior management training, including techniques for de-escalating problem behavior.
(4) Complete an annual review of the discipline and behavior management policies and techniques to verify that the physical restraint holds being utilized are being applied properly and safely. The review of the policies and techniques shall be documented and submitted biennially at the time of licensure as part of the application process.

Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Private Protective Services Board intends to amend the rules cited as 12 NCAC 07D .0807, .0902. Notice of Rule-making Proceedings was published in the Register on March 15, 2001 for 12 NCAC 07D .0807 and on August 1, 2001 for 12 NCAC 07D .0902.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 14, 2002

Time: 1:00 p.m.

Location: Radison Governor's Inn, I-40 at Davis Drive, Exit 280, Research Triangle Park, NC.

Reason for Proposed Action:

12 NCAC 07D .0807 – In early 2001, The Private Protective Services Board began a full and complete review of its armed training courses and materials. The review has recently been completed and a number of changes are being made to the training requirements. The Board believes that these changes are essential to increase the level of competency of armed security officers. By increasing the level of competency, there will be further assurances that the public health, safety, and welfare are being protected.

12 NCAC 07D .0902 – The Private Protective Services Board has revamped its training program for certified firearms instructors. The Board is changing its training, whereby the training will be conducted by the NC Justice Academy. Because the State Budget and the Justice Department policies do not allow the Justice Academy to handle cash funds, the Board proposes, through this Rule, to accept the course fee from each student and pass the funds along to the Justice Academy. The Board will not keep any of the course fee.

Comment Procedures: Written comments may be provided to the Board at anytime on or before February 14, 2002. Anyone interested in submitting written comments may do so by mailing them to W. Wayne Woodard, Director, NC Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Fiscal Impact

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

CHAPTER 07 – PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

12 NCAC 07D .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in 12 NCAC 07D .0707.

(b) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including but not limited to, familiarity with rules and regulations relating to armed security guards (minimum of four hours);
(2) handgun safety, including but not limited to, range firing procedures (minimum of one hour);
(3) handgun operation and maintenance (minimum of three hours);
(4) handgun fundamentals (minimum of eight hours); and

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(5) night firing (minimum of four hours).

(c) In addition to the requirements set forth in Paragraphs (a) and (b) of this Rule and prior to being issued a permit,

applicants shall attain a score of at least 80 percent accuracy on a firearms range qualification course approved by the Board and the Attorney General, a copy of which is on file in the ~~administrator's~~ Director's office.

(d) All armed security guard training required by 12 NCAC 07D shall be administered by a certified trainer and shall be successfully completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(e) All applicants for an armed security guard firearm registration permit must obtain training under the provisions of this Section using their duty weapon and their duty ammunition.

(f) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(g) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards which consists of at least four hours of classroom instruction and shall be a review of the requirements set forth in Paragraphs (b)(1)-(b)(5) of this Rule. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (c) of this Rule.

(h) To be authorized to carry a standard 12 gauge shotgun in the performance of their duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training which shall include the following:

- (1) legal limitations on the use of shotguns;
- (2) shotgun safety, including but not limited to, range firing procedures;
- (3) shotgun operation and maintenance; and
- (4) shotgun fundamentals.

An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit.

(i) In addition to the requirements set forth in Paragraph (h) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course approved by the Board and the Attorney General, a copy of which is on file in the Director's office.

(j) Applicants for shotgun recertification shall complete an additional one hour of classroom training as set forth in Paragraphs (h)(1)-(h)(4) of this Rule and shall also complete the requirements of Paragraph (i) of this Rule.

(k) Applicants for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (c) of this Rule.

Authority G.S. 74C-5; 74C-13.

SECTION .0900 - FIREARMS TRAINER CERTIFICATE

12 NCAC 07D .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE

Each applicant for a firearms trainer certificate shall submit an original and one copy of the application to the Board. The application shall be accompanied by:

- (1) two sets of classifiable fingerprints on an applicant fingerprint card;
- (2) one recent head and shoulders color photograph of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) certified statement of the result of a criminal history records search by the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months;
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board;
- (5) the applicant's non-refundable registration fee;
- (6) a certificate of successful completion of the training required by 12 NCAC 07D .0901(3) and (4). This training shall have been completed within 60 days of the submission of the application; and
- (7) actual cost charged to the Private Protective Services Board by the North Carolina Justice Academy to cover the cost of the firearms training course given by the N.C. Justice Academy and collected by the Private Protective Services Board.

Authority G.S. 74C-5; 74C-13.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to amend the rule cited as 15A NCAC 03M .0511. Notice of Rule-making Proceedings was published in the Register on November 1, 2000.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: February 6, 2002

Time: 7:00 p.m.

Location: Hilton Wilmington Riverside, 301 N. Water St., Wilmington, NC

Date: February 26, 2002

Time: 7:00 p.m.

Location: Duke University Marine Lab, Pivers Island, Beaufort, NC

Date: March 19, 2002

Time: 7:00 p.m.

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Location: College of the Albemarle, Room 202, B Building, 1208 N. Road St., Elizabeth City, NC

Date: April 22, 2002

Time: 7:00 p.m.

Location: Bob Martin Agriculture Center, 2900 Hwy 125 South, Williamston, NC

Reason for Proposed Action: The fishery management plan for Bluefish developed cooperatively by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission allows individual states to implement management measures in addition to those required by the fishery management plans or its amendments. Recently the bluefish bag limit in federal waters increased to 15. This amendment increases the bag limit in state waters to 15 but restricts the taking of large bluefish to five.

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, c/o Juanita Gaskill, PO Box 769, Morehead City, NC 28557. Oral comments may be presented at the four public hearings. All public hearings will begin at 7:00 pm. Oral presentation lengths may be limited, depending on the number of people that wish to speak at the public hearings. The public comment period will end on April 22, 2002. The Marine Fisheries Commission will consider the public comments in regard to adoption of this Rule as a permanent rule at a business session scheduled for April 23-24, 2002 at the Bob Martin Agricultural Center, 2900 Hwy, 125 South, Williamston, NC

Fiscal Impact

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

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03M – FINFISH

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0511 BLUEFISH

(a) In order to comply with or utilize conservation equivalency to comply with the management requirements incorporated in the Fishery Management Plan for Bluefish developed cooperatively by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, the Fisheries Director may, by proclamation, take any or all of the following actions for bluefish:

- (1) Taken by a commercial fishing operation: (A) Specify size; (B) Specify seasons; (C) Specify areas; (D) Specify quantity; (E) Specify means/methods; and (F) Require submission of statistical and biological data.
(2) Taken for recreational purposes: (A) Specify size; (B) Specify quantity.

(b) It is unlawful to possess more than 15 bluefish per person per day for recreational purposes. Of these 15 bluefish, it is unlawful to possess more than five bluefish that are greater than 24 inches total length.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR – Division of Forest Resources intends to adopt the rules cited as 15A NCAC 09C .0516-.0517 and amend the rules cited as 15A NCAC 09C .0401-.0402, .0503, .0507-.0508, .0510-.0512, .0515, .0602, .0604-.0607, .0902-.0903. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 7, 2002

Time: 2:00 p.m.

Location: 10th Floor Conference Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action:

15A NCAC 09C .0401-.0402 – These Rules were promulgated prior to the development of the Forest Stewardship Program and the development of additional marketing options for forest products. The Rules will be changed to make it more consistent with the Division of Forest Resources Programs.

15A NCAC 09C 0503, .0507-.0508, .0510-.0512, .0515-.0517 – These Rules establish methods to establish tree seedling prices, custom sale of tree seedlings, application for tree seedlings, payment of tree seedlings, exchange and distribution of clonal material. The rules will be changed to allow for year-round tree seedling sales and to improve tree seedling price establishment and payment for seedlings. The rules will also establish a mechanism for establishing fees for the storage of seedlings and place restrictions on hunting on nursery and orchard sites.

15A NCAC 09C .0602, .0605-.0607 – These Rules establish a mechanism to determine fees for custom forestry services. The rules will be changed to modify the methods used to establish the fee for services.

15A NCAC 09C .0902-.0903 – These rules were promulgated prior to the 1997 revision to the General Statute and the identification of additional approved practices. The rules will be changed to include the revision to the General Statute and include additions and clarifications of the approved practices.

Comment Procedures: Written comments will be accepted through February 14, 2002 and should be addressed to Michael Thompson, NC Division of Forest Resources, 1616 Mail Service Center, Raleigh, NC 27699-1616.

Fiscal Impact

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

CHAPTER 09 - DIVISION OF FOREST RESOURCES

SUBCHAPTER 09C - DIVISION PROGRAMS

SECTION .0400 - FOREST MANAGEMENT

15A NCAC 09C .0401 REFERRALS AND LIMITATIONS

The forest management program strives to provide forestry services to the largest number of landowners and forest product operators as possible in order to bring more forest land under active management. Accomplishment of this objective requires that all sources of assistance be used including those of private consulting foresters and other natural resource professionals. The referrals to consulting foresters and the limitations of the Division of Forest Resources' (Division) services are as follows:

- (1) Whenever economic considerations and the landowner's objectives reveal that assistance by a private forester is practical, the landowner is referred to a consulting forester or other natural resource professionals. The determination to refer should be based upon a discussion with the landowner and examination of his forest land. If services needed or desired are not offered by the Division, it is recommended to the landowner that a consulting forester be employed. When any referral is made, a list of practicing consulting foresters is furnished to the landowner.
- (2) When forest management services are provided by the Division, a limit of five man-days per landowner during any 12 month period is imposed. This five-day limit does not include custom forestry work performed by the Division for a fee or cost-share compliance checks.

Authority G.S. 113-81.2; 143B-10.

15A NCAC 09C .0402 TECHNICAL SERVICES

(a) Technical forestry services are provided to forest landowners, forest products operators and processors upon request. These services consist of the following:

- (1) Services provided without charge:
 - (A) examination of a forest tract (accompanied by the owner or agent);
 - (B) recommendation of forest management systems that best meet the desires and objectives of the owner, that are compatible with good forestry practices and that protect the environment;
 - (C) assistance in locating markets for timber and other forest products (pine straw, chips);
 - (D) assistance to operators and processors in locating raw material supplies and markets for their products; and

- (E) assistance to processors to help increase their conversion efficiency from logs to manufactured products.
- (2) Services provided for a fee are:
 - (A) marking and estimating timber for partial harvest or for other silvicultural purposes; and
 - (B) custom forestry services such as site preparation, prescribed burning, tree planting, etc. (see 15A NCAC 09C .0600).
- (b) Services not furnished by the Division. Requests for these services usually are referred to consulting foresters. These are:
 - (1) timber cruises and estimation of timber volume and/or value made for timber sale or inventory purposes;
 - (2) damage appraisals, except by court order;
 - (3) trespass investigations, except by court order;
 - (4) quotation or establishment of prices on stumpage or cut timber; and
 - (5) property line location and marking.

Authority G.S. 113-81.1; 143B-10.

SECTION .0500 - FOREST TREE SEEDLINGS

15A NCAC 09C .0503 TREE SEEDLING PRICES

Tree seedlings are grown in the nurseries for 9 to 48 months, depending upon species, prior to sale. Seedling and seed prices are determined on the basis of estimated costs of production and volume of sales. The secretary sets seedling prices annually. The director reviews and recommends prices each year for the following sales year. Prices are listed in printed price list.
Authority G.S. 113-35; 143B-10.

15A NCAC 09C .0507 CUSTOM SALE OF TREE SEEDLINGS

Applicants may order tree seedlings prior to the sowing of seed in the nursery. The nursery and tree improvement forester may use his discretion in accepting such custom orders. The Director may require a percentage of the contract price for the custom order at the time the custom production agreement is executed.

Authority G.S. 113-8; 113-35; 143B-10(j).

15A NCAC 09C .0508 APPLICATION FOR TREE SEEDLINGS OR SEED

Applicants for forest tree seedlings or seed shall complete a seedling or seed order form or other means developed by the Division. These can be obtained from the department; the division's local offices or from the Division's Webpage. The form includes information concerning species, prices, terms of sale, delivery dates, , types of applicant ownership, and uses of trees.

Authority G.S. 113-8; 113-35; 143B-10(j).

15A NCAC 09C .0510 PAYMENT FOR TREE SEEDLINGS

All applications shall include full payment unless the nursery and tree improvement forester has approved the applicant's

credit. A percentage of the selling price may be required at the time of execution of the credit application. The Director has the authority to waive collection of under payments of five dollars (\$5.00) or less and refunds of over payments of five dollars (\$5.00) or less, unless a refund is requested.

Authority G.S. 113-8; 113-35; 143B-10(j).

15A NCAC 09C .0511 FORFEITURE OF PAYMENT FOR LATE CANCELLATION

The division must guarantee sales in advance because tree seedling nurseries must cover costs of production from seedling sales. Therefore, any orders cancelled after December 31 for bareroot seedlings and September 1 for container seedlings will result in forfeiture of total payment by the applicant.

Authority G.S. 113-8; 113-35; 143B-10(j).

15A NCAC 09C .0512 DISPOSITION AND PROCESSING OF TREE SEEDLING ORDERS

The Division fills all tree seedlings orders as received and notifies applicants when depleted seedling supply prevents acceptance or completion of their orders.

Authority G.S. 113-8; 113-35; 143B-10(j).

15A NCAC 09C .0515 EXCHANGED AND DISTRIBUTION OF CLONAL MATERIAL

The division may release clonal material, vegetative cuttings made from any seed orchard or from genetically improved trees, when the Forest Management and Forest Development Section Chief, determines that such release furthers the state's tree improvement program. The following procedures govern release:

- (1) Written requests state the intended use of the material.
- (2) The person making the request agrees to comply with all quarantine regulations in the shipment of the material.
- (3) The person making the request agrees not to release any material to a third person.
- (4) Before the release of material, the person requesting material must have an orchard management plan approved by a college of forestry or Division of Forest Resources forest geneticist.

Authority G.S. 113-8; 113-35; 143B-10(j)

15A NCAC 09C .0516 STORAGE FEES

The Division is not responsible for storage of container seedlings after December 15th and bareroot seedlings after May 15th. The Director has the authority to establish a storage fee for seedlings stored after these dates.

Authority G.S. 113-8; 113-35; 143B-10(j).

15A NCAC 09C .0517 HUNTING

Hunting restricted. No person shall hunt any wild bird or wild animal on state nursery property, orchard sites or seed production areas except for:

- (1) predator control under the direction of the nursery supervisor or tree improvement supervisor;
- (2) those areas enrolled in game lands; and
- (3) in those cases where hunting is authorized, firearms will be restricted to shotguns and archery.

Authority G.S. 113-8; 113-35; 143B-10(j).

SECTION .0600 - CUSTOM FORESTRY SERVICES

15A NCAC 09C .0602 DEFINITION OF TERMS

As used in this Section "custom forestry services" means silvicultural practices designed to enhance forest and wildlife habitat conditions that the Division of Forest Resources (Division) performs for a fee.

Authority G.S. 113-8; 113-81.1; 143B-10.

15A NCAC 09C .0604 FEES FOR SERVICES

- (a) The Division charges a fee to cover costs.
- (b) These contract fees are determined by applying fixed hourly rates to the time required to perform the service and by including material costs. Most contracted service fees are converted to per acre rates. Some services require a fee on a per unit basis such as per mile or per tree. These fees are established by applying the same fixed hourly rates, time required, and material costs.
- (c) Designated Division employees, trained in such services, shall make contract fee estimates prior to beginning work. The Division shall base its required fees on this contracted fee estimate.

Authority G.S. 113-81.1; 143B-10.

15A NCAC 09C .0605 CONTRACTS FOR SERVICES

The Division shall provide services under contracts stipulating fees, performance standards, liability, and cancellation terms. Three types of contractual services exist:

- (1) Landowner contracts executed when the Division performs services for individual landowners or agencies.
- (2) Rental contracts executed when the Division rents specialized forestry equipment to contracting firms, companies, or individuals.
- (3) Sub-contracting contracts executed when the Division sub-contracts custom services to persons in accordance with procedures established by the director.

Authority G.S. 113-8; 113-81.1; 143B-10(j).

15A NCAC 09C .0606 AUTHORITY TO SUB-CONTRACT CUSTOM SERVICES

Custom services are sub-contracted to a third person when the director deems such action in the best interest of the state. Sub-contracting is undertaken to promote participation of private enterprise in custom forestry services, to expedite work accomplishment and to expand the custom forestry services capability of the Division.

Authority G.S. 113-81.1; 143B-10(j).

15A NCAC 09C .0607 PRACTICES

The director shall approve all custom forestry practices prior to establishing any new practices.

Authority G.S. 113-81.1; 143B-10.

SECTION .0900 - FOREST DEVELOPMENT PROGRAM

15A NCAC 09C .0902 ADMINISTRATION OF PROGRAM

(a) The manner and requirements of making application for cost sharing funds are as follows:

- (1) Any eligible landowner may apply for cost sharing payment.
- (2) Application may be made by satisfactorily completing an application form furnished by the department and returning it to one of the field offices of the Division of Forest Resources. An approved forest management plan relating to the application which assures forest productivity and provides environmental protection of the State's woodland must be on file with the Division of Forest Resources before the application may be accepted.

(b) The Secretary of the Department of Environment and Natural Resources will approve completed applications. Funds will be allocated from the Forest Development Fund to the landowner for cost sharing on a "first come, first served" basis, determined by the date of receipt of the application in the Division of Forest Resources' office in Raleigh, and until all available funds are encumbered. An exception will be made at the beginning of each fiscal year. At that time all applications will be held for a 10-day period to allow for inequities in the mail system. Should the applications received during the 10-day period exceed the funds available, allocation will be made by proration and lottery. A prorata share of monies will be made to the Division's three regions in accordance with the percent of total funds requested from each respective region. Applications from each region to receive these funds will be chosen through a public drawing. The drawing will be held the second working day after the 10th of July at 10:00 a.m. in Raleigh in the conference room of the Division of Forest Resources. Should funds be exhausted during a fiscal year, applications will be held in priority as received until the next fiscal year at which time they will be given priority above new applications. Applicants who start or complete their project without prior approval will not be eligible to receive funding.

(c) At the beginning of each fiscal year, the Secretary may designate a portion of funds for certain approved practices designed to encourage reforestation at reduced costs or for other special purposes in designated areas. Such designations will be for the current fiscal year only. Funding so designated must be committed by a date or dates specified at the time the special funding is designated. Funds remaining uncommitted after the specified date will be reallocated on the "first come, first served" basis. The determination to designate funds by the Secretary will be made in writing not less than three months prior to beginning of the fiscal year for which funds are designated.

(d) Funds will be allocated for replanting previously approved projects, when planting failure is not the result of negligence by the landowner. Requests will be approved in the order received.

(e) The Division shall periodically review the actual costs of carrying out approved practices. Prior to the beginning of each fiscal year, the Secretary shall establish prevailing costs for carrying out each approved practice on a regional basis throughout the state.

(f) No approval will be given for carrying out practices on more than 100 acres by a landowner in any one fiscal year. This limitation does not apply where cost sharing has been approved and funds allotted on acreages approved in a previous fiscal year.

(g) Maximum Cost Sharing Rate. Cost sharing rates are subject to change and will be determined by the Secretary one year in advance of implementation.

(h) Cost Sharing Payment to Landowner. Cost sharing payments will be made upon certification by the Division of satisfactory completion of the practice(s) as prescribed in the management plan. Determination of satisfactory completion will include an assessment of the proper use of approved practices in relation to the silvicultural need of land, installation of appropriate best management practices to insure soil protection and water quality, and assurance that the installed practice is in compliance with all known environmental rules and regulations. Payments may be made following satisfactory completion of all approved practices or, at the discretion of the landowner, following satisfactory completion of a sub-practice(s). However, no more than two payments will be made for sub-practices covered by any one application.

(i) Withdrawal of Allotted Funds

- (1) Funds allocated to an eligible landowner may be withdrawn at the end of the first full fiscal year following the year in which the funds were allotted if no work has been started, unless an extension is granted by the Division.
- (2) Funds allocated may be withdrawn at the end of the second full fiscal year following the year of allocation if the practice has not been completed unless an extension is granted.
- (3) Funds paid as "partial payment" must be repaid to the Forest Development Fund if the project is started but not completed within the allotted time.
- (4) Extensions. A 12 month extension may be granted by the Division when a project cannot be completed on schedule, through no fault of the applicant.

(j) The administration of any or all parts of this program may be delegated to the Division of Forest Resources by the Secretary.

(k) Eligible landowners may appeal disagreements, disapproval of applications, or decisions on unsatisfactory completion of silvicultural or environmental practices in the manner established in 15A NCAC 01B .0200.

(l) Cost-shared project maintenance. The Division will periodically check projects funded by the program to insure compliance with the 10-year maintenance requirement. Landowners with projects discovered to be destroyed or otherwise not maintained as specified in the approved plan will be required to reimburse the program. The Division's Raleigh office will be notified of all such projects and will be responsible

for seeking and collecting reimbursement as allowed in G.S. 113A-180.1.

Authority G.S. 113A-176; 113A-183; 143B-10(j).

15A NCAC 09C .0903 APPROVED PRACTICES

The following practices, and sub-practices, are eligible for cost share payments:

- (1) Site Preparation. Preparation of a site for planting, seeding or natural regeneration of a commercial forest tree species; this may be accomplished by the following sub-practices used singularly or in combinations:
 - (a) Burning. The use of prescribed fire for the purpose of site preparation;
 - (b) Chopping. The use of a machine-pulled chopper to crush and chop non-merchantable trees, brush and other debris for the purpose of site preparation;
 - (c) Discing. The use of a machine-pulled disc to crush and destroy non-merchantable trees, brush and other debris for the purpose of site preparation;
 - (d) KG/V-Blade Shear. The use of a sharp-edged, angled blade (KG or V-blade) mounted on a tractor to shear non-merchantable trees and brush for the purpose of site preparation;
 - (e) KG and Pile. The use of a sharp-edged, angled blade (called KG blade) mounted on a tractor to shear non-merchantable trees and brush for the purpose of site preparation; this sheared material and other debris are pushed into piles or windrows;
 - (f) Rake & Pile. The use of a toothed, rake-type blade mounted on a tractor to push logging debris, but not roots or soil, into piles or windrows;
 - (g) Bedding. The use of a bedding plow pulled by a tractor to prepare a bed or ridge for the purpose of site preparation;
 - (h) V-Blade Bedding. The use of a sharp angled blade mounted on a tractor to shear non-merchantable trees and brush and a bedding plow pulled by a tractor to prepare a bed or ridge for the purpose of site preparation in a single pass operation;
 - (i) Furrowing. The use of a plow pulled by a tractor to prepare a shallow trench or furrow to reduce competing vegetation for the purpose of site preparation;
 - (j) Bulldozing and Piling. The use of a bulldozer to push over non-merchantable trees and brush for the

purpose of site preparation; the material is pushed into piles or windrows;

- (k) Other. The use of hand tools or other machines to destroy or reduce competing vegetation for the purpose of site preparation;
- (l) Chemical Control; Aerial. The use of herbicides, applied from the air, to reduce competing vegetation for the purpose of site preparation; and
- (m) Chemical Control; Ground. The use of hand tools and/or ground chemical applications to reduce competing vegetation for the purpose of site preparation.
- (n) Preharvest Treatment. Use of chemical or mechanical means, including hand methods, to control vegetation to develop a stand of trees from advanced hardwood regeneration, natural pine regeneration, or artificial regeneration:
 - (A) Landowner must agree to harvest overstory stand once adequate regeneration is established;
 - (B) Cannot be used to prepare an area for pine straw production; and
 - (C) Only other site prep technique that can be cost shared at a later date is prescribed burning, if needed.
- (2) Silvicultural Clearcut. The felling of trees in unmerchantable stands for the purpose of removing all stems in the overstory to allow regeneration of desirable species by exposing the site to direct sunlight:
 - (a) Fell and Leave. Felling all trees on an area with no removal of merchantable material, for the purpose of accomplishing a silvicultural clearcut;
 - (b) Fell and Remove. Felling all trees on an area, both merchantable and unmerchantable, for the purpose of accomplishing a silvicultural clearcut; the stumpage value of all merchantable trees removed from the area, as determined by the Director, will be deducted from the allowable cost of completing the practice.
- (3) Tree Planting or Seeding. Planting seedlings or applying seed to establish a commercial forest stand:
 - (a) Hand Planting. The use of planting bars or other hand tools to plant forest tree seedlings;

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- (b) Machine Planting. The use of a planting machine to plant forest tree seedlings;
(c) Machine Plant - Chemical. The combined use of a planting machine to plant forest tree seedlings and application equipment to apply herbicides to reduce competing vegetation in a single pass operation.
(d) V-Blade Planting. The use of a tractor with attached V-shaped blade and planting machine to plant forest tree seedlings;
(e) Direct Seeding. The use of any type applicator to apply desirable forest tree seed directly to the soil.
(4) Tree Planting Followed by Site Preparation. Tree planting followed by the use of a herbicide treatment, within one year after planting.
(5) Mixed Stand Plantings. Tree planting to establish a mixed pine-hardwood stand, or a mixed stand of hardwood species.
(6) Timber Stand Improvement Release of Seedlings. Releasing established reproduction of desired tree species for the purpose of ensuring adequate regeneration of a commercial stand:
(a) Chemical Control: Aerial. The use of herbicides, applied from the air, to reduce competing vegetation for the purpose of releasing desirable reproduction;
(b) Chemical Control; Ground. The use of hand tools and/or ground chemical applicators to reduce competing vegetation for the purpose of releasing desirable reproduction;
(c) Mechanical Control. The use of hand tools or machines to reduce competing vegetation for the purpose of releasing desirable reproduction.
(7) Uneven-Aged Management. A planned sequence of silvicultural treatments designed to maintain and regenerate a stand with three or more age classes.

Date: February 7, 2002
Time: 2:30 p.m.
Location: Parker-Lincoln Building, Department's Training Room, 2728 Capital Blvd., Raleigh, NC

Reason for Proposed Action:

15A NCAC 18D .0105 - The definition of "acceptable experience" as it applies to each grade of certification, including distribution operators, needs to be clarified in this Rule.
15A NCAC 18D .0205 - The Class D treatment plant classification needs to be amended to reflect the original intent that was to include only water systems requiring minimal treatment and operational expertise.
15A NCAC 18D .0205-.0206 - Clarification is necessary regarding the type of cross-connection control devices used by water systems that would require an operator in responsible charge.
15A NCAC 18D .0307 - When a person's certification is revoked for any reason other than their failure to renew his/her certificate, allowing it to lapse two years, or they fail to meet the continuing education requirements of 15A NCAC 18D .0308(a), they must appear before the Board for approval to be eligible for any further certification or reinstatement of certification.
15A NCAC 18D .0701 - Clarification is necessary regarding the number and type of systems for which an operator can be in responsible charge.

Comment Procedures: Send comments to Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or phone (919) 715-3225. Comments will be accepted through February 14, 2002.

Fiscal Impact

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

SECTION .0100 - GENERAL POLICIES

15A NCAC 18D .0105 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Acceptable Experience":
(a) For surface grades means at least 50% of the duties shall consist of active on-site performance of operational duties, including on-site water facility laboratory duties at a surface water treatment facility. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, cross-connection-control

Authority G.S. 113A-176; 113A-183; 143B-10(j).

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Water Treatment Facility Operators Certification Board intends to amend the rules cited as 15A NCAC 18D .0105, .0205-.0206, .0307, .0701. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

and other skills necessary for maintaining and operating a surface water treatment facility. The remaining duties shall be in related fields such as wastewater facility operation, water/wastewater laboratory, water pumping stations, water system design and engineering, wells, distribution systems, or cross-connection-control. The experience of Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50% of their job duties include inspection or on-site technical assistance of public water systems.

- (b) For well grades means at least 50% of the duties shall consist of active on-site performance of operational duties for public water systems with chemical treatment having one or more wells. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, cross-connection-control and other skills necessary for maintaining and operating a treated well water system. The remaining duties shall be in related fields such as wastewater facility operation, water/wastewater laboratory, water pumping stations, water system design and engineering, surface facilities, distribution systems, or cross-connection-control. The experience of Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50% of their job duties include inspection or on-site technical assistance of public water systems.
- (c) For distribution grades means at least 50% of the duties shall consist of active on-site performance of operational duties for distribution systems within public water systems. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, cross-connection-control and other skills necessary for maintaining and operating a water distribution system. The remaining duties shall be in related fields such as wastewater facility operation, water/wastewater laboratory, water pumping stations, water system design and engineering, surface facilities, wells, or cross-connection-control. The experience

of Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50% of their job duties include inspection or on-site technical assistance of public water systems.

- (d) For cross-connection-control grade means at least 50% of the duties shall consist of on-site performance of cross-connection-control duties for a public water system. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, back flow prevention and other skills necessary for maintaining and operating a cross-connection-control program for a public water system. The remaining duties shall be in related fields such as wastewater facility operation, water/wastewater laboratory, water pumping stations, water system design and engineering, surface facilities, or wells. The experience of Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50% of their job duties include inspection or on-site technical assistance of public water systems.

- (2) "Certified Operator" means any holder of a certificate issued by the Board in accordance with the provisions of G.S. 90A-20 to -29.
- (3) "College Graduate" means a graduate of an accredited four-year institution awarding degrees on the bachelor level.
- (4) "Licensee" means any person who holds a current certificate issued by the water treatment facility operators board of certification.
- (5) "Owner" shall mean person, political subdivision, firm, corporation, association, partnership or non-profit corporation formed to operate a public water supply facility.
- (6) "Political Subdivision" means any city, town, county, sanitary district, or other governmental agency or privately owned public water supply operating a water treatment facility.
- (7) "Operator in responsible charge" means a person designated by the owner of the water treatment facility to be responsible for the total operation and maintenance of the facility.
- (8) "Secretary" shall mean the Secretary of the Department of Environment and Natural Resources.
- (9) "Service Connection" means a water tap made to provide a water connection to the water distribution system.

- (10) "Fire Protection System" means dry or wet sprinkler systems or fire hydrant connection to the water distribution system.

water. Implementation of this requirement is subject to the following provisions:

- (1) Upon vacancy of a position resulting in noncompliance with this requirement each facility shall notify the Board Office within 24 hours or at the start of the next regular business day of such vacancy;
- (2) Upon such vacancy the facility shall have 90 days to fill the position with a certified Grade C or above operator or shall have pending approval for a temporary certification for the operator;
- (3) Within 18 months of vacancy the facility shall have a certified Grade C or above operator assigned to fill the vacancy.

(c) There shall be an operator in responsible charge for the distribution portion of the community and non-transient non-community public water systems designated in Subparagraphs (c)(1) and (c)(2) of this Rule. This operator shall possess a valid certificate issued by the Board equivalent to or exceeding the distribution classification of the facility for which he or she is designated.

- (1) No later than July 1, 1999 all community public water systems serving greater than 100 service connections shall have a certified distribution operator in responsible charge of the distribution portion of the system.
- (2) No later than July 1, 2001 all community and non-transient non-community public water systems shall have a certified distribution operator in responsible charge of the distribution portion of the system. A system serving 100 or fewer service connections is exempt from this requirement if it has an operator in responsible charge as required in Paragraph (a) of this Rule.

(d) By July 1, 2003 there shall be an operator in responsible charge for the cross-connection-control facilities of the distribution system for all public water systems required by 15A NCAC 18C to have five or more testable backflow prevention assemblies. This operator shall possess a valid Grade Cross-Connection-Control certificate issued by the Board.

(e) All operators of community and non-transient non-community public water systems shall follow the standard operating procedures established by the operator in responsible charge. Any decisions about water quality or quantity that affect public health which have not been defined in the standard operating procedures shall be referred to the operator in responsible charge or to the certified operator on duty.

Authority G.S. 90A-20; 90A-28; 90A-29; 90A-32.

SECTION .0300 - APPLICATIONS AND FEES

15A NCAC 18D .0307 REVOCATION OF CERTIFICATE

- (a) If an operator fails to renew his/her certificate and allows it to lapse two years, his/her certificate shall be revoked.
- (b) If an operator fails to meet the continuing education requirements of Rule .0308(a) of this Section, his/her certificate shall be revoked.

Authority G.S. 90A-21(c).

SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

15A NCAC 18D .0205 CLASSIFICATION OF WATER TREATMENT FACILITIES

(a) With the exception of Class D-Well, the public water system treatment classification shall be based on the source of water and the number of points assigned to each facility as taken from the table in Rule .0203(b) of this Section. Classifications are as follows:

Class C	0-40 points
Class B	41-110 points
Class A	over 110 points

Class D-Well shall be any non-community public water system with hypochlorite solution as the only treatment applied to the water.

(b) The classification of distribution systems shall apply to all community and non-transient non-community public water systems. The distribution system class level shall be the greater of the treatment plant class level from Paragraph (a) of this Rule or the following class level based on the number of service connections and fire protection:

- (1) Class D-DISTRIBUTION shall be any system with 100 or fewer service connections with no fire protection system;
- (2) Class C-DISTRIBUTION shall be any system with more than 100 service connections but not exceeding 1,000 service connections, with no fire protection system;
- (3) Class B-DISTRIBUTION shall be shall be any system with more than 1,000 service connections but not exceeding 3,300 service connections or any system not exceeding 1,000 service connections, with a fire protection system; and
- (4) Class A-DISTRIBUTION shall be any system with more than 3,300 service connections.

(c) Class CROSS-CONNECTION-CONTROL shall be any distribution system with requirement for five or more testable backflow prevention assemblies to be installed within the water distribution system.

Authority G.S. 90A-21(c); 90A-22.

15A NCAC 18D .0206 CERTIFIED OPERATOR REQUIRED

(a) All public water systems shall have a certified operator in responsible charge for each water treatment facility that alters the physical, chemical, or microbiological characteristics of the water; has approved plans for such alterations; or has equipment installed for such alterations.

(b) There shall be an operator holding at least a Grade C-Surface certification or above assigned to be on duty on the premises when a surface water treatment facility is treating

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(c) If an operator in responsible charge fails to meet the requirements of 15A NCAC 18D .0701, his/her certificate may be revoked.

(d) Any person having a certification revoked for any reason other than Paragraph (a) or (b) of this Rule, shall appear before the Board for approval to be eligible for any further certification or reinstatement of certification.

Authority G.S. 90A-25.1; 90A-26.

SECTION .0700 - OPERATIONS AND MANAGEMENT

15A NCAC 18D .0701 OPERATOR IN RESPONSIBLE CHARGE

(a) The operator in responsible charge must possess a valid certificate issued by the Board equivalent to or exceeding the classification of the facility for which he or she is designated.

(b) The operator in responsible charge is actually in charge of the daily operation and maintenance of the facility and shall reside within 50 miles of the facility and shall be readily available for consultation on the premises of the facility in case of an emergency, malfunction or breakdown of equipment or other needs. The operator in responsible charge of a non-community public water system shall not reside more than 50 miles from the facility without written permission from the Board. No person shall be in responsible charge of more than any one of the following without written permission from the Board:

- (1) One surface water treatment facility.
- (2) Five community public water systems with well water facilities and not to exceed 15 well water facilities for community public water systems in any event.
- (3) 10 non-community public water systems with well water facilities and not to exceed 30 well water facilities for non-community public water systems in any event.
- (4) One distribution system serving over 3,300 service connections.
- (5) Five distribution systems serving over 500 service connections and less than 3,300 service connections.
- (6) 10 total distribution systems without written permission from the Board.
- (7) 10 total cross-connection-control systems without written permission from the Board.

(c) When permission from the Board is required, the request shall include sufficient documentation to satisfy the Board that the facilities in question can be managed in compliance with the requirements of 15A NCAC 18.

(d) The operator in responsible charge shall report with annual certification renewal the name(s) and public water system identification number(s) for all systems for which the operator is the operator in responsible charge.

(e) If an operator in responsible charge takes responsibility for an additional system or relinquishes responsibility for any system, the operator shall notify the Board in writing within 30 days of this change.

(f) The operator in responsible charge shall establish standard operating procedures for each facility for which he/she is responsible. These procedures shall provide sufficient

instruction to ensure that his/her decisions about water quality or quantity that affect public health are carried out properly. The procedures shall instruct persons lacking proper certification to refer all such decisions affecting public health to the certified operator on duty or to the operator in responsible charge.

Authority G.S. 90A-21(c); 90A-31.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 33 - MIDWIFERY JOINT COMMITTEE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Midwifery Joint Committee intends to amend the rule cited as 21 NCAC 33 .0105. Notice of Rule-making Proceedings was published in the Register on November 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 21, 2001

Time: 1:00 p.m.

Location: Board of Nursing Office, 2724 National Dr., Raleigh, NC

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

Comment Procedures: Written comments should be submitted to Jean H. Stanley, APA Coordinator, Midwifery Joint Committee, PO Box 2129, Raleigh, NC 27602-2129 by February 21, 2002.

Fiscal Impact

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

SECTION .0100 – MIDWIFERY JOINT COMMITTEE

21 NCAC 33 .0105 DUE PROCESS

(a) The Midwifery Practice Act authorizes the Committee to conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline the certified nurse-midwife approved under the Act. The Committee may issue, review, deny, suspend, revoke or refuse to issue or renew any approval for the reasons set forth in G.S. 90-178.6. .

(b) Complaints.

(1) A complaint regarding a violation of the Midwifery Practice Act or Rules and Regulations should be submitted in writing and document:

(A) the name of the certified nurse-midwife or other person involved;

(B) a description of the alleged behavior or incident; and

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- (C) the name, mailing address and phone number of the person filing the complaint.
 - (2) The complaint shall be delivered to the Committee administrative office by mail, private carrier or in person. Complaints transmitted by facsimile or electronic mail will not be accepted.
 - (3) An incomplete complaint may be corrected and resubmitted.
- (c) Action on a Complaint. Action on a complaint consists of the following:
- (1) The Committee shall receive and acknowledge complaints, open a confidential file and initiate complaint tracking.
 - (2) Complaints will be screened to determine jurisdiction and the type of response appropriate for the complaint.
 - (3) Investigation:
 - (A) If the facts clearly indicate a Midwifery Practice Act violation, the Committee shall commence an investigation. If a Committee member is utilized in the investigation, care must be taken to observe due process by separating:
 - (i) investigation;
 - (ii) prosecution; and
 - (iii) hearings and final decision-making.
 - (B) A confidential report of each investigation shall be prepared for the Committee's review.
 - (4) Formal and Informal Hearings:
 - (A) The Committee, after review of an investigative file, may schedule an informal meeting.
 - (B) If the matter cannot be resolved informally, then a formal hearing shall be held.
 - (C) No Committee member shall participate in more than one of the following steps in the enforcement process:
 - (i) investigation;
 - (ii) formal hearing; or
 - (iii) formal hearing.
 - (D) Members of the Committee shall not make ex parte communication with parties to a hearing.
 - (5) Final Orders: As soon as possible, but at least within 60 days, the Committee will issue its final decision in writing specifying the date on which it will take effect. The Committee will serve one copy of the decision on each party to the hearing.
 - (6) Compliance: The Committee Chair will cause a follow-up inquiry to determine that the orders of the Committee are being obeyed.

(d) Formal Hearing. Formal hearings shall be conducted in accordance with G.S.150B.

- (e) Disciplinary Sanctions.
- (1) The following types of disciplinary sanctions may, among others, be utilized by the Committee:
 - (A) Letter of Reprimand;
 - (B) Probation;
 - (C) Suspension of approval;
 - (D) Nonrenewal of Approval;
 - (E) Revocation of approval; and
 - (G) Injunction.
 - (2) The Committee may request information from professional associations, professional review organizations (PROs), hospitals, clinics or other institutions in which a certified nurse-midwife performs professional services, on possible chemical abuse, or incompetent or unethical behavior.
 - (3) The Committee will provide notice of sanction taken by it to other public entities as necessary to ensure that other state Boards and enforcement authorities receive the names of applicants disciplined.

Authority G.S. 90-178.6.

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0109, .0112-.0113, .0224-.0225. Notice of Rule-making Proceedings was published in the Register on November 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 21, 2002

Time: 1:00 p.m.

Location: Board of Nursing Office, 3724 National Dr., Raleigh, NC

Reason for Proposed Action:

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

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

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

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

Comment Procedures: *Written comments should be submitted to Jean H. Stanley, APA Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129 by February 21, 2002.*

Fiscal Impact

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

SECTION .0100 – GENERAL PROVISIONS

The text in BOLD has been approved by the Rules Review Commission and is waiting for the 2002 Legislative Session.

21 NCAC 36 .0109 SELECTION AND QUALIFICATIONS OF NURSE MEMBERS

(a) Vacancies in nurse member positions on the Board that are scheduled to occur during the next year shall be announced in the **last** issue of the North Carolina Board of Nursing "**Bulletin**" for the calendar year, which shall be mailed to the address on record for each North Carolina licensed **nurse**. The "Bulletin" shall include a petition form for nominating a nurse to the Board and information on filing the petition with the Board.

(b) Any licensed nurse considering nomination for election shall provide documentation of having attended a Board-sponsored information session regarding member roles and responsibilities prior to filing a petition for the next election.

(c) Each petition shall be checked with the records of the Board to validate that the nominee and each petitioner hold a current North Carolina license to practice nursing. If the nominee is found to be not currently licensed, the petition shall be declared invalid. If any petitioners are found to be not currently licensed and this finding decreases the number of petitioners to less than 10, the petition shall be declared invalid.

(d) On forms provided by the Board, each nominee shall:

- (1) indicate the category for which nominee is seeking election;
- (2) attest to meeting the qualifications specified in G.S. 90-171.21(d);
- (3) provide written permission to be listed on the ballot; and
- (4) provide written acknowledgement by his/her employer of nominees intent to seek election.

The forms must be **received by the Board by April 1 at midnight.**

(e) Minimum requirements for a registered nurse or licensed practical nurse seeking election for membership and maintaining membership on the Board shall include:

- (1) current unencumbered license to practice in North Carolina;
- (2) evidence of five years of employment in nursing practice at the appropriate level of licensure for the Board member category;
- (3) evidence of employment in a position that meets the criteria for the specified Board member position for the three years immediately preceding the election; and

(4) maintaining North Carolina as declared primary state of residence consistent with Rule .0702(a) of this Chapter.

(f) Minimum on-going employment requirements for the registered nurse or licensed practical nurse member shall include:

- (1) continuous employment equal to or greater than 50% of a full-time position that meets the criteria for the specified Board member position; and
- (2) maintaining North Carolina as declared primary state of residence consistent with Rule .0702(a) of this Chapter.

(g) The following apply in determining qualifications for registered nurse categories of membership:

- (1) Nurse Educator includes any nurse who teaches in or directs a basic or graduate nursing program; or who teaches in or directs a continuing education or staff development program for nurses.
- (2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing to inpatients.
- (3) Hospital Nursing Service Director is any nurse who is the chief executive officer for nursing service.
- (4) Employed by a hospital includes any nurse employed by a hospital.
- (5) Employed by a physician includes any nurse employed by a physician or group of physicians licensed to practice medicine in North Carolina and engaged in private practice.
- (6) Employed by skilled or intermediate care facility includes any nurse employed by a long term nursing facility.
- (7) A nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist includes any advanced practice registered nurse who meets the criteria specified in G.S. 90-171.21(d)(4).
- (8) Community health nurse includes any nurse who functions as a generalist or specialist in areas including, but not limited to, public health, student health, occupational health or community mental health.

(h) The term "nursing practice" when used in determining qualifications for registered or practical nurse categories of membership, means any position for which the holder of the position is required to hold a current license to practice nursing at the appropriate licensure level for each category.

- (i) A nominee shall be listed in only one category on the ballot.
- (j) If there is no nomination in one of the registered nurse categories, all registered nurses who have been duly nominated and qualified shall be eligible for an at-large registered nurse position. A plurality of votes for the registered nurse not elected to one of the specified categories shall elect that registered nurse to the at-large position.

(k) Separate slates shall be prepared for election of registered nurse nominees and for election of licensed practical nurse nominees. Nominees shall be listed in random order on the slate for licensed practical nurse nominees and within the categories for registered nurse nominees. Slates shall be published in the "Bulletin" following the Spring Board meeting and shall be accompanied by biographical data on nominees and a passport-type photograph.

(l) Any nominee may withdraw her/his name at any time by written notice prior to the date and hour fixed by the Board as the latest time for voting. Such nominee shall be eliminated from the contest and any votes cast for that nominee shall be disregarded.

(m) The procedure for voting shall be identified in the "Bulletin" following the Spring Board meeting, together with a notice designating the latest day and hour for voting.

(n) The Board of Nursing may contract with a computer or other service to receive the votes and tabulate the results.

(o) The tabulation and verification of the tabulation of votes shall include the following:

- (1) The certificate number shall be provided for each individual voting.
- (2) The certificate number shall be matched with the database from the Board.

(p) A plurality vote shall elect. If more than one person is to be elected in a category, the plurality vote shall be in descending order until the required number has been elected. In any election, if there is a tie vote between nominees, the tie shall be resolved by a draw from the names of nominees who have tied.

(q) The results of an election shall be recorded in the minutes of the next regular meeting of the Board of Nursing following the election and shall include at least the following:

- (1) the number of nurses eligible to vote;
- (2) the number of votes cast; and
- (3) the number of votes cast for each person on the slate.

(r) The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.

(s) All petitions to nominate a nurse, signed consents to appear on the slate, verifications of qualifications, and copies of the computerized validation and tabulation shall be retained for a period of three months following the close of an election.

Authority G.S. 90-171.21; 90-171.23(b).

21 NCAC 36 .0112 DETERMINATION OF VACANCY

(a) Should a registered nurse member of the Board cease to meet the employment criteria as defined in Rule .0109 Paragraph (f) of this Section which is the basis for the member's eligibility, the member will have 60 days to resume employment in the designated area. If employment criteria as defined in Rule .0109 Subparagraph (f)(1) of this Section in the specified area are not met within 60 days, the seat will be declared vacant and the vacancy filled according to G.S. 90-171.21(c). Provided, however, that if such a change in employment for the specified category of Board member occurs within 12 months of the end of the member's term, such member may continue to serve until the end of the term.

(b) Should a licensed practical nurse member of the Board cease to meet the employment criteria as defined in Rule .0109 Paragraph (f) of this Section, which is the basis for the member's eligibility, the member will have 60 days to resume employment. If employment criteria as defined in Rule .0109 Paragraph (f) of this Section are not met within 60 days, the seat will be declared vacant and the vacancy filled according to G.S. 90-171.21(c). Provided however, that if such change in employment occurs within 12 months of the end of the member's term, such member may continue to serve until the end of the term.

Authority G.S. 90-171.21(c); 90-171.23(b).

21 NCAC 36 .0113 DETERMINATION OF QUALIFICATIONS

For purposes of G.S. 90-171.21 and Rule .0109(e) and (f) of this Section, the Board shall determine whether a person meets the employment requirements by examining the following factors:

- (1) whether the licensee is presently employed equal to or greater than 50% of a full-time position;
- (2) the number of days during the preceding three years devoted to practice in the specified activity that would qualify the licensee for election in that category as outlined in Rule .0109 of this Section;
- (3) the duration of any periods of interruption of engaging in the specified activity during the preceding three years and the reasons for any such interruptions;
- (4) job descriptions, contracts, and any other relevant evidence concerning the time, effort, and education devoted to the specified activity; and
- (5) whether engagement in the specified activity is or has been for compensation, and whether income from the specified activity meets the employment requirements outlined in this Rule and in Rule .0109(e) and (f) of this Section.

Authority G.S. 90-171.21(d); 90-171.23(b)(2).

SECTION .0200 – LICENSURE

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

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

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

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- support to the types of nursing services offered.
- (b) Assessment is an on-going process and consists of the determination of nursing care needs based upon collection and interpretation of data relevant to the health status of a client, group or community.
- (1) Collection of data includes:
- (A) obtaining data from relevant sources regarding the biophysical, psychological, social and cultural factors of the client's life and the influence these factors have on health status, including:
- (i) subjective reporting;
- (ii) observations of appearance and behavior;
- (iii) measurements of physical structure and physiological functions;
- (iv) information regarding available resources; and
- (B) verifying data collected.
- (2) Interpretation of data includes:
- (A) analyzing the nature and inter-relationships of collected data; and
- (B) determining the significance of data to client's health status, ability to care for self, and treatment regimen.
- (3) Formulation of a nursing diagnosis includes:
- (A) describing actual or potential responses to health conditions. Such responses are those for which nursing care is indicated, and/or for which referral to medical or community resources is appropriate; and
- (B) developing a statement of a client problem identified through interpretation of collected data.
- (c) Planning nursing care activities includes identifying the client's needs and selecting or modifying nursing interventions related to the findings of the nursing assessment. Components of planning include:
- (1) prioritizing nursing diagnoses and needs;
- (2) setting realistic, measurable goals and outcome criteria;
- (3) initiating or participating in multidisciplinary planning;
- (4) developing a plan of care which includes determining and prioritizing nursing interventions; and
- (5) identifying resources based on necessity and availability.
- (d) Implementation of nursing activities is the initiating and delivering of nursing care according to an established plan, which includes, but is not limited to:
- (1) procuring resources;
- (2) implementing nursing interventions and medical orders consistent with 21 NCAC 36 .0221(c) and within an environment conducive to client safety;
- (3) prioritizing and performing nursing interventions;
- (4) analyzing responses to nursing interventions;
- (5) modifying nursing interventions; and
- (6) assigning, delegating and supervising nursing activities of other licensed and unlicensed personnel consistent with Paragraphs (a) and (i) of this Rule, G.S. 90-171.20(7)d and (7)i, and 21 NCAC 36 .0401.
- (e) Evaluation consists of determining the extent to which desired outcomes of nursing care are met and planning for subsequent care. Components of evaluation include:
- (1) collecting evaluative data from relevant sources;
- (2) analyzing the effectiveness of nursing interventions; and
- (3) modifying the plan of care based upon newly collected data, new problem identification, change in the client's status and expected outcomes.
- (f) Reporting and Recording by the registered nurse are those communications required in relation to all aspects of nursing care.
- (1) Reporting means the communication of significant information to other persons responsible for, or involved in, the care of the client. The registered nurse is accountable for:
- (A) directing the communication to the appropriate person(s) and consistent with established policies, procedures, practices and channels of communication which lend support to types of nursing services offered;
- (B) communicating within a time period which is consistent with the client's need for care;
- (C) evaluating the responses to information reported; and
- (D) determining whether further communication is indicated.
- (2) Recording means the documentation of all significant information on the appropriate client record, nursing care plan or other documents. This documentation must:
- (A) be pertinent to the client's health care;
- (B) accurately describe all aspects of nursing care including assessment, planning, implementation and evaluation;
- (C) be completed within a time period consistent with the client's need for care;
- (D) reflect the communication of significant information to other persons; and
- (E) verify the proper administration and disposal of controlled substances.
- (g) Collaborating involves communicating and working cooperatively with individuals whose services may have a direct or indirect effect upon the client's health care and includes:

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- (1) initiating, coordinating, planning and implementing nursing or multidisciplinary approaches for the client's care;
 - (2) participating in decision-making and in cooperative goal-directed efforts;
 - (3) seeking and utilizing appropriate resources in the referral process; and
 - (4) safeguarding confidentiality.
- (h) Teaching and Counseling clients is the responsibility of the registered nurse, consistent with G.S. 90-171.20(7)g.
- (1) teaching and counseling consist of providing accurate and consistent information, demonstrations and guidance to clients, their families or significant others regarding the client's health status and health care for the purpose of:
 - (A) increasing knowledge;
 - (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
 - (C) promoting the client's ability to make informed decisions.
 - (2) teaching and counseling include, but are not limited to:
 - (A) assessing the client's needs, abilities and knowledge level;
 - (B) adapting teaching content and methods to the identified needs, abilities of the client(s) and knowledge level;
 - (C) evaluating effectiveness of teaching and counseling; and
 - (D) making referrals to appropriate resources.
- (i) Managing the delivery of nursing care through the on-going supervision, teaching and evaluation of nursing personnel is the responsibility of the registered nurse as specified in the legal definition of the practice of nursing and includes, but is not limited to:
- (1) continuous availability for direct participation in nursing care, onsite when necessary, as indicated by client's status and by the variables cited in Paragraph (a) of this Rule;
 - (2) assessing capabilities of personnel in relation to client status and plan of nursing care;
 - (3) delegating responsibility or assigning nursing care functions to personnel qualified to assume such responsibility and to perform such functions;
 - (4) accountability for nursing care given by all personnel to whom that care is assigned and delegated; and
 - (5) direct observation of clients and evaluation of nursing care given.
- (j) Administering nursing services is the responsibility of the registered nurse as specified in the legal definition of the practice of nursing in G.S. 90-171.20 (7) i, and includes, but is not limited to:
- (1) identification, development and updating of standards, policies and procedures related to the delivery of nursing care;
 - (2) implementation of the identified standards, policies and procedures to promote safe and effective nursing care for clients;
 - (3) planning for and evaluation of the nursing care delivery system; and
 - (4) management of licensed and unlicensed personnel who provide nursing care consistent with Paragraphs (a) and (i) of this Rule and which includes:
 - (A) appropriate allocation of human resources to promote safe and effective nursing care;
 - (B) defined levels of accountability and responsibility within the nursing organization;
 - (C) a mechanism to validate qualifications, knowledge and skills of nursing personnel;
 - (D) provision of educational opportunities related to expected nursing performance; and
 - (E) validation of the implementation of a system for periodic performance evaluation.
- (k) Accepting responsibility for self for individual nursing actions, competence and behavior which includes:
- (1) having knowledge and understanding of the statutes and rules governing nursing;
 - (2) functioning within the legal boundaries or registered nurse practice; and
 - (3) respecting client rights and property, and the rights of property of others.

Authority G.S. 90-171.20(7); 90-171.23(b); 90-171.43(4).

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

- (a) The licensed practical nurse shall accept only those assigned nursing activities and responsibilities, as defined in Paragraphs (b) through (h) of this Rule, which the licensee can safely perform. That acceptance shall be based upon the variables in each practice setting which include:
- (1) the nurse's own qualifications in relation to client need and plan of nursing care, including:
 - (A) basic educational preparation; and
 - (B) knowledge and skills subsequently acquired through continuing education and practice;
 - (2) the degree of supervision by the registered nurse consistent with Paragraph (d)(3) of this Rule;
 - (3) the stability of each client's clinical condition;
 - (4) the complexity and frequency of nursing care needed by each client or client group;
 - (5) the accessible resources; and
 - (6) established policies, procedures, practices, and channels of communication which lend support to the types of nursing services offered.
- (b) Assessment is an on-going process and consists of participation in the determination of nursing care needs based

upon collection and interpretation of data relevant to the health status of a client.

- (1) collection of data consists of obtaining data from relevant sources regarding the biophysical, psychological, social and cultural factors of the client's life and the influence these factors have on health status, according to structured written guidelines, policies and forms, and includes:
 - (A) subjective reporting;
 - (B) observations of appearance and behavior;
 - (C) measurements of physical structure and physiologic function; and
 - (D) information regarding available resources.
- (2) interpretation of data is limited to:
 - (A) participation in the analysis of collected data by recognizing existing relationships between data gathered and a client's health status and treatment regimen; and
 - (B) determining a client's need for immediate nursing interventions based upon data gathered regarding the client's health status, ability to care for self, and treatment regimen consistent with Paragraph (a)(6) of this Rule.

(c) Planning nursing care activities includes participation in the identification of client's needs related to the findings of the nursing assessment. Components of planning include:

- (1) participation in making decisions regarding implementation of nursing intervention and medical orders and plan of care through the utilization of assessment data;
- (2) participation in multidisciplinary planning by providing resource data; and
- (3) identification of nursing interventions and goals for review by the registered nurse.

(d) Implementation of nursing activities consists of delivering nursing care according to an established health care plan and as assigned by the registered nurse or other person(s) authorized by law as specified in G.S. 90-171.20 (8) (c).

- (1) Nursing activities and responsibilities which may be assigned to the licensed practical nurse include:
 - (A) procuring resources;
 - (B) implementing nursing interventions and medical orders consistent with Paragraph (b) of this Rule and Paragraph (c) of 21 NCAC 36 .0221 and within an environment conducive to client safety;
 - (C) prioritizing and performing nursing interventions;
 - (D) recognizing responses to nursing interventions;
 - (E) modifying immediate nursing interventions based on changes in a client's status; and

(F) delegating specific nursing tasks as outlined in the plan of care and consistent with Paragraph (d)(2) of this Rule, and 21 NCAC 36 .0401.

- (2) The licensed practical nurse may participate, consistent with 21 NCAC 36 .0224(d)(6), in implementing the health care plan by assigning nursing care activities to other licensed practical nurses and delegating nursing care activities to unlicensed personnel qualified and competent to perform such activities and providing all of the following criteria are met:
 - (A) validation of qualifications of personnel to whom nursing activities may be assigned or delegated;
 - (B) continuous availability of a registered nurse for supervision consistent with 21 NCAC 36 .0224(i) and Paragraph (d)(3) of this Rule;
 - (C) accountability maintained by the licensed practical nurse for responsibilities accepted, including nursing care given by self and by all other personnel to whom such care is assigned or delegated;
 - (D) participation by the licensed practical nurse in on-going observations of clients and evaluation of clients' responses to nursing actions; and
 - (E) provision of supervision limited to the validation that tasks have been performed as assigned or delegated and according to established standards of practice.
- (3) The degree of supervision required for the performance of any assigned or delegated nursing activity by the licensed practical nurse when implementing nursing care is determined by variables which include, but are not limited to:
 - (A) educational preparation of the licensed practical nurse, including both the basic educational program and the knowledge and skills subsequently acquired by the nurse through continuing education and practice;
 - (B) stability of the client's clinical condition, which involves both the predictability and rate of change. When a client's condition is one in which change is highly predictable and would be expected to occur over a period of days or weeks rather than minutes or hours, the licensed practical nurse participates in care with minimal supervision. When the client's condition is unpredictable or unstable, the licensed practical nurse participates in the performance of the task under close supervision of the

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

Authority G.S. 90-171.20(7),(8); 90-171.23(b); 90-171.43(4).

**CHAPTER 68 - CERTIFICATION BOARD FOR
SUBSTANCE ABUSE PROFESSIONALS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Substance Abuse Professional Certification Board intends to adopt the rules cited as 21 NCAC 68 .0214-.0215, .0611, .0620; amend the rules cited as 21 NCAC 68 .0101, .0201-.0206, .0208, .0211-.0212, .0305-.0306; and repeal the rule cited as 21 NCAC 68 .0302. Notice of Rule-making Proceedings was published in the Register on November 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 15, 2002

Time: 2:00 p.m.

Location: NC Council of Community MH/DD/SA Programs Conference Room, 1318 Dale Street, Suite 120, Raleigh, NC

Reason for Proposed Action: *This legislation will be effective April 1, 2002 to authorize the Board to regulate registrants, increase fees, to clarify supervision, and prescribe new duties to substance abuse professionals. The addition of new definitions was also included. A repeal was necessary because a specified period of time had run.*

Comment Procedures: *Any person may submit comments to the Board either orally or in writing at the Public Hearing. All other written comments must be received by the Board no later than the commencement of the public hearing. Written comments shall be mailed to Mr. Jim Scarborough, Administrator, NC Substance Abuse Professional Certification Board, PO Box 10126, Raleigh, NC 27605.*

Fiscal Impact

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

SECTION .0100 - GENERAL

21 NCAC 68 .0101 DEFINITIONS

As used in the General Statutes or this Chapter, the following terms have the following meaning:

- (1) "Application packet" means a set of instructions and forms required by the Board for registration.
- (2) "Approved Supervisor" means a supervisor as set out in G.S. 90-113.31. This is a person who fulfills or is in the process of fulfilling the requirements for this Board designation pursuant to Rule .0211 of this Chapter by completing its academic, didactic and experiential requirements.
- (3) "Assessment" means identifying and evaluating an individual's strengths, weaknesses, problems and needs for the development of a treatment or service plan for alcohol, tobacco and drug abuse.

- (4) "Complainant" means a person who has filed a complaint pursuant to these Rules.
- (5) "Consultation" means a meeting for discussion, decision-making and planning with other service providers for the purpose of providing substance abuse services.
- (6) "Crisis" means a decisive, crucial event in the course of treatment that threatens, either directly or indirectly related to alcohol or drug use, to compromise or destroy the rehabilitation effort.
- (7) "Deemed Status Group" means those persons who are credentialed as a clinical addictions specialist because of their membership in a deemed status discipline.
- (8) "Education" means a service which is designed to inform and teach various groups; including clients, families, schools, businesses, churches, industries, civic and other community groups about the nature of substance abuse disorders and about available community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life's problems.
- (9) "Full Time" means 2,000 hours per year.
- (10) "Impairment" means a mental illness, substance abuse or chemical dependency, physical illness, or aging problems.
- (11) "Letter of Reference" means a letter that recommends a person for certification.
- (12) "Membership In Good Standing" means a member's certification is not in a state of revocation, lapse, or suspension. However, an individual whose certification is suspended and the suspension is stayed is a member in good standing during the period of the stay.
- (13) "Passing score" means the score set by the entity administering the exam.
- (14) "President" means the President of the Board.
- (15) "Prevention Consultation" means a service provided to other mental health, human service, and community planning/development organizations or to individual practitioners in other organizations to assist in the development of insights and skills of the practitioner necessary for prevention.
- (16) "Prevention performance domains" means areas of professional activities to include: planning and evaluation, education and skill development, community organization, public and organizational policy, and professional growth and responsibility.
- (17) "Referral" means identifying the needs of an individual that cannot be met by the counselor or agency and assisting the individual to utilize the support systems and community resources available.
- (18) "Rehabilitation" means re-establishing the functioning needed for professional

- competency by treatment, if treatment is necessary.
- (19) "Reinstatement" means an action where the Board restores certification or registration to an applicant after the applicant completes the requirements imposed by the Board.
- (20) "Relapse" means the return to the pattern of substance abuse as well as the process during which indicators appear prior to the person's resumption of substance abuse or a re-appearance or exacerbation of physical, psychological or emotional symptoms of impairment.
- (21) "Renewal" means an action by the Board granting a substance abuse professional a consecutive certification or registration based upon the completion of requirements for renewal as prescribed by the Board.
- (22) "Revival" means an action by the Board granting a substance abuse professional a certification or registration following a lapse of certification or registration wherein the professional must also meet the requirements for renewal as prescribed by the Board.
- (23) "Reprimand" means a written warning from the Board to a person making application for certification by the Board or certified by the Board.
- (24) "Respondent" means a person who is making application for certification by the Board or is certified by the Board against whom a complaint has been filed.
- (25) "Sexual activity" means:
- (a) Contact between the penis and the vulva or the penis and the anus;
 - (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or
 - (c) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (26) "Sexual Contact" means the intentional touching, either directly or indirectly, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (27) "Substance Abuse Counseling Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the 12 core functions (Rule .0204 of this Chapter) as documented by a job description and supervisors evaluation.
- (28) "Substance Abuse Prevention Consultant Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the

- prevention domains referenced by Rule .0206 of this Chapter and as documented by a job description and supervisor's evaluation.
- (29) "Supervised Practice" means supervision of the applicant in the knowledge and skills related to substance abuse professionals.
- (30) "Suspension" means a loss of certification or the privilege of making application for certification.

Authority G.S. 90-113.30; 90-113.33; 90-113.40; 90-113.41; 90-113.41A.

SECTION .0200 - CERTIFICATION

21 NCAC 68 .0201 APPLICATION FOR REGISTRATION

- (a) Applications, inquiries and forms shall be obtained from and returned to the Board.
- (b) To obtain an application packet, the applicant shall submit a check or money order for a non-refundable fee in the amount of twenty-five dollars (\$25.00) and a letter of intent stating the credential sought by the applicant.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40.

21 NCAC 68 .0202 REGISTRATION PROCESS FOR BOARD CERTIFICATION

- (a) Individuals may register with the Board at the beginning of their entry into the field. This allows the Board to review the applicant's materials including education, training, experience and supervision contracts and provide the registrant with a clear understanding of his or her standing in the certification process.
- (b) Although early registration is not required, it will provide better direction through the process. To register, the applicant shall send the following to the Board:
 - (1) Completed registration form provided by the Board;
 - (2) Documentation of required high school graduation or completion of GED, as well as documentation of any baccalaureate or advanced degree the applicant may have completed;
 - (3) A signed supervision contract provided by the Board documenting the proposed supervision process by an approved supervisor;
 - (4) A signed form attesting to the applicant's commitment to adhere to the ethical standards of the Board; and
 - (5) A check or money order in the amount of one hundred twenty-five dollars (\$125.00) that is non-refundable and made payable to the Board.
- (c) Once the materials are determined by the Board to be in order the applicant shall be granted registration status.
- (d) If a registrant performs services as a counselor, in order for this experience to be considered toward certification at a later date, the registrant shall receive supervision from an approved supervisor at a ratio of one hour of supervision for every ten hours of practice.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40.

21 NCAC 68 .0203 DESIGNATION AS SUBSTANCE ABUSE COUNSELOR INTERN

(a) An applicant may by-pass early registration at the entry level and seek designation as a Counselor Intern.

(b) To be designated as a Substance Abuse Counselor Intern, a counselor shall submit and successfully complete the following:

- (1) A registration form provided by the Board.
- (2) Documentation provided by the Board verifying the successful completion of 300 hours of Supervised Practical Training.
- (3) Successful completion of the written examination developed by the IC&RC/AODA, Inc. or its successor organization.
- (4) Payment of a non-refundable, one hundred twenty-five dollar (\$125.00) written exam fee plus a one hundred twenty-five dollar (\$125.00) registration fee if not already registered with the Board.

(c) Upon the failure of an applicant to achieve a passing score, the applicant may request a reexamination and pay a non-refundable reexamination fee of one hundred twenty-five dollars (\$125.00) after a period of three months from the date of the test.

(d) Once an individual has been designated as a Substance Abuse Counselor Intern, he or she may function as a counselor intern under an approved supervisor at a ratio of one hour of supervision for every 40 hours of practice.

Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.38; 90-113.39; 90-113.40; 90-113.41.

21 NCAC 68 .0204 SUPERVISED PRACTICAL TRAINING FOR SUBSTANCE ABUSE COUNSELOR CERTIFICATION

(a) The process of supervision utilized to train the Substance Abuse Counselor shall be provided by an approved supervisor and cover all twelve core functions of the Substance Abuse Counselor. Verification of at least 10 hours of supervised practice must be made in each of the core functions. These 120 hours of supervised practice shall be divided into one hour of supervision for every 10 hours of practice in each one of the 12 core functions. These core functions are:

- (1) Screening to determine a client is appropriate and eligible for admission to a particular program;
- (2) Intake to provide the administrative and initial assessment procedures for admission to a program;
- (3) Orientation of the client to the general nature and goals of the program, rules governing client conduct, notice of the hours during which services are available, treatment costs to be borne by the client, if any, and client's rights;
- (4) An assessment to identify and evaluate an individual's strengths, weaknesses, problems and needs for the development of the treatment plan;

(5) The treatment planning process whereby the counselor and client identify and rank problems needing resolution, establish agreed upon immediate and long term goals, and decide on a treatment process and the resources to be utilized;

(6) Counseling to assist individuals, families or groups in achieving objectives through exploration of a problem and its ramifications, examination of attitudes and feelings, consideration of alternative solution, and decision making;

(7) Case management activities which bring services, agencies, resources or people together within a planned framework of action toward the achievement of established goals;

(8) Those crisis intervention services which respond to an alcohol or other drug abuser's needs during acute emotional and physical distress;

(9) Provision of client education information to individuals and groups describing alcohol and other drug abuse and the available services and resources;

(10) Referring the client whose needs cannot be met by the counselor or agency to other support systems and community resources available;

(11) Charting the results of the assessment and treatment plan while writing reports, progress notes, discharge summaries and other client-related data necessary for the compilation of necessary reports and recordkeeping;

(12) Consultation with substance abuse and other professionals to assure comprehensive, quality care for the client.

(b) The remaining 180 hours of Supervised Practice shall be in core function areas but may be distributed at the discretion of the supervisor.

(c) Upon completion of the 300 hours, the supervisor shall complete an evaluation form reviewing the Counselor Intern's professional development and provide it to the Board, documenting the 300 hours of practice, including 30 hours of supervision.

(d) This training may be completed as an academic course of study in a fully accredited college or university or it may be developed in the work setting as long as it is appropriately supervised. The Supervised Practice shall take place within a setting whose primary focus is the treatment of alcohol and drug abuse.

Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.39; 90-113.40.

21 NCAC 68 .0205 CERTIFIED SUBSTANCE ABUSE COUNSELOR CERTIFICATION

Requirements for certification as a Certified Substance Abuse Counselor shall be as follows:

- (1) Successful completion of at least 6000 hours of paid or volunteer supervised experience earned in not less than three years, 300 hours

- of which shall be supervised practice. If the work setting is not exclusively substance abuse focused, the applicant may accumulate experience proportional to the substance abuse services performed;
- (2) Board approved education and training of at least 270 clock hours as follows:
- (a) Substance Abuse Specific (SAS) education and training in the amount of at least 190 hours;
 - (b) Up to 80 hours may be directed toward general professional skill building to enhance counselor development;
 - (c) No more than 25% of the 270 hours (67.5) hours may be inservice education received within the applicant's organization by staff of the same organization;
 - (d) All 270 clock hours needed for initial certification must be in the core competencies. Core competencies are listed as follows:
 - (i) Basic alcoholism, drug addiction and cross addiction knowledge;
 - (ii) Screening, intake, orientation and assessment;
 - (iii) Individual, group and family counseling and intervention techniques;
 - (iv) Case management, treatment planning, reporting and record keeping;
 - (v) Crisis intervention skills;
 - (vi) Prevention and education;
 - (vii) Consultation, referral and networking that utilizes community resources;
 - (viii) Ethics, legal issues, and confidentiality;
 - (ix) Special populations which include but are not limited to individuals or groups with specific ethnic, cultural, sexual orientation, and gender characteristics as well as persons dealing with HIV, co-occurring disabilities and perinatal issues;
 - (x) Physiology and pharmacology of alcohol and other drugs that include the licit and illicit drugs, inhalants and nicotine;
 - (xi) Psychological, emotional, personality and developmental issues; and
 - (e) Of the 270 clock hours, applicants for certification as a Substance Abuse Professional must document twelve hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education and six hours professional ethics training and education;
 - (ii) Traditions and philosophies of 12-step and other recovery support groups;
- (3) A one hundred dollar (\$100.00) oral examination and case preparation fee plus a one hundred twenty-five dollar (\$125.00) written exam fee and a one hundred twenty-five dollar (\$125.00) non-refundable registration fee, unless previously paid. The applicant may request a reexamination and pay a non-refundable reexamination fee of one hundred dollars (\$100.00) for the oral examination fee and one hundred twenty-five dollars (\$125.00) for the written exam fee if a passing score is not achieved and at least three months have passed from the date of test;
- (4) Successful completion of the IC&RC/AODA, Inc. or its successor organization written exam;
- (5) Successful completion of an IC&RC/AODA, Inc. or its successor organization oral examination and case presentation administered by the Board following review and approval by the Board of the requirements in this Rule;
- (6) Completed evaluation forms and contracts for supervision, these forms must be mailed directly to the Board by three references: a supervisor, co-worker, and colleague;
- (7) A signed form attesting to the applicant's adherence to the Ethical Standards of the Board;
- (8) Documentation of high school graduation, completion of GED, baccalaureate or advanced degree;
- (9) Completed registration forms;
- (10) Resume; and
- (11) Job description which verifies job function.

Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.36; 90-113.39; 90-113.40.

21 NCAC 68 .0206 PROCESS FOR PREVENTION CONSULTANT CERTIFICATION

- (a) Prevention consultant certification shall be offered to those persons whose primary responsibilities are to provide substance abuse information and education, environmental approaches, alternative activities, community organization, networking, and referral.
- (b) Requirements for certification shall be as follows:
- (1) 10,000 hours (five years) work experience in prevention consultation obtained in a minimum of 60 months without a

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- (2) baccalaureate degree or 4,000 hours (two years) work experience in prevention consultation obtained in a minimum of 24 months with a baccalaureate degree in a human services field from a regionally accredited college or university;
- (2) 270 hours of academic and didactic training divided in the following manner:
 - (A) 170 hours primary and secondary prevention and in the prevention performance domains; and
 - (B) 100 hours in substance abuse specific studies, which includes 12 hours in HIV/AIDS/STDS/TB/Bloodborne pathogens training and six hours in prevention specific ethics training;
- (3) A minimum of 300 supervised practice hours documented by a or certified substance abuse professional;
- (4) Evaluations from a supervisor on this practice as well as two evaluations from colleagues or co-workers;
- (5) Successful completion of an IC&RC/AODA, Inc. or its successor organization written examination;
- (6) A form signed by the applicant attesting to the applicant's adherence to the Ethical Standards of the Board;
- (7) A registration fee of one hundred twenty-five dollars (\$125.00), and an examination fee of one hundred twenty-five dollars (\$125.00).

Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.40; 90-113.41.

21 NCAC 68 .0208 CONTINUING EDUCATION REQUIRED FOR COUNSELOR AND PREVENTION CONSULTANT RECERTIFICATION

- (a) Each certified Counselor and Prevention Consultant shall receive 60 hours of education during the current certification period which shall be documented. A minimum of 30 hours shall be substance abuse specific (SAS) and no more than 25 percent or 15 hours can be inservice education. This education may include a combination of hours including attending workshops, receiving clinical supervision and providing workshops.
- (b) Recertification educational guidelines as a Substance Abuse Professional require:
 - (1) No more than 25 percent or 15 hours may be inservice education, received within your organization by staff of the same employment.
 - (2) No more than 25 percent or 15 hours of workshop presentation with one hour of presentation translating to one hour of education. Workshop presentation shall be a part of an event pre-approved by the Board.
 - (3) No more than 25 percent or 15 hours of Alcohol/Drug Education Traffic School (ADETS) and Drug Education School (DES) events.

- (4) An applicant shall include documentation of each event submitted.
- (5) All applicants shall include six hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education and three hours of professional ethics training and education for each recertification.
- (6) No more than 25 percent self study, pre-approved by the Board pursuant to Rule .0213 of this Section.
- (c) To be recertified, a certified professional must submit the following:
 - (1) A completed application form with continuing education documented; and
 - (2) A non-refundable one hundred twenty-five dollar (\$125.00) recertification fee.

Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.38.

21 NCAC 68 .0211 PROCESS FOR CLINICAL SUPERVISOR CERTIFICATION

Requirements for certification as a Clinical Supervisor shall be:

- (1) Applicant shall obtain and maintain certification as a Substance Abuse Counselor, Clinical Addictions Specialist, or a substance abuse specialty credential offered by an organization granted deemed status by the Board in order to be eligible for Clinical Supervisor Certification;
- (2) All applicants shall be required to hold a master's degree or higher education in a human services field with a clinical application from a regionally accredited college or university;
- (3) 8,000 hours or four years full-time experience in the field of alcohol and other drug abuse (10,000 hours to insure reciprocity pursuant to IC&RC/AODA, Inc. or its successor organization's requirements);
- (4) Thirty hours of clinical supervision specific education for initial certification and 15 hours of clinical supervision specific education for re-certification (which will occur every two years). These hours shall be reflective of clinical supervision or clinical supervision of the twelve core functions in their clinical application and practice and may also be used as re-certification hours for Substance Abuse Counselor or Clinical Addictions Specialist certification. For the purpose of re-certification as a Clinical Supervisor, 25 percent of the required total hours may be obtained by providing supervision of a Substance Abuse Counselor or Clinical Addictions Specialist;
- (5) Three letters of reference: one from a substance abuse professional who can attest to supervisory competence and two from either substance abuse counselors who have been supervised by the candidate or substance abuse professionals who can attest to the applicant's competence;

- (6) Successful completion of an IC&RC/AODA, Inc. or its successor-organization's written examination;
- (7) Payment of all application fees. A fee of twenty-five dollars (\$25.00) shall be submitted to the Board with a letter of intent in order to receive the application packet. Also, an applicant shall submit with a completed registration packet a registration fee of one hundred twenty-five dollars (\$125.00) and a written examination fee of one hundred twenty-five dollars (\$125.00).
- (8) A fee of one hundred twenty-five dollars (\$125.00) shall be required as a recertification fee.

information shall be needed from the applicant school for the site review itself:

- (1) Curricula description including number of hours of substance abuse specific credits;
- (2) Information as to how the educational requirements for HIV and ethics shall be met within the curricula;
- (3) The names and resume of any faculty who shall be teaching the substance abuse curricula;
- (4) The name of the school in which the substance abuse curricula shall be housed and organizational contact information; and
- (5) Specific guidelines and information on the field experience that shall be required of students including current substance abuse specific field placements and supervision.

(d) The Chairperson of the Curriculum Review Committee shall follow up the telephoned exchange of information with an official letter outlining the requirements for a site review.

(e) The Curricula Review Subcommittee shall conduct a site visit and review of curricula to determine if the proposal meets educational, hour, substance abuse specific, supervised experience, and instructor guidelines of the Board.

(f) The Curricula Review Subcommittee shall make a recommendation to the Standards Committee for approval or disapproval of the curricula.

(g) The school shall be notified of the recommendation of the Standards Committee to the Board and shall have the opportunity to make a presentation to the Board to support its request.

(h) Upon a recommendation by the Standards Committee for approval, the Board shall make a final determination of the approval or disapproval of the curricula.

(i) The curricula shall be approved for a period of three years. Application for extension of the curricula shall be made 90 days prior to the effective date of the extension.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

21 NCAC 68 .0215 VERIFICATION

(a) Application for verification of certification shall be made to the Board.

(b) A request for verification shall be made in writing and submitted with a check or money order in the amount of ten dollars (\$10.00).

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.40.

SECTION .0300 - CLINICAL ADDICTIONS SPECIALIST

21 NCAC 68 .0302 DEFINITIONS

Authority S.L. 1997, c. 492.

21 NCAC 68 .0305 CERTIFICATION REQUIREMENTS FOR INDIVIDUAL APPLICANT

In addition to meeting the requirements of G.S. 90-113.40, an applicant seeking certification as a clinical addictions specialist shall submit the following, if applicable:

Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.38; 90-113.40; 90-113.41; 90-114.41A.

21 NCAC 68 .0212 PROCESS FOR RESIDENTIAL FACILITY DIRECTOR CERTIFICATION

(a) Residential facility director certification may be obtained and continued by any person certified as a Substance Abuse Counselor or Clinical Addictions Specialist.

(b) Requirements for certification shall be as follows:

- (1) 50 hours of academic and didactic management specific training;
- (2) Recommendation of applicant's current supervisor;
- (3) Positive recommendation of a colleague and co-worker of the applicant; and
- (4) An application packet fee of twenty-five dollars (\$25.00), a registration fee of one hundred twenty-five dollars (\$125.00), and a certification fee of one hundred twenty-five dollars (\$125.00).

(c) In addition to meeting the continuing education requirements provided to practice as a Certified Counselor or Clinical Addictions Specialist, in order to maintain certification as a Residential Facility Director, the applicant shall take 40 hours of continuing education every two years and maintain documentation of such training. Anyone allowing certification to lapse beyond three months of the re-certification due date shall be required to reapply as a new applicant.

Authority G.S. 90-113.30; 90-113.33; 90-113.35; 90-113.38; 90-113.39; 90-113.40.

21 NCAC 68 .0214 CONTINUING EDUCATION SCHOOL CURRICULA APPROVAL

(a) The Standards Committee shall be notified of a request from a school for approval of a "Substance Abuse Specialty" curricula.

(b) The Chairperson of the Standards Committee shall ask members of the Curriculum Review Subcommittee of the Standards Committee to set up an appointment with the appropriate faculty and representatives of the applicant school for a site review.

(c) The Chairperson of the Curriculum Review Subcommittee shall contact the applicant school's representative to schedule the site review and inform the representative that the following

- (1) Documentation evidencing that 12 hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education and six hours of professional ethics training were included in the 180 hours completed for certification in the core competencies by the applicant not in the deemed status group;
- (2) Copy of a substance abuse specialty certificate or its equivalent;
- (3) Copy of his or her masters' or doctorate degree diploma;
- (4) Completed registration form; and
- (5) Payment of the following fees:
 - (a) All applicants who are in the deemed status group shall make payment of a non-refundable application fee of ten dollars (\$10.00) and payment of a non-refundable certification fee of forty dollars (\$40.00).
 - (b) All other applicants shall make payment of an application packet fee of twenty-five dollars (\$25.00) and payment of a non-refundable certification fee of one hundred twenty-five dollars (\$125.00).
 - (c) All applicants seeking certification pursuant to Criteria A of G.S. 90-113.40(c) shall make payment of a non-refundable written examination fee of one hundred twenty-five dollars (\$125.00) and payment of a non-refundable oral examination fee of one hundred dollars (\$100.00).
 - (d) All applicants seeking certification pursuant to Criteria B of G.S. 90-113.40(c) shall make payment of a non-refundable written examination fee of one hundred twenty-five dollars (\$125.00).
 - (e) All applicants seeking certification pursuant to Criteria C of G.S. 90-113.40(c) shall make payment of a non-refundable oral examination fee of one hundred dollars (\$100.00).

- (1) Renew certification as classified by the criteria for their original certification every two years.
- (2) Document completing 40 hours of education pursuant to Section .0400 of this Chapter, during the current certification period. A minimum of 30 hours shall be substance abuse specific. This education may include a combination of hours including attending workshops, receiving clinical supervision and providing workshops.
- (3) Meet recertification educational guidelines as a substance abuse professional as follows:
 - (A) No more than 25 percent or 10 hours may be inservice education, received within the applicant's organization by staff of the same employment.
 - (B) No more than 25 percent or 10 hours receiving supervision with two hours of supervision translating to one hour of education.
 - (C) No more than 25 percent or 10 hours of workshop presentation with two hours of presentation translating to one hour of education. Workshop presentation shall be pursuant to Rule .0213 of this Chapter.
 - (D) No more than 25 percent or 10 hours of Alcohol/Drug Education Traffic School (ADETS) and Drug Education School (DES) events.
 - (E) All applicants shall include six hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education and three hours of professional ethics training and education for each certification.
- (4) A completed application form with continuing education documented.
- (5) A non-refundable one hundred twenty-five dollar (\$125.00) recertification fee.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.41A; 90-113.43.

SECTION .0600 - GROUNDS FOR DISCIPLINE AND DISCIPLINARY PROCEDURES

21 NCAC 68 .0611 PROOF OF REHABILITATION

- (a) As used in G.S. 90-113.44 and elsewhere, rehabilitation means sustained and continuous rehabilitation for at least six months.
- (b) Evidence for consideration shall include:
 - (1) Documentation of treatment history including all assessments, evaluations, treatment, counseling, and group experiences;
 - (2) Complete criminal record;
 - (3) A comprehensive biopsychosocial and medical assessment that includes evidence of physical, mental, psychological and social functioning;
 - (4) Medical diagnosis and treatment history and functioning prognosis; and

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.40; 90-113.41; 90-113.43.

21 NCAC 68 .0306 RENEWAL OF INDIVIDUAL CERTIFICATION AS CLINICAL ADDICTIONS SPECIALIST

- (a) An applicant who is in the deemed status group shall submit the following every two years:
 - (1) A completed application form and copy of current substance abuse certification from the applicant's deemed status professional discipline.
 - (2) A non-refundable recertification fee of thirty-five dollars (\$35.00).
- (b) All other individual applicants shall:

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(5) History of relapse.

(b) Sanctions of suspension or revocation of certification shall be published by the Board as soon as it is practicable.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

Authority G.S. 90-113.30; 90-113.33; 90-113.42; 90-113.43; 90-113.44.

**21 NCAC 68 .0620 PUBLICATION OF ETHICS
SANCTIONS.**

(a) All ethics complaint sanctions may be reported by the Board in its newsletter.

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 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substantive (>\$5,000,000)
None

Editor's Note: This publication for 10 NCAC 03C .3102 and .4305 will serve as Notice of Text for permanent rulemaking and as Notice of Proposed Temporary Rules pursuant to S.L. 2001-410. This publication for 10 NCAC 03R .1413-.1417 will serve as Notice of Proposed Temporary Rules pursuant to S.L. 2001-410.

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03C - LICENSING OF HOSPITALS

SECTION .3100 - PROCEDURE

Rule-making Agency:

NC Medical Care Commission for 10 NCAC 03C .3102 and .4305
Division of Facility Services for 10 NCAC 03R .1413-.1417

Authority for the rulemaking:

Medical Care Commission - G.S. 131E-79; S.L. 2001, c. 410
Facility Services – G.S. 131E-177; 131E-183; S.L. 2001, c. 410

Reason for Proposed Action: The NC General Assembly recently ratified House Bill 1147 (Session Law 2001-410). This legislation amends G.S. 131E-83 and directs the NC Medical Care Commission to adopt temporary rules "setting forth conditions for licensing neonatal care beds." The Commission needs to adopt temporary amendments to 10 NCAC 03C .3102 and .4305 to meet this legislative mandate. The public was given prior notice to this rule-making action in two ways: a Notice of Proposed Rule-making Proceedings was published in Volume 16, Issue 08 of the North Carolina Register and a Notice was published at the Division's website (http://www.facility-services.state.nc.us) under the Section titled "What's New." Rules 10 NCAC 03R .1413-1417 are certificate of need (CON) rules pertaining to neonatal beds. They are being amended to ensure consistency with the changes in 10 NCAC 03C .3102 and .4305.

Proposed Effective Date for temporary rules: March 11, 2002

Proposed Effective Date for permanent rules: April 1, 2003

Public Hearing:

Date: January 31, 2002

Time: 10:00 a.m.

Location: Room 113, Council Building, NC Division of Facility Services, 701 Barbour Dr., Dorothea Dix Campus, Raleigh, NC

Comment Procedures: Written comments concerning this rule-making action must be submitted to Mark Benton, Rule-making Coordinator, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701 through January 31, 2002.

Fiscal Impact

State
Local

10 NCAC 03C .3102 PLAN APPROVAL

(a) The facility design and construction shall be in accordance with the construction standards of the Division, the North Carolina Building Code, and local municipal codes.

(b) Submission of Plans:

- (1) Before construction is begun, color marked plans, and specifications covering construction of the new buildings, alterations or additions to existing buildings, or any change in facilities shall be submitted to the Division for approval.
(2) The Division will review the plans and notify the licensee that said buildings, alterations, additions, or changes are approved or disapproved. If plans are disapproved the Division shall give the applicant notice of deficiencies identified by the Division.
(3) In order to avoid unnecessary expense in changing final plans, a preliminary step, proposed plans in schematic form shall be reviewed by the Division.
(4) The plans shall include a plot plan showing the size and shape of the entire site and the location of all existing and proposed facilities.
(5) Plans shall be submitted in triplicate in order that the Division may distribute a copy to the Department of Insurance for review of State Building Code requirements and to the Department of Environment, Health, and Natural Resources for review under state sanitation requirements.

(c) Location:

- (1) The site for new construction or expansion shall be approved by the Division.
(2) Hospitals shall be so located that they are free from undue noise from railroads, freight yards, main traffic arteries, schools and children's playgrounds.
(3) The site shall not be exposed to smoke, foul odors, or dust from nearby industrial plants.
(4) The area of the site shall be sufficient to permit future expansion and to provide adequate parking facilities.
(5) Available paved roads, adequate water, sewage and power lines shall be taken into consideration in selecting the site.

(d) The bed capacity and services provided in a facility shall be in compliance with G.S. 131E, Article 9 regarding Certificate of Need. A facility shall be licensed for no more beds than the number for which required physical space and other required facilities are available. Neonatal Level 1, Level II and III beds are considered part of the licensed bed capacity. Newborn nursery bassinets are not considered part of the licensed bed capacity however, no more bassinets shall be placed in service than the number for which required physical space and other required facilities are available.

Authority G.S. 131E-79.

SECTION .4300 - MATERNAL - NEONATAL SERVICES

10 NCAC 03C .4305 ORGANIZATION OF NEONATAL SERVICES

(a) The governing body shall approve the scope of all neonatal services and the facility shall classify its capability in providing a range of neonatal services using the following criteria:

- (1) Newborn Nursery: Full-term and pre-term neonates that are stable without complications; may include small for gestational age or large for gestational age neonates;
- (2) LEVEL I: Neonates or infants that are stable without complications but require special care and frequent feedings; infants of any weight who no longer require Level II or Level III neonatal services, but who still require more nursing hours than normal infants, and infants who require close observation in a licensed acute care bed;
- (3) LEVEL II: Neonates or infants that are high-risk, small (or approximately 32 and less than 36 completed weeks of gestational age) but otherwise healthy, or sick with a moderate degree of illness that are admitted from within the hospital or transferred from another facility requiring intermediate care services for sick infants, but not requiring intensive care; may serve as a "step-down" unit from Level III. Level II neonates or infants require less constant nursing care, but care does not exclude respiratory support; and
- (4) LEVEL III (Neonatal Intensive Care Services): High-risk, medically unstable or critically ill neonates approximately under 32 weeks of gestational age, or infants, requiring constant nursing care or supervision not limited to continuous cardiopulmonary or respiratory support, complicated surgical procedures, or other intensive supportive interventions.

(b) The facility shall provide for the availability of equipment, supplies, and clinical support services.

(c) The medical and nursing staff shall develop and approve policies and procedures for the provision of all neonatal services.

Authority G.S. 131E-79.

SUBCHAPTER 03R - CERTIFICATE OF NEED

REGULATIONS

SECTION .1400 - CRITERIA AND STANDARDS FOR NEONATAL SERVICES

10 NCAC 03R .1413 DEFINITIONS

The definitions in this Rule shall apply to all rules in this Section:

- (1) "Approved neonatal service" means a neonatal service that was not operational prior to the beginning of the review period.
- (2) "Existing neonatal service" means a neonatal service in operation prior to the beginning of the review period.
- (3) "High-risk obstetric patients" means those patients requiring specialized services provided by an acute care hospital to the mother and fetus during pregnancy, labor, delivery and to the mother after delivery. The services are characterized by specialized facilities and staff for the intensive care and management of high-risk maternal and fetal patients before, during, and after delivery.
- (4) "Level I neonatal service" means services provided by an acute care hospital in a licensed acute care bed to neonates and infants that are stable without complications but require special care and frequent feedings; infants of any weight who no longer require Level II or Level III neonatal services, but still require more nursing hours than normal infants; and infants who require close observation in a licensed acute care bed.
- (5) "Level II neonatal service" means services provided by an acute care hospital in a licensed acute care bed to neonates or infants that are high-risk, small (approximately 32 and less than 36 completed weeks of gestational age) but otherwise healthy, or sick with a moderate degree of illness that are admitted from within the hospital or transferred from another facility requiring intermediate care services for sick infants, but not intensive care. Level II neonates or infants require less constant nursing care than Level III services, but care does not exclude respiratory support.
- (6) "Level III neonatal service" means neonatal intensive care services provided by an acute care hospital in a licensed acute care bed to high-risk medically unstable or critically ill neonates (approximately under 32 weeks of gestational age) or infants requiring constant nursing care or supervision not limited to continuous cardiopulmonary or respiratory support, complicated surgical procedures, or other intensive supportive interventions.
- (7) "Neonatal bed" means a licensed acute care bed used to provide Level I, II, or III neonatal services.

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| <p>(8) "Neonatal intensive care services" shall have the same meaning as defined in G.S. 131E-176(15b).</p> <p>(9) "Neonatal service area" means a geographic area defined by the applicant from which the patients to be admitted to the service will originate.</p> <p>(10) "Neonatal services" means any of the Level I, Level II or Level III services defined in this Rule.</p> <p>(11) "Newborn nursery services" means services provided by an acute care hospital to full term and pre-term neonates that are stable, without complications, and may include neonates that are small for gestational age or large for gestational age.</p> <p>(12) "Obstetric services" means any normal or high-risk services provided by an acute care hospital to the mother and fetus during pregnancy, labor, delivery and to the mother after delivery.</p> <p>(13) "Perinatal services" means services provided during the period shortly before and after birth.</p> <p>.</p> | <p>obstetrical patients referred from the applicant's facility to other facilities or programs; and</p> <p>(F) the number of neonatal patients referred to other facilities for services, identified by required level of neonatal service (i.e. Level I, Level II or Level III);</p> <p>(4) the projected number of neonatal patients to be served identified by newborn nursery, Level I, Level II and Level III neonatal services for each of the first three years of operation following the completion of the project, including the methodology and assumptions used for the projections;</p> <p>(5) the projected number of patient days of care to be provided in the newborn nursery bassinets, Level I beds, Level II beds and Level III beds, respectively, for each of the first three years of operation following completion of the project, including the methodology and assumptions used for the projections;</p> <p>(6) if proposing to provide new newborn nursery or Level I neonatal services, documentation that at least 90 percent of the anticipated patient population is within 30 minutes driving time one-way from the facility;</p> <p>(7) if proposing to provide new newborn nursery or Level I neonatal services, documentation of a written plan to transport infants to Level II or Level III neonatal services as the infant's care requires;</p> |
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Authority G.S. 131E-177(1); 131E-183.

10 NCAC 03R .1414 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop a new newborn nursery service or increase the number of Level I, II, or III neonatal beds shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to develop a new newborn nursery service or increase the number of Level I, II, or III neonatal beds shall provide the following additional information:

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| <p>(1) the current number of newborn nursery bassinets, Level I beds, Level II beds and Level III beds operated by the applicant;</p> <p>(2) the proposed number of newborn nursery bassinets, Level I beds, Level II beds and Level III beds to be operated following completion of the proposed project;</p> <p>(3) evidence of the applicant's experience in treating the following patients at the facility during the past twelve months, including:</p> <p>(A) the number of obstetrical patients treated at the acute care facility;</p> <p>(B) the number of neonatal patients treated in newborn nursery bassinets, Level I beds, Level II beds and Level III beds, respectively;</p> <p>(C) the number of inpatient days at the facility provided to obstetrical patients;</p> <p>(D) the number of inpatient days provided in Level I beds, Level II beds and Level III beds, respectively;</p> <p>(E) the number of high-risk obstetrical patients treated at the applicant's facility and the number of high-risk</p> | <p>(8) evidence that the applicant shall have access to a transport service with at least the following components:</p> <p>(A) trained personnel;</p> <p>(B) transport incubator;</p> <p>(C) emergency resuscitation equipment;</p> <p>(D) oxygen supply, monitoring equipment and the means of administration;</p> <p>(E) portable cardiac and temperature monitors; and</p> <p>(F) a mechanical ventilator;</p> <p>(9) documentation that the proposed service shall be operated in an area organized as a physically and functionally distinct entity with controlled access;</p> <p>(10) documentation to show that the new or additional Level I, Level II or Level III neonatal services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;</p> <p>(11) a detailed floor plan of the proposed area drawn to scale;</p> |
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- (12) documentation of direct or indirect visual observation by unit staff of all patients from one or more vantage points; and
- (13) documentation that the floor space allocated to each bed and bassinet shall accommodate equipment and personnel to meet anticipated contingencies.

(c) If proposing to provide new Level II or Level III neonatal services the applicant shall also provide the following information:

- (1) documentation that at least 90 percent of the anticipated patient population is within 90 minutes driving time one-way from the facility, with the exception that there shall be a variance from the 90 percent standard for facilities which demonstrate that they provide very specialized levels of neonatal care to a large and geographically diverse population, or facilities which demonstrate the availability of air ambulance services for neonatal patients;
- (2) evidence that existing and approved neonatal services in the applicant's defined neonatal service area are unable to accommodate the applicant's projected need for additional Level II and Level III services;
- (3) an analysis of the proposal's impact on existing Level II and Level III neonatal services which currently serve patients from the applicant's primary service area;
- (4) the availability of high risk OB services at the site of the applicant's planned neonatal service;
- (5) copies of written policies which provide for parental participation in the care of their infant, as the infant's condition permits, in order to facilitate family adjustment and continuity of care following discharge; and
- (6) copies of written policies and procedures regarding the scope and provision of care within the neonatal service, including but not limited to the following:
 - (A) the admission and discharge of patients;
 - (B) infection control;
 - (C) pertinent safety practices;
 - (D) the triaging of patients requiring consultations, including the transfer of patients to another facility; and
 - (E) the protocols for obtaining emergency physician care for a sick infant.

Authority G.S. 131E-177(1); 131E-183.

10 NCAC 03R .1415 REQUIRED PERFORMANCE STANDARDS

(a) An applicant shall demonstrate that the proposed project is capable of meeting the following standards:

- (1) an applicant proposing a new newborn nursery, new Level I services, or additional Level I beds shall demonstrate that the

- (2) occupancy of the applicant's total number of neonatal beds is projected to be at least 50% during the first year of operation and at least 65% during the third year of operation following completion of the proposed project; if an applicant proposes an increase in the number of the facility's existing Level II or Level III beds, the overall average annual occupancy of the total number of existing Level II and Level III beds in the facility is at least 75%, over the 12 months immediately preceding the submittal of the proposal; and
- (3) if an applicant is proposing to develop new or additional Level II or Level III beds, the projected occupancy of the total number of Level II and Level III beds proposed to be operated during the third year of operation of the proposed project shall be at least 75%.
- (4) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

(b) If an applicant proposes to develop a new Level II or Level III service, the applicant shall document that an unmet need exists in the applicant's defined neonatal service area. The need for Level II and Level III beds shall be computed for the applicant's neonatal service area by:

- (1) identifying the annual number of live births occurring at all hospitals within the proposed neonatal service area, using the latest available data compiled by the State Center for Health Statistics;
- (2) identifying the low birth weight rate (percent of live births below 2,500 grams) for the births identified in Subparagraph (1) of this Paragraph, using the latest available data compiled by the State Center for Health Statistics;
- (3) dividing the low birth weight rate identified in Subparagraph (2) of this Paragraph by .08 and subsequently multiplying the resulting quotient by four; and
- (4) determining the need for Level II and Level III beds in the proposed neonatal service area as the product of:
 - (A) the product derived in Subparagraph (3) of this Paragraph, and
 - (B) the quotient resulting from the division of the number of live births in the initial year of the determination identified in Subparagraph (1) of this Paragraph by the number 1000.

Authority G.S. 131E-177(1); 131E-183(b).

10 NCAC 03R .1416 REQUIRED SUPPORT SERVICES

(a) An applicant proposing to provide new Level I, Level II or Level III services shall document that the following items shall be available, unless an item shall not be available, then documentation shall be provided obviating the need for that item:

- (1) competence to manage uncomplicated labor and delivery of normal term newborn;
- (2) capability for continuous fetal monitoring;
- (3) a continuing education program on resuscitation to enhance competence among all delivery room personnel in the immediate evaluation and resuscitation of the newborn and of the mother;
- (4) obstetric services;
- (5) anesthesia services;
- (6) capability of cesarean section within 30 minutes at any hour of the day; and
- (7) twenty-four hour on-call blood bank, radiology, and clinical laboratory services.

(b) An applicant proposing to provide new Level II or Level III services shall document that the following items shall be available, unless any item shall not be available, then documentation shall be provided obviating the need for that item:

- (1) competence to manage labor and delivery of premature newborns and newborns with complications;
- (2) twenty-four hour availability of microchemistry hematology and blood gases;
- (3) twenty-four hour coverage by respiratory therapy;
- (4) twenty-four hour radiology coverage with portable radiographic capability;
- (5) oxygen and air and suction capability;
- (6) electronic cardiovascular and respiration monitoring capability;
- (7) vital sign monitoring equipment which has an alarm system that is operative at all times;
- (8) capabilities for endotracheal intubation and mechanical ventilatory assistance;
- (9) cardio-respiratory arrest management plan;
- (10) isolation capabilities;
- (11) social services staff;
- (12) occupational or physical therapies with neonatal expertise; and
- (13) a registered dietician or nutritionist with training to meet the special needs of neonates.

(c) An applicant proposing to provide new Level III services shall document that the following items shall be available, unless any item shall not be available, then documentation shall be provided obviating the need for that item:

- (1) pediatric surgery services;
- (2) ophthalmology services;
- (3) pediatric neurology services;
- (4) pediatric cardiology services;
- (5) on-site laboratory facilities;
- (6) computed tomography and pediatric cardiac catheterization services;
- (7) emergency diagnostic studies available 24 hours per day;
- (8) designated social services staff; and
- (9) serve as a resource center for the statewide perinatal network.

Authority G.S. 131E-177(1); 131E-183(b).

10 NCAC 03R .1417 REQUIRED STAFFING AND STAFF TRAINING

An applicant shall demonstrate that the following staffing requirements for hospital care of newborn infants shall be met:

- (1) If proposing to provide new Level I services the applicant shall provide documentation to demonstrate that:
 - (a) the nursing care shall be supervised by a registered nurse in charge of perinatal facilities;
 - (b) a physician is designated to be responsible for neonatal care; and
 - (c) the medical staff will provide physician coverage to meet the specific needs of patients on a 24 hour basis.
- (2) If proposing to provide new Level II services the applicant shall provide documentation to demonstrate that:
 - (a) the nursing care shall be supervised by a registered nurse;
 - (b) the service shall be staffed by a board certified pediatrician; and
 - (c) the medical staff will provide physician coverage to meet the specific needs of patients on a 24 hour basis.
- (3) If proposing to provide new Level III services the applicant shall provide documentation to demonstrate that:
 - (a) the nursing care shall be supervised by a registered nurse with educational preparation and advanced skills for maternal-fetal and neonatal services;
 - (b) the service shall be staffed by a full-time board certified pediatrician with certification in neonatal medicine; and
 - (c) the medical staff will provide physician coverage to meet the specific needs of patients on a 24 hour basis.
- (4) All applicants shall submit documentation which demonstrates the availability of appropriate inservice training or continuing education programs for neonatal staff.
- (5) All applicants shall submit documentation which demonstrates the proficiency and ability of the nursing staff in teaching parents how to care for neonatal patients following discharge to home.
- (6) All applicants shall submit documentation to show that the proposed neonatal services will be provided in conformance with the requirements of federal, state and local regulatory bodies.

Authority G.S. 131E-177(1); 131E-183(b).

TEMPORARY RULES

Rule-making Agency: *NC Medical Care Commission*

Rule Citation: 10 NCAC 03D .0801-.0805, .0807-.0808, .0901, .0903-.0904, .0906, .0910, .0912-.0916, .0925, .1001-.1004, .1101-.1104, .1201-.1206, .1301-.1302, .1401-.1403, .1501-.1503, .2001, .2101-.2106, .2201-.2203, .2501-.2524, .2601-.2616, .2701-.2704, .2801-.2809, .2901-.2911, .3001-.3004, .3101-.3102, .3201, .3301-.3305, .3401-.3403, .3501-.3503.

Effective Date: *January 1, 2002*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 131E-155.1; 131E-156; 131E-157(a); 131E-159(a); 131E-159(b); 131E-162; 143-507(a); 143-508; 143-509(3); 143-509(4); S.L. 1984, c. 1034, s. 98; S.L. 1983, c. 1034, v. 98; S.L. 2001, c. 211; S.L. 2001, c. 220*

Reason for Proposed Action: *The NC General Assembly recently ratified House Bill 452 (Session Law 2001-220) and House Bill 453 (Session Law 2001-211). These two pieces of legislation amend G.S. 143-56 and G.S. 143-540 to update existing EMS terminology, definitions, roles and responsibilities. As such, changes are needed to ensure compliance with the new laws. The Commission is repealing existing EMS rules and replacing them with new temporary rules. The public was given prior notice to this rule-making action in two ways: (1) a Notice of Proposed Rule-making Proceedings was published in Volume 16, Issue 05 of the North Carolina Register; and (2) a Notice was published at the Division's website (<http://www.facility-services.state.nc.us>) under the Section titled "What's New."*

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

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03D - RULES AND REGULATIONS GOVERNING AMBULANCE SERVICE

SECTION .0800 - DEFINITIONS

10 NCAC 03D .0801 AMBULANCE AND BASIC LIFE SUPPORT (BLS) PROFESSIONAL

*History Note: Authority G.S. 131E-157(a); 143-508;
Eff. January 1, 1990;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0802 CERTIFIED EMT INSTRUCTOR

*History Note: Authority G.S. 131E-159(b);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0803 APPROVED TEACHING INSTITUTION

*History Note: Authority G.S. 131E-159(b);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0804 COMMISSION

*History Note: Authority G.S. 131E-159(b);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0805 OFFICE OF EMERGENCY MEDICAL SERVICES

*History Note: Authority G.S. 131E-157(a); 131E-159(b);
Eff. December 1, 1989;
Amended Eff. February 1, 1998;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0807 CRITICAL CARE TRANSPORT PROGRAM

*History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0808 AMBULANCE PROVIDER LICENSE

*History Note: Authority G.S. 131E-155.1;
Eff. February 1, 1996;
Temporary Repeal Eff. January 1, 2002.*

SECTION .0900 - VEHICLES

10 NCAC 03D .0901 INTERIOR DIMENSIONS

*History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0903 WARNING DEVICES

*History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0904 VEHICLE BODY

*History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0906 EQUIPMENT SECURED

*History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.*

10 NCAC 03D .0910 SEAT BELTS

History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .0912 DISPLAYED PERMIT

History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .0913 PERMIT

History Note: Authority G.S. 131E-157(a); 143-508;
Eff. December 1, 1989;
Amended Eff. August 1, 1998; August 1, 1994;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .0914 PERMIT REQUIRED

History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.

**10 NCAC 03D .0915 AMBULANCE LETTERING:
MARKINGS: SYMBOLS AND EMBLEMS**

History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

**10 NCAC 03D .0916 GENERAL AMBULANCE
REQUIREMENTS**

History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .0925 INFECTIOUS DISEASE

History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

SECTION .1000 - AMBULANCE EQUIPMENT

**10 NCAC 03D .1001 MEDICAL AND RELATED
EQUIPMENT**

History Note: Authority G.S. 131E-157(a);
Eff. January 1, 1990;
Amended Eff. August 1, 1998; August 1, 1994;
Temporary Repeal Eff. January 1, 2002.

**10 NCAC 03D .1002 EXTRICATION AND ACCESS
EQUIPMENT**

History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1003 OTHER EQUIPMENT

History Note: Authority G.S. 131E-157(a); 143-507(a);
143-508;
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

**10 NCAC 03D .1004 WEAPONS AND EXPLOSIVES
FORBIDDEN**

History Note: Authority G.S. 131E-157(a);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

SECTION .1100 - COMMUNICATIONS

**10 NCAC 03D .1101 PUBLIC ACCESS TO
AMBULANCE SERVICE**

History Note: Authority G.S. 131E-157(a); 143-509(4);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1102 DISPATCH

History Note: Authority G.S. 131E-157(a); 143-509(4);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1103 EQUIPMENT

History Note: Authority G.S. 131E-157(a); 143-509(4);
Eff. December 1, 1989;
Amended Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1104 LICENSE REQUIRED

History Note: Authority G.S. 131E-157(a); 143-509(4);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.

**SECTION .1200 - TRAINING AND PERFORMANCE OF
PERSONNEL**

**10 NCAC 03D .1201 CRITERIA FOR APPROVED
TEACHING INSTITUTIONS**

History Note: Authority G.S. 131E-159(b);
Eff. December 1, 1989;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1202 CRITERIA FOR CERTIFIED

EMT INSTRUCTOR

Temporary Repeal Eff. January 1, 2002.

History Note: Authority G.S. 131E-159(b); 143-507(c); 143-508; S.L. 1983, c. 1034, s. 98; Eff. December 1, 1989; Amended Eff. August 1, 1998; Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1203 EDUCATIONAL PROGRAMS

History Note: Authority G.S. 131E-159(b); Eff. December 1, 1989; Amended Eff. August 1, 1998; Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1204 AEROMEDICAL FLIGHT CREW MEMBERS

History Note: Authority G.S. 131E-159(b); Eff. December 1, 1989; Amended Eff. August 1, 1998; Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1205 MEDICAL RESPONDER PERFORMANCE

History Note: Authority G.S. 143-507(c); 143-508; Eff. December 1, 1989; Amended Eff. August 1, 1998; Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1206 EMERGENCY MEDICAL TECHNICIAN PERFORMANCE

History Note: Authority G.S. 143-507(c); 143-508; Eff. December 1, 1989; Amended Eff. August 1, 1998; Temporary Repeal Eff. January 1, 2002.

SECTION .1300 - CERTIFICATION REQUIREMENTS FOR BASIC LIFE SUPPORT PERSONNEL

10 NCAC 03D .1301 CERTIFICATION REQUIREMENTS: MEDICAL RESPONDER

History Note: Authority G.S. 131E-159(a); S.L. 198., c. 1034, s. 98; S.L. 1983, c. 1034, s. 98; Eff. December 1, 1989; Amended Eff. August 1, 1998; February 1, 1996; February 1, 1994; Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1302 CERTIFICATION REQUIREMENTS: EMERGENCY MEDICAL TECHNICIAN

History Note: Authority G.S. 131E-159(b); S.L. 1984, c. 1034, s. 98; S.L. 1983, c. 1034, s. 98; Eff. December 1, 1989; Amended Eff. August 1, 1998; February 1, 1996; February 1, 1994;

SECTION .1400 - ADMINISTRATION

10 NCAC 03D .1401 LICENSE, PERMIT OR CERTIFICATION DENIAL, SUSPENSION, AMENDMENT OR REVOCATION

History Note: Authority G.S. 131E-155.1; 131E-156; 131E-157(a); 131E-159(b); 143-508; S.L. 1983, c. 1034, s. 98; Eff. December 1, 1989; Amended Eff. August 1, 1998; February 1, 1996; November 1, 1995; Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1402 PROCEDURES FOR DENIAL, SUSPENSION, AMENDMENT, OR REVOCATION

History Note: Authority G.S. 131E-157(a); 131E-159(b); Eff. December 1, 1989; Amended Eff. February 1, 1996; Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1403 APPLICATION PROCEDURES, REQUIRED FORMS

History Note: Authority G.S. 131E-155.1; 131E-157(a); 131E-159(b); 143-508; Eff. December 1, 1989; Amended Eff. August 1, 1998; February 1, 1996; Temporary Repeal Eff. January 1, 2002.

SECTION .1500 - AMBULANCE PROVIDER LICENSING REQUIREMENTS

10 NCAC 03D .1501 LICENSING REQUIREMENTS: AMBULANCE PROVIDER

History Note: Authority G.S. 131E-155.1; Eff. February 1, 1996; Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1502 ISSUANCE OF LICENSE

History Note: Authority G.S. 131E-155.1; Eff. February 1, 1996; Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .1503 LENGTH OF LICENSURE

History Note: Authority G.S. 131E-155.1; Eff. February 1, 1996; Temporary Repeal Eff. January 1, 2002.

SECTION .2000 - GENERAL INFORMATION

10 NCAC 03D .2001 DEFINITIONS

History Note: Authority G.S. 131-162; Eff. August 1, 1998; Temporary Repeal Eff. January 1, 2002.

Temporary Repeal Eff. January 1, 2002.

SECTION .2100 - TRAUMA CENTER STANDARDS AND APPROVAL

10 NCAC 03D .2101 LEVEL I TRAUMA CENTER CRITERIA

History Note: Authority G.S. 131E-162;
Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .2102 LEVEL II TRAUMA CENTER CRITERIA

History Note: Authority G.S. 131E-162;
Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .2103 LEVEL III TRAUMA CENTER CRITERIA

History Note: Authority G.S. 131E-162;
Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .2104 SUBMISSION OF REQUEST FOR PROPOSAL (RFP)

History Note: Authority G.S. 131E-162;
Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .2105 INITIAL DESIGNATION PROCESS

History Note: Authority G.S. 131E-162; 143-509(3);
Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .2106 RENEWAL DESIGNATION PROCESS

History Note: Authority G.S. 131E-162; 143-509(3);
Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

SECTION .2200 – ENFORCEMENT

10 NCAC 03D .2201 DENIAL, PROBATION, VOLUNTARY WITHDRAWAL OR REVOCATION OF TRAUMA CENTER DESIGNATION

~~reasonable length of time; or~~

History Note: Authority G.S. 131E-162;
Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

10 NCAC 03D .2202 PROCEDURES FOR APPEAL OF DENIAL, PROBATION, OR REVOCATION

History Note: Authority G.S. 131E-162;
Eff. August 1, 1998;

10 NCAC 03D .2203 MISREPRESENTATION OF DESIGNATION

History Note: Authority G.S. 131E-162;
Eff. August 1, 1998;
Temporary Repeal Eff. January 1, 2002.

SECTION .2500 – DEFINITIONS

10 NCAC 03D .2501 ABBREVIATIONS

The following abbreviations are used throughout this Subchapter:

- (1) EMS: Emergency Medical Services;
- (2) OEMS: Office of Emergency Medical Services;
- (3) PreMIS: Prehospital Medical Information System;
- (4) MR: Medical Responder;
- (5) EMT: Emergency Medical Technician;
- (6) EMT-D: EMT Defibrillation;
- (7) EMT-I: EMT Intermediate;
- (8) EMT-P: EMT Paramedic;
- (9) EMD: Emergency Medical Dispatcher;
- (10) EMDPRS: Emergency Medical Dispatch Priority Reference System;
- (11) EMS-NP: EMS Nurse Practitioner;
- (12) EMS-PA: EMS Physician Assistant;
- (13) MICN: Mobile Intensive Care Nurse;
- (14) AHA: American Heart Association; and
- (15) CPR: cardiopulmonary resuscitation.

History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2502 AIR MEDICAL AMBULANCE

"Air Medical Ambulance" means an aircraft specifically designed and equipped to transport patients by air. The patient care compartment of air medical ambulances shall be staffed by medical crewmembers approved for the mission by the medical director.

History Note: Authority G.S. 143-508(b); 143-508(d)(8);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2503 AIR MEDICAL PROGRAM

"Air Medical Program" means a specialty care transport program designed and operated for transportation of patients by either fixed or rotary wing aircraft.

History Note: Authority G.S. 143-508(b); 143-508(d)(1);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2504 ASSISTANT MEDICAL DIRECTOR

"Assistant Medical Director" means a physician, EMS-PA, or EMS-NP who assists the medical director with the medical management of an EMS system or EMS specialty care transport program.

History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2505 CONVALESCENT AMBULANCE
"Convalescent Ambulance" means an ambulance used on a scheduled basis solely to transport patients having a known, non-emergency medical condition. Convalescent ambulances shall not be used in place of any other category of ambulance defined in this Subchapter.

History Note: Authority G.S. 143-508(b); 143-508(d)(8);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2506 EDUCATIONAL MEDICAL ADVISOR
"Educational medical advisor" means the physician responsible for overseeing the medical components of approved EMS educational programs in basic and advanced EMS educational institutions.

History Note: Authority G.S. 143-508(b); 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2507 EMS EDUCATIONAL INSTITUTION
"EMS Educational Institution" means any agency credentialed by the OEMS to offer EMS educational programs.

History Note: Authority G.S. 143-508(b); 143-508(d)(4);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2508 EMS INSTRUCTOR
"EMS Instructor" means a person who is credentialed by the OEMS as a Level I or II EMS Instructor or EMD Instructor and who is approved to instruct or coordinate EMS educational programs.

History Note: Authority G.S. 143-508(b); 143-508(d)(3);
143-508(d)(4);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2509 EMS NONTRANSPORTING VEHICLE
"EMS nontransporting vehicle" means a motor vehicle dedicated and equipped to move medical equipment and EMS personnel functioning within the scope of practice of EMT-I or EMT-P to the scene of a request for assistance. EMS nontransporting vehicles shall not be used for the transportation of patients on the streets, highways, waterways, or airways of the state.

History Note: Authority G.S. 143-508(b); 143-508(d)(8);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2510 EMS SYSTEM
"EMS System" means a coordinated arrangement of resources (including personnel, equipment and facilities) organized to respond to medical emergencies and integrated with other health care providers and networks including, but not limited to, public health, community health monitoring activities, and special needs populations

History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2511 GROUND AMBULANCE
"Ground Ambulance" means an ambulance used to transport patients with traumatic or medical conditions or patients for whom the need for emergency medical care is anticipated either at the patient location or during transport. Ground ambulances may be used to transport all types of patients.

History Note: Authority G.S. 143-508(b); 143-508(d)(8);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2512 MEDICAL CREWMEMBERS
"Medical Crew Member" means EMS personnel or other health care professionals who hold current North Carolina credentials and are affiliated with a specialty care transport program.

History Note: Authority G.S. 143-508(b); 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2513 MEDICAL DIRECTOR
"Medical director" means the physician responsible for the medical aspects of the management of an EMS system or EMS specialty care transport program.

History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2514 MEDICAL OVERSIGHT
"Medical oversight" means the responsibility for the management and accountability of the medical care aspects of an EMS system. Medical oversight includes physician direction of the initial education and continuing education of EMS personnel; development and monitoring of both operational and treatment protocols; evaluation of the medical care rendered by EMS personnel; participation in system evaluation; and directing, by two-way voice communications, the medical care rendered by the EMS personnel.

History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2515 MODEL EMS SYSTEM
"Model EMS system" means an approved EMS system that chooses to meet the criteria for and receives this designation by the OEMS.

History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2516 OFFICE OF EMERGENCY MEDICAL SERVICES
"Office of Emergency Medical Services (OEMS)" means a section of the Division of Facility Services of the North Carolina Department of Health and Human Services located at 701 Barbour Drive, Raleigh, North Carolina 27603.

History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2517 OPERATIONAL PROTOCOLS

"Operational protocols" means the written administrative policies and procedures of an EMS system that provide guidance for the day-to-day operation of the system.

*History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2518 PHYSICIAN

"Physician" means a medical or osteopathic doctor licensed by the NC Medical Board to practice medicine in the state of North Carolina.

*History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2519 QUALITY MANAGEMENT COMMITTEE

"Quality management committee" means a committee within an EMS system or specialty care transport program that is affiliated with a medical review committee as referenced in G.S. 143-518(a)(5) and is responsible for the continued monitoring and evaluation of medical and operational issues within the system and for improvement of the system.

*History Note: Authority G.S. 143-508(b); 143-518(a)(5);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2520 SPECIALTY CARE TRANSPORT PROGRAM

"Specialty Care Transport Program" means a program designed and operated for the provision of specialized medical care and transportation of critically ill or injured patients.

*History Note: Authority G.S. 143-508(b); 143-508(d)(1);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2521 SPECIALTY CARE TRANSPORT PROGRAM CONTINUING EDUCATION COORDINATOR

"Specialty Care Transport Program Continuing Education Coordinator" means a Level I EMS Instructor within a specialty care transport program who is responsible for the coordination of EMS continuing education programs for EMS personnel within the program.

*History Note: Authority G.S. 143-508(b); 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2522 SYSTEM CONTINUING EDUCATION COORDINATOR

"System Continuing Education Coordinator" means a Level I EMS Instructor within a model EMS system who is responsible for the coordination of EMS continuing education programs.

*History Note: Authority G.S. 143-508(b); 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2523 TREATMENT PROTOCOLS

"Treatment protocols" means a written document approved by the medical directors of both the local EMS system or specialty

care transport program and the OEMS specifying the diagnostic procedures, treatment procedures, medication administration, and patient care related policies that shall be completed by EMS personnel or medical crewmembers based upon the assessment of a patient.

*History Note: Authority G.S. 143-508(b); 143-508(d)(6);
143-508(d)(7);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2524 WATER AMBULANCE

"Water Ambulance" means a watercraft specifically designed and equipped to transport patients.

*History Note: Authority G.S. 143-508(b); 143-508(d)(8);
Temporary Adoption Eff. January 1, 2002.*

SECTION .2600 – EMS SYSTEMS

10 NCAC 03D .2601 EMS SYSTEM REQUIREMENTS

(a) County government shall establish EMS Systems. Each EMS System shall have:

- (1) A defined geographical service area for the EMS System. The minimum service area for an EMS System shall be one county. There may be multiple EMS Provider service areas within the service area of an EMS System. The highest level of care offered within any EMS Provider service area must be available to the citizens within that service area 24 hours per day;
- (2) A scope of practice within the parameters defined by the North Carolina Medical Board pursuant to G.S. 143-514;
- (3) A written plan describing the dispatch and coordination of all responders that provide EMS care within the system;
- (4) A minimum of one licensed EMS provider. For those systems with providers operating within the EMD, EMT-D, EMT-I or EMT-P scope of practice, there shall be a plan for medical oversight required by Section .2800 of this Subchapter;
- (5) An identified number of permitted ambulances to provide coverage to the service area 24 hours per day;
- (6) Personnel credentialed to perform within the scope of practice of the system to staff the ambulance vehicles as required by G.S. 131E-158. There shall be a written plan for the use of credentialed EMS personnel for all practice settings used within the system;
- (7) A system to collect data that uses the basic data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection";
- (8) A written infection control policy that addresses the cleansing and disinfecting of vehicles and equipment that are used to treat or transport patients;

- (9) A written plan to provide orientation to personnel on EMS operations and related issues for hospitals routinely receiving patients from the EMS system;
- (10) A listing of facilities that will provide online medical direction for systems with providers operating within the EMT-D, EMT-I or EMT-P scope of practice. To provide online medical direction, the facility shall have, at a minimum:
- (A) Availability of a physician, Mobile Intensive Care Nurse, EMS-nurse practitioner, or EMS-physician assistant to provide online medical direction to EMS personnel during all hours of operation of the facility;
- (B) A written plan to provide physician backup to the MICN, EMS-NP, or EMS-PA providing online medical direction to EMS personnel;
- (C) A mechanism for persons providing online medical direction to provide feedback to the Quality Management system; and
- (D) A plan to provide orientation and education regarding treatment protocols for those individuals providing online medical direction;
- (11) A written plan to ensure that each facility that routinely receives patients and also provides clinical education for EMS personnel that is precepted by a nurse, has a nurse liaison as defined by the "North Carolina Board of Nursing: Guidelines for the Selection and Performance of the Emergency Medical Services Nurse Liaison";
- (12) A written plan for providing emergency vehicle operation education for system personnel who operate emergency vehicles;
- (13) An EMS communication system that provides for:
- (A) Public access using the emergency telephone number 9-1-1 within the public dial telephone network as the primary method for the public to request emergency assistance. This number shall be connected to the emergency communications center or Public Safety Answering Point (PSAP) with immediate assistance available such that no caller will be instructed to hang up the telephone and dial another telephone number. A person calling for emergency assistance shall never be required to speak with more than two persons to request emergency medical assistance;
- (B) An emergency communications system operated by public safety telecommunicators with training in the management of calls for medical assistance available 24 hours per day;
- (C) Dispatch of the most appropriate emergency medical response unit or units to any caller's request for assistance. The dispatch of all response vehicles shall be in accordance with an official written EMS system plan for the management and deployment of response vehicles including requests for mutual aid; and
- (D) Two-way radio voice communications from within the defined service area to the emergency communications center or PSAP and to facilities where patients are routinely transported. The emergency communications system shall maintain all Federal Communications Commission (FCC) radio licenses or authorizations required;
- (14) A written plan addressing the use of specialty care transport programs within the system; and
- (15) A written continuing education plan for EMS Personnel that meets the requirements of the North Carolina Medical Board pursuant to G.S. 143-514.
- (b) An application to establish an EMS System shall be submitted by the county to the OEMS for review. When the system is comprised of more than one county, only one application shall be submitted. The proposal shall demonstrate that the system meets the requirements in Paragraph (a) of this Rule. System approval shall be granted for a period not to exceed six years. Systems shall apply to OEMS for reapproval.
- (c) Counties shall have one year from the effective date of these Rules to apply for initial system approval.

History Note: Authority G.S. 143-508(b); (d)(1), (d)(5), (d)(9); 143-509(1); 143-517; Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2602 MODEL EMS SYSTEMS

(a) Some EMS Systems may choose to move beyond the minimum requirements in Rule .2601 of this Section and receive designation from the OEMS as a Model EMS System. To receive this designation, an EMS System shall document that, in addition to the system requirements in Rule .2601 of this Section, the following criteria have been met:

- (1) A uniform level of care throughout the system available 24 hours per day;
- (2) A plan for medical oversight that meets the requirements found in Section .2800 of this Subchapter. Specifically, Model EMS Systems shall meet the additional requirements for medical director and written treatment protocols as defined in Rules .2801(1)(b) and .2805(a)(2) of this Subchapter;
- (3) A mechanism to collect and electronically submit to the OEMS data corresponding to the advanced data set and data dictionary as

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specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection";

- (4) A written plan to address management of the EMS system to include:
 - (A) Triage of patients to appropriate facilities;
 - (B) Transport of patients to facilities outside of the system;
 - (C) Arrangements for transporting patients to appropriate facilities when diversion or bypass plans are activated;
 - (D) A mechanism for reporting, monitoring, and establishing standards for system response times;
 - (E) A disaster plan; and
 - (F) A mass gathering plan;
- (5) A written continuing education plan for EMS Personnel, under the direction of the System Continuing Education Coordinator, developed and modified based on feedback from system data, review and evaluation of patient outcomes, and quality management reviews;
- (6) A written plan to assure participation in clinical and field internship educational components for all EMS personnel;
- (7) Operational protocols for the management of equipment, supplies and medications. These protocols shall include a methodology:
 - (A) to assure that each vehicle contains the required equipment and supplies on each response;
 - (B) for cleaning and maintaining the equipment and vehicles; and
 - (C) to assure that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications;
- (8) A written plan for the systematic and periodic inspection, repair and maintenance of all vehicles used in the system;
- (9) A written plan addressing the role of the EMS system in the areas of public education, injury prevention, and community health;
- (10) Affiliation with a minimum of one trauma Regional Advisory Committee; and
- (11) A system wide communication system which meets the requirements of Paragraph (a)(13) of Rule .2601 of this Section, and in addition:
 - (A) Operates an EMD program; and
 - (B) Has an operational E-911 system.

(b) EMS Systems holding current accreditation by a national accreditation agency may use this as documentation of completion of the equivalent requirements outlined in this Rule.

(c) The county shall submit an application for designation as a Model EMS System to the OEMS for review. When the system is comprised of more than one county, only one application shall be submitted. The application shall demonstrate that the system

meets the standards found in Paragraph (a) of this Rule. Designation as a Model EMS System shall be awarded for a period not to exceed six years, after which time, the system shall apply to OEMS for model system redesignation.

*History Note: Authority G.S. 143-508(b); (d)(1), (d)(5), (d)(9); 143-509(1);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2603 SPECIAL SITUATIONS

Upon application of interested citizens in North Carolina, the North Carolina Medical Care Commission may approve the furnishing and providing of programs within the scope of practice of EMD, EMT, EMT-D, EMT-I, or EMT-P in North Carolina by persons who have been approved to provide these services by an agency of a state or federal jurisdiction adjoining North Carolina. This approval may be granted where the North Carolina Medical Care Commission concludes that the requirements enumerated in Rule .2601 of this Subchapter cannot be reasonably obtained by reason of lack of geographical access.

*History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2604 EMS PROVIDER LICENSE REQUIREMENTS

(a) Any firm, corporation, agency, organization or association that provides emergency medical services as its primary responsibility shall be licensed as an EMS Provider by meeting the following criteria:

- (1) Be affiliated with an EMS System. Providers that apply for an initial EMS Provider license after January 1, 2002, shall have until December 31, 2002, to comply with this requirement;
- (2) Present an application for a permit for any ambulances which will be in service as required by G.S. 131E-156;
- (3) Submit a written plan detailing how the provider will furnish credentialed personnel;
- (4) Where there is a franchise ordinance in effect which covers the proposed service area, be granted a current franchise to operate or present written documentation of impending receipt of a franchise from the county; and
- (5) Present a written plan and method for recording systematic, periodic inspection repair, cleaning and routine maintenance of all EMS responding vehicles.

(b) Presenting documentation to the OEMS that the provider meets the criteria found in Paragraph (a) of this Rule may renew an EMS Provider License.

*History Note: Authority G.S. 131E-155.1(c);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2605 EMS PROVIDER LICENSE CONDITIONS

(a) Applications for an EMS Provider License shall be received by the OEMS at least 30 days prior to the date that the provider

proposes to initiate service. Applications for renewal of an EMS Provider License shall be received by the OEMS at least 30 days prior to the expiration date of the current license.

(b) Only one license shall be issued to each EMS provider. The Department shall issue a license to the EMS provider following verification of compliance with applicable laws and rules.

(c) EMS Provider Licenses shall not be transferred.

(d) The license shall be posted in a prominent location accessible to public view at the primary business location of the EMS provider.

(e) In order to provide a transition time for implementation of these Rules, EMS providers that have a current EMS Provider License as of December 31, 2001, with an expiration date in 2002, shall be issued a one-year extension to the current license from the current expiration date.

*History Note: Authority G.S. 131E-155.1(c);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2606 TERM OF EMS PROVIDER LICENSE

(a) EMS Provider Licenses shall remain in effect up to six years, unless any of the following occurs:

- (1) The Department imposes an administrative sanction which specifies license expiration;
- (2) The EMS provider closes or goes out of business;
- (3) The EMS provider changes name or ownership; or
- (4) Substantial failure to comply with Rule .2604 of this Section.

(b) When the name or ownership of the EMS provider changes, an EMS Provider License application shall be submitted to the OEMS at least 30 days prior to the effective date of the change.

(c) For EMS providers maintaining affiliation with a Model EMS System, licenses may be renewed without requirement for submission of an application.

*History Note: Authority G.S. 131E-155.1(c);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03D .2607 GROUND AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

To be permitted as a ground ambulance, a vehicle shall have:

- (1) A patient compartment that meets the following minimum interior dimensions:
 - (a) The length, measured on the floor from the back of the driver's compartment, driver's seat or partition to the inside edge of the rear loading doors, shall be at least 102 inches; and
 - (b) The height shall be at least 48 inches over the patient area, measured from the approximate center of the floor, exclusive of cabinets or equipment;
- (2) Patient care equipment and supplies as defined in the treatment protocols for the system. Vehicles used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined

in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection." The equipment and supplies shall be clean, in working order and secured in the vehicle;

(3) Other equipment to include:

- (a) One fire extinguisher that shall be a dry chemical or all-purpose type with a pressure gauge mounted in a quick-release bracket; and
- (b) The availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance;

(4) The name of the ambulance provider permanently displayed on each side of the vehicle;

(5) Reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle;

(6) Emergency warning lights and audible warning devices mounted on the vehicle other than those required by Federal Motor Vehicle Safety Standards. All warning devices shall function properly;

(7) No structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the vehicle;

(8) An operational two-way radio that shall:

- (a) be mounted to the ambulance and installed for safe operation and control by the ambulance driver;
- (b) have sufficient range, radio frequencies and capabilities to establish and maintain two-way voice radio communication from within the defined service area of the EMS system to the emergency communications center or public safety answering point (PSAP) designated to direct or dispatch the deployment of the ambulance;
- (c) be capable of establishing two-way voice radio communication from within the defined service area to the emergency department of the hospital(s) where patients are routinely transported and to facilities that provide on-line medical direction to EMS personnel;
- (d) be equipped with a radio control device mounted in the patient compartment capable of operation by the patient attendant to receive on-line medical direction; and
- (e) be licensed or authorized by the Federal Communications Commission (FCC);

(9) Ground ambulances shall not use a radiotelephone device such as a cellular

- telephone as the only source of two-way radio voice communication; and
- (10) Other communications instruments or devices such as data radio, facsimile, computer or telemetry radio shall be in addition to the mission dedicated dispatch radio and shall function independently from the mission dedicated radio.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2608 CONVALESCENT AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

To be permitted as a convalescent ambulance, a vehicle shall have:

- (1) A patient compartment that meets the following minimum interior dimensions:
 - (a) The length, measured on the floor from the back of the driver's compartment, driver's seat or partition to the inside edge of the rear loading doors, shall be at least 102 inches; and
 - (b) The height shall be at least 48 inches over the patient area, measured from the approximate center of the floor, exclusive of cabinets or equipment;
- (2) Patient care equipment and supplies as defined in the treatment protocols for the system. Vehicles used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection". The equipment and supplies shall be clean, in working order and secured in the vehicle;
- (3) Other equipment to include:
 - (a) One fire extinguisher that shall be a dry chemical or all-purpose type with a pressure gauge mounted in a quick-release bracket; and
 - (b) The availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance;
- (4) Convalescent ambulances shall:
 - (a) not be equipped, permanently or temporarily, with any emergency warning devices, audible or visual, other than those required by Federal Motor Vehicle Safety Standards;
 - (b) have the name of the ambulance provider permanently displayed on each side of the vehicle;
 - (c) not have emergency medical symbols, such as the Star of Life, block design cross, or any other

- (d) medical markings, symbols, or emblems, including the word "EMERGENCY," on the vehicle;
 - (d) have the words "CONVALESCENT AMBULANCE" lettered on both sides and on the rear of the vehicle body; and
 - (e) have reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle;
- (5) A two-way radio or radiotelephone device such as a cellular telephone shall be available to summon emergency assistance for a vehicle permitted as a convalescent ambulance; and
 - (6) The convalescent ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the vehicle.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2609 AIR MEDICAL AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

To be permitted as an air medical ambulance, an aircraft shall meet the following requirements:

- (1) Configuration of the aircraft interior shall not compromise the ability to provide appropriate care or prevent providers from performing emergency procedures if necessary.
- (2) Patient care equipment and supplies as defined in the treatment protocols for the program. Air Medical Ambulances used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection." The equipment and supplies shall be clean, in working order and secured in the vehicle.
- (3) Internal voice communication system to allow for communication between the medical crew and flight crew;
- (4) Due to the different configurations and space limitations of air medical ambulances, the medical director shall designate the combination of medical equipment specified in Item (2) of this Rule that is carried on a mission based on anticipated patient care needs.
- (5) Air medical ambulances shall have the name of the organization permanently displayed on each side of the aircraft.
- (6) Air medical ambulances shall be equipped with a two-way voice radio licensed by the Federal Communications Commission capable of operation on any frequency required to allow communications with public safety agencies such as fire departments, police departments, ambulance and rescue units,

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- (7) hospitals and local government agencies within the defined service area.
- (7) All rotary wing aircraft permitted as an air medical ambulance shall have the following flight equipment operational in the aircraft:
 - (a) Two 360-channel VHF aircraft frequency transceivers;
 - (b) One VHF omnidirectional ranging (VOR) receiver;
 - (c) Altitude indicators;
 - (d) One transponder with 4097 code, Mode C with altitude encoding;
 - (e) Turn and slip indicator in the absence of three altitude indicators;
 - (f) Current FAA approved navigational aids and charts for the area of operations;
 - (g) Radar altimeter;
 - (h) Satellite Global Navigational system;
 - (i) Emergency Locator Transmitter (ELT);
 - (j) A remote control external search light;
 - (k) A light which illuminates the tail rotor;
 - (l) A fire extinguisher; and
 - (m) Survival gear appropriate for the service area and the number of occupants.
- (8) Any fixed wing aircraft issued a permit to operate as an air medical ambulance shall have a current "Instrument Flight Rules" certification.
- (9) The availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the air medical ambulance.
- (10) The air medical ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the aircraft.
- (2) Patient care equipment and supplies as defined in the treatment protocols for the system. Water ambulances used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection." The equipment and supplies shall be clean, in working order and secured in the vehicle.
- (3) Water ambulances shall have the name of the ambulance provider permanently displayed on each side of the watercraft.
- (4) Water ambulances shall have a 360-degree beacon warning light in addition to warning devices required in G.S. 75A, Article 1.
- (5) Water ambulances shall be equipped with:
 - (a) Two floatable rigid long backboards with proper accessories for securing infant, pediatric, and adult patients and stabilization of the head and neck;
 - (b) One floatable liter with patient restraining straps and capable of being secured to the watercraft;
 - (c) One fire extinguisher that shall be a dry chemical or all-purpose type with a pressure gauge mounted in a quick-release bracket;
 - (d) Lighted compass;
 - (e) Radio navigational aids such as ADF (automatic directional finder), Satellite Global Navigational system, navigational radar, or other comparable radio equipment suited for water navigation;
 - (f) Marine radio; and
 - (g) One pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance;
- (6) The water ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the watercraft.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2610 WATER AMBULANCE: WATERCRAFT AND EQUIPMENT REQUIREMENTS

To be permitted as a water ambulance, a watercraft shall meet the following requirements:

- (1) A patient care area which:
 - (a) Provides access to the head, torso, and lower extremities of the patient while providing sufficient working space to render patient care;
 - (b) Is covered to protect the patient and EMS personnel from the elements; and
 - (c) Has an opening of sufficient size to permit the safe loading and unloading of a person occupying a litter.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002

10 NCAC 03D .2611 AMBULANCE PERMIT CONDITIONS

- (a) An EMS provider shall apply to the OEMS for the appropriate ambulance permit prior to placing an ambulance in service.
- (b) The Department shall issue a permit for an ambulance following verification of compliance with applicable laws and rules.
- (c) Only one Ambulance Permit shall be issued for each ambulance.
- (d) An ambulance shall be permitted in only one category.

- (e) Ambulance Permits shall not be transferred except in the case of air medical ambulance replacement aircraft when the primary aircraft is out of service.
- (f) The Ambulance Permit shall be posted as designated by the OEMS inspector.
- (g) In order to provide a transition time for implementation of these Rules, ambulances with a current ambulance permit as of December 31, 2001, shall be issued a one-year extension to the current ambulance permit from the current expiration date.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2612 TERM OF AMBULANCE PERMIT

- (a) Ambulance Permits shall remain in effect up to two years in an EMS system or four years in a Model EMS system, unless any of the following occurs:
 - (1) The Department imposes an administrative sanction which specifies permit expiration;
 - (2) The EMS provider closes or goes out of business;
 - (3) The EMS provider changes name or ownership; or
 - (4) Substantial failure to comply with the applicable paragraphs of Rules .2607, .2608, .2609, or .2610 of this Section.
- (b) Ambulance Permits will be renewed without OEMS inspection for those ambulances currently operated within a Model EMS System.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2613 EMS NONTRANSPORTING VEHICLE REQUIREMENTS

- To be permitted as an EMS nontransporting vehicle, a vehicle shall have:
- (1) Patient care equipment and supplies as defined in the treatment protocols for the system. The equipment and supplies shall be clean, in working order and secured in the vehicle.
 - (2) EMS nontransporting vehicles shall have the name of the organization permanently displayed on each side of the vehicle.
 - (3) EMS nontransporting vehicles shall have reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle.
 - (4) Emergency warning lights and audible warning devices mounted on the vehicle other than those required by Federal Motor Vehicle Safety Standards. All warning devices shall function properly.
 - (5) The vehicle shall not have structural or functional defects that may adversely affect the EMS personnel or the safe operation of the vehicle.
 - (6) One fire extinguisher that shall be a dry chemical or all-purpose type with a pressure gauge, mounted in a quick-release bracket.
 - (7) An operational two-way radio that shall:

- (a) be mounted to the EMS nontransporting vehicle and installed for safe operation and control by the driver;
- (b) have sufficient range, radio frequencies and capabilities to establish and maintain two-way voice radio communication from within the defined service area of the EMS system to the emergency communications center or public safety answering point (PSAP) designated to direct or dispatch the deployment of the ambulance;
- (c) be capable of establishing two-way voice radio communication from within the defined service area to facilities that provide on-line medical direction to EMS personnel; and
- (d) be licensed or authorized by the Federal Communications Commission (FCC).
- (8) EMS nontransporting vehicles shall not use a radiotelephone device such as a cellular telephone as the only source of two-way radio voice communication.
- (9) Other communications instruments or devices such as data radio, facsimile, computer or telemetry radio shall be in addition to the mission dedicated dispatch radio and shall function independently from the mission dedicated radio.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2614 EMS NONTRANSPORTING VEHICLE PERMIT CONDITIONS

- (a) An EMS provider shall apply to the OEMS for an EMS nontransporting vehicle permit prior to placing such a vehicle in service.
- (b) The Department shall issue a permit for a vehicle following verification of compliance with applicable laws and rules.
- (c) Only one EMS nontransporting vehicle permit shall be issued for each vehicle.
- (d) EMS nontransporting vehicle permits shall not be transferred.
- (e) The EMS nontransporting vehicle permit shall be posted as designated by the OEMS inspector.
- (f) In order to provide a transition time for implementation of these Rules, EMS nontransporting vehicles with a current permit as of December 31, 2001, shall be issued a one-year extension to the current permit from the current expiration date.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2615 TERM OF EMS NONTRANSPORTING VEHICLE PERMIT

(a) EMS nontransporting vehicle permits shall remain in effect up to two years in an EMS system or four years in a model EMS system, unless any of the following occurs:

- (1) The Department imposes an administrative sanction that specifies permit expiration;
- (2) The EMS provider closes or goes out of business;
- (3) The EMS provider changes name or ownership; or
- (4) Substantial failure to comply with Rule .2613 of this Section.

(b) EMS nontransporting vehicle permits will be renewed without OEMS inspection for those vehicles currently operated within a Model EMS System.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2616 WEAPONS AND EXPLOSIVES FORBIDDEN

(a) Weapons, as defined by the local county district attorney's office, and explosives shall not be worn or carried aboard an ambulance or EMS nontransporting vehicle within the State of North Carolina when the vehicle is operating in any patient treatment or transport capacity or is available for such function.

(b) This Rule shall apply whether or not such weapons and explosives are concealed or visible.

(c) This Rule shall not apply to duly appointed law enforcement officers.

(d) Safety flares are authorized for use on an ambulance with the following restrictions:

- (1) These devices are not stored inside the patient compartment of the ambulance; and
- (2) These devices shall be packaged and stored so as to prevent accidental discharge or ignition.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002.

SECTION .2700 – SPECIALTY CARE TRANSPORT PROGRAMS

10 NCAC 03D .2701 PROGRAM CRITERIA

(a) Programs seeking designation to provide specialty care transports shall submit an application for program approval to the OEMS at least 60 days prior to field implementation. The application shall document that the program has:

- (1) A defined service area;
- (2) A medical oversight plan meeting the requirements of Section .2800;
- (3) Service continuously available on a 24 hour per day basis;
- (4) The capability to provide the following patient care skills and procedures:
 - (A) Advanced airway techniques including rapid sequence induction, cricothyrotomy, and ventilator management, including continuous monitoring of the patient's oxygenation;
 - (B) Insertion of femoral lines;

(C) Maintaining invasive monitoring devices to include central venous pressure lines, arterial and venous catheters, arterial lines, intra-ventricular catheters, and epidural catheters; and

(D) Interpreting 12-lead electrocardiograms;

(5) A written continuing education plan for EMS Personnel, under the direction of the Specialty Care Transport Program Continuing Education Coordinator, developed and modified based on feedback from program data, review and evaluation of patient outcomes, and quality management reviews.

(b) Applications for specialty care transport program approval shall document that the applicant meets the requirements for the specific program type or types applied for as specified in Rules .2702, .2703 or .2704 of this Section.

(c) Specialty care transport program approval shall be valid for a period to coincide with the EMS Provider License, not to exceed six years. Programs shall apply to the OEMS for reapproval.

History Note: Authority G.S. 143-508(d)(1), (d)(8), (d)(9); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2702 AIR MEDICAL SPECIALTY CARE TRANSPORT PROGRAM

(a) In addition to the general requirements of specialty care transport programs in Rule .2701 of this Section, air medical programs shall document that the program has:

- (1) medical crewmembers that have all completed training regarding:
 - (A) altitude physiology;
 - (B) the operation of the EMS communications system used in the program;
 - (C) in-flight emergencies specific to the aircraft used in the program; and
 - (D) aircraft safety. This training shall be conducted every six months;
- (2) a Certificate of Need obtained from the Department when applicable;
- (3) a written plan for transporting patients to appropriate facilities when diversion or bypass plans are activated;
- (4) a written plan for providing emergency vehicle operation education for program personnel who operate ground emergency vehicles; and
- (5) a written plan specifying how EMS systems will request ground support ambulances operated by the program.

(b) Air medical programs based outside of North Carolina that provide specialty care transports may be granted approval by the OEMS to operate in North Carolina by submitting an application for program approval. The application shall document that the program meets all criteria specified in Rules .2604 and .2701 of this Subchapter and Paragraph (a) of this Rule.

History Note: Authority G.S. 143-508(d)(1);

Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2703 GROUND SPECIALTY CARE TRANSPORT PROGRAMS

(a) When transporting patients that have a medical need for one or more of the skills or procedures as defined for specialty care transport programs in .2701(a)(4) of this Section, staffing for the vehicle used in the ground specialty care transport program shall be at a level to ensure the capability to provide in the patient compartment, when the patient condition requires, two of the following personnel approved by the medical director as medical crew members:

- (1) EMT-Paramedic;
- (2) Nurse practitioner;
- (3) Physician;
- (4) Physician assistant;
- (5) Registered nurse; and
- (6) Respiratory therapist.

(b) When transporting patients that do not require specialty care transport skills or procedures, staffing for the vehicles used in the ground specialty care transport program shall be at a level to ensure compliance with G.S. 131E-158(a).

(c) In addition to the general requirements of specialty care transport programs in Rule .2701 of this Section, ground programs providing specialty care transports shall document that the program has:

- (1) a communication system that will provide, at a minimum, two-way voice communications to medical crewmembers anywhere in the service area of the program. The medical director shall verify that the communications system is satisfactory for on-line medical direction;
- (2) medical crewmembers that have all completed training regarding:
 - (A) operation of the EMS communications system used in the program; and
 - (B) the medical and safety equipment specific to the vehicles used in the program. This training shall be conducted every six months;
- (3) Operational protocols for the management of equipment, supplies and medications. These protocols shall include:
 - (A) A standard equipment and supply listing for all ambulance vehicles used in the program. This listing shall meet or exceed the requirements for each category of ambulance used in the program as found in Rules .2607, .2608, .2609, and .2610 of this Subchapter;
 - (B) A standard listing of medications for all ambulance and EMS nontransporting vehicles used in the system. This listing shall be based on the local treatment protocols and be approved by the medical director;
 - (C) A methodology to assure that each vehicle contains the required

equipment and supplies on each response;

(D) A methodology for cleaning and maintaining the equipment and vehicles; and

(E) A methodology for assuring that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications;

(4) A written plan for providing emergency vehicle operation education for program personnel who operate emergency vehicles; and

(5) A written plan specifying how EMS systems will request ambulances operated by the program.

(d) Ground Specialty Care Transport programs based outside of North Carolina may be granted approval by the OEMS to operate in North Carolina by submitting an application for program approval. The application shall document that the program meets all criteria specified in Rules .2604 and .2701 of this Subchapter and Paragraphs (a) and (b) of this Rule.

History Note: Authority G.S. 143-508(d)(1), (d)(8), (d)(9); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2704 HOSPITAL AFFILIATED GROUND SPECIALTY CARE TRANSPORT PROGRAMS USED FOR INPATIENT TRANSPORTS

(a) Patients transported by this type specialty care transport program shall:

(1) have a medical need for one or more of the skills or procedures as defined for specialty care transport programs as defined in Subparagraph (a)(4) of Rule .2701 in this Section; or

(2) be a patient of the hospital administering the program, or be scheduled for admission to or discharge from the hospital administering the program.

(b) In addition to the general requirements of specialty care transport programs in Rule .2701 of this Section, hospital affiliated ground programs providing specialty care transports shall document that the program has:

(1) a communication system that will provide, at a minimum, two-way voice communications to medical crewmembers anywhere in the service area of the program. The medical director shall verify that the communications system is satisfactory for on-line medical direction;

(2) medical crewmembers that have all completed training regarding:

(A) operation of the EMS communications system used in the program; and

(B) the medical and safety equipment specific to the vehicles used in the program. This training shall be conducted every six months;

- (3) staffing at a level to ensure the capability to provide in the patient compartment, when the patient condition requires, two of the following personnel approved by the medical director as medical crew members:
 - (A) EMT-Paramedic;
 - (B) Nurse practitioner;
 - (C) Physician;
 - (D) Physician assistant;
 - (E) Registered nurse; or
 - (F) Respiratory therapist;
- (4) Operational protocols for the management of equipment, supplies and medications. These protocols shall include:
 - (A) A standard equipment and supply listing for all ambulance vehicles used in the program. This listing shall meet or exceed the requirements for each category of ambulance used in the program as found in Rules .2607, .2608, .2609, and .2610 of this Subchapter;
 - (B) A standard listing of medications for all ambulance and EMS nontransporting vehicles used in the program. This listing shall be based on the local treatment protocols and be approved by the medical director;
 - (C) A methodology to assure that each vehicle contains the required equipment and supplies on each response;
 - (D) A methodology for cleaning and maintaining the equipment and vehicles; and
 - (E) A methodology for assuring that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications;
- (5) A written plan for providing emergency vehicle operation education for program personnel who operate emergency vehicles; and
- (6) A written plan specifying how EMS systems will request ambulances operated by the program.

(c) Hospital Affiliated Specialty Care Transport programs based outside of North Carolina may be granted approval by the OEMS to operate in North Carolina by submitting an application for program approval. The application shall document that the program meets all criteria specified in Rules .2604 and .2701 of this Subchapter and Paragraphs (a) and (b) of this Rule.

History Note: Authority G.S. 143-508(d)(1), (d)(8), (d)(9); Temporary Adoption Eff. January 1, 2002.

SECTION .2800 - MEDICAL OVERSIGHT

10 NCAC 03D .2801 COMPONENTS OF MEDICAL

OVERSIGHT FOR EMS SYSTEMS

Each EMS System operating within the scope of practice for EMD, EMT-D, EMT-I or EMT-P or seeking designation as a Model EMS System shall have the following components in place to assure medical oversight of the system:

- (1) A medical director appointed, either directly or by clearly documented delegation, by the county responsible for establishing the EMS system. Systems may elect to appoint one or more assistant medical directors;
 - (a) For EMS Systems, the medical director and assistant medical directors shall meet the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection"; and
 - (b) For Model EMS Systems, the medical director and assistant medical directors shall also meet the additional criteria for medical directors of Model EMS Systems as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection";
- (2) Written treatment protocols for use by EMS personnel;
- (3) For systems providing EMD service, an EMDPRS approved by the medical director;
- (4) A quality management committee; and
- (5) Written procedures for use by EMS personnel to obtain on-line medical direction. On-line medical direction shall:
 - (a) Be restricted to medical orders that fall within the scope of practice of the EMS personnel and within the scope of approved system treatment protocols;
 - (b) Be provided only by physicians, EMS-physician assistants, EMS-nurse practitioners, or mobile intensive care nurses. Only physicians may deviate from written treatment protocols; and
 - (c) Be provided by a system of two-way voice communication that can be maintained throughout the treatment and disposition of the patient.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2802 COMPONENTS OF MEDICAL OVERSIGHT FOR SPECIALTY CARE TRANSPORT PROGRAMS

Each specialty care transport program shall have the following components in place to assure medical oversight of the system:

- (1) A medical director. The administration of the specialty care transport program shall appoint a medical director following the criteria for

medical directors of specialty care transport programs as defined by the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection". The program administration may elect to appoint one or more assistant medical directors;

- (2) Treatment protocols for use by medical crewmembers;
- (3) A quality management committee; and
- (4) A written protocol for use by medical crewmembers to obtain on-line medical direction. On-line medical direction shall:
 - (a) Be restricted to medical orders that fall within the scope of practice of the medical crewmembers and within the scope of approved program treatment protocols;
 - (b) Be provided only by physicians, EMS-physician assistants, EMS-nurse practitioners, or mobile intensive care nurses. Only physicians may deviate from written treatment protocols; and
 - (c) Be obtained via a system of two-way voice communication that can be maintained throughout the treatment and disposition of the patient.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2803 RESPONSIBILITIES OF THE MEDICAL DIRECTOR FOR EMS SYSTEMS

- (a) The medical director for an EMS system shall be responsible for the following:
 - (1) Ensure that medical control is available 24 hours a day;
 - (2) The establishment, approval and annual updating of treatment protocols;
 - (3) For EMD programs, the establishment, approval, and annual updating of the EMDPRS;
 - (4) Medical supervision of the selection, system orientation, continuing education and performance of EMS personnel;
 - (5) Medical supervision of a scope of practice performance evaluation for all EMS personnel in the system based on the treatment protocols for the system;
 - (6) The medical review of the care provided to patients;
 - (7) Providing guidance regarding decisions about the equipment, medical supplies, and medications that will be carried on ambulances or EMS nontransporting vehicles within the scope of practice of EMT-D, EMT-I, or EMT-P; and
 - (8) Keeping the care provided up to date with current medical practice.

(b) Any tasks related to Paragraph (a) of this Rule may be completed, through clearly established written delegation, by assisting physicians, physician assistants, nurse practitioners, registered nurses, EMD's, or EMT-P's.

(c) The medical director shall have the authority to suspend temporarily, pending due process review, any EMS personnel from further participation in the EMS system when it is determined the activities or medical care rendered by such personnel may be detrimental to the care of the patient, constitute unprofessional behavior, or result in non-compliance with credentialing requirements.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2804 RESPONSIBILITIES OF THE MEDICAL DIRECTOR FOR SPECIALTY CARE TRANSPORT PROGRAMS

- (a) The medical director for a specialty care transport program shall be responsible for the following:
 - (1) The establishment, approval and periodic updating of treatment protocols;
 - (2) Medical supervision of the selection, program orientation, continuing education and performance of medical crewmembers;
 - (3) Medical supervision of a scope of practice performance evaluation for all medical crewmembers in the program based on the treatment protocols for the program;
 - (4) The medical review of the care provided to patients;
 - (5) Keeping the care provided up to date with current medical practice; and
 - (6) In air medical programs, determination and specification of the medical equipment required in Paragraph (2) of Rule .2609 of this Subchapter that is carried on a mission based on anticipated patient care needs.

(b) Any tasks related to Paragraph (a) of this Rule may be completed, through clearly established written delegation, by assisting physicians, physician assistants, nurse practitioners, registered nurses, or medical crewmembers.

(c) The medical director shall have the authority to suspend temporarily, pending due process review, any medical crewmembers from further participation in the specialty care transport program when it is determined the activities or medical care rendered by such personnel may be detrimental to the care of the patient, constitute unprofessional behavior, or result in non-compliance with credentialing requirements.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2805 REQUIREMENTS FOR TREATMENT PROTOCOLS FOR EMS SYSTEMS

- (a) Written treatment protocols:
 - (1) used in EMS Systems shall meet the minimum standard treatment protocols as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection";

- (2) used in Model EMS Systems shall also meet the minimum standard treatment protocols for Model EMS Systems as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection"; and
- (3) shall not contain medical procedures, medications, or intravenous fluids which exceed the scope of practice defined by the North Carolina Medical Board pursuant to G.S. 143-514 for the level of care offered in the EMS system or any other applicable health care licensing board.

(b) Treatment protocols developed locally shall, at a minimum, meet the requirements of Paragraph (a) of this Rule, shall be reviewed annually and any change in the treatment protocols shall be submitted to the OEMS medical director for review and approval at least 30 days prior to the implementation of the change.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2806 REQUIREMENTS FOR TREATMENT PROTOCOLS FOR SPECIALTY CARE TRANSPORT PROGRAMS

(a) Treatment protocols used by medical crewmembers within a specialty care transport program shall:

- (1) Incorporate all skills, medications, equipment, and supplies for specialty care transport programs as defined by the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection" and shall be approved by the OEMS medical director; and
- (2) Not contain medical procedures, medications, or intravenous fluids that exceed the scope of practice of the medical crewmembers.

(b) Treatment protocols shall be reviewed annually and any change in the treatment protocols shall be submitted to the OEMS medical director for review and approval at least 30 days prior to the implementation of the change.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2807 REQUIREMENTS FOR EMERGENCY MEDICAL DISPATCH PRIORITY REFERENCE SYSTEM (EMDPRS)

(a) EMDPRS used by EMD's within an approved EMD program shall:

- (1) Meet or exceed the statewide standard for EMDPRS as defined by the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection" and shall be approved by the OEMS medical director; and
- (2) Not exceed the EMD scope of practice.

(b) An EMDPRS developed locally shall be reviewed and updated annually and submitted to the OEMS medical director for approval. Any change in the EMDPRS shall be submitted to

the OEMS medical director for review and approval at least 30 days prior to the implementation of the change.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2808 QUALITY MANAGEMENT COMMITTEE FOR EMS SYSTEMS

(a) The quality management committee for an EMS system shall:

- (1) Be composed of at least one voting representative from each of the following components of the system:
 - (A) physicians;
 - (B) nurses;
 - (C) medical facility personnel such as pharmacists or respiratory therapists;
 - (D) EMS educators;
 - (E) county government officials; and
 - (F) EMS providers;
- (2) Appoint a physician as chairperson;
- (3) Meet at a minimum on a quarterly basis;
- (4) Ensure that a medical review committee as referenced in G.S. 143-518(a)(5), or sub-committee thereof, analyzes system data to evaluate the ongoing quality of patient care and medical direction within the system;
- (5) Use information gained from system data analysis to make recommendations regarding the content of educational programs for EMS personnel;
- (6) Review treatment protocols of the EMS system and make recommendations to the medical director for changes;
- (7) Establish a written procedure to guarantee reviews for EMS personnel temporarily suspended by the medical director; and
- (8) Maintain minutes of committee meetings throughout the approval period of the EMS System.

(b) The quality management committee shall adopt written guidelines, which address at a minimum:

- (1) Structure of committee membership;
- (2) Appointment of committee officers;
- (3) Appointment of committee members;
- (4) Length of terms of committee members;
- (5) Frequency of attendance of committee members;
- (6) Establishment of a quorum for conducting business; and
- (7) Confidentiality of medical records and personnel issues.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2809 QUALITY MANAGEMENT COMMITTEE FOR SPECIALTY CARE TRANSPORT PROGRAMS

(a) The quality management committee for a specialty care transport program shall:

- (1) Be composed of at least one voting representative from each of the following components of the program:
 - (A) physicians;
 - (B) nurses;
 - (C) medical facility personnel such as pharmacists or respiratory therapists;
 - (D) educators; and
 - (E) medical crewmembers;
- (2) Appoint a physician as chairperson;
- (3) Meet at a minimum on a quarterly basis;
- (4) Ensure that a medical review committee as referenced in G.S. 143-518(a)(5), or subcommittee thereof, analyzes system data to evaluate the ongoing quality of patient care and medical direction within the program;
- (5) Use information gained from program data analysis to make recommendations regarding the content of educational programs for medical crewmembers;
- (6) Review treatment protocols of the specialty care transport programs and make recommendations to the medical director for changes;
- (7) Establish a written procedure to guarantee reviews for medical crewmembers temporarily suspended by the medical director; and
- (8) Maintain minutes of committee meetings throughout the approval period of the specialty care transport program.

(b) Each quality management committee shall adopt written guidelines, which address at a minimum:

- (1) Structure of committee membership;
- (2) Appointment of committee officers;
- (3) Appointment of committee members;
- (4) Length of terms of committee members;
- (5) Frequency of attendance of committee members;
- (6) Establishment of a quorum for conducting business; and
- (7) Confidentiality of medical records and personnel issues.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002.

SECTION .2900 – EMS PERSONNEL

10 NCAC 03D .2901 EDUCATIONAL PROGRAMS

- (a) An educational program approved to qualify EMS personnel to perform within their scope of practice shall be offered by an EMS Educational Institution.
- (b) Educational programs approved to qualify EMS personnel or EMS Instructors for credentialing or renewal of credentials shall meet the requirements of the North Carolina Medical Board pursuant to G.S. 143-514.

History Note: Authority G.S. 143-508(d)(3), (d)(4); 143-514; Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2902 INITIAL CREDENTIALING

REQUIREMENTS FOR EMS PERSONNEL

(a) EMS personnel applicants shall meet the following criteria within one year of the completion date of the approved educational program for their level of application. If the educational program was completed over one year prior to application, applicants shall submit evidence of completion of continuing education during the past year. This continuing education shall be consistent with their level of application and approved by the OEMS:

- (1) Be at least 18 years of age;
- (2) Successfully complete a scope of practice performance evaluation, approved by the OEMS, for the level of application:
 - (A) For MR and EMT credentialing, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application or other person approved by the OEMS; and
 - (B) For EMT-D, EMT-I, EMT-P, EMD, MICN, EMS-PA, and EMS-NP credentialing, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor, or other person approved by the OEMS;
- (3) Successfully complete a written examination approved or administered by the OEMS. Applicants who fail the written EMT examination but achieve a minimum score of 70% on the medical responder subset contained within the examination may be credentialed as medical responders.

(b) EMD applicants shall successfully complete, within one year prior to application, an AHA CPR course or equivalent, including infant, pediatric and adult CPR, in addition to Subparagraph (a)(1), Part (a)(2)(B) and Subparagraph (a)(3) of this Rule.

(c) MICN applicants shall currently be a registered nurse who is licensed to practice nursing in North Carolina and have two years emergency or critical care experience, or a combination of this experience in addition to Subparagraph (a)(1) and Part (a)(2)(B) of this Rule.

(d) EMS-NP applicants shall currently be a registered nurse who is licensed to practice nursing in North Carolina and approved as a nurse practitioner by the North Carolina Board of Nursing and the North Carolina Medical Board and have two years emergency or critical care experience, or a combination of this experience in addition to Subparagraph (a)(1) and Part (a)(2)(B) of this Rule.

(e) EMS-PA applicants shall currently be a physician assistant licensed by the North Carolina Medical Board and have two years emergency or critical care experience, or a combination of this experience in addition to Subparagraph (a)(1) and Part (a)(2)(B) of this Rule.

History Note: Authority G.S. 143-508(d)(3); 131E-159 (a),(b);

Temporary Adoption Eff. January 1, 2002.

Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2903 CREDENTIALING REQUIREMENTS LEGAL RECOGNITION APPLICANTS

- (a) Applicants holding current credentials with the National Registry of Emergency Medical Technicians, a national credentialing agency approved by the OEMS, or another state where the education and credentialing requirements are approved for legal recognition by the OEMS may be eligible for credentialing at their level of application without examination.
- (b) Persons who live in a state that borders North Carolina may continue to obtain a North Carolina credential through legal recognition if they continue to renew their credentials in the state in which they reside.
- (c) Persons who live in North Carolina and have a current credential in another state that borders North Carolina may renew their North Carolina credential through legal recognition if they continue to meet the credentialing requirements in the state in which they are credentialed.
- (d) Persons who were previously credentialed in North Carolina and are currently credentialed in another state, the National Registry of Emergency Medical Technicians, or a national credentialing agency approved by the OEMS may be eligible for credentialing at their level of application without examination.

History Note: Authority G.S. 143-508(d)(3), (d)(4); 131-E-159(a),(b),(c),(d); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2904 TERM OF CREDENTIALS FOR EMS PERSONNEL

- (a) Credentials for EMS personnel shall be valid for the period stated on the credential issued to the applicant. This period shall not exceed four years.
- (b) Credentials obtained through legal recognition shall be valid for four years or the unexpired term of the credential that was used to obtain a credential in this state, whichever is shorter.

History Note: Authority G.S. 131E-159(a),(c),(d); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2905 RENEWAL OF CREDENTIALS FOR EMS PERSONNEL AND EMS INSTRUCTORS

Persons shall renew credentials by presenting documentation to the OEMS that they have successfully completed the requirements for their level of application as defined by the North Carolina Medical Board pursuant to G.S. 143-514.

History Note: Authority G.S. 131-159(a); 143-508(d)(3); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2906 SCOPE OF PRACTICE FOR EMS PERSONNEL

EMS Personnel educated in approved programs, credentialed by the OEMS, and affiliated with an approved EMS system may perform acts and administer intravenous fluids and medications as allowed by the North Carolina Medical Board pursuant to G.S. 143-514.

History Note: Authority G.S. 143-508(d)(6); 143-514;

10 NCAC 03D .2907 PRACTICE SETTINGS FOR EMS PERSONNEL

EMS Personnel may function in the following practice settings in accordance with the protocols approved by the medical director of the EMS System or Specialty Care Transport Program with which they are affiliated, and by the OEMS:

- (1) at the location of a physiological or psychological illness or injury including transportation to an appropriate treatment facility if required;
- (2) at public or community health facilities in conjunction with public and community health initiatives;
- (3) in hospitals and clinics;
- (4) in residences, facilities, or other locations as part of wellness or injury prevention initiatives within the community and the public health system; and
- (5) at mass gatherings or special events.

History Note: Authority G.S. 143-508(d)(7); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .2908 CREDENTIALING REQUIREMENTS FOR LEVEL I EMS INSTRUCTORS

(a) Applicants for credentialing as a Level I EMS instructor shall meet the following:

- (1) Be currently credentialed by the OEMS as an EMT, EMT-D, EMT-I, or EMT-P;
- (2) Three years equivalent experience at the scope of practice for the level of application;
- (3) Within one year prior to application, successfully complete a scope of practice performance evaluation, approved by the OEMS, for the level of EMS personnel application:
 - (A) For a credential to teach at the EMT level this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application or other person approved by the OEMS; and
 - (B) For a credential to teach at the EMT-D, EMT-I, or EMT-P levels, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor, or other person approved by the OEMS;
- (4) 100 hours of formal teaching experience in an approved EMS educational program or equivalent;
- (5) Successful completion of a Level I EMS Instructor methodology course as defined by the North Carolina Medical Board pursuant to G.S. 143-514;

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- (6) Attendance at a Level I EMS Instructor workshop approved by the OEMS; and
 - (7) A high school diploma or General Education Development certificate.
- (b) Persons who have a current EMT Instructor Certification as of December 31, 2001, shall be issued a Level I EMS Instructor credential consistent with the term of their EMT Instructor Certification.
- (c) The credential of a Level I EMS Instructor shall remain in effect up to four years, unless any of the following occurs:
- (1) The OEMS imposes an administrative action against the instructor credential; or
 - (2) The instructor fails to maintain a current EMS Personnel credential at the highest level that the instructor is approved to teach.

*History Note: Authority G.S. 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002.*

**10 NCAC 03D .2909 CREDENTIALING
REQUIREMENTS FOR LEVEL II EMS INSTRUCTORS**

- (a) Applicants for credentialing as a Level II EMS instructor shall meet the following:
- (1) Be currently credentialed by the OEMS as an EMT, EMT-D, EMT-I, or EMT-P;
 - (2) Completion of post-secondary level education equal to or exceeding an Associate Degree. Persons who have a current EMT Instructor Certification as of December 31, 2001, and apply for Level II EMS Instructor credentials by December 31, 2003, are exempt from this requirement;
 - (3) Within one year prior to application, successfully complete a scope of practice performance evaluation, approved by the OEMS, for the level of EMS personnel application:
 - (A) For EMT instructor credentialing, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application or other person approved by the OEMS; and
 - (B) For EMT-D, EMT-I, and EMT-P instructor credentialing, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor, or other person approved by the OEMS;
 - (4) Two years teaching experience as a Level I EMS Instructor or equivalent;
 - (5) Successful completion of an EMS Education Administration Course as defined by the North Carolina Medical Board pursuant to G.S. 143-514;
 - (6) Current approval by the OEMS as an EMS evaluator; and

- (7) Attendance at a Level II EMS Instructor workshop approved by the OEMS;
- (b) The credential of a Level II EMS Instructor shall remain in effect up to four years, unless any of the following occurs:
- (1) The OEMS imposes an administrative action against the instructor credential; or
 - (2) The instructor fails to maintain a current EMS Personnel credential at the highest level that the instructor is approved to teach.

*History Note: Authority G.S. 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002.*

**10 NCAC 03D .2910 CREDENTIALING
REQUIREMENTS FOR EMD INSTRUCTORS**

- (a) Applicants for credentialing as an EMD instructor shall meet the following:
- (1) Be currently credentialed by the OEMS as an EMD;
 - (2) Three years experience as an EMD;
 - (3) 100 hours of classroom teaching experience in EMS or telecommunications subjects;
 - (4) Successful completion of an EMD Instructor Course approved by the OEMS;
 - (5) Within one year prior to application, successfully complete a scope of practice performance evaluation approved by the OEMS, for EMD credentialing. This evaluation shall be conducted under the direction of the educational medical advisor, an EMD Instructor designated by the educational medical advisor, or other person approved by the OEMS;
 - (6) A high school diploma or General Education Development certificate; and
 - (7) Attendance at a Level I EMS Instructor workshop approved by the OEMS.
- (b) Persons currently approved by the OEMS as EMD Instructors shall be issued an EMD Instructor credential valid through December 31, 2003.
- (c) The credential of an EMD Instructor shall remain in effect up to four years, unless any of the following occurs:
- (1) The OEMS imposes an administrative action against the EMD instructor credential; or
 - (2) The instructor fails to maintain a current EMD credential.

*History Note: Authority G.S. 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002.*

**10 NCAC 03D .2911 CREDENTIALING OF
INDIVIDUALS TO ADMINISTER LIFESAVING
TREATMENT TO PERSONS SUFFERING AN ADVERSE
REACTION TO INSECT STINGS**

- (a) To become credentialed by the North Carolina Medical Care Commission to administer epinephrine to persons who suffer adverse reactions to insect stings, a person shall meet the following:
- (1) Be 18 years of age or older; and
 - (2) Successfully complete an educational program taught by a physician licensed to practice

medicine in North Carolina or designee of the physician. The educational program shall instruct individuals in the appropriate use of procedures for the administration of epinephrine to pediatric and adult victims who suffer adverse reactions to insect stings and shall include at a minimum the following:

- (A) Definition of anaphylaxis;
- (B) Agents which might cause anaphylaxis and the distinction between them, including drugs, insects, foods, and inhalants;
- (C) Recognition of symptoms of anaphylaxis for both pediatric and adult victims;
- (D) Appropriate emergency treatment of anaphylaxis as a result of insect stings;
- (E) Availability and design of packages containing equipment for administering epinephrine to victims suffering from anaphylaxis as a result of insect stings;
- (F) Pharmacology of epinephrine including indications, contraindications, and side effects;
- (G) Discussion of legal implications of rendering aid; and
- (H) Instruction that treatment is to be utilized only in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment.

(b) A credential to administer epinephrine to persons who suffer adverse reactions to insect stings may be issued by the North Carolina Medical Care Commission upon receipt of a completed application signed by the applicant and the physician who taught or was responsible for the educational program. All credentials shall be valid for the period stated on the credential issued to the applicant and this period shall not exceed four years.

*History Note: Authority G.S. 143-508(d)(11);
Temporary Adoption Eff. January 1, 2002.*

SECTION .3000 – EMS EDUCATIONAL INSTITUTIONS

**10 NCAC 03D .3001 CONTINUING EDUCATION
EMS EDUCATIONAL INSTITUTION REQUIREMENTS**

- (a) Continuing Education EMS Educational Institutions shall be credentialed by the OEMS to provide EMS continuing education programs.
- (b) Continuing Education EMS Educational Institutions shall have, at a minimum;
 - (1) a Level I credentialed instructor as program coordinator. The program coordinator shall hold a Level I instructor credentialed at a level equal to or greater than the highest level of continuing education program offered in the system. Educational institutions offering only EMD continuing education programs may

- (2) meet this requirement with a credentialed EMD instructor;
- (2) a continuing education program consistent with the system continuing education plan for EMS personnel;
 - (A) In an EMS System, the continuing education programs for EMD, EMT-D, EMT-I and EMT-P shall be reviewed and approved by the medical director of the EMS System;
 - (B) In a Model EMS System, the continuing education program shall be reviewed and approved by the system continuing education coordinator and medical director.
 - (C) In a specialty care transport program, the continuing education program shall be reviewed and approved by Specialty Care Transport Program Continuing Education Coordinator and the medical director;
- (3) instructional supplies and equipment, a record-keeping system detailing student attendance and performance, and facilities as defined by the North Carolina Medical Board pursuant to G.S. 143-514;
- (4) educational programs offered in accordance with Rule .2901 of this Subchapter.

- (c) An application for credentialing as a Continuing Education EMS Educational Institution shall be submitted to the OEMS for review. The application shall demonstrate that the applicant meets the requirements in Paragraph (b) of this Rule.
- (d) Continuing Education EMS Educational Institution credentials shall be valid for a period not to exceed four years.
- (e) For Continuing Education EMS Educational Institutions maintaining affiliation with a Model EMS System, credentials may be renewed without requirement for submission of an application

*History Note: Authority G.S. 143-508(d)(4);
Temporary Adoption Eff. January 1, 2002.*

**10 NCAC 03D .3002 BASIC EMS EDUCATIONAL
INSTITUTION REQUIREMENTS**

- (a) Basic EMS Educational Institutions may offer MR, EMT, EMT-D, EMD, EMS-NP, EMS-PA, and MICN courses for which they have been credentialed by the OEMS.
- (b) For initial courses, Basic EMS Educational Institutions shall have, at a minimum:
 - (1) a Level I EMS Instructor as lead course instructor for MR, EMT, and EMT-D courses;
 - (2) an EMD Instructor as lead course instructor for EMD courses;
 - (3) instructors for EMS-NP, EMS-PA and MICN appointed by the EMS educational program coordinator and approved by the educational medical advisor;
 - (4) a lead EMS educational program coordinator. This individual may be either a Level II EMS Instructor credentialed at or above the highest level of course offered by the institution, or a

combination of staff who cumulatively meet the requirements of the Level II EMS Instructor referenced in this Paragraph. These individuals may share the responsibilities of the lead EMS educational coordinator. The details of this option shall be defined in the educational plan required in Paragraph (b)(6) of this Rule. Basic EMS Educational Institutions offering only EMD courses may meet this requirement with a credentialed EMD instructor;

- (5) an Educational Medical Advisor that meets the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection";
- (6) an educational plan approved by the OEMS addressing program components as defined by the North Carolina Medical Board pursuant to G.S. 143-514; and
- (7) instructional supplies and equipment, a record-keeping system detailing student attendance and performance, and facilities as defined by the North Carolina Medical Board pursuant to G.S. 143-514.

(c) For EMS continuing education programs, Basic EMS Educational Institutions shall meet the requirements defined in Paragraphs (a) and (b) of Rule .3001 of this Section.

(d) An application for credentialing as a Basic EMS Educational Institution shall be submitted to the OEMS for review. The proposal shall demonstrate that the applicant meets the requirements in Paragraphs (b) and (c) of this Rule.

(e) Basic EMS Educational Institution credentials shall be valid for a period not to exceed four years.

(f) For Basic EMS Educational Institutions maintaining affiliation with a Model EMS System, credentials may be renewed without requirement for submission of an application.

*History Note: Authority G.S. 143-508(d)(4);
Temporary Adoption Eff. January 1, 2002.*

**10 NCAC 03D .3003 ADVANCED EMS
EDUCATIONAL INSTITUTION REQUIREMENTS**

(a) Advanced EMS Educational Institutions may offer all EMS educational programs for which they have been credentialed by the OEMS.

(b) For initial courses, Advanced EMS Educational Institutions shall have, at a minimum:

- (1) a Level I EMS Instructor as lead course instructor for MR, EMT and EMT-D courses;
- (2) an EMD Instructor as lead course instructor for EMD courses;
- (3) instructors for EMS-NP, EMS-PA and MICN appointed by the EMS educational program coordinator and approved by the educational medical advisor;
- (4) a Level II EMS Instructor as lead instructor for EMT-I and EMT-P courses;
- (5) a lead EMS educational program coordinator. This individual may be either a Level II EMS Instructor credentialed at or above the highest level of course offered by the institution, or a

combination of staff who cumulatively meet the requirements of the Level II EMS Instructor referenced in this paragraph. These individuals may share the responsibilities of the lead EMS educational coordinator. The details of this option shall be defined in the educational plan required in Paragraph (b)(7) of this Rule;

- (6) an Educational Medical Advisor that meets the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection";
- (7) an educational plan approved by OEMS addressing program components as defined by the North Carolina Medical Board pursuant to G.S. 143-514; and
- (8) instructional supplies and equipment, a record-keeping system detailing student attendance and performance, and facilities as defined by the North Carolina Medical Board pursuant to G.S. 143-514.

(c) For EMS continuing education programs, Advanced EMS Educational Institutions shall meet the requirements defined in Paragraphs (a) and (b) of Rule .3001 of this Section.

(d) An application for credentialing as an Advanced EMS Educational Institution shall be submitted to the OEMS for review. The application shall demonstrate that the applicant meets the requirements in Paragraphs (b) and (c) of this Rule. Advanced EMS Educational Institutions holding current accreditation by a national EMS educational accreditation agency that has been recognized by OEMS may use this accreditation as documentation toward meeting the requirements of Paragraphs (b) and (c) of this Rule.

(e) Advanced Educational Institution credentials shall be valid for a period not to exceed four years.

(f) For Advanced EMS Educational Institutions maintaining affiliation with a Model EMS System, credentials may be renewed without requirement for submission of an application.

*History Note: Authority G.S. 143-508(d)(4);
Temporary Adoption Eff. January 1, 2002.*

**10 NCAC 03D .3004 TRANSITION FOR APPROVED
TEACHING INSTITUTIONS**

Approved Teaching Institutions under contract with the OEMS as of December 31, 2001 shall be credentialed as an EMS Educational Institution consistent with the existing level of approval through December 31, 2002. These institutions may continue to offer courses currently allowed under the contract while preparing for credentialing under these Rules.

*History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002.*

SECTION .3100 – ENFORCEMENT

**10 NCAC 03D .3101 DENIAL, SUSPENSION,
AMENDMENT OR REVOCATION**

(a) The Department may deny, suspend, or revoke the permit of an ambulance or EMS nontransporting vehicle if the EMS provider:

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- (1) fails to substantially comply with the requirements of Section .2600 of this Subchapter;
- (2) obtains or attempts to obtain a permit through fraud or misrepresentation; or
- (3) fails to provide emergency medical care within the defined EMS service area in a timely and professional manner.
- (b) In lieu of suspension or revocation, the Department may issue a temporary permit for an ambulance or EMS nontransporting vehicle whenever the Department finds that:
- (1) the EMS provider to which that vehicle is assigned has substantially failed to comply with the provisions of G.S. 131E, Article 7 and the rules adopted under that article;
- (2) there is a reasonable probability that the EMS provider can remedy the permit deficiencies within a length of time determined by the department; and
- (3) there is a reasonable probability that the EMS provider will be willing and able to remain in compliance with the rules regarding vehicle permits for the foreseeable future.
- (c) The Department shall give the EMS provider written notice of the temporary permit. This notice shall be given personally or by certified mail and shall set forth:
- (1) the duration of the temporary permit not to exceed 60 days;
- (2) a copy of the vehicle inspection form;
- (3) the statutes or rules alleged to be violated; and
- (4) notice to the EMS provider's right to a contested case hearing on the temporary permit.
- (d) The temporary permit shall be effective immediately upon its receipt by the EMS provider and shall remain in effect until the Department:
- (1) restores the vehicle to full permitted status; or
- (2) suspends or revokes the vehicle's permit.
- (e) The Department may deny, suspend, or revoke the credentials of EMS personnel or EMS instructors for any of the following reasons:
- (1) failure to comply with the applicable performance and credentialing requirements as found in this Subchapter;
- (2) immoral conduct;
- (3) making false statements or representations to the OEMS or willfully concealing information in connection with an application for credentials;
- (4) being unable to perform as a professional with reasonable skill and safety to patients and the public by reason of illness, use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality;
- (5) unprofessional conduct, including but not limited to a failure to comply with the rules relating to the proper function of credentialed EMS personnel or EMS instructors contained in this Subchapter or the performance of or attempt to perform a procedure which is detrimental to the health and safety of any person or which is beyond the scope of practice of credentialed EMS personnel or EMS instructors;
- (6) conviction in any court of a crime involving moral turpitude, a conviction of a felony, or conviction of a crime involving the function of credentialed EMS personnel or EMS instructors;
- (7) by false representations obtaining or attempting to obtain money or anything of value from a patient;
- (8) adjudication of mental incompetence;
- (9) lack of professional competence to practice with a reasonable degree of skill and safety for patients including but not limited to a failure to perform a prescribed procedure, failure to perform a prescribed procedure competently or performance of a procedure which is not within the scope of practice of credentialed EMS personnel or EMS instructors;
- (10) making false statements or representations, willfully concealing information, or failing to respond within a reasonable period of time and in a reasonable manner to inquiries from the OEMS;
- (11) testing positive for any substance, legal or illegal, which could impair the physical or psychological ability of the credentialed EMS personnel or EMS instructor to perform all required or expected functions while on duty;
- (12) representing or allowing others to represent that the credentialed EMS personnel or EMS instructor has a credential that the credentialed EMS personnel or EMS instructor does not in fact have; or
- (13) inappropriate use or disclosure of records or data associated with EMS Systems, Specialty Care Transport Programs, or patients.
- (f) The Department may amend any EMS provider license by reducing it from a full license to a provisional license whenever the Department finds that:
- (1) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 7 and the rules adopted under that article;
- (2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.
- (g) The Department shall give the licensee written notice of the amendment to the EMS provider License. This notice shall be given personally or by certified mail and shall set forth:
- (1) the length of the provisional EMS provider license;
- (2) the factual allegations;
- (3) the statutes or rules alleged to be violated; and

- (4) notice to the EMS provider's right to a contested case hearing on the amendment of the EMS provider license.
- (h) The provisional EMS provider license shall be effective immediately upon its receipt by the licensee and shall be posted in a prominent location at the primary business location of the EMS provider, accessible to public view, in lieu of the full license. The provisional license shall remain in effect until the Department:
- (1) restores the licensee to full licensure status; or
 - (2) revokes the licensee's license.
- (i) The Department may revoke or suspend an EMS provider license whenever the Department finds that the licensee:
- (1) has substantially failed to comply with the provisions of G.S. 131E, Article 7 and the rules adopted under that article and it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time;
 - (2) has substantially failed to comply with the provisions of G.S. 131E, Article 7 and the rules adopted under that article and, although the licensee may be able to remedy the deficiencies within a reasonable period of time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future;
 - (3) has failed to comply with the provision of G.S. 131E, Article 7 and the rules adopted under that article that endanger the health, safety or welfare of the patients cared for or transported by the licensee; or
 - (4) obtained or attempted to obtain an ambulance permit, EMS nontransporting vehicle permit, or EMS provider license through fraud or misrepresentation.
- (j) The issuance of a provisional EMS provider license is not a procedural prerequisite to the revocation or suspension of a license pursuant to Paragraph (i) of this Rule.
- (k) The Department may amend, deny, suspend, or revoke the credential of an EMS educational institution for any of the following reasons:
- (1) failure to substantially comply with the requirements of Section .3000 of this Subchapter; or
 - (2) obtaining or attempting to obtain a credential through fraud or misrepresentation.
- (l) The Department may amend, deny, suspend, or revoke the approval of an EMS System or designation of a Model EMS System for any of the following reasons:
- (1) failure to substantially comply with the requirements of Section .2600 of this Subchapter; or
 - (2) obtaining or attempting to obtain designation through fraud or misrepresentation.
- (m) The Department may amend, deny, suspend, or revoke the designation of a Specialty Care Transport Program for any of the following reasons:
- (1) failure to substantially comply with the requirements of Section .2700 of this Subchapter; or

- (2) obtaining or attempting to obtain designation through fraud or misrepresentation.

History Note: Authority G.S. 131E-155.1(d); 131E-157(c); 131E-159(a); 143-508(d)(10); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .3102 PROCEDURES FOR DENIAL, SUSPENSION, AMENDMENT, OR REVOCATION

Denial, suspension, amendment or revocation of credentials, licenses, permits, approvals, or designations shall follow the law regarding contested cases found in G.S. 150B.

History Note: Authority G.S. 143-508(d)(10). Temporary Adoption Eff. January 1, 2002.

SECTION .3200 – TRAUMA SYSTEM DEFINITIONS

10 NCAC 03D .3201 TRAUMA SYSTEM DEFINITIONS

The following definitions apply throughout this Subchapter:

- (1) "Advanced Trauma Life Support (ATLS)" refers to the course sponsored by the American College of Surgeons.
- (2) "ACS" stands for the American College of Surgeons.
- (3) "Affiliated Hospital" means a non-trauma center hospital that is owned by the trauma center such that a contract or other agreement exists between these facilities to allow for the diversion or transfer of the trauma center's patient population to this non-trauma center hospital.
- (4) "Bypass" means the transport of an Emergency Medical Services patient past an Emergency Medical Services receiving facility for the purposes of accessing a designated trauma center or a higher-level trauma center.
- (5) "Contingencies" are conditions placed on a trauma center's designation, which if unmet, can result in the loss or amendment of a hospital's designation.
- (6) "Trauma Performance Improvement Program (TPIP)" means a system in which outcome data is used to modify the process of patient care and prevent repetition of adverse events.
- (7) "Deficiency" is the failure to meet essential criteria for a trauma center's designation as specified in Section .3300 of this Subchapter, which can serve as the basis for a focused review or denial of a trauma center designation.
- (8) "Department" means the North Carolina Department of Health and Human Services.
- (9) "Diversion" means that a hospital of its own volition reroutes a trauma patient to a trauma center.
- (10) "E-Code" is a numeric identifier that defines the cause of injury, taken from the International Classification of Diseases (ICD).

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- (11) "Focused Review" is an evaluation of the trauma center's corrective actions to remove contingencies (as the result of deficiencies) placed upon it following a renewal site visit.
- (12) "Hospital" means a licensed facility as defined in G.S. 131E-176.
- (13) "Immediately available" implies the physical presence of the health professional in an appropriate location at the time of need by the trauma patient.
- (14) "Lead RAC Agency" is the agency (comprised of one or more Level I or II trauma centers) that provides staff support and serves as the coordinating entity for trauma planning in a region.
- (15) "Level I Trauma Center" is a regional resource trauma center that has the capability of providing leadership, research and total care for every aspect of injury from prevention to rehabilitation.
- (16) "Level II Trauma Center" is a hospital that provides definitive trauma care regardless of the severity of the injury, but may not be able to provide the same comprehensive care as a Level I trauma center, and does not have trauma research as a primary objective.
- (17) "Level III Trauma Center" is a hospital that provides prompt assessment, resuscitation, emergency operations, and stabilization and arranges for hospital transfer as needed to a Level I or II trauma center.
- (18) "OEMS" means Office of Emergency Medical Services.
- (19) "Post Graduate Year Four (PGY4)" means any surgery resident having completed three clinical years of general surgical training. A pure laboratory year will not constitute a clinical year.
- (20) "Promptly available" implies the physical presence of health professionals in an appropriate location within a short period of time, which is defined by the trauma system (director) and continuously monitored by the performance improvement program.
- (21) "RAC" stands for "Regional Advisory Committee" which is comprised of a Lead RAC Agency and a group representing trauma care providers and the community, for the purpose of regional trauma planning, establishing, and maintaining a coordinated trauma system.
- (22) "RFP" stands for "Request for Proposal" and is a standardized state document that must be completed by each hospital seeking initial or renewal trauma center designation.
- (23) "Revocation" means the removal of a trauma center designation, for concerns related to patient morbidity/mortality and/or failure to meet essential criteria and/or recurrent contingencies.
- (24) "Transfer Agreement" means a formal written agreement between two agencies specifying the appropriate transfer of patient populations delineating the conditions and methods of transfer.
- (25) "Trauma Center" is a hospital facility designated by the State of North Carolina and distinguished by its ability to immediately manage, on a 24-hour basis, the severely injured patient or those at risk for severe injury.
- (26) "Trauma Center Criteria" means essential or desirable characteristics to define Level I, II or III trauma centers.
- (27) "Trauma Center Designation" means a formalized process of approval in which a hospital voluntarily seeks to have its trauma care capabilities and performance evaluated by experienced on-site reviewers.
- (28) "Trauma Minimum Data Set" means the basic data required of all hospitals for submission to the trauma statewide database.
- (29) "Trauma Patient" is any patient with an ICD-9-CM discharge diagnosis 800.00-959.9 excluding 905-909 (late effects of injury), 9100-924 (blisters, contusions, abrasions, and insect bites), and 930-939 (foreign bodies).
- (30) "Trauma Program" means an administrative entity that includes the trauma service and coordinates other trauma related activities. It must also include, at a minimum, the trauma medical director, trauma program manager/trauma coordinator and trauma registrar. This program's reporting structure must give it the ability to interact with at least equal authority with other departments providing patient care.
- (31) "Trauma Protocols" are standards for practice in a variety of situations within the trauma system.
- (32) "Trauma Guidelines" are suggested standards for practice in a variety of situations within the trauma system.
- (33) "Trauma Registry" is an OEMS maintained database to provide information for analysis and evaluation of the quality of patient care, including epidemiological and demographic characteristics of trauma patients.
- (34) "Trauma Service" means a clinical service established by the medical staff that has oversight of and responsibility for the care of the trauma patient.
- (35) "Trauma System" means an integrated network that ensures that acutely injured patients are expeditiously taken to hospitals appropriate for their level of injury.
- (36) "Trauma Team" means a group of health care professionals organized to provide coordinated and timely care to the trauma patient.

- (37) "Triage" is a predetermined schematic for patient distribution based upon established medical needs.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

SECTION .3300 – TRAUMA CENTER STANDARDS AND APPROVAL

10 NCAC 03D .3301 LEVEL I TRAUMA CENTER CRITERIA

To receive designation as a Level I Trauma Center, a hospital shall have the following:

- (1) a trauma program and a trauma service which have been operational for at least six months prior to application for designation;
- (2) membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal;
- (3) trauma medical director who is a board-certified general surgeon. The trauma medical director must:
 - (a) have a minimum of three years clinical experience on a trauma service or trauma fellowship training;
 - (b) serve on the center's trauma service;
 - (c) participate in providing care to patients with life-threatening or urgent injuries;
 - (d) participate in the North Carolina Chapter of the ACS Committee on Trauma as well as other regional and national trauma organizations;
 - (e) remain a current provider in the ACS' Advanced Trauma Life Support Course and in the provision of trauma related instruction to other health care personnel; and
 - (f) be involved with trauma research and the publication of results and presentations;
- (4) a full-time trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing;
- (5) a full-time trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record;
- (6) a hospital department/division/section for general surgery, neurological surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each;
- (7) clinical capabilities in general surgery with two separate posted call schedules. One shall be for trauma, one for general surgery. In those

instances where a physician may simultaneously be listed on both schedules, there must be a defined back-up surgeon listed on the schedule to allow the trauma surgeon to provide care for the trauma patient. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These, at a minimum, must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency). If a trauma surgeon is simultaneously on call at more than one hospital, there shall be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel;

- (8) response of a trauma team to provide evaluation and treatment of a trauma patient 24-hours-per-day that includes:
 - (a) an in-house Post Graduate Year 4 or senior general surgical resident, at a minimum, who is a member of that hospital's surgical residency program and responds within 20 minutes of notification;
 - (b) a trauma attending whose presence at the patient's bedside within 20 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures;
 - (c) an emergency physician who is present in the emergency department 24-hours-per-day who is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine). Emergency physicians caring only for pediatric patients may, as an alternative, be boarded in pediatric emergency medicine. These physicians must be board-certified within five years after successful completion of a residency and serve as a designated member of the trauma team until the arrival of the trauma surgeon;
 - (d) neurosurgery and orthopaedic surgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, unless there is either an in-house attending neurosurgeon/orthopaedic surgeon, a Post Graduate Year 2 or high in-house neurosurgery/orthopaedic surgery resident or an in-house

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- trauma surgeon or emergency physician as long as the institution can document management guidelines and annual continuing medical education for neurosurgical/orthopaedic emergencies. There must be a specified written back-up on the call schedule whenever the neurosurgical/orthopaedist is simultaneously on-call at a hospital other than the trauma center;
- (9) (e) an in-house anesthesiologist or a clinical anesthesiology year 3 (CA3) resident as long as an anesthesiologist on-call is advised and promptly available if requested by the trauma team leader and;
- (f) registered nursing personnel trained in the care of trauma patients;
- (9) a written credentialing process established by the department of surgery to approve attending general surgeons covering the trauma service. The surgeons must have a minimum of board certification in general surgery within five years of completing residency;
- (10) standard written protocols relating to trauma management must be formulated and routinely updated;
- (11) criteria to ensure team activation prior to arrival of trauma/burn patients, to include at a minimum, the following:
- (a) shock;
- (b) respiratory distress;
- (c) airway compromise;
- (d) unresponsiveness (Glasgow Coma Scale less than 8) with potential for multiple injuries; and
- (e) gunshot wound to head, neck or torso;
- (12) prompt surgical evaluation shall be considered based upon the following criteria:
- (a) proximal amputations;
- (b) burns meeting institutional transfer criteria;
- (c) vascular compromise;
- (d) crush to chest or pelvis;
- (e) two or more proximal long bone fractures; and
- (f) spinal cord injury;
- (13) prompt surgical consults shall be considered based upon the following criteria:
- (a) falls greater than 20 feet;
- (b) pedestrian struck by motor vehicle;
- (c) motor vehicle crash with:
- (i) ejection (includes motorcycle);
- (ii) rollover;
- (iii) speed greater than 40 mph; or
- (iv) death at the scene;
- (14) (d) extremes of age, < 5 or > 70 years; clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule), to include individuals credentialed in the following:
- (a) cardiac surgery;
- (b) critical care;
- (c) hand surgery;
- (d) microvascular/replant surgery;
- (e) neurosurgery (The neurosurgeon must be dedicated to one hospital or a back-up call schedule must be available. If fewer than 25 emergency neurosurgical trauma operations are done in a year, and the neurosurgeon is dedicated only to that hospital, then a published back-up call list is not necessary);
- (f) obstetrics/gynecologic surgery;
- (g) ophthalmic surgery;
- (h) oral/maxillofacial surgery;
- (i) orthopaedics (dedicated to one hospital or a back-up call schedule must be available);
- (j) pediatric surgery;
- (k) plastic surgery;
- (l) radiology;
- (m) thoracic surgery; and
- (n) urologic surgery;
- (15) an emergency department which has at a minimum;
- (a) a designated physician director who is board-certified or board prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
- (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department such that:
- (i) at least one physician on every shift in the Emergency Department is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) to serve as the designated member of the trauma team at least until the arrival of the trauma surgeon. Emergency physicians caring only for pediatric patients may, as an alternative, be boarded in pediatric emergency medicine. All these physicians must be board-

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- certified within five years after successful completion of a residency;
- (ii) all remaining emergency physicians, if not board-certified or prepared in emergency medicine as outlined in Sub-item (15)(b)(i) of this Rule, are board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine, with each being board-certified within five years after successful completion of a residency; and
- (iii) all emergency physicians practice emergency medicine as their primary specialty;
- (c) nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
- (d) equipment for patients of all ages to include:
 - (i) airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) pulse oximetry;
 - (iii) end-tidal carbon dioxide determination equipment;
 - (iv) suction devices;
 - (v) electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) apparatus to establish central venous pressure monitoring;
 - (vii) intravenous fluids and administration devices to include larger bore catheters and intraosseous infusion devices;
 - (viii) sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, and thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) apparatus for gastric decompression;
- (x) 24-hour-per-day x-ray capability;
- (xi) two-way communication equipment for communication with the emergency transport system;
- (xii) skeletal traction devices, including capability for cervical traction;
- (xiii) arterial catheters;
- (xiv) thermal control equipment for patients;
- (xv) thermal control equipment for blood and fluids;
- (xvi) rapid infuser system;
- (xvii) Broselow tape;
- (xviii) sonography; and
- (xix) doppler;
- (16) an operating suite which is immediately available 24-hours-per-day and has at a minimum:
 - (a) 24-hour-per-day immediate availability on in-house staffing;
 - (b) equipment for patients of all ages to include:
 - (i) cardiopulmonary bypass capability;
 - (ii) operating microscope;
 - (iii) thermal control equipment for patients
 - (iv) thermal control equipment for blood and fluids;
 - (v) 24-hour-per-day x-ray capability including c-arm image intensifier;
 - (vi) endoscopes and bronchoscopes;
 - (vii) craniotomy instruments;
 - (viii) capability of fixation of long-bone and pelvic fractures; and
 - (ix) rapid infuser system;
- (17) a postanesthetic recovery room or surgical intensive care unit which has at a minimum:
 - (a) 24-hour-per-day in-house staffing by registered nurses;
 - (b) equipment for patients of all ages to include:
 - (i) capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) capability for continuous monitoring of intracranial pressure;
 - (iii) pulse oximetry;
 - (iv) end-tidal carbon dioxide determination capability;
 - (v) thermal control equipment for patients; and

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- (18) an intensive care unit for trauma patients which has at a minimum:
 - (a) a designated surgical director for trauma patients;
 - (b) a physician on duty in the intensive care unit 24-hours-per-day or immediately available from within the hospital as long as this physician is not the sole physician on-call for the emergency department;
 - (c) ratio of one nurse per two patients on each shift;
 - (d) equipment for patients for all ages to include:
 - (i) airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, and pocket masks);
 - (ii) oxygen source with concentration controls;
 - (iii) cardiac emergency cart;
 - (iv) temporary, transvenous pacemaker;
 - (v) electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) cardiac output monitoring capability;
 - (vii) electronic pressure monitoring capability;
 - (viii) mechanical ventilator;
 - (ix) patient weighing devices;
 - (x) pulmonary function measuring devices;
 - (xi) temperature control devices; and
 - (xii) intracranial pressure monitoring devices;
 - (e) within 30 minutes of request, be able to perform blood gas measurements, hematocrit level, and chest x-ray studies;
- (19) acute hemodialysis capability;
- (20) physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (21) acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;
- (22) radiological capabilities which has at a minimum:
 - (a) 24-hour-per-day in-house radiology technologist;
 - (b) 24-hour-per-day in-house computerized tomography technologist;
- (c) sonography;
- (d) computed tomography;
- (e) angiography;
- (f) magnetic resonance imaging; and
- (g) resuscitation equipment to include airway management, and IV therapy;
- (23) respiratory therapy services available in-house 24-hours-per-day;
- (24) 24-hour-per-day clinical laboratory service, which must include at a minimum:
 - (a) standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;
 - (b) blood typing and cross-matching;
 - (c) coagulation studies;
 - (d) comprehensive blood bank or access to community central blood bank with storage facilities;
 - (e) blood gases and pH determination; and
 - (f) microbiology;
- (25) a rehabilitation service which provides at a minimum:
 - (a) a professional staff trained in rehabilitation care of critically injured patients;
 - (b) for major trauma patients, functional assessment and recommendations regarding short and long term rehabilitation needs within one week of the patient's admission to the hospital or as soon as hemodynamically stable;
 - (c) full in-house rehabilitation service or a written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;
 - (d) physical, occupational, speech therapies, and social services; and
 - (e) substance evaluation and counseling capability;
- (26) a performance improvement program, as outlined in the document "Performance Improvement Guidelines for North Carolina Trauma Centers", dated January 1, 2002, which is incorporated by reference and includes:
 - (a) a state approved trauma registry whose data is submitted to the OEMS at least quarterly, which includes all trauma patients seen at the trauma center itself or those that are routinely diverted or transferred to its affiliated hospital;
 - (b) morbidity and mortality reviews to include all trauma deaths;
 - (c) trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other

- healthcare providers which reviews policies, procedures, and system issues and whose members or designee attend at least 50% of the regular meetings;
- (d) multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, neurosurgery, orthopaedics, emergency medicine, anesthesiology, and other specialty physicians as needed specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attend at least 50% of the regular meetings;
- (e) identification of discretionary and non-discretionary audit filters;
- (f) documentation and review of times and reasons for trauma related diversion of patients;
- (g) documentation and review of response times for trauma surgeons (who must demonstrate 80% compliance), neurosurgeons, anesthesiologists or airway managers, and orthopaedists;
- (h) appropriate trauma team notification;
- (i) review of pre-hospital trauma care to include dead on arrivals; and
- (j) review of times and reasons for transfer of injured patients;
- (27) an outreach program to include:
- (a) written transfer agreements to address the transfer and receipt of trauma patients;
- (b) programs for physicians within the community and within the referral area (to include telephone and on-site consultations) about how to access the trauma center resources and refer patients within the system;
- (c) development of a Regional Advisory Committee (RAC) as specified in Rule .3502 of this Subchapter;
- (d) development of regional criteria for coordination of trauma care;
- (e) assessment of trauma system operations at the regional level; and
- (f) ATLS;
- (28) a program of injury prevention and public education to include:
- (a) epidemiology research to include studies in injury control, collaboration with other institutions on research, monitoring progress of prevention programs, and consultation with qualified researchers on evaluation measures;
- (b) surveillance methods to include trauma registry data, special
- Emergency Department and field collection projects;
- (c) designation of a injury prevention coordinator; and
- (d) outreach activities, program development, information resources and collaboration with existing national, regional, and state trauma programs;
- (29) a trauma research program designed to produce new knowledge applicable to the care of injured patients to include:
- (a) identifiable institutional review board process;
- (b) extramural educational presentations which must include 12 education/outreach presentations over a three-year period; and
- (c) 10 peer-reviewed publications over a three-year period that could come from any aspect of the trauma program;
- (30) a documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
- (a) a general surgery residency program;
- (b) current board certification for neurosurgeons and orthopaedics;
- (c) 20 hours of category I or II trauma related continuing medical education every two years for all attending general surgeons on the trauma service, orthopaedists, and neurosurgeons, with at least 50% of this being extramural;
- (d) 20 hours of category I or II trauma related continuing medical education every two years for all emergency physicians, with at least 50% of this being extramural;
- (e) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS;
- (f) 20 hours of category I trauma related continuing medical education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager;
- (g) 16 hours of trauma registry related or trauma related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager for the trauma registrar;
- (h) at least an 80% compliance rate for 16 hours of trauma related continuing

- education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, emergency departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and
- (i) 16 hours of trauma registry related or trauma related continuing education every two years for physician assistants and mid-level practitioners routinely caring for trauma patients.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .3302 LEVEL II TRAUMA CENTER CRITERIA

To receive designation as a Level II Trauma Center, a hospital shall have the following:

- (1) a trauma program and a trauma service which have been operational for at least six months prior to application for designation;
- (2) membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal;
- (3) a trauma medical director who is a board-certified general surgeon. The trauma medical director must:
 - (a) have a minimum of three years clinical experience on a trauma service and/or trauma fellowship training;
 - (b) serve on the center's trauma service;
 - (c) participate in providing care to patients with life-threatening urgent injuries;
 - (d) participate in the North Carolina Chapter of the ACS' Committee on Trauma as well as other regional and national trauma organizations; and
 - (e) remain a current provider in the ACS' Advanced Trauma Life Support Course and in the provision of trauma related instruction to other health care personnel;
- (4) a full-time trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing;
- (5) a full-time trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record;
- (6) a hospital department/division/section for general surgery, neurological surgery, emergency medicine, anesthesiology, and

- orthopaedic surgery, with designated chair or physician liaison to the trauma program for each;
- (7) clinical capabilities in general surgery with two separate posted call schedules. One shall be for trauma, one for general surgery. In those instances where a physician may simultaneously be listed on both schedules, there must be a defined back-up surgeon listed on the schedule to allow the trauma surgeon to provide care for the trauma patient. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These, at a minimum, must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency). If a trauma surgeon is simultaneously on call at more than one hospital, there shall be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel;
- (8) response of a trauma team to provide evaluation and treatment of a trauma patient 24-hours-per-day that includes:
 - (a) a trauma attending whose presence at the patient's bedside within 20 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures;
 - (b) an emergency physician who is present in the emergency department 24-hours-per-day who is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine and practices emergency medicine as his primary specialty. This physician must be board-certified within five years after successful completion of a residency and serves as a designated member of the trauma team until the arrival of the trauma surgeon;
 - (c) neurosurgery and orthopaedic surgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, as long as there is either an in-house attending neurosurgeon/orthopaedic surgeon; a Post Graduate Year 2 or higher in-

- house neurosurgery/orthopaedic surgery resident; or in-house emergency physician or the on-call trauma surgeon as long as the institution can document management guidelines and annual continuing medical education for neurosurgical/orthopaedic emergencies. There must be a specified written back-up on the call schedule whenever the neurosurgeon/orthopaedic surgeon is simultaneously on-call at a hospital other than the trauma center; and
- (d) an in-house anesthesiologist or a clinical anesthesiology year 3(CA3) resident unless an anesthesiologist on-call is advised and promptly available after notification or an in-house CRNA under physician supervision, practicing in accordance with G.S. 90-171.20(7)e., pending the arrival of the anesthesiologist;
- (9) a written credentialing process established by the department of surgery to approve attending general surgeons covering trauma service. The surgeons must have a minimum of board certification in general surgery within five years of completing residency;
- (10) standard written protocols relating to trauma care management must be formulated and routinely updated;
- (11) criteria to ensure team activation prior to arrival of trauma/burn patients, to include at a minimum, the following:
- (a) shock;
- (b) respiratory distress;
- (c) airway compromise;
- (d) unresponsiveness (Glasgow Coma Scale less than 8) with potential for multiple injuries; and
- (e) gunshot wound to head, neck or torso;
- (12) prompt surgical evaluation shall be considered based upon the following criteria:
- (a) proximal amputations;
- (b) burns meeting institutional transfer criteria;
- (c) vascular compromise;
- (d) crush to chest or pelvis;
- (e) two or more proximal long bone fractures; and
- (f) spinal cord injury;
- (13) prompt surgical consults shall be considered based upon the following criteria:
- (a) falls greater than 20 feet;
- (b) pedestrian struck by motor vehicle;
- (c) motor vehicle crash with:
- (i) ejection (includes motorcycle);
- (ii) rollover;
- (iii) speed greater than 40 mph; or
- (iv) death at the scene;
- (14) extremes of age, < 5 or > 70 years; clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule), to include individuals credentialed in the following:
- (a) critical care;
- (b) hand surgery;
- (c) neurosurgery (The neurosurgeon must be dedicated to one hospital or a back-up call schedule must be available. If fewer than 25 emergency neurosurgical trauma operations are done in a year, and the neurosurgeon is dedicated only to that hospital, then a published back-up call list is not necessary);
- (d) obstetrics/gynecologic surgery;
- (e) ophthalmic surgery;
- (f) oral maxillofacial surgery;
- (g) orthopaedics (dedicated to one hospital or a back-up call schedule must be available);
- (h) plastic surgery;
- (i) radiology;
- (j) thoracic surgery; and
- (k) urologic surgery;
- (15) an emergency department which has at a minimum:
- (a) a designated physician director who is board-certified or board prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
- (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department who:
- (i) are either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine). This physician must be board-certified within five years after successful completion of a residency;
- (ii) are designated members of the trauma team; and

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- (iii) practice emergency medicine as their primary specialty;
 - (c) nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
 - (d) equipment for patients of all ages to include:
 - (i) airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) pulse oximetry;
 - (iii) end-tidal carbon dioxide determination equipment;
 - (iv) suction devices;
 - (v) electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) apparatus to establish central venous pressure monitoring;
 - (vii) intravenous fluids and administration devices to include large bore catheters and introsseous infusion devices;
 - (viii) sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, and thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) two-way communication equipment for communication with the emergency transport system;
 - (xii) skeletal traction devices, including capability for cervical traction;
 - (xiii) arterial catheters;
 - (xix) thermal control equipment for patients;
 - (xx) thermal control equipment for blood and fluids;
 - (xxi) rapid infuser system;
 - (xxii) Broselow tape;
 - (xxiii) sonography; and
 - (xxiv) doppler;
- (16) an operating suite which is immediately available 24-hours-per-day and which has at a minimum:
- (a) 24-hour-per-day immediate availability of in-house staffing;
 - (b) equipment for patients of all ages to include:
 - (i) thermal control equipment for patients;
 - (ii) thermal control equipment for blood and fluids;
 - (iii) 24-hour-per-day x-ray capability, including c-arm image intensifier;
 - (iv) endoscopes and bronchoscopes;
 - (v) craniotomy instruments;
 - (vi) capability of fixation of long-bone and pelvic fractures; and
 - (vii) rapid infuser system;
- (17) a postanesthetic recovery room or surgical intensive care unit which has at a minimum:
- (a) 24-hour-per-day in-house staffing by registered nurses;
 - (b) equipment for patients of all ages to include:
 - (i) capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) capability for continuous monitoring of intracranial pressure;
 - (iii) pulse oximetry;
 - (iv) end-tidal carbon dioxide determination capability;
 - (v) thermal control equipment for patients; and
 - (vi) thermal control equipment for blood and fluids;
- (18) an intensive care unit for trauma patients which has at a minimum:
- (a) a designated surgical director of trauma patients;
 - (b) a physician on duty in the intensive care unit 24-hours-per-day or immediately from within the hospital as long as this physician is not the sole physician on-call for the emergency department;
 - (c) ratio of one nurse per two patients on each shift;
 - (d) equipment for patients of all ages to include:
 - (i) airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, and pocket masks);
 - (ii) oxygen source with concentration controls;

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- (iii) cardiac emergency cart;
 - (iv) temporary transvenous pacemaker;
 - (v) electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) cardiac output monitoring capability;
 - (vii) electronic pressure monitoring capability;
 - (viii) mechanical ventilator;
 - (ix) patient weighing devices;
 - (x) pulmonary function measuring devices;
 - (xi) temperature control devices; and
 - (xii) intracranial pressure monitoring devices;
- (19) (e) within 30 minutes of request, be able to perform blood gas measurements, hematocrit level, and chest x-ray studies;
- (20) acute hemodialysis capability or utilization of a written transfer agreement;
- (21) physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (22) acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;
- (23) radiological capabilities which has at a minimum:
- (a) 24-hour-per-day in-house radiology technologist;
 - (b) 24-hour-per-day in-house computerized tomography technologist
 - (c) sonography;
 - (d) computed tomography;
 - (e) angiography; and
 - (f) resuscitation equipment to include airway management and IV therapy;
- (24) respiratory therapy services available in-house 24-hours-per-day;
- (25) 24-hour-per-day clinical laboratory service which must include at a minimum:
- (a) standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;
 - (b) blood typing and cross-matching;
 - (c) coagulation studies;
 - (d) comprehensive blood bank or access to a community central blood bank with storage facilities;
 - (e) blood gases and pH determination; and
 - (f) microbiology;
- (26) a rehabilitation service which provides at a minimum:
- (a) a professional staff trained in rehabilitation care of critically injured patients;
 - (b) for major trauma patients, functional assessment and recommendation regarding short and long term rehabilitation needs within one week of the patients' admission to the hospital or as soon as hemodynamically stable;
 - (c) full in-house rehabilitation service or a written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;
 - (d) physical, occupational, speech therapies, and social services; and
 - (e) substance abuse evaluation and counseling capability;
- (26) a performance improvement program, as outlined in the document "Performance Improvement Guidelines for North Carolina Trauma Centers," dated January 1, 2002, which is incorporated by reference and includes:
- (a) a state approved trauma registry whose data is submitted to the OEMS at least quarterly, which includes all trauma patients seen at the trauma center itself or those that are routinely diverted or transferred to its affiliated hospital;
 - (b) morbidity and mortality reviews to include all trauma deaths;
 - (c) trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers which reviews policies, procedures, and system issues and whose members or designee attend at least 50% of the regular meetings;
 - (d) multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, neurosurgery, orthopaedics, emergency medicine, anesthesiology, and other specialty physicians as needed specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attend at least 50% of the regular meetings;
 - (e) identification of discretionary and non-discretionary audit filters;
 - (f) documentation and review of times and reasons for trauma related diversion of patients;
 - (g) documentation and review of response times for trauma surgeons

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- (27) (h) (who must demonstrate 80% compliance), neurosurgeons, anesthesiologist or airway managers, and orthopaedists;
- (i) appropriate trauma team notification;
- (j) review of pre-hospital trauma care to include dead on arrivals; and
- (j) review of times and reasons for transfer of injured patients;
- (27) an outreach program to include:
 - (a) written transfer agreements to address the transfer and receipt of trauma patients;
 - (b) programs for physicians within the community and within the referral area (to include telephone and on-site consultations) about how to access the trauma center resources and refer patients within the system;
 - (c) development of a Regional Advisory Committee (RAC) as specified in Rule .3502 of this Subchapter;
 - (d) development of regional criteria for coordination of trauma care; and
 - (e) assessment of trauma system operations at the regional level;
- (28) a program of injury prevention and public education to include:
 - (a) designation of a injury prevention coordinator; and
 - (b) outreach activities, program development, information resources and collaboration with existing national, regional, and state trauma programs;
- (29) a documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
 - (a) current board certification for neurosurgeons and orthopaedists;
 - (b) 20 hours of category I or II trauma related continuing medical education every two years for all attending general surgeons on the trauma service, orthopaedics, and neurosurgeons, with at least 50% of this being extramural;
 - (c) 20 hours of category I or II trauma related continuing medical education every two years for all emergency physicians, with at least 50% of this being extramural;
 - (d) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS;
- (e) 20 hours of category I trauma related continuing medical education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager;
- (f) 16 hours of trauma registry related or trauma related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager, for the trauma registrar;
- (g) at least 80% compliance rate for 16 hours of trauma related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, emergency departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and
- (h) 16 contact hours of trauma related continuing education every two years for physician assistants and mid-level practitioners routinely caring for trauma patients.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .3303 LEVEL III TRAUMA CENTER CRITERIA

To receive designation as a Level III Trauma Center, a hospital shall have the following:

- (1) a trauma program and a trauma service which have been operational for at least six months prior to application for designation;
- (2) membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal application;
- (3) a trauma medical director who is a board-certified general surgeon. The trauma medical director must:
 - (a) serve on the center's trauma service;
 - (b) participate in providing care to patients with life-threatening or urgent injuries;
 - (c) participate in the North Carolina Chapter of the ACS' Committee on Trauma; and
 - (d) remain a current provider in the ACS' Advanced Trauma Life Support Course in the provision of trauma related instruction to other health care personnel;
- (4) a designated trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing;

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- (5) a trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record;
- (6) a hospital department/division/section for general surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each;
- (7) clinical capabilities in general surgery with a written posted call schedule that indicates who is on call for both trauma and general surgery. If a trauma surgeon is simultaneously on call at more than one hospital, there must be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These, at a minimum, must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency);
- (8) response of a trauma team to provide evaluation and treatment of a trauma patient 24-hours-per-day that includes:
- (a) a trauma attending whose presence at the patient's bedside within 30 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures;
 - (b) an emergency physician who is present in the emergency department 24-hours-per-day who is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine and practices emergency medicine as his primary specialty. This physician must be board-certified within five years after successful completion of a residency and serves as a designated member of the trauma team until the arrival of the trauma surgeon;
 - (c) an anesthesiologist who is on-call and promptly available after notification by the trauma team leader or an in-house CRNA under physician supervision, practicing in accordance with G.S. 90-171.20(7)e, pending the arrival of the anesthesiologist within 20 minutes of notification;
- (9) a written credentialing process established by the department of surgery to approve attending general surgeons covering the trauma service. These surgeons must have a minimum of board certification in general surgery within five years of completing residency;
- (10) standard written protocols relating to trauma care management must be formulated and routinely updated;
- (11) Criteria to ensure team activation prior to arrival of trauma/burn patients, to include at a minimum, the following:
- (a) shock;
 - (b) respiratory distress;
 - (c) airway compromise;
 - (d) unresponsiveness (Glasgow Coma Scale less than 8) with potential for multiple injuries; and
 - (e) gunshot wound to head, neck or torso;
- (12) prompt surgical evaluation shall be considered based upon the following criteria:
- (a) proximal amputations;
 - (b) burns meeting institutional transfer criteria;
 - (c) vascular compromise;
 - (d) crush to chest or pelvis;
 - (e) two or more proximal long bone fractures; and
 - (f) spinal cord injury;
- (13) prompt surgical consults shall be considered based upon the following criteria:
- (a) falls greater than 20 feet;
 - (b) pedestrian struck by motor vehicle;
 - (c) motor vehicle crash with:
 - (i) ejection (includes motorcycle);
 - (ii) rollover;
 - (iii) speed greater than 40 mph; or
 - (iv) death at the scene;
 - (d) extremes of age, < 5 or > 70 years;
- (14) clinical capabilities (promptly available within 30 minutes if requested by the trauma team leader, with a posted on-call schedule) to include individuals credentialed in the following:
- (a) orthopaedics; and
 - (b) radiology;
- (15) an emergency department which has at a minimum;
- (a) a designated physician director who is board-certified or board prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);

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- (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department who:
 - (i) are either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine. This physician must be board-certified within five years after successful completion of a residency;
 - (ii) are designated members of a trauma team; and
 - (iii) practice emergency medicine as their primary specialty;
 - (c) nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
 - (d) resuscitation equipment for patients of all ages to include:
 - (i) airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) pulse oximetry;
 - (iii) end-tidal carbon dioxide determination equipment;
 - (iv) suction devices;
 - (v) electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) apparatus to establish central venous pressure monitoring;
 - (vii) intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;
 - (viii) sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, and thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) two-way communication equipment for communication with the emergency transport system;
 - (xii) skeletal traction devices;
 - (xiii) thermal control equipment for patients;
 - (xiv) thermal control equipment for blood and fluids;
 - (xv) rapid infuser system;
 - (xvi) Broselow tape; and
 - (xvii) doppler.
- (16) an operating suite which has at a minimum:
- (a) personnel available 24-hours-a-day, on-call and available within 30 minutes of notification unless in-house;
 - (b) age specific equipment to include:
 - (i) thermal control equipment for patients;
 - (ii) thermal control equipment for blood and fluids;
 - (iii) 24-hour-per-day x-ray capability, including c-arm image intensifier;
 - (iv) endoscopes and bronchoscopes;
 - (v) equipment for long bone and pelvic fixation; and
 - (vi) rapid infuser system.
- (17) a postanesthetic recovery room or surgical intensive care unit which has at a minimum:
- (a) 24-hour-per-day availability of registered nurses within 30 minutes from inside or outside the hospital; and
 - (b) equipment for patients of all ages to include:
 - (i) capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) pulse oximetry;
 - (iii) end-tidal carbon dioxide determination;
 - (iv) thermal control equipment for patients; and
 - (v) thermal control equipment for blood and fluids;
- (18) an intensive care unit for trauma patients which has at a minimum:
- (a) a designated surgical director of trauma patients;
 - (b) a physician on duty in the intensive care unit 24-hours-per-day or immediately available from within

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| <p>(c) the hospital (which may be a physician who is the sole physician on-call for the Emergency Department);
equipment for patients of all ages to include:</p> <ul style="list-style-type: none"> (i) airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators and pocket masks); (ii) oxygen source with concentration controls; (iii) cardiac emergency cart; (iv) temporary transvenous pacemaker; (v) electrocardiograph-oscilloscope-defibrillator; (vi) cardiac output monitoring capability; (vii) electronic pressure monitoring capability; (viii) mechanical ventilator; (ix) patient weighing devices; (x) pulmonary function measuring devices; and (xi) temperature control devices; and <p>(d) within 30 minutes of request, be able to perform blood gas measurements, hematocrit level, and chest x-ray studies;</p> <p>(19) physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;</p> <p>(20) acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;</p> <p>(21) acute head injury management capability or written transfer agreement with a hospital capable of caring for a head injury;</p> <p>(22) radiological capabilities which have at a minimum:</p> <ul style="list-style-type: none"> (a) radiology technologist available within 30 minutes of notification or documentation that procedures are available within 30 minutes; (b) if the capability of computed tomography exists in the hospital, the computed tomography technologist must be available within 30 minutes of notification; (c) sonography; and (d) resuscitation equipment to include: airway management and IV therapy; <p>(23) respiratory therapy services on-call 24-hours-per-day;</p> <p>(24) 24-hour-per-day clinical laboratory service which must include at a minimum:</p> | <ul style="list-style-type: none"> (a) standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate; (b) blood-typing and cross-matching; (c) coagulation studies; (d) comprehensive blood bank or access to a community central blood bank with storage facilities; (e) blood gases and pH determination; and (f) microbiology; <p>(25) full in-house rehabilitation service or written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;</p> <p>(26) physical therapy and social services;</p> <p>(27) a performance improvement program, as outlined in the document "Performance Improvement Guidelines for North Carolina Trauma Centers", dated January 1, 2002, which is incorporated by reference and includes:</p> <ul style="list-style-type: none"> (a) a state approved trauma registry whose data is submitted to the OEMS at least quarterly, which includes all trauma patients seen at the trauma center itself or those that are routinely diverted or transferred to its affiliated hospital; (b) morbidity and mortality reviews to include all trauma deaths; (c) trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers which reviews policies, procedures, and system issues and whose members or designee attend at least 50% of the regular meetings; (d) multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, emergency medicine, and other specialty physicians as needed specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attend at least 50% of the regular meetings; (e) identification of discretionary and non-discretionary audit filters; (f) documentation and review of times and reasons for trauma related diversion of patients; (g) documentation and review of response times for trauma surgeons (who must demonstrate 80% compliance) and orthopaedists; (h) appropriate trauma team notification; |
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- (i) documentation (unless in-house) and review of emergency department response times for anesthesiologists or airway managers and computerized tomography technologist;
- (j) documentation of availability of the surgeon on-call for trauma, such that compliance is 90% or greater where there is no trauma surgeon back-up call schedule;
- (k) trauma performance and multidisciplinary peer review committees may be incorporated together or included in other staff meetings as appropriate for the facility performance improvement rules;
- (l) review of pre-hospital trauma care to include dead on arrivals; and
- (m) review of times and reasons for transfer of injured patients;
- (28) an outreach program to include:
 - (a) written transfer agreements to address the transfer and receipt of trauma patients; and
 - (b) participation in a Regional Advisory Committee (RAC).
- (29) coordination and/or participation in community prevention activities;
- (30) a documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
 - (a) 20 hours of category I or II trauma related continuing medical education every two years for all attending general surgeons on the trauma service, with at least 50% of this being extramural;
 - (b) 20 hours of category I or II trauma related continuing medical education every two years for all emergency physicians, with at least 50% of this being extramural;
 - (c) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS;
 - (d) 20 hours of category I trauma related continuing medical education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager;
 - (e) 16 hours of trauma registry related or trauma related continuing education every two years, as deemed appropriate by the trauma nurse

- (f) coordinator/program manager, for the trauma registrar; at least an 80% compliance rate for 16 hours of trauma related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, emergency departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and
- (g) 16 hours of trauma registry related or trauma related continuing education every two years for physician assistants and mid-level practitioners routinely caring for trauma patients.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .3304 INITIAL DESIGNATION PROCESS

- (a) For initial trauma center designation, the hospital shall request a consult visit by OEMS and have the consult within one year prior to submission of the RFP.
- (b) A hospital interested in pursuing trauma center designation shall submit a letter of intent 180 days prior to the submission of an RFP to the OEMS. The letter shall also define the hospital's primary trauma catchment area. Simultaneously, Level I or II applicants shall also demonstrate the need for the trauma center designation by submitting one original and three copies of documents which include, at a minimum:
 - (1) the population to be served and the extent to which the population is under served for trauma care with the methodology used to reach this conclusion;
 - (2) geographic considerations to include trauma primary and secondary catchment area and distance from other trauma centers; and
 - (3) trauma patient volume and severity of injury for the facility for the 24-month period of time preceding the application. The trauma center shall show that its trauma service will be taking care of at least 200 trauma patients with an Injury Severity Score (ISS) greater than or equal to 15 during the first two-year period of its designation. This criteria shall be met without compromising the quality of care or cost effectiveness of any other designated Level I or II trauma center sharing all or part of its catchment area or by jeopardizing the existing trauma center's ability to meet this same 200 patient minimum.
- (c) Following receipt of the letter of intent by OEMS, any designated Level I or II trauma center(s) sharing all or part of the applicant's catchment area must provide to OEMS a trauma registry download for the same two-year period used by the applicant. This download shall be provided within 30 days of the request of OEMS.

TEMPORARY RULES

(d) OEMS shall review the regional data, from both the applicant and the existing trauma center(s), and ascertain the applicant's ability to satisfy the justification of need information required in Paragraph (b) of this Rule. Simultaneously, the applicant's primary RAC shall be notified of the application and be provided the regional data as required in Paragraph (b) of this Rule submitted by the applicant for review and comment. The RAC shall be given a minimum of 30 days to submit any concerns in writing for OEMS' consideration. If no comments are received, OEMS shall proceed.

(e) OEMS shall notify the hospital in writing of its decision to allow submission of an RFP. The RAC shall also be notified so that any necessary changes in protocols can be considered.

(f) OEMS shall also notify the respective Board of County Commissioners in the applicant's trauma primary catchment area of the request for initial designation to allow for comment.

(g) Hospitals desiring to be considered for initial trauma center designation shall complete and submit an original and five copies of bound, page-numbered RFP to the OEMS at least 90 days prior to the proposed site visit date.

(h) For Level I, II, and III applicants, the RFP shall demonstrate that the hospital meets the standards for the designation level applied for as found in Rules .3301, .3302, or .3303 of this Section and shall include information which supports compliance with the criteria contained in "North Carolina's Trauma Center Criteria," dated January 1, 2002, which is incorporated by reference.

(i) If OEMS does not recommend a site visit, the reasons shall be forwarded to the hospital in writing within 30 days of the decision. The hospital may reapply for designation within six months following the submission of an updated RFP. If the hospital fails to respond within six months, the hospital shall reapply following the process outlined in Paragraphs (a) – (h) of this Rule.

(j) If the OEMS recommends the hospital for a site visit, the hospital shall be notified within 30 days and the site visit shall be conducted within six months of the recommendation. The site visit shall be scheduled on a date mutually agreeable to the hospital and the OEMS.

(k) Any in-state reviewer for a Level I or II visit (except the OEMS representatives) shall be from outside the planning region in which the hospital is located. The composition of a Level I or II state site survey team shall be as follows:

- (1) one out-of-state Fellow of the ACS, experienced as a site surveyor, who shall be designated the primary reviewer;
- (2) one emergency physician who currently works in a designated trauma center, is a member of the North Carolina College of Emergency Physicians, and is boarded in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
- (3) one in-state trauma surgeon who is a member of the North Carolina Committee on Trauma;
- (4) one out-of-state trauma nurse coordinator/program manager;
- (5) the medical director of the OEMS; and
- (6) the Hospitals Specialist of the OEMS.

(l) All site team members for a Level III visit shall be from in state, and all (except for the OEMS representatives) shall be

from outside the planning region in which the hospital is located. The composition of a Level III state site survey team shall be as follows:

- (1) one Fellow of the ACS, who is a member of the North Carolina Committee on Trauma and shall be designated the primary reviewer;
- (2) one emergency physician who currently works in a designated trauma center, is a member of the North Carolina College of Emergency Physicians, and is boarded in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
- (3) a trauma nurse coordinator/program manager;
- (4) the medical director of the OEMS; and
- (5) the Hospitals Specialist of the OEMS.

(m) On the day of the site visit, the hospital shall make available all required patient medical charts.

(n) A post conference report based on the consensus of the site review team will be given verbally during a summary conference. A written consensus report will be completed, to include a peer review report, by the primary reviewer and submitted to OEMS within 30 days of the site visit.

(o) The report of the site survey team and the staff recommendations shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting which is more than 45 days following the site visit. Based upon the site visit report and the staff recommendation, the State Emergency Medical Services Advisory Council shall recommend to the OEMS that the request for trauma center designation be approved or denied.

(p) All criteria defined in Rules .3301, .3302 or .3303 of this Section shall be met for initial designation at the level requested. Initial designation shall not be granted if deficiencies exist.

(q) Hospitals with a deficiency(ies) may be given up to 12 months to demonstrate compliance. Satisfaction of deficiency(ies) may require an additional site visit. If compliance is not demonstrated within the time period, to be defined by OEMS, the hospital shall be required to submit a new application and updated RFP and follow the process outlined in Paragraphs (a) – (h) of this Rule.

(r) The final decision regarding trauma center designation shall be rendered by the OEMS.

(s) The hospital shall be notified, in writing, of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.

(t) If a trauma center changes its trauma program administrative structure (such that the trauma service, trauma medical director, trauma nurse coordinator/program manager and/or trauma registrar are relocated on the hospital's organizational chart) at any time, it shall notify OEMS of this change in writing within 30 days of the occurrence.

(u) Initial designation as a trauma center is valid for a period of three years.

History Note: Authority G.S. 131E-162; 143-509(3); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .3305 RENEWAL DESIGNATION PROCESS

TEMPORARY RULES

(a) One of two options may be utilized to achieve trauma center renewal:

- (1) Undergo a site visit conducted by OEMS to obtain a four-year renewal designation; or
- (2) Undergo a verification visit arranged by the ACS, in conjunction with OEMS, to obtain a three year renewal designation;

(b) For hospitals choosing Subparagraph (a)(1) of this Rule:

- (1) Prior to the end of the designation period, the OEMS shall forward to the hospital an RFP for completion. The hospital shall, within 10 days of receipt of the RFP, define for OEMS the trauma center's trauma primary catchment area. Upon this notification, OEMS shall notify the respective Board of County Commissioners in the applicant's trauma primary catchment area of the request for renewal to allow for comment.
- (2) Hospitals seeking a renewal of trauma center designation shall complete and submit an original and five copies of a bound, page-numbered RFP as directed by the OEMS to the OEMS and the specified site surveyors at least 30 days prior to the site visit. The RFP shall include information that supports compliance with the criteria contained in Rules .3301, .3302, or .3303 of this Section as relates to the trauma center's level of designation.
- (3) All criteria defined in Rules .3301, .3302 or .3303 of this Section, as relates to the trauma centers level of designation, shall be met for renewal designation.
- (4) A site visit shall be conducted within 120 days prior to the end of the designation period. The site visit shall be scheduled on a date mutually agreeable to the hospital and the OEMS.
- (5) The composition of a Level I or II site survey team shall be the same as that specified in Rule .3304(k) of this Section.
- (6) The composition of a Level III site survey team shall be the same as that specified in Rule .3304(l) of this Section.
- (7) On the day of the site visit, the hospital shall make available all required patient medical charts.
- (8) A post conference report based on consensus of the site review team will be given verbally during the summary conference. A written consensus report will be completed, to include a peer review report, by the primary reviewer and submitted to OEMS within 30 days of the site visit.
- (9) The report of the site survey team and a staff recommendation shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting which is more than 45 days following the site visit. Based upon the site visit report and the staff recommendation, the State Emergency Medical Services Advisory Council shall

recommend to the OEMS that the request for trauma center renewal be approved or denied.

- (10) Hospitals with a deficiency(ies) have two weeks to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be corrected in two weeks, the hospital, instead of a renewal, may be given a time period (up to 12 months) to demonstrate compliance and undergo a focused review, which may require an additional site visit. If compliance is not demonstrated within the time period, as specified by OEMS, the trauma center designation shall not be renewed. To become redesignated, the hospital shall be required to submit an updated RFP and follow the initial applicant process outlined in Rule .3304 of this Section.
- (11) The final decision regarding trauma center renewal shall be rendered by the OEMS.
- (12) The hospital shall be notified in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
- (13) The four-year renewal date that may be eventually granted will not be extended due to the focused review period.
- (14) Hospitals in the process of satisfying contingencies placed on them prior to December 31, 2001, shall be evaluated based on the rules that were in effect at the time of their renewal visit.

(c) For hospitals choosing Subparagraph (a)(2) of this Rule:

- (1) At least six months prior to the end of the trauma center's designation period, the trauma center must notify the OEMS of its intent to undergo an ACS verification visit. It must simultaneously define in writing to the OEMS its trauma primary catchment area. Trauma centers choosing this option must then comply with all the ACS' verification procedures, as well as any additional state criteria as outlined in Rules .3301, .3302 or .3303, as apply to their level of designation.
- (2) If a trauma center currently using the ACS' verification process chooses not to renew using this process, it must notify the OEMS at least six months prior to the end of its state trauma center designation period of its intention to exercise Subparagraph (a)(1) of this Rule.
- (3) When completing the ACS documentation for verification, the trauma center must simultaneously submit two identical copies to OEMS. The trauma center must simultaneously complete documents supplied by OEMS to verify compliance with additional North Carolina criteria (i.e. criteria that exceed the ACS criteria) and forward these to OEMS and the ACS.

- (4) The OEMS shall notify the Board of County Commissioners within the trauma center's trauma primary catchment area of the trauma center's request for renewal to allow for comments.
- (5) The trauma center must make sure the site visit is scheduled to ensure that the ACS' final written report, accompanying medical record reviews and cover letter are received by OEMS at least 30 days prior to a regularly scheduled State Emergency Medical Services Advisory Council meeting to ensure that the trauma center's state designation period does not terminate without consideration by the State Emergency Medical Services Advisory Council.
- (6) The composition of the Level I and Level II site team must be as specified in Rule .3304(k) of this Section, except that both the required trauma surgeons and the emergency physician may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician membership will be required of the surgeons or emergency physician, respectively, if from out-of-state.
- (7) The composition of the Level III site team must be as specified in Rule .3304(l) of this Section, except that the trauma surgeon, emergency physician, and trauma nurse coordinator/program manager may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician membership will be required of the surgeon or emergency physician, respectively, if from out-of-state.
- (8) All state trauma center criteria must be met as defined in Rules .3301, .3302, and 3303, for renewal of state designation. An ACS' verification is not required for state designation. An ACS' verification does not ensure a state designation.
- (9) The final written report issued by the ACS' verification review committee, the accompanying medical record reviews (from which all identifiers may be removed) and cover letter must be forwarded to OEMS within 10 working days of its receipt by the trauma center seeking renewal.
- (10) The written reports from the ACS and the OEMS staff recommendation shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting. The State EMS Advisory Council shall recommend to OEMS that the request for trauma center renewal be approved or denied.
- (11) The hospital shall be notified in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
- (12) Hospitals with contingencies, as the result of a deficiency(ies), as determined by OEMS, may undergo a focused review (to be conducted by the OEMS) whereby the trauma center may be given up to 12 months to demonstrate compliance. Satisfaction of contingency(ies) may require an additional site visit. If compliance is not demonstrated within the time period, as specified by OEMS, the trauma center designation shall not be renewed. To become redesignated, the hospital shall be required to submit a new RFP and follow the initial applicant process outlined in Rule .3304 of this Section.

History Note: Authority G.S. 131E-162; 143-509(3); Temporary Adoption Eff. January 1, 2002.

SECTION .3400 – TRAUMA CENTER DESIGNATION ENFORCEMENT

10 NCAC 03D .3401 DENIAL, FOCUSED REVIEW, VOLUNTARY WITHDRAWAL, OR REVOCATION OF TRAUMA CENTER DESIGNATION

(a) The OEMS may deny the initial or renewal designation (without first allowing a focused review) of a trauma center for any of the following reasons:

- (1) failure to comply with G.S. 131E-162 and the rules adopted under that article; or
- (2) attempting to obtain a trauma center designation through fraud or misrepresentation; or
- (3) failure to comply with G.S. 131E-162 and the rules adopted under that article endangers the health, safety or welfare of patients cared for in the hospital; or
- (4) repetition of contingencies placed on the trauma center in previous site visits.

(b) When a trauma center is required to have a focused review, an option only for a trauma center seeking renewal, it must be able to demonstrate compliance with the provisions of G.S.131E-162 and the rules adopted under that article within one year or less as required and delineated in writing by OEMS.

(c) The OEMS may revoke a trauma center designation at any time or deny a request for renewal of designation, whenever the OEMS finds that the trauma center has failed to comply with the provisions of G.S. 131E-162 and the rules adopted under that article; and

- (1) it is not probable that the trauma center can remedy the deficiencies within one year or less; or
- (2) although the trauma center may be able to remedy the deficiencies within a reasonable period of time, it is not probable that the trauma center shall be able to remain in compliance with designation rules for the foreseeable future; or
- (3) the trauma center fails to meet the requirements of a focused review; or

- (4) failure to comply endangers the health, safety or welfare of patients cared for in the trauma center.
- (d) The OEMS shall give the trauma center written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:
 - (1) the factual allegations;
 - (2) the statutes or rules alleged to be violated; and
 - (3) notice of the hospital's right to a contested case hearing on the amendment of the designation.
- (e) Focused review is not a procedural prerequisite to the revocation of a designation pursuant to Paragraph (d) of this Rule.
- (f) With the OEMS' approval, a trauma center may voluntarily withdraw its designation for a maximum of one year by submitting a written request. This request shall include the reasons for withdrawal and a plan for resolution of the issues. To reactivate the designation, the facility shall provide written documentation of compliance that is acceptable to the OEMS. Voluntary withdrawal shall not affect the original expiration date of the trauma center's designation.
- (g) If the trauma center fails to resolve the issues which resulted in a voluntary withdrawal within the specified time period for resolution, the OEMS may revoke the trauma center designation.
- (h) In the event of a revocation or voluntary withdrawal, the OEMS shall provide written notification to all hospitals and Emergency Medical Services providers within the trauma center's defined trauma primary catchment area. The OEMS shall provide written notification to same if, and when, the voluntary withdrawal reactivates to full designation.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .3402 PROCEDURES FOR APPEAL OF DENIAL, FOCUSED REVIEW OR REVOCATION

Appeal of denial or revocation of a trauma center designation shall follow the law regarding contested cases found in G.S. 150B.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .3403 MISREPRESENTATION OF DESIGNATION

- (a) Hospitals shall not represent themselves as a trauma center unless they are currently designated by the Department pursuant to Section .3300 of this Subchapter.
- (b) Designation applies only to the hospital that submitted the RFP and underwent the formal site survey and does not extend to its satellite facilities or affiliates.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

SECTION .3500 – TRAUMA SYSTEM DESIGN

10 NCAC 03D .3501 STATE TRAUMA SYSTEM

- (a) The state trauma system consists of regional plans, policies, guidelines and performance improvement initiatives by the RACs and monitored by the OEMS.

- (b) The OEMS shall require that each hospital select a Regional Advisory Committee (RAC). If a hospital does not exist in a given county, the EMS system for the county shall select the RAC. Each RAC shall include at least one Level I or II trauma center. Any hospital changing its affiliation shall report the change in writing to the OEMS within 30 days of the date of the change.

- (c) The OEMS shall notify each RAC of its hospital and county membership.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .3502 REGIONAL TRAUMA SYSTEM PLAN

- (a) A Level I and/or II trauma center shall facilitate development of and provide RAC staff support which shall include, at a minimum, the following:

- (1) the trauma medical director(s) from the Lead RAC Agency; and
- (2) trauma nurse coordinator(s) or program manager(s) from the Lead RAC Agency.

- (b) The RAC membership shall include, at a minimum, the following:

- (1) the trauma medical director(s) and the trauma nurse coordinator(s) or program manager(s) from the Lead RAC Agency;
- (2) if on staff, an outreach coordinator(s) or designee(s), as well as an identified RAC registrar or designee(s) from the Lead RAC Agency;
- (3) a senior level hospital administrator;
- (4) an emergency physician;
- (5) an Emergency Medical Services representative
- (6) a representative from each hospital participating in the RAC;
- (7) community representatives; and
- (8) an EMS System physician involved in medical oversight.

- (c) The RAC shall develop and submit a plan, within one year of notification of the RAC membership, or for existing RACs within six months of the implementation date of this Rule, to the OEMS containing at a minimum:

- (1) organizational structure to include the roles of the members of the system;
- (2) goals and objectives to include the orientation of the providers to the regional system;
- (3) RAC membership list, rules of order, terms of office, meeting schedule (held at a minimum of two times per year);
- (4) copies of documents and information required by the OEMS as defined in Rule .3503 of this Section;
- (5) system evaluation tools to be utilized;
- (6) written documentation of regional support for the plan; and
- (7) performance improvement activities to include the RAC Registry.

- (d) The RAC shall submit to the OEMS an annual progress report that assesses compliance with the regional trauma system plan and specifies any updates to the plan.

(e) Upon OEMS receipt of a letter of intent for initial Level I or II trauma center designation pursuant to Rule .3304 (b) of this Subchapter, the applicant's RAC shall be provided the applicant's data from OEMS to review and comment. This data which should demonstrate the need for the trauma center designation must include, at a minimum:

- (1) the population to be served and the extent to which the population is under served for trauma care with the methodology used to reach this conclusion;
- (2) geographic considerations to include trauma primary and secondary catchment area and distance from other trauma centers; and
- (3) trauma patient volume and severity of injury for the facility for the twenty-four month period of time preceding the application. The trauma center shall show that its trauma service will be taking care of at least 200 trauma patients with an Injury Severity Score (ISS) greater than or equal to 15 during the first two-year period of its designation. This criteria shall be met without compromising the quality of care or cost effectiveness of any other designated Level I or II trauma center sharing all or part of its catchment area or by jeopardizing the existing trauma center's ability to meet this same 200 patient minimum.

(f) The RAC has 30 days to comment on the request for initial designation.

(g) The RAC shall also be notified of the OEMS approval to submit an RFP so that necessary changes in protocols can be considered.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

10 NCAC 03D .3503 REGIONAL TRAUMA SYSTEM POLICY DEVELOPMENT

The RAC shall oversee the development, implementation, and evaluation of the regional trauma system to include:

- (1) public information and education programs to include system access and injury prevention;
- (2) written trauma systems guidelines to address the following:
 - (A) regional communications;
 - (B) triage;
 - (C) treatment at the scene and in the pre-hospital, inter-hospital, and emergency department treatment to and shall include: guidelines to facilitate the rapid assessment and initial resuscitation of the severely injured patient, including primary and secondary survey. Criteria addressing management during transport should include continued assessment and management of airway, cervical spine, breathing, circulation, neurologic and secondary parameters, communication and documentation;

(D) transport to determine the appropriate the appropriate mode of transport and level of care required to transport, considering patient condition, requirement for trauma center resources, family requests and capability of transferring entity;

(E) bypass procedures which define:

- (i) circumstances and criteria for bypass decisions;
- (ii) time and distance criteria; and
- (iii) mode of transport which bypasses closer facilities;

(F) scene and inter-hospital diversion procedures which shall include delineation of specific factors such as hospital census and/or acuity, physician availability, staffing issues, disaster status, or transportation which would require routing of a patient to an other trauma center;

(3) transfer agreements (to include those with other hospitals, as well as specialty care facilities such as burn, pediatrics, spinal cord and rehabilitation) which shall outline mutual understandings between facilities to transfer/accept certain patients. These shall specify responsible parties, documentation requirements and minimum care requirements;
(4) a performance improvement plan which includes:

- (A) a performance improvement committee of the RAC;
 - (i) whose membership only includes health care professionals, as defined and protected by G.S. 131E-95 or in G.S. 90-21.222A; and
 - (ii) continuously evaluates the regional trauma system through structured review of process of care and outcomes;
- (B) a RAC registry database, once operational, that reports quarterly or as requested by the OEMS.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002.

Rule-making Agency: Commission for MHDDAS

Rule Citation: 10 NCAC 14V .4101-.4103

Effective Date: February 15, 2002

Findings Reviewed and Approved by: Julian Mann, III

Authority for the rulemaking: G.S. 143B-147

Reason for Proposed Action: The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS) gave abbreviated notice via publication of the Notice of Rulemaking Proceedings in Volume 16, Issue 3 of the North Carolina Register. The adoption of temporary rules is necessary in order to implement provisions of recent legislation, Session Law 2001-437. Specifically it is necessary to coordinate certain provisions in conjunction with an allocation of \$5,000,000 in Temporary Assistance to Needy Families (TANF) Block Grant funds for the establishment and expansion of regional residential substance abuse treatment and services for women with children.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MHDDAS intends to amend the rules cited as 10 NCAC 14V .4101-.4103. Notice of Rule-making Proceedings was published in the Register on August 1, 2001.

Proposed Effective Date: February 15, 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 (1/30/02). 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, phone 919-881-2446.

Comment Procedures: Written comments will be accepted through February 15, 2002. 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, phone 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 .4100 - RESIDENTIAL RECOVERY PROGRAMS FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS AND THEIR CHILDREN

10 NCAC 14V .4101 SCOPE

(a) A 24-hour residential recovery program professionally supervised residential facility which provides trained staff who work intensively with individuals with substance abuse disorders

who provide or have the potential to provide primary care for their children.

(b) These programs shall include, for each parent in the program, assessment/referral, individual and group therapy, therapeutic parenting skills, basic independent living skills, educational groups, child supervision, aftercare, follow-up and access to preventive and primary health care.(c) Goals for parent-child interaction shall be established and progress towards meeting these goals shall be documented in the parent's service record.(d) The facility may utilize services from another facility providing treatment, support or medical services.

(e) Services shall be designed to provide a safe and healthy environment for clients and their children.

(f) Each facility shall assist the individual with the development of independent living skills in preparation for community based living.

History Note: Authority G.S. 143B-147; Eff. May 1, 1996; Temporary Amendment Eff. February 15, 2002.

10 NCAC 14V .4102 STAFF

(a) Each individual and child admitted to a facility shall receive services as appropriate to his or her needs from a qualified professional who has responsibility for the client's treatment program. Each individual and child shall receive age-appropriate, therapeutic professional services.

(b) A minimum of one staff member shall be present in the facility with an individual at all times unless the designated qualified professional has documented in the individual client plan certain clearly delineated instances in which the client may be without supervision. In the case of multi-unit facilities which are licensed under the same license, a staff person shall be on the facility premises at all times when an individual is on the premises unless the designated qualified professional has assessed and documented in the individual client plan certain clearly delineated instances in which the client may be without supervision.

(c) A minimum of one staff member shall be present when one or more children are in the facility. In the case of multi-unit facilities which are licensed under the same license, a staff person shall be on the facility premises at all times when one or more children are in the facility or in circumstances when the child's parent is not present, the staff member must be in the unit with the child or children.

(d) Each individual identified as a residential staff member shall receive pre-service training in the following areas:

- (1) confidentiality;
(2) client rights;
(3) crisis management;
(4) developmentally appropriate child behavior management;
(5) medication education and administration;
(6) symptoms of secondary complications to substance abuse or drug addiction;
(7) signs and symptoms of pre-term labor; and
(8) signs and symptoms of post-partum complications.

(e) Adequate training to support the therapeutic process shall also be provided to all residential staff in the following areas within 60 days of employment:

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- (1) therapeutic parenting skills;
- (2) dynamics and needs of emotionally disturbed and substance abusing individuals and their children;
- (3) multi-cultural and gender specific issues;
- (4) issues of substance abuse and the process of recovery;
- (5) HIV/AIDS;
- (6) sexually transmitted diseases;
- (7) drug screening;
- (8) domestic violence, sexual abuse, and sexual assault;
- (9) pregnancy, delivery and well child care; and
- (10) infant feeding, including breast feeding.

- (3) assistance from a local ambulance service, rescue squad or other trained medical personnel within 20 minutes of the facility.

(d) Schedules: The facility shall:

- (1) have a written schedule for daily routine activities; and
- (2) establish a schedule for the provision of treatment and rehabilitation services.

(e) Discharge Plan: Before discharging the client, the facility shall complete a discharge plan for each client and refer each client who has completed services to the level of treatment or rehabilitation in accordance with the client needs.

History Note: Authority G.S. 143B-147; Eff. May 1, 1996; Temporary Amendment Eff. February 15, 2002.

History Note: Authority G.S. 143B-147; Eff. May 1, 1996; Temporary Amendment Eff. February 15, 2002.

10 NCAC 14V .4103 OPERATIONS

(a) Admissions:

- (1) Admission to the facility shall be a joint decision of the designated qualified professional, the provider of residential care, and the individual.
- (2) The individual shall have the opportunity for at least one pre-admission visit to the facility except for an emergency admission.

(b) Coordination Of Treatment And Education To Children In The Facility: Each facility or multi- unit facility shall provide or make arrangements for the following:

- (1) The appropriate education program for a child shall be coordinated with his/her service plan.
- (2) Each child shall receive preventive and primary health care services.
- (3) Each child shall have required immunizations as specified by G.S. 130A-152.
- (4) Each child, birth through four years of age, shall receive a behavioral health and developmental screening, and if appropriate, receive a multi-disciplinary evaluation by qualified professionals for early childhood intervention services. Parents shall be provided information on services that the child is eligible for or entitled to receive at screening and evaluation.(5) Each child five years of age and over, shall receive a behavioral health and developmental screening, and if appropriate, be evaluated for child mental health and substance abuse disorder(s) by a qualified professional(s).
- (6) Each child three years of age and over, shall receive substance abuse prevention services to address at-risk factors associated with being a child in a high-risk family.

(c) Emergency Medical Services: Each facility shall ensure the availability of emergency medical services to include:

- (1) immediate access to a physician;
- (2) acute care hospital services; and

Rule-making Agency: *Social Services Commission*

Rule Citation: *10 NCAC 41F .0601-.0602, .0701-.0702, .0704, .0707, .0807; 41N .0101, .0203, .0212-.0216*

Effective Date of Temporary Rule: *February 1, 2002*

Proposed Effective Date of Permanent Rule: *July 1, 2002*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 131D-10.5; 143B-153*

Public Hearing:

Date: *February 14, 2002*

Time: *10:00 a.m.*

Location: *325 N. Salisbury Street; Albemarle Bldg., Room 832; Raleigh, NC*

Reason for Proposed Action: *The Social Services Commission intends to temporarily amend rules in 10 NCAC 41F governing the licensure of family foster homes and amend and adopt rules in 10 NCAC 41N governing the licensure of child-placing agencies, for which there have been recent State statutory and federal regulatory changes. Session Law 2001-424 mandates that the Department of Health and Human Services establish appropriate residential treatment alternatives for children at risk of institutional or other out of home placements that facilitate cost sharing among involved agencies. Amendment and adoption of rules for foster families and child-placing agencies are needed to ensure that the most cost effective treatment services are provided in family settings and that such costs are shared among the responsible agencies. The implementation of the new federal regulations to limit waivers that are not for non-safety standards in relative foster family homes should enhance our ability to approve more family foster homes and ensure that North Carolina's family foster home rules are consistent with federal regulations.*

Comment Procedures: *Should you desire to comment on the proposed rules, please contact Ms. Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401,*

phone (919) 733-3055; fax (919) 733-9386. Verbal comments may be expressed at the Commission meeting. Any written comments must be received by 10:00 a.m. on February 14, 2002.

Fiscal Impact

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

CHAPTER 41 – CHILDREN'S SERVICES

SUBCHAPTER 41F - LICENSING OF FAMILY FOSTER HOMES

SECTION .0600 – DEFINITIONS

10 NCAC 41F .0601 DEFINITIONS

The following definitions shall apply to the rules in Subchapters 41F, 41N, 41O and 41P:

- (1) Family Foster Home means a place of residence of a family, person or persons licensed to provide full time foster care services to children under the supervision of a county department of social services or a licensed private child placing agency, and which meets the regulations regarding family foster home capacity set forth in Rule .0602 of this Section.
(2) Agency means a county department of social services or a private child placing agency that is duly authorized by law to receive children for purposes of placement in family foster homes or adoptive homes.

History Note: Authority G.S. 131D, Art. 1A; 143B-153; Eff. July 1, 1982; Temporary Amendment Eff. February 1, 2002.

10 NCAC 41F .0602 FAMILY FOSTER HOME: QUALIFICATIONS

- (a) Not more than seven children may be provided care in any family foster home at any given time. These seven children shall include the foster parent's own children, children placed for foster care, day care children or any other children.
(b) Not more than five children placed for foster care shall reside in a family foster home at any one time. With prior approval from the Children's Services, Section, additional children may be placed if the agency submits to the licensing authority:
(1) Written documentation that the family foster home meets the fire and building safety standards of the North Carolina State Building Code applicable for the number of children in the home. The North Carolina State Building Code is hereby incorporated by reference including subsequent amendments and additions. The North Carolina State Building Code may be obtained from the North Carolina Department of Insurance, Code Council Building, 410 North Boylan Avenue,

Raleigh, North Carolina 27603 at a cost of one hundred eighteen (\$118.00) dollars.

- (2) Written documentation addressing the foster parents skill, stamina, and capacity to care for the children. (c) Members of the household 18 years old and over are not included in capacity, but there must be physical accommodations for all persons in the home.

History Note: Authority G.S. 131D, Art. 1A; 143B-153; Eff. July 1, 1982; Temporary Amendment Eff. February 1, 2002.

SECTION .0700 – STANDARDS FOR LICENSING

10 NCAC 41F .0701 CLIENT RIGHTS AND CARE OF CHILDREN

The foster parents shall ensure that each child:

- (1) has clothing to wear that is appropriate to the weather;
(2) is allowed to have personal property;
(3) is encouraged to express opinions on issues concerning care;
(4) is provided care in a manner that recognizes variations in cultural values and traditions;
(5) is provided the opportunity for spiritual development and is not denied the right to practice religious beliefs;
(6) is not identified in connection with the agency in any way that would bring the child or the child's family embarrassment;
(7) is not forced to acknowledge dependency on or gratitude to the foster parents;
(8) is encouraged to contact and have telephone conversations with family members, when not contraindicated in the child's treatment or service plan;(9) is provided training and discipline that is appropriate for the child's age, intelligence, emotional makeup and past experience;
(10) is not subjected to cruel, severe, or unusual punishment;
(11) is not subjected to corporal punishment;
(12) is not deprived of a meal or contacts with family for punishment or placed in isolation time-out except when isolation time-out means the removal of a child to a separate unlocked room or area from which the child is not physically prevented from leaving. The foster parent may use isolation time-out as a behavioral control measure when the foster parent provides it within hearing distance and sight of another foster parent. The length of time alone shall be appropriate to the child's age and development;(13) is not subjected to verbal abuse, threats, or humiliating remarks about himself or his family;
(14) is provided a daily routine in the home that promotes good mental health and provides an opportunity for normal activities with time for rest and play;

- (15) is provided training in good health habits, including proper eating, frequent bathing and good grooming. Each child shall be provided food with appropriate nutritional content for normal growth and health. Any special diets recommended by a physician must be provided;
- (16) is provided medical care in accordance with the treatment prescribed for the child;
- (17) of mandatory school age maintains regular school attendance unless the child has been officially excused by the proper authorities;
- (18) is encouraged to participate in neighborhood and group activities, to have friends visit the home and to visit in the homes of friends;
- (19) assumes some responsibility for himself and household duties in accordance with his age, health and ability. Household tasks shall not interfere with school, sleep, play or study periods;
- (20) is not permitted to do any task which is in violation of child labor laws or not appropriate for a child of that age;
- (21) is provided supervision in accordance with the child's age, intelligence, emotional makeup and past experience; and
- (22) if less than six years of age, is properly secured in a child passenger restraint system which is of a type and which is installed in a manner approved by the Commissioner of Motor Vehicles.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1982; Temporary Amendment Eff. February 1, 2002.

10 NCAC 41F .0702 CRITERIA FOR THE FOSTER FAMILY

(a) Personal Qualities. Foster parents shall be selected on the basis of having personal characteristics and relationships which will permit them to undertake and perform the responsibilities of caring for children, in providing continuity of care, and in working with a social agency. Persons who have been found to have abused or neglected a child by any agency duly authorized by law to investigate allegations of abuse or neglect may not be eligible for licensure as foster parents. Foster parents shall be persons:

- (1) who give a feeling of caring about others and being responsive to them;
- (2) who are able to give affection and care to a child in order to meet the child's needs;
- (3) who can enjoy being parents;
- (4) who have the capacity to give, without expectation of return;
- (5) who have worked out between themselves a satisfactory and stable marital relationship, without severe problems in their sexual identification, or in their relationship with each other;
- (6) who are able to maintain meaningful relationships, free from severe conflicts, with

- members of their own families as well as with others outside the families;
- (7) who have reputable characters, acceptable values and ethical standards conducive to the well being of children;
- (b) Family Attitude Toward Foster Care. All members of the foster family must be in agreement with the decision to provide foster care services.
- (c) Age. A new family foster home license may be issued to persons 21 years of age and older.
- (d) Health. The foster family shall be in good physical and mental health as evidenced by:
 - (1) a physical examination completed by a physician, physician's assistant or a certified nurse practitioner on each member of the foster family household within at least three months prior to the initial licensing and every other year thereafter;
 - (2) documentation that each member of the household has had a TB skin test or chest x-ray prior to initial licensure and a TB skin test annually thereafter, a medical history form must be completed on each member of the foster family at the time of the initial licensing and on any person who subsequently becomes a member of this household;
 - (3) on years that a physical examination is not required a health questionnaire addressing the current physical and mental health of each household member must be completed by the foster family.
- (e) Income. The foster family shall have a stable income sufficient for their needs without dependency upon board payments. The supervising agency shall discuss the family's income and expenditures and shall document on each licensing application/reapplication that this standard is met.
- (f) Religion. The foster parents shall not deny the child the opportunity for spiritual development and the right to practice his religious belief.
- (g) Employment of Foster Parent. Both foster parents may be employed if a suitable child care plan has been approved by the supervising agency.
- (h) Adoption. With special permission from the Children's Services Branch Section, Foster Care Services, a foster home license may remain valid while foster parents are adopting a child:
 - (1) Such permission must be obtained through a written request from the licensing agency and may include a request to continue placement of children in the home while the foster parents are adopting a child.
 - (2) Written request for a foster home license to remain valid must document that the agency has given careful consideration to the effect new children will have on the child being adopted as well as how the new child or children will be affected.
- (i) ~~County Department of Social Services~~ Agency Employees, Social Services Board Members, County Commissioners as Foster ~~Parents~~: Parents. These persons may be licensed as foster parents if such licensure does not constitute a conflict of

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interest regarding supervision of children placed in the home. The agency decision shall be documented in the family's record.

(j) Foster Family Vacations Relative to Foster Children. Foster parents shall be allowed to take foster children on trips away from the foster home in accordance with the following:

- (1) If the foster child will be away from the home longer than overnight, the supervising agency must be notified.
- (2) If the child will be away longer than a week, permission must be given by the supervising agency.
- (3) In cases where natural parents remain in contact with their children, the parents are informed of the child's situation.

(k) Day Care and Baby Sitting Services in the Foster Home. With prior approval from the supervising agency, a licensed foster parent may keep day care children or provide baby-sitting services under the following conditions:

- (1) The foster ~~the~~ home is not overcrowded according to the definition of capacity for family foster homes as set forth in Section .0600 of this Subchapter.
- (2) The foster parent continues to meet the requirements of Rule .0701 of this Subchapter.

(l) Day Care Centers Operated by Foster Parents. If a licensed foster parent operates or plans to operate a day care center, the following criteria must be met:

- (1) The foster family living quarters can not be part of the day care operation.
- (2) There must be a separate entrance to the day care operation.
- (3) Adequate staff in addition to the foster parents must be available to provide care for the day care children.
- (4) The foster parents continue to meet the requirements of Rule .0701 of this Subchapter.

(m) Relationship to Responsible Agency. Foster parents must agree to work constructively with the supervising agency in the following ways:

- (1) Work with the child and the child's natural family in the placement process when appropriate, return to natural family, adoption, or replacement process;
- (2) Work with direct service social worker in developing plans, and meeting the needs of the child and the child's family;
- (3) Accept consultation from social workers, mental health personnel and physicians and other authorized persons who are involved with the foster child;
- (4) Use staff development opportunities effectively;
- (5) Maintain confidentiality regarding children and their natural parent(s);
- (6) Keep records regarding foster child's illness, behavior, social needs, school, family visits, etc.; and
- (7) Report to the agency immediately any significant changes in their and/or child's situation.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1982; Amended Eff. May 1, 1990; July 1, 1983; Temporary Amendment Eff. February 1, 2002.

10 NCAC 41F .0704 PHYSICAL FACILITY

(a) Fire and Building Safety.

- (1) . Each home shall be in compliance with all applicable portions of the NC Building Code in effect at the time the home was constructed or last renovated. The NC Building Code is hereby incorporated by reference including subsequent amendments and additions. The NC Building Code may be obtained from the North Carolina Department of Insurance, Code Council Building, 410 North Boylan Avenue, Raleigh, North Carolina 27603 at a cost of one hundred eighteen dollars (\$118.00), at the time of adoption of this Rule. Where strict conformance with current requirements would be impractical, or because of extraordinary circumstances or unusual conditions, the licensing authority may approve alternative methods or procedures, addressing criteria and functional variations for the physical plant requirements, when it can be effectively demonstrated to the licensing authority that the intent of the physical plan requirements are met and that the variation does not reduce the safety or operational effectiveness of the home.

(2) All homes shall be reasonably protected from all fire hazards, included but not limited to the following:

- (A) All hallways, doorways, entrances, ramps, steps and corridors shall be kept clear and unobstructed at all times;
- (B) an evacuation plan shall be developed, and all persons in the home shall be knowledgeable of the plan;
- (C) all homes shall have one smoke detector outside each bedroom that is within 10 feet of each bedroom door, with at least one smoke detector on each level and at least one five pound ABC type fire extinguisher;
- (D) all homes shall have a telephone that functions without use of electric power.

(3) Before a home is fully licensed, and annually thereafter, it must be inspected and receive a satisfactory rating on the fire and building safety inspection report completed by the local jurisdiction. ~~(A) county building inspector;~~
~~(B) local fire department official.~~

(b) Health Regulations.

- (1) All homes must meet the minimum sanitation standards for a residential care facility as set forth by the North Carolina Health Services Commission and codified in 15A NCAC 18A

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.1600 which is incorporated by reference including all subsequent amendments and editions. Copies of this Rule may be obtained from the Office of Administrative Hearings (OAH) Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of adoption of this Rule.

- (2) Before a home not on public water and sewer systems, is fully licensed, and annually thereafter, it must be inspected by the county sanitarian and receive a satisfactory rating on the inspection form for residential care facilities.

(c) Environmental Regulations.

- (1) The home and yard shall be maintained and repaired so that they are not hazardous to the children in care.
- (2) The house shall be kept free of uncontrolled rodents and insects.
- (3) Windows and doors used for ventilation shall be screened.
- (4) The kitchen shall be equipped with an operable stove and refrigerator, running water and eating, cooking and drinking utensils to accommodate the household members, which are cleaned and stored after each use.
- (5) Household equipment and furniture shall be in good repair.
- (6) Flammable and poisonous substances, medications and cleaning materials shall be stored out of the reach of children placed for foster care.
- (7) Explosive materials, ammunition and firearms shall be stored separately in locked places.
- (8) Documentation that household pets have been vaccinated for rabies shall be maintained by the foster parents.
- (9) Comfort Zone: each home shall have heating, air-cooling or ventilating capability to maintain a comfort range between 65 and 85 degrees F.
- (10) Rooms including toilets, baths, and kitchens, without operable windows must have mechanical ventilation to the outside.

(d) Room Arrangements.

- (1) Family Room. Each home shall have a family room which shall be large enough to meet the needs of the family including children placed for foster care.
- (2) Kitchen and Dining Area. The kitchen shall be large enough for preparation of food and cleaning of dishes. The dining area shall be large enough to seat all members of the family including children placed for foster care.
- (3) Bedrooms. Bedrooms shall be clearly identified on a floor plan as bedrooms and shall not serve dual functions.

(A) Space.. Children shall not be permitted to sleep in an unfinished basement or in an unfinished attic.

(B) Sleeping Arrangements.

- (i) No child two years of age or older shall share a bedroom with an adult.
- (ii) Each child shall have his own bed except:
 - (I) siblings of same sex may share a double bed;
 - (II) two children of the same sex and near the same age may at the discretion of the foster parents and supervising agency share a double bed, but only if the children so desire.

(iii) Each bed shall be provided with a comfortable mattress, proper support, two sheets, blanket, and bedspread, and be of a size to accommodate the child.

(iv) No day bed, convertible sofa, or other bedding of a temporary nature shall be used except for temporary care of up to two weeks.

(v) Sleeping room shall not be shared by children of opposite sex. If exceptions are necessary, these shall be only for children age five and under.

(vi) Sleeping arrangements shall be such that space is provided within the bedroom for the bed, the child's personal possessions and for a reasonable degree of privacy.

(vii) When children share a bedroom, consideration shall be given to the ages of the children. It is recommended that a child under six should not share a room with a child over 12. No more than 4 children shall share a room.

(C) Storage. Separate and accessible drawer space for personal belongings and sufficient closet space for indoor and outdoor clothing shall be available for each child.

(4) Bathrooms. The home shall have indoor, operable sanitary toilet, hand washing, and

bathing facilities. Homes shall be designed in a manner that will provide children privacy while bathing, dressing and using toilet facilities.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1982; Amended Eff. May 1, 1994; May 1, 1990; July 1, 1983; Temporary Amendment Eff. February 1, 2002.

10 NCAC 41F .0707 CRIMINAL HISTORIES

- (a) An applicant shall not be eligible for licensure if the applicant, or any member of the applicant's household 18 years of age or older, refuses to consent to any criminal history check required by G.S. 131D, Art. 1A.
- (b) An applicant may not be eligible for licensure if the licensing authority determines based on the criminal history, that the applicant or any member of the applicant's household 18 years of age or older is unfit to have responsibility for the safety and well-being of children.

History Note: Authority G.S. 131D-10.5; 143B-153; Temporary Adoption Eff. January 1, 1996; Eff. April 1, 1997; Temporary Amendment Eff. October 28, 1997; Amended Eff. April 1, 1999; Temporary Amendment Eff. February 1, 2002.

SECTION .0800 – LICENSING REGULATIONS AND PROCEDURES

10 NCAC 41F .0807 REVOCATION

- (a) Licenses may be revoked when an agency duly authorized by law to investigate allegations of abuse or neglect finds the foster parent has abused or neglected a child.
- (b) Revocation of a license may occur when the foster family home is not in compliance with minimum licensing standards, and it is determined that compliance cannot be accomplished within established time limits.
- (c) Foster parents must be made aware of the reasons for the agency's decision to revoke a license.
- (d) Foster parents must submit their license to the agency for it to be returned to the Division of Social Services, Children's Services. Section.
- (e) Appeal procedures specified in 10 NCAC 41A .0107, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, shall be applicable for persons seeking an appeal to the Department's decision to revoke a license.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1982; Amended Eff. July 1, 2002; May 1, 1990; February 1, 1986; Temporary Amendment Eff. February 1, 2002.

SUBCHAPTER 41N - CHILD PLACING AGENCIES: MATERNITY HOMES AND CHILDREN'S CAMPS

SECTION .0100 – GENERAL

10 NCAC 41N .0101 SCOPE

The rules in this Subchapter apply to persons defined in 10 NCAC 41N .0202(b) who receive children for the purpose of placement in family foster homes, adoptive homes, and who operate residential maternity homes. In addition, if the persons defined in 10 NCAC 41N .0202(b) provide behavioral mental health treatment services, the rules in 10 NCAC 14V .0203, .0204, .0205 and .0206 shall apply.

History Note: Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153; Eff. February 1, 1986; Amended Eff. January 1, 2002; July 1, 1990; Temporary Amendment Eff. February 1, 2002.

SECTION .0200 – ORGANIZATION AND ADMINISTRATION

10 NCAC 41N .0203 RESPONSIBILITIES OF THE GOVERNING BODY

- (a) The governing body shall provide leadership for the agency and shall be responsible for establishing the agency's policies, programs, and guiding its development.
- (b) The governing body shall assure the employment of an administrator and delegate responsibility to that person for the administration and operation of the agency, including the employment and discharge of all agency staff.
- (c) The governing body shall annually evaluate the administrator's performance except a sole proprietor or partner is exempt from this Rule if he serves as administrator.
- (d) The governing body shall approve the annual budget of anticipated income and expenditures necessary to provide the services described in its statement of purpose. The governing body shall provide for an annual audit of agency financial records.
- (e) The governing body shall establish and utilize personnel practices for selection and retention of staff which are sufficient to operate the agency.
- (f) The governing body shall establish and utilize policies and procedures for periodic evaluation of the agency's services. This evaluation must include the agency's interaction with other community agencies to serve its clients.
- (g) The governing body or their appointed advisory boards or committees shall meet as often as necessary with a minimum of four meetings a year. A quorum of its members shall be present at all meetings at which decisions with respect to the agency are made. Meeting minutes of the governing body shall be permanently maintained.
- (h) The governing body shall establish in writing the policies and procedures for control and access to or receipt, use, and release of information about its clients.
- (i) The governing body, in the event of the closing of the agency, shall develop a plan which is appropriate to the program for the retention and long term storage of case records. The specifics of this plan must be submitted to the licensing authority before the actual closing of the agency.

History Note: Authority G.S. 131D-1; 131D-10.5; 143B-153; Eff. February 1, 1986; Amended Eff. January 1, 2002; July 1, 1990; Temporary Amendment Eff. February 1, 2002.

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10 NCAC 41N .0212 CONFIDENTIALITY

- (a) The agency's policy on confidentiality shall:
- (1) identify the individuals with access to or control over confidential information;
 - (2) specify that persons who have access to records or specified information in a record be limited to persons authorized pursuant to law. These persons shall include the client; the birth parent or legal custodian when the client is a minor; agency staff; auditing, licensing, or accrediting personnel; and those persons for whom the agency has obtained a signed consent for release of confidential information; and
 - (3) require that a consent for release form is signed when client information is disclosed.
- (b) The agency shall:
- (1) provide a secure place for the storage of records with confidential information;
 - (2) inform any individual with access to confidential information of the provisions of this Rule;
 - (3) ensure that, upon employment and whenever revisions are made to the policy, staff sign a compliance statement which indicates an understanding of the requirements of confidentiality;
 - (4) permit a child to review his case record in the presence of agency personnel on the agency premises, in a manner that protects the confidentiality of other family members or other individuals referenced in the record, unless agency personnel determines the information in the child's case record would be harmful to the child.
 - (5) in cases of perceived harm to the child, document in writing any refusals to share information with the child, birth parent or legal custodian;
 - (6) maintain a confidential case record for each child;
 - (7) maintain confidential personnel records for all employees; and
 - (8) maintain confidential records for all volunteers.

(c) The agency may destroy in office the closed record of a child who has been discharged for a period of three years or may destroy in office a record three years after a child has reached age 18, unless included in a federal fiscal or program audit that is unresolved, then the agency may destroy the record in office when released from all audits.

History Note: Authority G.S. 131D-10.5; 143B-153; Temporary Adoption Eff. February 1, 2002.

10 NCAC 41N .0213 CLIENT RIGHTS

(a) The agency shall develop and implement policies and procedures to protect the individual rights and dignity of children or residents and families who are provided services by the agency.

(b) The agency shall have a client's and family's rights policy, which includes that each child or resident has the right to:

- (1) privacy;
- (2) be provided adequate food, clothing, and shelter;
- (3) have access to family time and have telephone conversations with family members, when not contraindicated in the child's intervention plan or individualized service plan;
- (4) have personal property and a space for storage;
- (5) express opinions on issues concerning the child's or resident's care or treatment;
- (6) receive care in a manner that recognizes variations in cultural values and traditions;
- (7) be free from coercion by foster parents or staff with regard to religious or cultural decisions. The agency shall have a process to assure that, whenever practical, the wishes of the birth parents with regard to a child's or resident's religious and cultural participation are ascertained and followed;
- (8) not be identified in connection with publicity for the agency which shall bring the child or resident, or the child's or resident's family embarrassment; and
- (9) not be forced to acknowledge dependency on or gratitude to the agency.

(c) The agency shall have a policy that prohibits direct involvement by a child or resident in funds solicitation for the agency.

(d) The agency shall have a policy, which prohibits the child's or resident's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the child or resident and the child's legal custodian.

History Note: Authority G.S. 131D-10.5; 143B-153; Temporary Adoption Eff. February 1, 2002.

10 NCAC 41N .0214 GRIEVANCE PROCEDURES

(a) The agency shall provide to each child or resident and birth parents or legal custodians, upon placement:

- (1) a written description of policies and procedures that the child or resident and his birth parents or legal custodians follow to register complaints;
- (2) information about client's and family's rights;
- (3) the process for appealing a decision or action of the agency; and
- (4) the process of resolution of a complaint.

(b) Upon resolution of a grievance, the agency shall maintain a copy of the complaint and the resolution in the case record.

History Note: Authority G.S. 131D-10.5; 143B-153; Temporary Adoption Eff. February 1, 2002.

10 NCAC 41N .0215 SEARCHES

(a) The agency shall have written policies and procedures regarding foster parents or staff conducting searches of children's or residents' rooms and possessions that shall be

discussed with each child or resident, their birth parents or legal custodians prior to or upon placement.

- (b) The search policies and procedures shall include:
 - (1) Circumstances under which searches are conducted;
 - (2) Persons who are allowed to conduct searches; and
 - (3) Provision for documenting searches and informing the agency of searches.

History Note: Authority G.S. 131D-10.5; 143B-153; Temporary Adoption Eff. February 1, 2002.

10 NCAC 41N .0216 MEDICATION ADMINISTRATION

(a) The agency shall have written policies and procedures regarding foster parents or staff administering medications to children placed in their home or residents that shall be discussed with each child or resident, and the child's birth parents or legal custodians prior to or upon placement.

- (b) These policies and procedures shall address medication:
 - (1) Administration;
 - (2) dispensing, packaging, labeling, storage and disposal;
 - (3) review;
 - (4) education and training; and
 - (5) documentation, including medication orders, Medication Administration Record (MAR); orders and copies of lab tests; and, if applicable, administration errors and adverse drug reactions.

History Note: Authority G.S. 131D-10.5; 143B-153; Temporary Adoption Eff. February 1, 2002.

Rule-making Agency: DHHS – Division of Medical Assistance

Rule Citation: 10 NCAC 50B .0102

Effective Date: January 1, 2002

Findings Reviewed and Approved by: Julian Mann, III

Authority for the rulemaking: G.S. 108A-54; C.F.R. 435.210; 42 C.F.R. 435.222; 42 C.F.R. 435.230; 42 C.F.R. 435.301; 42 C.F.R. 435.308; 42 C.F.R. 435.322; 42 C.F.R. 435.330; 42 U.S.C. 1396(a)(10)(A)(ii); 42 U.S.C. 1396a(a)(10)(C); S.L. 1983, c. 1034, s. 62.2; S.L. 1987, c. 738, s. 69; S.L. 1989, c. 752, s. 133

Reason for Proposed Action: *This change is based on recent General Assembly legislation to enact a new optional federal coverage group for women who have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention, breast and cervical cancer early detection program and need treatment for breast or cervical cancer, including precancerous conditions. The women are not otherwise covered under creditable coverage including Medicaid and are under the age of 65.*

Comment Procedures: *Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Dr., 2504 Mail Service Center, Raleigh, NC 27699-2504.*

CHAPTER 50 – MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0100 – COVERAGE GROUPS

10 NCAC 50B .0102 OPTIONAL

The following optional groups of individuals described by 42 U.S.C. 1396a(a)(10)(A)(ii) and 42 U.S.C. 1396a(a)(10)(C) shall be eligible for Medicaid:

- (1) Children:
 - (a) Children under age one whose family income is more than the amount established under Item (16), Rule .0101 of this Section and not more than a percent of the federal poverty level established by the General Assembly;
 - (b) Children under age 21 who meet the eligibility requirements of this Subchapter;
 - (c) Qualified children under age 19 as described in Item (6), Rule .0101 of this Section, who were born on or before September 30, 1983, and whose income is not more than 100% of the federal poverty level;
 - (d) Adopted children under age 18 with special needs, as described at 42 U.S.C. 1396a(a)(10)(A)(ii)(VIII).
- (2) Individuals receiving optional state supplemental payment.
- (3) Caretaker relatives of eligible dependent children.
- (4) Pregnant women:
 - (a) Whose countable income is more than the amount established under Item (15), Rule .0101 of this Section and not more than a percent of the federal poverty level established by the General Assembly; or
 - (b) Who, if their countable income exceeds the percent of the federal poverty level, established in Sub-item (4)(a) of this Rule, meet the eligibility criteria for medically needy set forth in this Subchapter.
- (5) Aged, blind and disabled individuals whose income is at or below 100% of the Federal Poverty Level, adjusted each April 1, and who meet the resource requirements of SSI, but who do not receive cash assistance.
- (6) Women, as described at 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) who:

- (a) Have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the Public Health Service Act in accordance with the requirements of Section 1504 of that Act and need treatment for breast or cervical cancer, including a precancerous condition of the breast or cervix;
- (b) Are not otherwise covered under creditable coverage, as defined in Section 2701(c) of the Public Health Service Act;
- (c) Are not otherwise eligible for Medicaid; and
- (d) Have not attained age 65.

sought recourse for unresolved objections to the main Rule, 15A NCAC 02B .0256, with the Environmental Review Commission (ERC) of the General Assembly. ERC staff managed a six-month arbitration process that resulted in a consensus set of changes to the agriculture rule embodied in Session Law 2001-355, which was signed by Governor Easley on August 10th. The bill specifies certain changes to the rule as agreed to by all parties and authorizes the EMC to adopt a temporary rule that would specifically incorporate those changes. The EMC intends to amend this Rule to incorporate the consensus changes as contemplated by the bill.

Comment Procedures: Comments should be directed to Rich Gannon, Division of Water Quality, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone 919-733-5083, ext. 356.

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0256 TAR-PAMLICO RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: AGRICULTURAL NUTRIENT CONTROL STRATEGY

(a) **PURPOSE.** The purpose of this Rule is to set forth a process by which agricultural operations in the Tar-Pamlico River Basin will collectively limit their nitrogen and phosphorus loading to the Pamlico estuary. The purpose is to achieve and maintain a 30 percent reduction in collective nitrogen loading from 1991 levels within five to eight years and to hold phosphorus loading at or below 1991 levels within four years of Commission approval of a phosphorus accounting methodology.

(1) **PROCESS.** This Rule requires farmers in the Basin to implement land management practices that collectively, on a county or watershed basis, will achieve the nutrient goals. Local committees and a Basin committee will develop strategies, coordinate activities and account for progress.

(2) **LIMITATION.** This Rule may not fully address the agricultural nitrogen reduction goal of the Tar-Pamlico Nutrient Sensitive Waters Strategy in that it does not address atmospheric sources of nitrogen to the Basin, including atmospheric emissions of ammonia from sources located both within and outside of the Basin. As better information becomes available from ongoing research on atmospheric nitrogen loading to the Basin from these sources, and on measures to control this loading, the Commission may undertake separate rule-making to require such measures it deems necessary from these sources to support the goals of the Tar-Pamlico Nutrient Sensitive Waters Strategy.

History Note: Filed as a Temporary Amendment Eff. October 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Filed as a Temporary Amendment Eff. September 12, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 108A-54; 42 C.F.R. 435.210; 42 C.F.R. 435.222; 42 C.F.R. 435.230; 42 C.F.R. 435.301; 42 C.F.R. 435.308; 42 C.F.R. 435.322; 42 C.F.R. 435.330; 42 U.S.C. 1396(a)(10)(A)(ii); 42 U.S.C. 1396a(a)(10)(C); S.L. 1983, c. 1034, s. 62.2; S.L. 1987, c. 738, s. 69 and 70; S.L. 1989, c. 752, s. 133; Eff. September 1, 1984; Amended Eff. January 1, 1995; February 1, 1992; July 1, 1991; August 1, 1990; Temporary Amendment Eff. February 23, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. January 1, 2002.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: Environmental Management Commission

Rule Citation: 15A NCAC 02B .0256

Effective Date: January 1, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A-C; S.L. 2001, c. 355

Reason for Proposed Action: In October 2000, the Environmental Management Commission adopted the last of a set of nutrient reduction rules for the Tar-Pamlico River Basin to address ongoing nutrient-related problems in the Pamlico estuary. The last rules 15A NCAC 02B .0255 and .0256, addressed agriculture. The pasture industry subsequently

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(b) **APPLICABILITY.** This Rule shall apply to all persons engaging in agricultural operations in the Tar-Pamlico River Basin except certain persons engaged in such operations for educational purposes. Persons engaged for educational purposes shall be those persons involved in secondary school or lesser grade-level activities that are a structured part of an organized program conducted by a public or private educational institution or by an agricultural organization. Educational activities shall not include research activities in support of commercial production. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:

- (1) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.
- (2) Research activities in support of such commercial production.
- (3) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
 - (A) 20 or more horses;
 - (B) 20 or more cattle;
 - (C) 150 or more swine;
 - (D) 120 or more sheep;
 - (E) 130 or more goats;
 - (F) 650 or more turkeys;
 - (G) 3,500 or more chickens; or
 - (H) A number of any single species or combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
- (4) Certain tree-harvesting activities described and defined as follows.
 - (A) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B .0259 that was open farmland on September 1, 2001. This one-time harvest of trees may be conducted within one tree cropping interval only under a verifiable farm plan that received final approval from a local agricultural agency on or after September 1, 2001 and that expressly allowed the harvest of trees no earlier than 10 years after the trees are established and the return of the land to another agricultural pursuit.
 - (B) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B .0259 that had trees established under an agricultural incentive program as of September 1, 2001.
 - (C) All tree harvesting described in Subparagraphs (b)(4)(A) and (b)(4)(B) of this Rule shall comply with Forest Practices Guidelines Related to Water Quality codified at 15A NCAC 01I. The nutrient

removal functions that were provided by trees prior to their harvest shall be replaced by other measures that are implemented by the owner of the land from which the trees are harvested.

(D) The following definitions shall apply to terms used in Subparagraphs (b)(4)(A) through (b)(4)(C) of this Rule.

- (i) "Agricultural incentive program" means any of the following programs and any predecessor program to any of the following programs:
 - (I) Agriculture Cost Share Program for Nonpoint Source Pollution Control established by G.S. 143-215.74.
 - (II) Conservation Reserve Enhancement Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition) and 15A NCAC 06G .0101 through 15A NCAC 06G .0106.
 - (III) Conservation Reserve Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition).
 - (IV) Environmental Quality Incentives Program established by 7 C.F.R. Part 1466 (January 1, 2001 Edition).
 - (V) Wetlands Reserve Program established by 7 C.F.R. Part 1467 (January 1, 2001 Edition).
 - (VI) Wildlife Habitat Incentives Program established by 7 C.F.R. Part 636 (January 1, 2001 Edition).
- (ii) "Local agricultural agency" means the North Carolina Cooperative Extension Service, the Farm Services Agency of the United States

Department of Agriculture, the Natural Resources Conservation Service of the United States Department of Agriculture, a Soil and Water Conservation District created pursuant to G.S. 139-5, or their successor agencies.

- (iii) "Open farmland" means the footprint of land used for pasture or for crops or horticultural products other than trees. Open farmland may contain scattered trees if an open canopy existed on September 1, 2001 as determined from the most recent aerial photographs taken prior to September 1, 2001 for the Farm Services Agency of the United States Department of Agriculture.
- (iv) "Tree" means a woody plant with a diameter equal to or greater than five inches when measured at a height of four and one-half feet above the ground.
- (v) "Tree cropping interval" means the time required to establish and grow trees that are suitable for harvesting. The tree-cropping interval shall be set out in the farm plan and shall be no less than 10 years after the trees are established.

(c) **METHOD FOR RULE IMPLEMENTATION.** This Rule shall be implemented through a cooperative effort between a Basin Oversight Committee and Local Advisory Committees in each county or watershed. The membership, roles and responsibilities of these committees are set forth in Paragraphs (f) and (g) of this Rule. Committees' activities shall be guided by the following constraints:

- (1) The Commission shall determine whether each Local Advisory Committee has achieved its nitrogen reduction goal within five years of the effective date of this Rule, and its phosphorus loading goal within four years of the date that a phosphorus accounting method is approved by the Commission, both based on the accounting process described in Paragraphs (f) and (g) of this Rule. Should the Commission determine that a Local Advisory Committee has not achieved its nitrogen goal within five years, then the Commission shall require additional BMP implementation as needed to ensure that the goal is met within eight years of the effective date of this Rule. The Commission shall similarly review compliance

with the phosphorus goal four years after it approves a phosphorus accounting method, and shall require additional BMP implementation as needed to meet that goal within an additional three years from that date. All persons subject to this Rule who have not implemented BMPs in accordance with an option provided in Subparagraphs (d)(1) or (d)(2) of this Rule shall be subject to such further requirements deemed necessary by the Commission for any Local Advisory Committee that has not achieved a nutrient goal.

- (2) Should a committee not form or not follow through on its responsibilities such that a local strategy is not implemented in keeping with Paragraph (g) of this Rule, the Commission may require all persons subject to this Rule in the affected area to implement BMPs as set forth in Paragraph (e) of this Rule.

(d) **OPTIONS FOR MEETING RULE REQUIREMENTS.** Persons subject to this Rule shall register their operations with their Local Advisory Committee according to the requirements of Paragraph (g) of this Rule within one year of the effective date of this Rule. Such persons may elect to implement any BMPs they choose that are recognized by the Basin Oversight Committee as nitrogen-reducing BMPs within five years of the effective date of this Rule. Persons who implement one of the following two options within five years of the effective date of this Rule for nitrogen-reducing BMPs and within four years of the date that a phosphorus accounting method is approved by the Commission shall not be subject to any additional requirements that may be placed on persons under Paragraph (c) of this Rule. Persons subject to this Rule shall be responsible for implementing and maintaining the BMPs used to meet the requirements of this Rule for as long as they continue their agricultural operation. If a person ceases an operation and another person assumes that operation, the new operator shall be responsible for implementing BMPs that meet the requirements of this Paragraph.

- (1) Option 1 is to implement site-specific BMPs that are accepted by the Local Advisory Committee as fully satisfying a person's obligations under this Rule based on BMP implementation needs identified in the local nutrient control strategy required under Subparagraph (g)(3) of this Rule and on nutrient reduction efficiencies established by the Basin Oversight Committee as called for under Subparagraphs (f)(2) and (f)(3) of this Rule.
- (2) Option 2 is to implement standard BMPs that persons subject to this Rule choose from the alternatives established pursuant to Paragraph (e) of this Rule.

(e) **STANDARD BEST MANAGEMENT PRACTICES (BMPs).** Standard BMPs shall be individual BMPs or combinations of BMPs that achieve at least a 30 percent reduction in nitrogen loading and no increase in phosphorus loading relative to conditions that lack such BMPs. Standard

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BMPs shall be established for the purposes of this Rule by one of the following processes:

- (1) The Soil and Water Conservation Commission may elect to approve, under its own authorities, standard BMP options for the Tar-Pamlico River Basin based on nutrient reduction efficiencies established by the Basin Oversight Committee pursuant to Subparagraph (f)(3) of this Rule and using criteria for nitrogen- and phosphorus-reducing BMPs as described in rules adopted by the Soil and Water Conservation Commission, including 15A NCAC 06E .0104 and 15A NCAC 06F .0104. One purpose of this process is to provide persons subject to this Rule the opportunity to work with the Soil and Water Conservation Commission in its development of standard BMP options; or
- (2) In the unlikely event that the Soil and Water Conservation Commission does not approve an initial set of standard BMP options for the Tar-Pamlico River Basin within one year of the effective date of this Rule, then the Environmental Management Commission may approve standard BMP options within eighteen months of the effective date of this Rule. In that event, the standard BMP options approved by the Commission shall be designed to reduce nitrogen and phosphorus loading, as specified at the beginning of Paragraph (e) of this Rule, from agricultural sources through structural, management, or buffering farming BMPs or animal waste management plan components.

(f) **BASIN OVERSIGHT COMMITTEE.** The Basin Oversight Committee shall have the following membership, role and responsibilities:

- (1) **MEMBERSHIP.** The Commission shall delegate to the Secretary the responsibility of forming a Basin Oversight Committee within two months of the effective date of this Rule. Members shall be appointed for five-year terms and shall serve at the pleasure of the Secretary. Until such time as the Commission determines that long-term maintenance of the nutrient loads is assured, the Secretary shall either reappoint members or replace members every five years. The Secretary shall solicit nominations for membership on this Committee to represent each of the following interests, and shall appoint one nominee to represent each interest. The Secretary may appoint a replacement at any time for an interest in Parts (f)(1)(F) through (f)(1)(J) of this Rule upon request of representatives of that interest:
 - (A) Division of Soil and Water Conservation;
 - (B) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity

- (C) and shall function as a technical program advisor to the Committee);
- (C) North Carolina Department of Agriculture and Consumer Services;
- (D) North Carolina Cooperative Extension Service;
- (E) Division of Water Quality;
- (F) Environmental interests;
- (G) Basinwide farming interests;
- (H) Pasture-based livestock interests;
- (I) Cropland farming interests; and
- (J) The scientific community with experience related to water quality problems in the Tar-Pamlico River Basin.

- (2) **ROLE.** The Basin Oversight Committee shall:
 - (A) Develop a tracking and accounting methodology pursuant to Subparagraph (f)(3) of this Rule. A final nitrogen methodology shall be submitted to the Commission for approval within one year after the effective date of this Rule. A final methodology for phosphorus shall be submitted at the earliest date possible as determined by the Basin Oversight Committee with input from the technical advisory committee described in Part (f)(2)(D) of this Rule.
 - (B) Identify and implement future refinements to the accounting methodology as needed to reflect advances in scientific understanding, including establishment of nutrient reduction efficiencies for BMPs.
 - (C) Appoint a technical advisory committee within 6 months of the effective date of this Rule to inform the Basin Oversight Committee on rule-related issues. The Basin Oversight Committee shall direct the committee to take the following actions at a minimum: monitor advances in scientific understanding related to phosphorus loading, evaluate the need for additional management action to meet the phosphorus loading goal, and report its findings to the Basin Oversight Committee on an annual basis. The Basin Oversight Committee shall in turn report these findings and its recommendations to the Commission on an annual basis following the effective date of this Rule, until such time as the Commission, with input from the Basin Oversight Committee, determines that the technical advisory committee has fulfilled its purpose. The Basin Oversight Committee shall

solicit nominations for this committee from the Division of Soil and Water Conservation, United States Department of Agriculture-Natural Resources Conservation Service, North Carolina Department of Agriculture and Consumer Services, North Carolina Cooperative Extension Service, Division of Water Quality, environmental interests, agricultural interests, and the scientific community with experience related to the committee's charge.

- (D) Review, approve and summarize county or watershed local strategies and present these strategies to the Commission for approval within two years after the effective date of this Rule.
 - (E) Establish minimum requirements for, review, approve and summarize local nitrogen and phosphorus loading annual reports as described under Subparagraph (g)(5) of this Rule, and present these reports to the Commission each October, until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals.
- (3) **ACCOUNTING METHODOLOGY.** The Basin Oversight Committee shall develop an accounting methodology that meets the following requirements:
- (A) The methodology shall quantify baseline total nitrogen and phosphorus loadings from agricultural operations in each county and for the entire basin.
 - (B) The methodology shall include a means of tracking implementation of BMPs, including number, type, and area affected.
 - (C) The methodology shall include a means of estimating incremental nitrogen and phosphorus reductions from actual BMP implementation and of evaluating progress toward the nutrient goals from BMP implementation. The methodology shall include nutrient reduction efficiencies for individual BMPs and combinations of BMPs that can be implemented toward the nitrogen and phosphorus goals.
 - (D) The methodology shall allow for future refinements to the nutrient baseline loading determinations, and to the load reduction accounting methodology.

- (E) The methodology shall provide for quantification of changes in nutrient loading due to changes in agricultural land use, modifications in agricultural activity, or changes in atmospheric nitrogen loading to the extent allowed by advances in technical understanding.

- (F) The methodology shall include a method to track maintenance of the nutrient net loads after the initial eight years of this Rule, including tracking of changes in BMPs and additional BMPs to offset new or increased sources of nutrients from agricultural operations.

(g) **LOCAL ADVISORY COMMITTEES.** The Local Advisory Committees shall have the following membership, roles, and responsibilities:

- (1) **MEMBERSHIP.** A Local Advisory Committee shall be appointed as provided in this Paragraph in each county (or watershed as specified by the Basin Oversight Committee) within the Tar-Pamlico River Basin. As directed by S.L. 2001, c. 355, the Local Advisory Committees shall be appointed on or before November 1, 2001. They shall terminate upon a finding by the Environmental Management Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured. Each Local Advisory Committee shall consist of:
 - (A) One representative of the local Soil and Water Conservation District;
 - (B) One local representative of the United States Department of Agriculture-Natural Resources Conservation Service;
 - (C) One local representative of the North Carolina Department of Agriculture and Consumer Services;
 - (D) One local representative of the North Carolina Cooperative Extension Service;
 - (E) One local representative of the North Carolina Division of Soil and Water Conservation; and
 - (F) At least five, but not more than 10 farmers who reside in the county or watershed.
- (2) **APPOINTMENT OF MEMBERS.** The Director of the Division of Water Quality and the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall jointly appoint members described in Subparagraphs (g)(1)(A), (g)(1)(B), (g)(1)(D), and (g)(1)(E) of this Rule. As directed by S.L. 2001, c. 355, the Commissioner of Agriculture shall appoint the members described in Subparagraphs (g)(1)(C) and (g)(1)(F) of this

- Rule from persons nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed. Members of the Local Advisory Committees shall serve at the pleasure of their appointing authority.
- (3) **ROLE.** The Local Advisory Committees shall:
- (A) Conduct a registration process for persons subject to this Rule. This registration process shall be completed within one year after the effective date of this Rule. It shall obtain information that shall allow Local Advisory Committees to develop local strategies in accordance with Subparagraph (g)(4) of this Rule. At minimum, the registration process shall request the type and acreage of agricultural operations, nutrient-reducing BMPs implemented since January 1, 1992 and their operational status, and the acres affected by those BMPs. It shall provide persons with information on requirements and options under this Rule, and on available technical assistance and cost share options;
 - (B) Designate a member agency to compile and retain copies of all individual plans produced to comply with this Rule;
 - (C) Develop local nutrient control strategies for agricultural operations, pursuant to Subparagraph (g)(4) of this Rule, to meet the nitrogen and phosphorus goals assigned by the Basin Oversight Committee. The nitrogen component of the control strategy shall be submitted to the Basin Oversight Committee no later than twenty-three months from the effective date of this Rule. The phosphorus component of the control strategy shall be submitted within one year of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule;
 - (D) Ensure that any changes to the design of the local strategy will continue to meet the nutrient goals of this Rule; and
 - (E) Submit annual reports to the Basin Oversight Committee, pursuant to Subparagraph (g)(5) of this Rule, each May until such time as the Commission determines that annual reports are no longer needed to assure
- long-term maintenance of the nutrient goals.
- (4) **LOCAL NUTRIENT CONTROL STRATEGIES.** The Local Advisory Committees shall be responsible for developing county or watershed nutrient control strategies that meet the following requirements. If a Local Advisory Committee fails to submit a nutrient control strategy as required in Part (g)(3)(C) of this Rule, the Commission may develop one based on the accounting methodology that it approves pursuant to Part (f)(2)(A) of this Rule.
- (A) Local nutrient control strategies shall be designed to achieve the required nitrogen reduction goals within five years after the effective date of this Rule, and to maintain those reductions in perpetuity or until such time as this Rule is revised to modify this requirement. Strategies shall be designed to meet the phosphorus loading goals within four years of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule.
 - (B) Local nutrient control strategies shall specify the numbers and types of all agricultural operations within their areas, numbers of BMPs that will be implemented by enrolled operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus reductions, schedule for BMP implementation, and operation and maintenance requirements.
 - (C) Local nutrient control strategies may prioritize BMP implementation to establish the most efficient and effective means of achieving the nutrient goals.
- (5) **ANNUAL REPORTS.** The Local Advisory Committees shall be responsible for submitting annual reports for their counties or watersheds. Annual reports shall be submitted to the Basin Oversight Committee each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals. Annual reports shall quantify progress toward the nutrient goals with sufficient detail to allow for compliance monitoring at the farm level. The Basin Oversight Committee shall determine reporting requirements to meet these objectives. Those requirements may include information on BMPs implemented by individual farms, proper BMP operation and maintenance, BMPs discontinued, changes in agricultural land use or activity, and resultant net nutrient loading changes.

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History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; S.L. 2001-355; Eff. September 1, 2000; Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-S.L. 2001-355).

Rule-making Agency: NC Marine Fisheries Commission

Rule Citation: 15A NCAC 03M .0506; 03O .0208

Effective Date: January 1, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-221; 143B-289.52

Reason for Proposed Action:

15A NCAC 03M .0506 – Changes to the management measures for black sea bass made effective by the National Marine Fisheries Service on July 30, 2001, require the recreational size limit for black sea bass to increase to 11 inches north of Cape Hatteras. It is proposed that further action will be taken in 2002 to required the same size limit for commercially taken black sea bass. Amendments to this Rule allow the size limit for black sea bass north of Cape Hatteras be implemented through proclamation. G.S. 143B-289.52(e) allows the adoption of temporary rules within six months of adoption or amendment of a fishery management plan in order to remain in compliance with that plan. These measures are necessary for compliance.

15A NCAC 03O .0208 – The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) required a complete review of the Marine Fisheries Laws. Section 6.10 authorizes the Marine Fisheries Commission to adopt temporary rules until all rules necessary to implement the provisions of this act have become effective. Final approval of the Oyster Fishery Management Plan and the Clam Fishery Management Plan adopted under the authority of the Fisheries Reform Act of 1997 was made at the August 26-27, 2001 Marine Fisheries Commission meeting. A temporary rule implementing new standards for maintained shellfish leases was adopted on October 1, 2001, but it contained an incorrect reference to a rule. The temporary rule should have stated 15A NCAC 03O .0201 instead of 15A NCAC 03K .0201. Without this correction there are no standards for maintaining a shellfish lease.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03M .0506. Notice of Rule-making Proceedings was published in the Register on November 1, 2000.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: February 6, 2002

Time: 7:00 p.m.

Location: Hilton Wilmington Riverside, 301 N. Water St., Wilmington, NC

Date: February 26, 2002

Time: 7:00 p.m.

Location: Duke University Marine Lab, Pivers Island, Beaufort, NC

Date: March 19, 2002

Time: 7:00 p.m.

Location: College of the Albemarle, Room 202-B Building, 1208 N. Road St., Elizabeth City, NC

Date: April 22, 2002

Time: 7:00 p.m.

Location: Bob Martin Agriculture Center, 2900 Hwy 125 South, Williamston, NC

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, c/o Juanita Gaskill, PO Box 769, Morehead City, NC 28557. Oral comments may be presented at the four public hearings. All public hearings will begin at 7:00 pm. Oral presentation lengths may be limited, depending on the number of people that wish to speak at the public hearings. The public comment period will end on April 22, 2002. The Marine Fisheries Commission will consider the public comments in regard to adoption of this Rule as a permanent rule at a business session scheduled for April 23-24, 2002 at the Bob Martin Agricultural Center, 2900 Hwy, 125 South, Williamston, NC

Fiscal Impact

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

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03M – FINFISH

SECTION .0500 - OTHER FINFISH

Editor's Note: The text in bold has been approved by Rules Review Commission and is waiting for the 2002 Legislative Session.

15A NCAC 03M .0506 SNAPPER-GROUPER

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fisheries for species of the snapper-grouper complex and black sea bass in order to comply with the management requirements incorporated in the Fishery Management Plans for Snapper-Grouper and Sea Bass developed by the South Atlantic Fishery Management Council or Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission:

- (1) Specify size;
(2) Specify seasons;
(3) Specify areas;
(4) Specify quantity;
(5) Specify means/methods; and

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- (6) Require submission of statistical and biological data.

The species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region are hereby incorporated by reference and copies are available via the Federal Register posted on the Internet at www.access.gpo.gov and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

(b) Black sea bass, south of Cape Hatteras:

- (1) It is unlawful to possess black sea bass less than ten inches total length.
(2) It is unlawful to take or possess more than 20 black sea bass per person per day without a valid Federal Commercial Snapper-Grouper permit.

(c) Gag grouper:

- (1) It is unlawful to possess gag grouper (gray grouper) less than 24 inches total length.
(2) It is unlawful to possess more than two gag grouper (gray grouper) per person per day without a valid Federal Commercial Snapper-Grouper Permit.
(3) It is unlawful to possess more than two gag grouper (gray grouper) per person per day during the months of March and April.
(4) It is unlawful to sell or purchase gag grouper (gray grouper) taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.

(d) Black grouper:

- (1) It is unlawful to possess black grouper less than 24 inches total length.
(2) It is unlawful to possess more than two black grouper per person per day without a valid Federal Commercial Snapper-Grouper Permit.
(3) It is unlawful to take or possess more than two black grouper per person per day during the months of March and April.
(4) It is unlawful to sell or purchase black grouper taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.

(e) It is unlawful to possess red grouper less than 20 inches total length.

(f) It is unlawful to possess yellowfin grouper (fireback grouper) less than 20 inches total length.

(g) It is unlawful to possess scamp less than 20 inches total length.

(h) It is unlawful to possess yellowmouth grouper less than 20 inches total length.

(i) Speckled hind (kitty mitchell) and warsaw grouper:

- (1) It is unlawful to sell or purchase speckled hind or warsaw grouper.
(2) It is unlawful to possess more than one speckled hind or one warsaw grouper per vessel per trip.

(j) Greater amberjack:

- (1) For recreational purposes:

(A) It is unlawful to possess greater amberjack less than 28 inches fork length.

(B) It is unlawful to possess more than one greater amberjack per person per day.

(2) It is unlawful to sell or purchase greater amberjack less than 36 inches fork length.

(3) It is unlawful to possess more than one greater amberjack per person per day without a valid Federal Commercial Snapper-Grouper Permit.

(4) It is unlawful to possess more than one greater amberjack per person per day during the month of April even with a valid Federal Commercial Snapper-Grouper Permit.

(5) It is unlawful to sell or purchase greater amberjack during any closed season.

(k) Red Snapper:

(1) It is unlawful to possess red snapper less than 20 inches total length.

(2) It is unlawful to possess more than two red snapper per person per day without a valid Federal Commercial Snapper-Grouper permit.

(l) Vermilion Snapper:

(1) For recreational purposes:

(A) It is unlawful to possess vermilion snapper (beeliner) less than 11 inches total length.

(B) It is unlawful to possess more than 10 vermilion snapper per person per day.

(2) It is unlawful to possess or sell vermilion snapper (beeliner) less than 12 inches total length with a valid Federal Commercial Snapper-Grouper permit.

(m) It is unlawful to possess silk snapper (yelloweye snapper) less than 12 inches total length.

(n) It is unlawful to possess blackfin snapper (hambone snapper) less than 12 inches total length.

(o) Red porgy (Pagrus pagrus):

(1) It is unlawful to possess red porgy less than 14 inches total length.

(2) It is unlawful to possess more than one red porgy per person per day without a valid Federal Commercial Snapper-Grouper Permit.

(3) From January 1 through April 30, it is unlawful, even with a valid Federal Commercial Snapper-Grouper Permit, to:

(A) possess more than one red porgy per person per day, or

(B) sell or offer for sale red porgy.

(4) It is unlawful to land more than 50 pounds of red porgy from May 1 through December 31 in a commercial fishing operation.

(p) It is unlawful for persons in possession of a valid National Marine Fisheries Service Snapper-Grouper Permit for Charter Vessels to exceed the creel restrictions established in Paragraphs (b),(j), (o), and (p) of this Rule when fishing with more than three persons (including the captain and mate) on board.

(q) In the Atlantic Ocean, it is unlawful for an individual fishing under a Recreational Commercial Gear License with seines,

shrimp trawls, pots, trotlines or gill nets to take any species of the Snapper-Grouper complex.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. April 1, 1997; March 1, 1996; September 1, 1991; Temporary Amendment Eff. December 23, 1996; Amended Eff. August 1, 1998; April 1, 1997; Temporary Amendment Eff. August 29, 2000; January 1, 2000; May 24, 1999; Temporary Amendment Eff. January 1, 2002.

SUBCHAPTER 03O - LICENSES, LEASES, AND FRANCHISES

SECTION .0200 - LEASES AND FRANCHISES

15A NCAC 03O .0208 CANCELLATION

(a) In addition to the grounds established by G.S. 113-202, the Secretary shall begin action to terminate leases and franchises for failure to produce and market shellfish or for failure to maintain a planting effort of cultch or seed shellfish in accordance with 15A NCAC 03O .0201. (b) Action to terminate a shellfish franchise shall begin when there is reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. The Division shall investigate all such rights issued in perpetuity to determine whether the Secretary should request that the Attorney General initiate an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state. (c) Action to terminate a shellfish lease or franchise shall begin when the Fisheries Director has cause to believe the holder of private shellfish rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters. (d) In the event action to terminate a lease is begun, the owner shall be notified by registered mail and given a period of 30 days in which to correct the situation. Petitions to review the Secretary's decision must be filed with the Office of Administrative Hearings as outlined in 15A NCAC 03P .0102. (e) The Secretary's decision to terminate a lease may be appealed by initiating a contested case as outlined in 15A NCAC 03P .0102.

History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52; Eff. January 1, 1991; Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992; September 1, 1991; Temporary Amendment Eff. January 1, 2002; October 1, 2001.

Rule-making Agency: Coastal Resources Commission

Rule Citation: 15A NCAC 07H .1205; 07J .0701-.0703

Effective Date: December 20, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 113A-107(a),(b); 113A-118.1; 113A-120.1; 113A-124

Reason for Proposed Action:

15A NCAC 07H .1205 – Staff has reviewed the specific conditions of the CRC's General Permit for Construction of Piers, Docks and Boat Houses. Staff believes that these proposed changes will allow piers that existed on or before July 1, 2001 to be structurally modified outside of their footprint but in a manner that will minimize impacts to adjacent coastal wetlands, estuarine waters and/or public trust areas.

15A NCAC 07J .0701-.0703 – Staff has recognized the need to amend the variance procedure rules in 15A NCAC 07J .0700 in accordance with the statutory interpretation made by the North Carolina Court of Appeals in the Sammie Williams vs. NC Department of Environment and Natural Resources, Division of Coastal Management case. The court imposed a three-factor rather than a four-factor test for variances and the rules should be amended in several places to reflect this interpretation of CAMA.

Comment Procedures: Comments may be submitted to Charles S. Jones, Assistant Director, Division of Coastal Management, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, 252-808-2808.

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .1200 - GENERAL PERMIT FOR CONSTRUCTION OF PIERS, DOCKS, AND BOAT HOUSES IN ESTUARINE AND PUBLIC TRUST WATERS

15A NCAC 07H .1205 SPECIFIC CONDITIONS

(a) Piers, docks, and boat houses may extend or be located up to a maximum of 400 feet from the normal high water line, or the normal water level, whichever is applicable. (b) Piers, docks, and boat houses shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public. The length of piers shall be measured from the waterward edge of any wetlands that border the water body. (c) Piers longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier lengths shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. (d) Piers and docks shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

- (e) Any portion of a pier (either fixed or floating) extending from the main structure and six feet or less in width shall be considered either a "T" or a finger pier.
- (f) Any portion of a pier (either fixed or floating) greater than six feet wide shall be considered a platform or deck.
- (g) "T"s, finger piers, platforms, and decks of piers on lots with shorelines 100 feet or greater in length shall not exceed a combined total area of 400 square feet. The combined total area for lots less than 100 feet shall not exceed four square feet per linear foot of shoreline.
- (h) Platforms and decks shall have no more than six feet of any dimension extending over coastal wetlands.
- (i) The width requirements established in Paragraphs (d), (e), (f), (g) and (h) of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than two feet on either side of the principal structure. These modifications may not be used to expand the floor decking of platforms and piers.
- (j) Boathouses shall not exceed 400 square feet and shall have sides extending no further than one-half the height of the walls and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.
- (k) Areas enclosed by boat lifts shall not exceed 400 square feet.
- (l) Piers, docks, decks, platforms and boat houses shall be single story. They may be roofed but shall not be designed to allow second story use.
- (m) Pier alignments along federally maintained channels must also meet Corps of Engineers regulations for pier construction pursuant to Section 10 of the Rivers and Harbors Act.
- (n) Piers, docks, and boat houses shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier is located between longer piers within 200 feet of the applicant's property. However, the proposed pier shall not be longer than the pier head line established by the adjacent piers, nor, longer than 1/3 the width of the water body.
- (o) Piers, docks and boat houses shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier, dock, or boat house. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of

this Rule may be aided by reference to the approved diagram in Paragraph (q) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable.

- (p) Piers, and mooring facilities shall be designed to provide docking space for no more than two boats.
- (q) Applicants for authorization to construct a dock or pier shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (r) The diagram shown below illustrates the various shoreline configurations.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990; RRC Objection due to ambiguity Eff. March 18, 1993; Amended Eff. August 1, 1998; April 23, 1993; Temporary Amendment Eff. December 20, 2001.

**SUBCHAPTER 07J - PROCEDURES FOR HANDLING
MAJOR DEVELOPMENT PERMITS: VARIANCE
REQUESTS: APPEALS FROM MINOR DEVELOPMENT
PERMIT DECISIONS: AND DECLARATORY RULINGS**

**SECTION .0700 - EXPEDITED PROCEDURES FOR
CONSIDERING VARIANCE PETITIONS**

15A NCAC 07J .0701 VARIANCE PETITIONS

- (a) Any person who has received a final decision of an application for a CAMA major or minor development permit may petition for a variance from the CRC by means of the procedure described in this Section. In the case of a minor development permit, a decision shall not be considered final until all available local appeals have been exhausted.
- (b) The procedure in this Section shall apply only to petitions for variances, and shall not apply to appeals of major or minor permit decisions. This procedure shall be used for all variance petitions except when:
 - (1) a petition is combined with an appeal of a major or minor permit decision concerning the same application, in which case the applicant may consolidate both matters for a single quasi-judicial hearing as described in Section .0300 of this Subchapter;
 - (2) the Commission determines that due to the extraordinary nature of a petition more facts are necessary, in which case the petition may be heard by means of a hearing; or
 - (3) there are controverted facts that are significant in determining the propriety of a variance.
- (c) Variance petitions shall be submitted on forms provided by the Department of Environment and Natural Resources or CAMA local permit officers or, if not on such a form, shall provide at a minimum the following information:

- (1) the case name and location of the development as identified on the denied permit application;
- (2) an explanation of the reasons why the applicant believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:
 - (A) that enforcement of the applicable development guidelines or standards will cause the petitioner practical difficulties or unnecessary hardships; and
 - (B) that such difficulties result from conditions peculiar to the petitioner's property; and
 - (C) that such conditions could not reasonably have been anticipated by the Commission when the applicable guidelines or standards were adopted.
- (3) a copy of the permit application and denial for the development in question;
- (4) the date of the petition, and the name, address, and phone number of the petitioner; and
- (5) a complete description of the proposed development, including a site drawing with adequate topographical and survey information.

(d) In order to have a petition for a variance considered under the procedures set forth in this Rule, a petitioner who has given notice of appeal of the permit decision concerning the development that is the subject of the variance appeal will be required to agree that the time required to consider the petition shall not be counted in calculating the 120 day time period allowed for disposition of the appeal. The time required to consider the petition shall be calculated from the date on which the petitioner requests to have the petition heard under these procedures until the date on which the petitioner reaffirms the notice of appeal.

(e) Petitions shall be mailed directly to the Director of the Division of Coastal Management, Department of Environment and Natural Resources, 1638 Mail Service Center, Raleigh, NC 27699-1638.

(f) A variance request shall be considered by the Commission at a regularly scheduled meeting. Petitions shall be scheduled no later than the second regularly scheduled meeting following the date of receipt of the petition by the Division of Coastal Management, except when a later meeting is agreed upon by the petitioner and the Division of Coastal Management. A complete variance petition, as described in Paragraph (c) of this Rule, must be received by the Division of Coastal Management a minimum of four weeks in advance of a regularly scheduled commission meeting to be considered by the Commission at that meeting.

(g) Written notice of variance hearings or commission consideration of variance requests shall be provided to the petitioner and the permit officer making the initial permit decision. Notice shall be published in a newspaper of general circulation in the area of the proposed variance five days prior to a commission decision on the petition.

History Note: Authority G.S. 113A-124;

*Eff. December 12, 1979;
Amended Eff. December 1, 1991; May 1, 1990; March 1, 1988;
February 1, 1983;
Temporary Amendment Eff. December 20, 2001.*

15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS

(a) The Division of Coastal Management, as staff to the commission, is hereby authorized to review petitions to determine whether they are complete according to the requirements set forth in Rule .0701. Incomplete applications and a description of the deficiencies shall be returned expeditiously to the petitioner. Complete requests shall be scheduled for the appropriate commission meeting.

(b) The staff shall prepare a written description of the variance petition that shall be presented to the Commission before the petition is considered. The written description shall include:

- (1) a description of the property in question;
- (2) a description of how the use of the property is restricted or otherwise affected by the applicable rules;
- (3) a discussion of whether the petition meets or does not meet each of the requirements for a variance including both the petitioner and the staff positions;
- (4) and any other undisputed facts relevant to the findings set forth in G.S. 113A-120.1 which the Commission must make in order to grant a variance.

(c) The petitioner shall be provided an opportunity to review the written description prepared by the staff and to agree or disagree with the facts and statements therein. The written description presented to the Commission shall include only those facts and statements that have been agreed upon and stipulated to by both the petitioner and the staff. If the staff does not reach agreement with the petitioner and receive the petitioner's approval of the written description at least two weeks prior to a regularly scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next regularly scheduled commission meeting. If the staff determines that agreement cannot be reached on sufficient facts on which to base a meaningful variance decision, then the petition will be considered by means of an administrative hearing. Copies of the agreed upon description shall be provided to the permit officer making the initial permit decision prior to commission consideration of the variance.

*History Note: Authority G.S. 113A-124;
Eff. December 12, 1979;
Amended Eff. December 1, 1991; May 1, 1990; October 1, 1988;
March 1, 1988;
Temporary Amendment Eff. December 20, 2001.*

15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE

(a) The Commission may review the variance petition and staff comments and hear any oral presentation by the petitioner in full session or may appoint a member or members to do so. In cases where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the Commission.

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(b) The Commission or its appointed member or members shall be provided with copies of the petition and any comments the staff deems necessary before considering the petition.

(c) The Commission staff shall orally describe the petition to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the variance. The applicant shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.

(d) The final decision of the commission may be made at the meeting at which the matter is heard or in no case later than the next regularly scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail at the earliest feasible date after the final decision is reached.

(e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

(f) Variances may only be granted following affirmative findings by the Commission on each of the following points:

- (1) that enforcement of the applicable development guidelines or standards will cause the petitioner practical difficulties or unnecessary hardships; and
(2) that such difficulties result from conditions peculiar to the petitioner's property; and
(3) that such conditions could not reasonably have been anticipated by the Commission when the applicable guidelines or standards were adopted.

History Note: Authority G.S. 113A-120.1; Eff. December 12, 1979; Amended Eff. December 1, 1991; March 3, 1981; Temporary Amendment Eff. December 20, 2001.

Rule-making Agency: DENR - Commission for Health Services

Rule Citation: 15A NCAC 18C .1510

Effective Date: January 1, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141

Reason for Proposed Action: As part of the recent federal rule making process for arsenic, EPA had promulgated a lower arsenic standard. Studies released from the National Academy of Science this fall indicate that arsenic ingestion poses a much greater risk to public health than previously thought. This knowledge went into the EPA's decision on revised arsenic standard. Because of the new knowledge of the serious risk to public health, the Commission for Health Services has decided to make January 1, 2002 the effective date of the new maximum contaminant level of 0.010 milligrams per liter. The effect is that the public notice requirements will take effect in 2002 and

people will be notified of the risks associated with the increased arsenic levels in their drinking water. Water systems will still have until January 23, 2006 to come into compliance with the reduced standard. Based on ongoing monitoring data, 15 systems were believed to be impacted by this Rule. Each system was visited in November by PWS staff and given a copy of the draft temporary rule along with the health risk assessment information, draft public notice, and remedial and removal advice. In addition the American Water Works Association e-mail list server was used to notify stakeholders groups and interested individuals.

Comment Procedures: Comments can be addressed to Jessica Miles, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634, or at jessica.miles@ncmail.net.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18C - WATER SUPPLIES

SECTION .1500 - WATER QUALITY STANDARDS

15A NCAC 18C .1510 MAXIMUM CONTAMINANT LEVELS FOR INORGANIC CHEMICALS

(a) The provisions of 40 C.F.R. 141.11 are hereby incorporated by reference, including any subsequent amendments and editions, except the maximum contaminant level for arsenic shall be regulated as set forth in Paragraph (c) of this Rule. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from USEPA's homepage at http://www.epa.gov/safewater.
(b) The provisions of 40 C.F.R. 141.62 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from USEPA's homepage at http://www.epa.gov/safewater.
(c) Effective January 1, 2002, the maximum contaminant level for arsenic applies to community and non-transient non-community water systems as follows:

- (1) The maximum contaminant level for arsenic is 0.010 milligrams per liter, until such time as the USEPA revises the standard to a level lower than 0.010 milligrams per liter at which time the more stringent level shall apply.
(2) Sampling, analytical requirements, and compliance calculations for arsenic shall be conducted as specified for the contaminants in 15A NCAC 18C .1508.
(3) Certified laboratories must report quantifiable results down to at least 0.005 milligrams per liter for arsenic compliance samples effective January 1, 2002.
(4) Water systems with arsenic in excess of the maximum contaminant level from the latest compliance sample must submit by January 1,

2005 a compliance schedule to the Division of Environmental Health, Public Water Supply Section stating the alternative solution that has been selected, the actions to be taken, and the deadline for those actions in order to meet the revised standard by the compliance date. The system must be in compliance with the MCL by January 23, 2006. In the interim period, the water system shall provide public notice pursuant to 15A NCAC 18C .1523. Exceedence of the maximum contaminant level shall be reported in the Consumer Confidence Report pursuant to 15A NCAC 18C.1538.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Amended Eff. October 1, 1986; October 1, 1982; April 1, 1982; March 31, 1981; Transferred and Recodified from 10 NCAC 10D .1616 Eff. April 4, 1990; Amended Eff. April 1, 1992; Temporary Amendment Eff. January 1, 2002.

Rule-making Agency: HHS-Commission for Health Services

Rule Citation: 15A NCAC 21H .0111

Effective Date: December 17, 2001

Findings Reviewed and Approved by: Julian Mann, III

Authority for the rulemaking: G.S. 130A-134; 130A-135; 130A-139; 130A-141

Reason for Proposed Action: Program funds are now available due to the passing of House Bill 231 ratified by the General Assembly of North Carolina – Session 2001. Specifically, this bill calls for the appropriation of General Funds to the Department of Health and Human Services, Division of Public Health, in the sum of four hundred sixty thousand dollars (\$460,000) for the 2001-2002 fiscal year for the NC Sickle Cell Syndrome Purchase of Care Program. These additional funds will provide dollars to cover the cost of the inclusion of inpatient services to the NC Sickle Cell Syndrome Purchase of Care Program.

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 Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001.

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21H - SICKLE CELL SYNDROME: GENETIC COUNSELING: CHILDREN AND YOUTH

SECTION

SECTION .0100 - SICKLE CELL SYNDROME PROGRAM

15A NCAC 21H .0111 MEDICAL SERVICES COVERED

Covered medical services, which must be determined to be related to sickle cell disease and approved by the Program, include:

- (1) inpatient care with a date of service prior to July 1, 2002;
(2) hospital outpatient care including emergency room visits. The total number of days per year for emergency room visits not to exceed triple the Program average for each for the previous two years;
(3) physicians' office visits;
(4) drugs on the Program's formulary. A copy of this formulary may be obtained by writing to the Sickle Cell Program;
(5) medical supplies and equipment;
(6) preventive and limited maintenance dentistry; and
(7) eye care (when the division of services for the blind will not provide coverage).

History Note: Filed as a Temporary Amendment Eff. October 14, 1988, for a period of 180 days to expire on April 12, 1989; Filed as a Temporary Amendment Eff. November 7, 1983, for a period of 120 days to expire on March 4, 1984; Authority G.S. 130A-129; Eff. February 1, 1976; Amended Eff. April 22, 1977; Readopted Eff. December 5, 1977; Amended Eff. October 1, 1984; March 1, 1984; July 1, 1982; January 1, 1982; Expired Temporary Amendment Eff. April 12, 1989; Amended Eff. September 1, 1990; Temporary Amendment Eff. June 19, 1996; Temporary Amendment Expired on March 11, 1997; Amended Eff. August 1, 2000; Temporary Amendment Eff. December 1, 2001; Temporary Amendment Eff. December 17, 2001.

TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION

Rule-making Agency: State Board of Education

Rule Citation: 16 NCAC 06C .0304

Effective Date: December 17, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 115C-271(a)

Reason for Proposed Action: The General Assembly directed the State Board to adopt rules to qualify persons to serve as local school superintendent without having either experience or

certification as an educator. The agency has solicited comments from local superintendents, education organizations, teacher education programs, and business organizations to assist with adopting this temporary rule. A number of school boards are currently seeking to fill vacancies in the office of superintendent. Both those school boards and persons who might qualify for employment without a traditional educator's license are interested in the timely adoption of this temporary amendment.

Comment Procedures: Questions or written comments regarding this matter may be directed to Harry E. Wilson, Rule-making Coordinator, 2086 Education Building, 301 N. Wilmington St., Raleigh, NC 27601-2825, (919) 807-3406.

CHAPTER 06 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06C – PERSONNEL

SECTION .0300 – CERTIFICATION

16 NCAC 06C .0304 LICENSE PATTERNS

(a) Licenses shall indicate grade levels, content areas and specializations for which the professional shall be eligible for employment, as well as preparation and experience levels.

(b) Licenses shall be of the following types:

(1) Teacher. The license shall entitle the holder to teach in some designated area of specialization at the elementary, middle, or secondary level. There shall be four levels of preparation:

- (A) bachelor's degree (A level);
- (B) master's degree (G level);
- (C) sixth-year (AG level); and
- (D) doctorate (DG level).

The teacher license shall further be categorized as prekindergarten B-K, elementary K-6, middle grades 6-9, secondary 9-12, special subjects K-12, or work force development.

(2) Administrator/supervisor. The holder may serve in generalist and program administrator roles such as superintendent, assistant or associate superintendent, principal, assistant principal or curriculum-instructional specialist. There shall be three levels of preparation:

- (A) master's degree;
- (B) sixth-year; and
- (C) doctorate.

A person shall be eligible to serve as a superintendent without qualifying for or holding a license as long as the person has earned at least a bachelor's degree from a regionally accredited college or university and has a minimum of five years leadership or managerial experience that the employing local board of education considers relevant to the position of superintendent.

(3) Student services area. The holder may provide specialized assistance to the learner, the teacher, the administrator and the education program in general. This category shall include school counseling, school social work,

school psychology, audiology, speech language pathology, and media. There shall be three levels of preparation as in the case of the administrator/supervisor, except that school psychology shall be restricted to the sixth-year or doctorate levels and school social work may be earned at the bachelor's level.

(c) The department shall base license classification on the level and degree of career development and competence. There shall be two classifications of licenses:

- (1) The initial license, which shall be valid for three years, shall allow the holder to begin practicing the profession on an independent basis.
- (2) The continuing license shall authorize professional school service on an ongoing basis, subject to renewal every five years.

History Note: Authority G.S. 115-12(9)a; 115C-271(a); N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. August 1, 2000; March 1, 1990; Temporary Amendment Eff. December 17, 2001.

Rule-making Agency: State Board of Education

Rule Citation: 16 NCAC 06E .0203

Effective Date: December 31, 2001

Findings Reviewed and Statement does not meet Criteria for Temporary Rule: Agency filed over objection

Authority for the rulemaking: G.S. 115C-12(12)

Reason for Proposed Action: Many high school athletics personnel have recently requested that the Board require that high schools employ only athletic trainers licensed under G.S. 90-522 et seq. Others have indicated that this goal is not currently attainable but that the Board must increase the requirements for persons who provide these services if student athletes are to be provided quality sports medicine services.

Comment Procedures: Questions or comments regarding this matter may be directed to Harry Wilson, Rule-making Coordinator, 2086 Education Building, 301 N. Wilmington St., Raleigh, NC 27601-2825, (919) 807-3406.

CHAPTER 06 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06E – STUDENTS

SECTION .0200 - SCHOOL ATHLETICS AND SPORTS MEDICINE

16 NCAC 06E .0203 ATHLETIC TRAINERS

(a) Each LEA must designate for each high school within its jurisdiction either a licensed athletic trainer who is qualified

TEMPORARY RULES

pursuant to G.S. 90, Article 34 or a sports medicine first responder. This person shall administer paramedical emergency life saving and sports medicine services within the high school.

(b) A sports medicine first responder must complete or be in the process of completing courses and maintain certification in the following:

- (1) cardio-pulmonary resuscitation;
- (2) first aid; and
- (3) injury management (level I followed by level II).

In addition, each sports medicine first responder must complete one CEU in injury prevention, sports medicine, or training-related instruction each school year.

(c) The licensed athletic trainer or sports medicine first responder may not have coaching responsibilities. A licensed athletic trainer or sports medicine first responder must attend all football practices and games unless excused by the superintendent due to emergency. The LEA may require a licensed athletic trainer or sports medicine first responder to attend practices or games that involve other sports.

History Note: Authority G.S. 115C-12(12);

N.C. Constitution, Article IX, Sec. 5;

Eff. July 1, 1986;

Codifier determined that findings did not meet criteria for temporary rule on December 10, 2001;

Temporary Amendment Eff. December 31, 2001.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, January 17, 2002, 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, January 11, 2002 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

January 17, 2002
February 21, 2002

March 21, 2002
April 18, 2002

RULES REVIEW COMMISSION

December 20, 2001

MINUTES

The Rules Review Commission met on Thursday morning, December 20, 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, Jim Funderburk, John Tart, Robert Saunders, David Twiddy and Walter Futch. Staff member Bobby Bryan administered the oath of office to new Commissioner John Tart from Goldsboro.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Jessica Gill	Division Coastal Management
Bill Crowell	Division Coastal Management
Jean Stanley	NC Board of Nursing
Torrey McLean	DHHS
J. N. MacCormack	DHHS
Randy Yardley	NC Psychology Board
Dedra Alston	DENR
Cindy Kornegay	DHHS/DMH/DD/SAS
Susan Collins	DHHS/DMH/DD/SAS
Thomas Allen	DENR-DAQ
Paul Grable	DENR-DAQ
Patricia T. Poole	DHHS/DPH
Richard Carry	DHHS/DPH/IMM
Mark Benton	DHHS/DFS
Howard Kramer	NC Board of Nursing
Grady McCallie	NC Conservation Network
Denise Stanford	NC Contractors Board

APPROVAL OF MINUTES

The meeting was called to order at 10:00 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the November 15, 2001, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

RULES REVIEW COMMISSION

7 NCAC 4S .0104: NC Department of Cultural Resources – No action was taken.

10 NCAC 3R .1615; .1616; .6336: DHHS/Division of Facility Services – The Commission approved the rewritten rules submitted by the agency.

10 NCAC 14J .0201; .0204; .0205; .0207: DHHS/Commission for MH/DD/SAS – The agency requested that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

10 NCAC 14P .0102: DHHS/Commission for MH/DD/SAS – The agency requested that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

10 NCAC 14Q .0303: DHHS/Commission for MH/DD/SAS – The agency requested that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

10 NCAC 14R .0101; .0105: DHHS/Commission for MH/DD/SAS – The agency requested that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002: DHHS/Commission for MH/DD/SAS – The agency requested that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

10 NCAC 45H .0205: DHHS/Commission for MH/DD/SAS – The Commission approved the rewritten rule submitted by the agency.

12 NCAC 9G .0307: Criminal Justice Education & Training Standards Commission – The Commission approved the rewritten rule submitted by the agency. Commissioners Funderburk and Futch opposed the motion to approve.

12 NCAC 9G .0401; .0405; .0406; .0407: Criminal Justice Education & Training Standards Commission – No action was taken.

15A NCAC 2D .1420: DENR/Environmental Management Commission – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 36 .0217: NC Board of Nursing – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 64 .0211: NC Examiners for Speech and Language Pathologists & Audiologists – No response was received from the agency and no action was taken.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

15A NCAC 6E .0103: DENR/Soil and Water Conservation Commission - The Commission objected to the rule due to lack of statutory authority and ambiguity. In (b), it is not clear what parameters are established by the division and approved by the Commission. Establishing the parameters is a rule-making activity and there is no authority cited to do so without going through the rule-making process. In (c), it is not clear how the Commission determines the later date to allocate the retained five percent of funding. In (d), it is not clear what standards the Commission will use in recalling unencumbered funds. Similarly in (e), it is not clear what standards the Commission will use in granting requests to retain funds.

15A NCAC 7B .0702; .0801; .0802; .0803; .0901; .0904: DENR/Coastal Resources Commission – These rules were withdrawn by the agency.

15A NCAC 7K .0212: DENR/Coastal Resources Commission: This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

15A NCAC 7L .0101; .0102; .0201-.0206; .0301-.0304; .0401-.0405; .0501-.0514; .0601-.0603; .0701-.0705: DENR/Coastal Resources Commission – These rules were withdrawn by the agency.

15A NCAC 19A .0101-.0103; .0202; .0203; .0205; .0207; .0209; .0801- .0803: DHHS/CHS – Commissioner Gray made a motion to approve rules but the motion died for lack of a second. The Commission then voted to return the rule to the agency for failure to comply with the notice and hearing provisions of the Administrative Procedure Act. It appears from the submission form and subsequent investigation that the wrong agency name appears in the rule making agency portion of the Submission for Permanent Rule form. In addition there is no evidence that the CHS took any agency action until it adopted the final version of the rule. All prior action appeared to be the action of the state DENR/Division of Public Health staff and not the action of the independent CHS agency.

21 NCAC 12 .0202: NC Licensing Board for General Contractors - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

COMMISSION PROCEDURES AND OTHER BUSINESS

No new business was discussed. However the Commissioners were asked to keep open the possibility of meeting on May 2 or 3 rather than May 16. No action was taken.

The next meeting will be on Thursday, January 17, 2002.

The meeting adjourned at 11:09 a.m.

Respectfully submitted,
Lisa Johnson

RULES REVIEW COMMISSION

Commission Review/Administrative Rules

Log of Filings (Log #183)

November 20, 2001 through December 20, 2001

DEPARTMENT OF COMMERCE/DIVISION OF COMMUNITY ASSISTANCE

Definitions	4 NCAC 19L .0103	Amend
General	4 NCAC 19L .0401	Amend
Size and Use of Grants Made to Recipients	4 NCAC 19L .0403	Amend
General Application Requirements	4 NCAC 19L .0407	Amend
Description	4 NCAC 19L .0501	Amend
Eligibility Requirements	4 NCAC 19L .0502	Amend
Eligibility Requirements	4 NCAC 19L .0802	Amend
Grant Agreement	4 NCAC 19L .0901	Amend
Recordkeeping	4 NCAC 19L .0911	Amend
Audit	4 NCAC 19L .0912	Amend
Citizen Participation	4 NCAC 19L .1002	Amend
Description	4 NCAC 19L .1701	Amend
Eligibility Requirements	4 NCAC 19L .1702	Amend
Selection Criteria	4 NCAC 19L .1703	Amend
Description	4 NCAC 19L .2001	Adopt
Eligibility Requirements	4 NCAC 19L .2002	Adopt
Selection Criteria	4 NCAC 19L .2003	Adopt

DHHS/SOCIAL SERVICES COMMISSION

Eligibility Requirements for the Special Children	10 NCAC 41H .0409	Adopt
Payments from the Special Children Adoption	10 NCAC 41H .0410	Adopt

DHHS

Definitions	10 NCAC 42B .2701	Adopt
Scope	10 NCAC 42B .2702	Adopt
Reporting Requirements	10 NCAC 42B .2703	Adopt
Definitions	10 NCAC 42B .4002	Adopt
Scope	10 NCAC 42B .4003	Adopt
Reporting Requirements	10 NCAC 42C .4004	Adopt
Definitions	10 NCAC 42D .2302	Adopt
Scope	10 NCAC 42D .2303	Adopt
Reporting Requirements	10 NCAC 42D .2304	Adopt

JUSTICE/CRIMINAL JUSTICE EDUCATION & TRAINING STANDARDS COMMISSION

Background Investigation	12 NCAC 9B .0102	Amend
Admission of Trainees	12 NCAC 9B .0203	Amend
Basic Law Enforcement Training	12 NCAC 9B .0205	Amend
Supplemental SMI Training	12 NCAC 9B .0215	Amend
Specialized Physical Fitness Instructor Training	12 NCAC 9B .0233	Amend
Reports of Training Course Presentation and Completion	12 NCAC 9C .0403	Amend
General Provisions	12 NCAC 9D .0202	Amend
Intermediate Criminal Justice Certificate	12 NCAC 9D .0204	Amend
Advanced Criminal Justice Certificate	12 NCAC 9D .0205	Amend

JUSTICE/N C SHERIFFS' EDUCATION AND TRAINING STANDARDS

Minimum Standards for Justice Officers	12 NCAC 10B .0301	Amend
Medical Examination	12 NCAC 10B .0304	Amend
Background Investigation	12 NCAC 10B .0305	Amend
Criminal History Record	12 NCAC 10B .0307	Amend
Certification of Personnel	12 NCAC 10B .0401	Amend
Lateral Transfer/Reinstatements	12 NCAC 10B .0406	Amend
Verification of Records to Division	12 NCAC 10B .0408	Amend
Employing Agency Retention of Certification Record	12 NCAC 10B .0409	Amend
Evaluation for Training Waiver	12 NCAC 10B .0505	Amend
Detention Officer Certification Course	12 NCAC 10B .0601	Amend
Evaluation for Training Waiver	12 NCAC 10B .0603	Amend
Comp Written Exam Detention Officer Certification	12 NCAC 10B .0606	Amend
Certification School Directors	12 NCAC 10B .0705	Amend
Terms and Conditions of School Director Certification	12 NCAC 10B .0706	Amend
Suspension Revocation or Denial School Director	12 NCAC 10B .0707	Amend

RULES REVIEW COMMISSION

Administration of Telecommunicator Certification	12 NCAC 10B .0708	Amend
Certification School Directors Telecommunicator	12 NCAC 10B .0710	Amend
Terms and Conditions of Telecommunicator School	12 NCAC 10B .0711	Amend
Suspension Revocation or Denial Telecommunicator	12 NCAC 10B .0712	Amend
Terms and Conditions of Detention Officer Instruct	12 NCAC 10B .0905	Amend
Terms and Conditions of Professional Lecturer	12 NCAC 10B .0907	Amend
Limited Lecturer Certification	12 NCAC 10B .0908	Amend
Terms and Conditions of a Limited Lecturer Certification	12 NCAC 10B .0909	Amend
Terms and Conditions of Telecommunicator Instructors	12 NCAC 10B .0915	Amend
Terms and Conditions of Professional Lecturer Cert	12 NCAC 10B .0917	Amend
Intermediate Law Enforcement Certificate	12 NCAC 10B .1004	Amend
Advanced Law Enforcement Certificate	12 NCAC 10B .1005	Amend
Intermediate Detention Officer Professional Certification	12 NCAC 10B .1204	Amend
Advanced Detention Officer Professional Certification	12 NCAC 10B .1205	Amend
Comprehensive Written Exam Telecommunicator	12 NCAC 10B .1307	Amend
Intermediate Reserve Deputy Sheriff Certificate	12 NCAC 10B .1404	Amend
Advanced Reserve Deputy Sheriff Certificate	12 NCAC 10B .1405	Amend
Intermediate Telecommunicator Certificate	12 NCAC 10B .1604	Amend
Advanced Telecommunicator Certificate	12 NCAC 10B .1605	Amend
In-Service Firearms Requalification Specifications	12 NCAC 10B .2104	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Neuse River Basin	15 NCAC 2B .0315	Amend
Standards of Construction Water Supply Wells	15 NCAC 2C .0107	Amend
Well Maintenance Repair Groundwater Resources	15 NCAC 2C .0112	Amend
DENR/MARINE FISHERIES COMMISSION		
Gill Nets, Seines, Identification, Restrictions	15 NCAC 3J .0103	Amend
Mutilated Finfish	15 NCAC 3M .0101	Amend
Spanish and King Mackerel	15 NCAC 3M .0301	Amend
Red Drum	15 NCAC 3M .0501	Amend
Procedure and Requirements to Obtain Licenses	15 NCAC 3O .0101	Amend
DENR/SEDIMENTATION CONTROL COMMISSION		
Plan Approval Fees	15 NCAC 4B .0126	Amend
DENR/COASTAL RESOURCES COMMISSION		
Purpose	15 NCAC 07B .0101	Repeal
Contents of the Land Use Plan	15 NCAC 07B .0201	Repeal
Executive Summary	15 NCAC 07B .0202	Repeal
Introduction	15 NCAC 07B .0203	Repeal
Goals and Objectives	15 NCAC 07B .0204	Repeal
Data Collection and Analysis	15 NCAC 07B .0206	Repeal
Present Conditions	15 NCAC 07B .0207	Repeal
Constraints	15 NCAC 07B .0210	Repeal
Estimated Demands	15 NCAC 07B .0211	Repeal
Policy Statements	15 NCAC 07B .0212	Repeal
Land Classification	15 NCAC 07B .0213	Repeal
Intergovernmental Coordination and Implementation	15 NCAC 07B .0214	Repeal
Public Participation	15 NCAC 07B .0215	Repeal
Plan Review and Approval	15 NCAC 07B .0216	Repeal
Land Use Plan Amendment	15 NCAC 07B .0401	Repeal
Public Hearing Required	15 NCAC 07B .0402	Repeal
Notice to Coastal Resources Commission	15 NCAC 07B .0403	Repeal
Waiver of Formal Review by the CRC	15 NCAC 07B .0404	Repeal
Consistency and Adoption	15 NCAC 07B .0405	Repeal
Standards for Waiver of Formal Review	15 NCAC 07B .0406	Repeal
Update Required	15 NCAC 07B .0501	Repeal
Purpose of Update	15 NCAC 07B .0502	Repeal
Data Collection and Analysis	15 NCAC 07B .0503	Repeal
Amendments to Maps	15 NCAC 07B .0504	Repeal
Format of Plan Update	15 NCAC 07B .0505	Repeal
Review and Approval	15 NCAC 07B .0506	Repeal
Official Copy of Plan	15 NCAC 07B .0507	Repeal
Authority	15 NCAC 07B .0601	Adopt

RULES REVIEW COMMISSION

Examples	15 NCAC 07B .0602	Adopt
Planning Options	15 NCAC 07B .0701	Adopt
Elements of CAMA Core and Advanced Core	15 NCAC 07B .0702	Adopt
State Technical Assistance, Review and Comment	15 NCAC 07B .0801	Adopt
Public Hearing and Local Adoption	15 NCAC 07B .0802	Adopt
Land Use Plan Amendments	15 NCAC 07B .0901	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
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	Adopt
State Technical Assistance, Review and Comment	15 NCAC 07L .0508	Adopt
Intergovernmental Coordination	15 NCAC 07L .0509	Adopt
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	Adopt
Contract Agreement	15 NCAC 07L .0701	Adopt
Progress Reports and Grant Monitoring	15 NCAC 07L .0702	Adopt
Payment	15 NCAC 07L .0703	Adopt
Project Completion Report	15 NCAC 07L .0704	Adopt
Accountability	15 NCAC 07L .0705	Adopt
DENR/COMMISSION FOR HEALTH SERVICES		
Cooked Crustacea Picking	15 NCAC 18A .0164	Amend
Single-Service Containers	15 NCAC 18A .0168	Amend
Freezing	15 NCAC 18A .0169	Amend
Repacking	15 NCAC 18A .0173	Amend
Monitoring Records	15 NCAC 18A .0436	Adopt
Heat Shock Method of Preparation of Shellfish	15 NCAC 18A .0618	Amend
Lead Free Construction	15 NCAC 18C .0408	Amend
Turbidity Sampling and Analysis	15 NCAC 18C .1505	Amend
Maximum Contaminant Levels for Turbidity	15 NCAC 18C .1506	Amend
Organic Chemicals Other Than TTHM	15 NCAC 18C .1515	Amend
Monitoring Frequency for Radioactivity	15 NCAC 18C .1519	Amend
Maximum Contaminant Levels for Radionulides	15 NCAC 18C .1520	Amend
Maximum Contaminant Level Goals for Radionulides	15 NCAC 18C .1521	Amend
Analytical Methods for Radioactivity	15 NCAC 18C .1522	Amend
Public Notification Requirements	15 NCAC 18C .1523	Amend

RULES REVIEW COMMISSION

Reporting Requirements	15 NCAC 18C .1525	Amend
Record Maintenance	15 NCAC 18C .1526	Amend
Variances and Exemptions for Chemicals Lead and Filter Backwash Recycling Rule	15 NCAC 18C .1607	Amend
Disinfectants and Disinfection by Products	15 NCAC 18C .2003	Amend
	15 NCAC 18C .2008	Amend
DENR/WATER TREATMENT FACILITY OPERATORS		
Application for Exam	15 NCAC 18D .0301	Amend
Application for Reciprocity	15 NCAC 18D .0302	Amend
Application for Temporary Certificate	15 NCAC 18D .0303	Amend
Petitions	15 NCAC 18D .0501	Amend
Declaratory Rulings	15 NCAC 18D .0508	Amend
TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS		
Contracts for Asbestos Abatement	19 NCAC 2B .0165	Amend
STATE BOARDS/EXAMINERS OF ELECTRICAL CONTRACTORS		
Examinations	21 NCAC 18B .0204	Amend
Regular Examinations	21 NCAC 18B .0206	Amend
Applications for Regular Examinations	21 NCAC 18B .0207	Amend
Specially Arranged Examinations	21 NCAC 18B .0208	Amend
Fees	21 NCAC 18B .0209	Amend
Applications Duly Filed	21 NCAC 18B .0210	Amend
Annual License Fees	21 NCAC 18B .0404	Amend
License Renewal Due Date	21 NCAC 18B .0405	Amend
STATE BOARDS/N C BOARD OF PHARMACY		
Automated Dispensing or Drug Supply Devices	21 NCAC 46 .1814	Amend
Proof of Identification	21 NCAC 46 .1817	Adopt
Request for Hearing	21 NCAC 46 .2004	Amend
Responsibilities of Pharmacist-Manager	21 NCAC 46 .2502	Amend
Exceptions to Health Care Practitioners	21 NCAC 46 .2506	Adopt
STATE BOARDS/APPRaisal BOARD		
Filing and Fees	21 NCAC 57A .0102	Amend
Qualifications for Trainee Registration Appraiser	21 NCAC 57A .0201	Amend
Character	21 NCAC 57A .0202	Amend
License and Certificate Renewal	21 NCAC 57A .0203	Amend
Continuing Education	21 NCAC 57A .0204	Amend
Inactive Status	21 NCAC 57A .0205	Amend
Expired Registration License or Certificate	21 NCAC 57A .0206	Amend
Payment of License and Certificate Fees	21 NCAC 57A .0207	Amend
Replacement License and Certificate Fees	21 NCAC 57A .0208	Amend
Federal Appraisal Registry	21 NCAC 57A .0209	Amend
Temporary Practice	21 NCAC 57A .0210	Amend
Re-examination	21 NCAC 57A .0303	Amend
Cheating and Related Misconduct	21 NCAC 57A .0304	Amend
Use of Titles	21 NCAC 57A .0401	Amend
Display of Licenses and Certificates	21 NCAC 57A .0402	Amend
Advertising	21 NCAC 57A .0403	Amend
Change of Name or Address	21 NCAC 57A .0404	Amend
Appraisal Reports	21 NCAC 57A .0405	Amend
Managing Appraiser	21 NCAC 57A .0406	Amend
Supervision of Trainees	21 NCAC 57A .0407	Amend
Supervision of Licensed and Certified Residential	21 NCAC 57A .0408	Repeal
Reporting Required Actions	21 NCAC 57A .0409	Adopt
Appraisal Standards	21 NCAC 57A .0501	Amend
Licensed Residential Real Estate Appraiser Course	21 NCAC 57B .0101	Amend
Certified Residential Real Estate Appraiser Course	21 NCAC 57B .0102	Amend
Certified General Real Estate Appraiser Course Req	21 NCAC 57B .0103	Amend
Facilities and Equipment	21 NCAC 57B .0204	Amend
Admissions Policy and Practice	21 NCAC 57B .0206	Amend
Administration	21 NCAC 57B .0207	Amend
Accommodations for Persons with Disabilities	21 NCAC 57B .0208	Amend
Certification of Course Completion	21 NCAC 57B .0209	Amend
Course Records	21 NCAC 57B .0210	Amend

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Program Changes	21 NCAC 57B .0211	Amend
Time and Place	21 NCAC 57B .0301	Amend
Course Content	21 NCAC 57B .0302	Amend
Course Completion Standards	21 NCAC 57B .0303	Amend
Course Scheduling	21 NCAC 57B .0304	Amend
Instructor Requirements	21 NCAC 57B .0306	Amend
Criteria for Course Recognition	21 NCAC 57B .0307	Amend
Applicability	21 NCAC 57B .0401	Amend
Fee for Renewal of Course Approval	21 NCAC 57B .0403	Amend
Fee for Renewal of Course Approval	21 NCAC 57B .0503	Amend
Purpose and Applicability	21 NCAC 57B .0601	Amend
Application and Fee	21 NCAC 57B .0602	Amend
Criteria for Course Approval	21 NCAC 57B .0603	Amend
Prelicensing and Precertification Courses	21 NCAC 57B .0604	Amend
Continuing Education Credit Hours	21 NCAC 57B .0605	Amend
Course Operational Requirements	21 NCAC 57B .0606	Amend
Certificate of Course Completion	21 NCAC 57B .0607	Amend
Submission of Course Roster	21 NCAC 57B .0608	Amend
Renewal of Approval and Fees	21 NCAC 57B .0611	Amend
Withdrawal or Denial of Approval	21 NCAC 57B .0612	Amend
Form of Complaints and Other Pleadings	21 NCAC 57C .0101	Amend
Presiding Officer	21 NCAC 57C .0102	Amend
Presiding Officer	21 NCAC 57C .0302	Amend
STATE BOARDS/REAL ESTATE COMMISSION, BOARD OF		
Agency Agreements and Disclosure	21 NCAC 58A .0104	Amend
Handling and Accounting of Funds	21 NCAC 58A .0107	Amend
Retention of Records	21 NCAC 58A .0108	Amend
Brokerage Fees and Compensation	21 NCAC 58A .0109	Amend
Broker in Charge	21 NCAC 58A .0110	Amend
Residential Property Disclosure Statement	21 NCAC 58A .0114	Amend
License Renewal Penalty for Operating While Licens	21 NCAC 58A .0503	Amend
Payment of (License) Fees	21 NCAC 58A .0507	Amend
Procedures for Requesting Hearing when Applicant's	21 NCAC 58A .0616	Adopt
Application for Payment	21 NCAC 58A .1401	Amend
Program Changes	21 NCAC 58C .0106	Repeal
Quarterly Reports	21 NCAC 58C .0215	Repeal
Changes During the Licensing Period	21 NCAC 58C .0216	Amend
Program Structuring	21 NCAC 58C .0302	Amend
Course Content	21 NCAC 58C .0303	Amend
Course Completion Standards	21 NCAC 58C .0304	Amend
Application and Criteria for Original Approval	21 NCAC 58C .0603	Amend
Request for Examination and Videotape	21 NCAC 58C .0605	Amend
Application and Criteria for Original Approval	21 NCAC 58E .0203	Amend
Elective Course Component	21 NCAC 58E .0302	Amend
Course Completion Reporting	21 NCAC 58E .0406	Amend
DEPARTMENT OF ADMINISTRATION/STATE PERSONNEL COMMISSION		
Establishment of Reasonable Attorney Fees by the	25 NCAC 01B .0438	Amend

AGENDA
RULES REVIEW COMMISSION
January 17, 2002

- 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/Commission for MH/DD/SAS – 10 NCAC 14J .0201; .0204; .0205; .0207 Continued on request of agency 12/20/01 (DeLuca)

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- C. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14P .0102 Continued on request of agency 12/20/01 (DeLuca)
- D. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14Q .0303 Continued on request of agency 12/20/01 (DeLuca)
- E. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14R .0101; .0105 Continued on request of agency 12/20/01 (DeLuca)
- F. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002 Continued on request of agency 12/20/01 (DeLuca)
- G. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0401; .0405; .0406; .0407 Objection on 9/20/01 and 10/18/01 (Bryan)
- H. DENR/Soil and Water Conservation Commission – 15A NCAC 6E .0103 Objection on 12/20/01 (Bryan)
- I. NC Examiners for Speech and Language Pathologists & Audiologists – 21 NCAC 64 .0211 Objection on 11/15/01 (DeLuca)
- IV. Review of rules (Log Report #183)
- V. Commission Business
- VI. Next meeting: Thursday, February 21, 2002

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

A.B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
NC ABC Commission v. Benjamin Franklin Black, B and M Convenience	01 ABC 0663	Morrison	07/23/01	
Deleon Christopher Izi v. NC Alcoholic Beverage Control Commission	01 ABC 0709	Gray	10/11/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
<u>BOARD OF MORTUARY SCIENCE</u>				
NC Board of Mortuary Science v. Beasley's Funeral Home, Inc., Odell Beasley, Crystal Beasley-Walker	00 BMS 0469	Mann	07/17/01	
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
NC Board of Mortuary Science v. Robert Breece, Jr., and Osborne Owens and Rogers and Breece Funeral Home	00 BMS 1763	Morrison	08/22/01	
NC Board of Mortuary Science v. Kyle Garret Peacock, Philip Smoak and Peggy Peacock	01 BMS 0298	Lassiter	09/20/01	
<u>BOARD OF GEOLOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
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	
<i>Child Support Enforcement Section</i>				
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	
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	

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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
Marvin Gay Adams v. Department of Health & Human Services	00 CSE 1550	Wade	09/18/01
Marvin R Thorpe Sr v. Department of Health & Human Services	00 CSE 1570	Morrison	12/04/01
Dean E McCall v. Department of Health & Human Services	00 CSE 1575	Conner	10/04/01
Robert Boening v. Department of Health & Human Services	00 CSE 1583	Morrison	10/31/01
Edward Cozart v. Department of Health & Human Services	00 CSE 1594	Gray	09/14/01
Rita Caperoon v. Department of Health & Human Services	00 CSE 1597	Lassiter	08/27/01
Trina Player v. Department of Health & Human Services	00 CSE 1611	Wade	10/22/01
Robert B McKay v. Department of Health & Human Services	00 CSE 1620	Gray	09/14/01
Thomas L Larison v. Department of Health & Human Services	00 CSE 1649	Mann	10/29/01
Gary E Barker v. Department of Health & Human Services	00 CSE 1659	Mann	09/26/01
Mettie Hansley v. Department of Health & Human Services	00 CSE 1673	Morrison	08/24/01
David K. Rose v. Department of Health & Human Services	00 CSE 1681	Gray	06/05/01
Bruce E Carpenter v. Department of Health & Human Services	00 CSE 1683	Morrison	10/31/01
John T McDonald v. Department of Health & Human Services	00 CSE 1687	Wade	06/08/01
Darren S Boyd v. Department of Health & Human Services	00 CSE 1697	Wade	08/29/01
Ilian Tourloukis v. Department of Health & Human Services	00 CSE 1701	Gray	09/14/01
Terry Antonio Leath v. Department of Health & Human Services	00 CSE 1709	Morrison	10/16/01
Jarvis Williams v. Department of Health & Human Services	00 CSE 1712	Wade	10/22/01
Jerry McLean v. Department of Health & Human Services	00 CSE 1725	Mann	09/13/01
Raymond Stevens v. Department of Health & Human Services	00 CSE 1730	Mann	10/31/01
David John Pehler v. Department of Health & Human Services	00 CSE 1733	Morrison	12/04/01
Mohammad E Ghafarian v. Department of Health & Human Services	00 CSE 1734	Wade	11/16/01
Richard Kevin Day v. Department of Health & Human Services	00 CSE 1735	Conner	08/20/01
Joe Louis Hall Jr. v. Department of Health & Human Services	00 CSE 1737	Morrison	11/16/01
Willie E Harris v. Department of Health & Human Services	00 CSE 1742	Morrison	07/26/01
Hugh Williams Jr v. Department of Health & Human Services	00 CSE 1753	Morrison	10/02/01
Michael Worthy v. Department of Health & Human Services	00 CSE 1756	Wade	09/18/01
Eduardo R Miranda v. Department of Health & Human Services	00 CSE 1768	Wade	09/18/01
Jacqueline Land v. Department of Health & Human Services	00 CSE 1773	Morrison	11/05/01
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01
Albert Hooks Jr. v. Department of Health & Human Services	00 CSE 1798	Lassiter	07/30/01
Jason Cline v. Department of Health & Human Services	00 CSE 1804	Gray	11/14/01
Larry J Thompson v. Department of Health & Human Services	00 CSE 1824	Morrison	12/18/01
John N. Pullium v. Department of Health & Human Services	00 CSE 1829	Chess	11/21/01
Walter Columbus Simmons v. Department of Health & Human Services	00 CSE 1831	Gray	10/10/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1835 ¹	Wade	05/30/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1837 ¹	Wade	05/30/01
Larry W Kiser v. Department of Health & Human Services	00 CSE 1840	Gray	06/08/01
Jason Parker v. Department of Health & Human Services	00 CSE 1853	Morrison	08/02/01
Michael A Gresham Sr. v. Department of Health & Human Services	00 CSE 1862	Gray	06/28/01
Allen K. Galloway v. Department of Health & Human Services	00 CSE 1883	Morrison	12/06/01
Jeffery W Sisk v. Department of Health & Human Services	00 CSE 1884	Lassiter	11/28/01
Barbara J Stacy v. Department of Health & Human Services	00 CSE 1903	Lassiter	09/17/01
Michael N Brack v. Department of Health & Human Services	00 CSE 1904	Lassiter	07/02/01
Gregory C McCauley v. Department of Health & Human Services	00 CSE 1915	Wade	08/03/01
Raymond N Strother v. Department of Health & Human Services	00 CSE 1910	Gray	07/18/01
Tamara J Mills-Cooper v. Department of Health & Human Services	00 CSE 1918	Gray	09/14/01
Donald E Scott v. Department of Health & Human Services	00 CSE 1919	Chess	08/08/01
Wayne DeRoss v. Department of Health & Human Services	00 CSE 1940	Conner	11/26/01
Paul Clayton Shepard v. Department of Health & Human Services	00 CSE 1945	Lassiter	09/20/01
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Paula Morrill v. Department of Health & Human Services	00 CSE 1948	Conner	10/16/01
Marcus Dontez Chavis v. Department of Health & Human Services	00 CSE 1955	Gray	10/15/01
Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01
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Richard Stevens Jr. v. Department of Health & Human Services	00 CSE 1965	Morrison	08/07/01
Angela Wells v. Department of Health & Human Services	00 CSE 1967	Morrison	08/21/01
Bobby R. Mayo v. Department of Health & Human Services	00 CSE 1969	Conner	07/09/01
Steven Gregory Hotz v. Department of Health & Human Services	00 CSE 1978	Chess	07/24/01
Sylvia J Walter v. Department of Health & Human Services	00 CSE 1983	Wade	10/22/01
Eugene Little v. Department of Health & Human Services	00 CSE 1995	Gray	10/11/01
Howard Jacobs v. Department of Health & Human Services	00 CSE 1996	Morrison	11/05/01
April Cheeseman v. Department of Health & Human Services	00 CSE 2000	Wade	10/11/01
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Robert Scot Pope v. Department of Health & Human Services	00 CSE 2014	Gray	11/14/01
William Kay v. Department of Health & Human Services	00 CSE 2060	Conner	07/20/01
Patrick L Merrick v. Department of Health & Human Services	00 CSE 2061	Chess	07/12/01
Luther I Gore v. Department of Health & Human Services	00 CSE 2062	Gray	08/15/01
Darlene S Roush v. Department of Health & Human Services	00 CSE 2102	Gray	10/11/01
David Diaz v. Department of Health & Human Services	00 CSE 2149	Gray	09/21/01
Jerome Maddox v. Department of Health & Human Services	00 CSE 2153	Wade	08/07/01
Mario C Crank v. Department of Health & Human Services	00 CSE 2172	Conner	11/26/01
Dennis Cunningham v. Department of Health & Human Services	00 CSE 2183	Conner	11/26/01
Toney Cooper v. Department of Health & Human Services	00 CSE 2214	Gray	09/06/01
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Michael Jarvis v. Department of Health & Human Services	01 CSE 0173	Wade	08/06/01
Samuel E Taylor v. Department of Health & Human Services	01 CSE 0181	Conner	06/08/01
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Jason O Smith v. Department of Health & Human Services	01 CSE 0266	Mann	07/19/01
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Eric L Woody v. Department of Health & Human Services	01 CSE 0387	Wade	08/10/01
Gilbert Monk v. Department of Health & Human Services	01 CSE 0390	Lassiter	07/02/01
David L Trammel Jr. v. Department of Health & Human Services	01 CSE 0391	Chess	06/26/01
Ralph A Terry v. Department of Health & Human Services	01 CSE 0405	Gray	06/29/01
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Leon B Featherson v. Department of Health & Human Services	01 CSE 0423	Wade	08/10/01
Robert Griffin v. Department of Health & Human Services	01 CSE 0430	Morrison	07/02/01
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Dennis E Chardavoyne v. Department of Health & Human Services	01 CSE 0432	Elkins	06/05/01
Luther W Covington v. Department of Health & Human Services	01 CSE 0438	Conner	07/20/01
Carl Franklin Slemp v. Department of Health & Human Services	01 CSE 0449	Morrison	07/12/01
Tennis Lee Perry v. Department of Health & Human Services	01 CSE 0450	Chess	07/06/01
Richard E Roberts Jr. v. Department of Health & Human Services	01 CSE 0461	Wade	07/12/01
David Wilson v. Department of Health & Human Services	01 CSE 0463	Conner	07/20/01
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Gregory Morgan v. Department of Health & Human Services	01 CSE 0498	Elkins	05/24/01
Malik J Flamer v. Department of Health & Human Services	01 CSE 0501	Wade	07/12/01
Wade Freeman McPhatter Jr. v. Department of Health & Human Services	01 CSE 0504	Conner	10/17/01
Armenous Dobson III v. Department of Health & Human Services	01 CSE 0519	Morrison	09/06/01
George Foster Still v. Department of Health & Human Services	01 CSE 0526	Elkins	09/13/01
John Winstead v. Department of Health & Human Services	01 CSE 0562	Conner	06/08/01
Raymond A McDonald v. Department of Health & Human Services	01 CSE 0592	Gray	07/18/01
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Allen Getzinger v. Department of Health & Human Services	01 CSE 0654	Lassiter	08/08/01
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James Balmer v. Department of Health & Human Services	01 CSE 0735	Elkins	08/16/01
Roger Dale Weaver v. Department of Health & Human Services	01 CSE 0739	Wade	09/18/01
Joshua V Harris v. Department of Health & Human Services	01 CSE 0757	Morrison	07/30/01
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Steven G Adelman v. Department of Health & Human Services	01 CSE 0766	Wade	09/28/01

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Sheree R Jenkins v. Department of Health & Human Services	01 DCS 1051	Chess	07/24/01
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Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01
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⁴ Combined Cases

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Lara Beth Henrick v. DHHS, Dorothea Dix Hospital	01 DHR 0409	Mann	07/19/01
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Donna Faye Smith v. Department of Human Resources	01 DHR 0887	Mann	11/02/01
Robert & Shirley Harmon on behalf of Gary Harmon v. NC DMH/DD/SAS	01 DHR 0955	Chess	06/25/01
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Lisa Dupree v. The State Board of Nurse Aid, Debbie Hockaday	01 DHR 1343	Mann	10/12/01
Constance Lindsey v. The Nurse Aid I Registry	01 DHR 1425	Gray	10/26/01
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Sadio-Tene Lloyd (for client TiNesha Booker) v. The Guilford Center/Child Authorization Team/The State DMH/DD/SAS	01 DHR 1577	Mann	11/15/01

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Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child Development	00 DHR 1270	Wade	05/22/01
Esther M Huntley, Treasurer, Rainbow Nursery Parents Club, Inc. v. DHHS, Division of Child Development	00 DHR 1419	Gray	09/24/01
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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
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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	
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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	
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Rossie Nicole Horne v. DHHS, Division of Facility Services	01 DHR 1198	Gray	10/11/01	
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Henry Monroe v. NC DHHS, Division of Facility Services	01 DHR 1306	Wade	11/16/01	
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Michelle Peebles v. NC DHHS, Division of Facility Services	01 DHR 1345	Lassiter	10/19/01	
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Alice G. Stevenson v. NC DHHS, Division of Facility Services	01 DHR 1567	Mann	12/13/01	
Desiree Scales v. DHHS, Division of Facility Services	01 DHR 1621	Conner	11/26/01	
Courtrina Dawson v. NC DHHS Division of Facility Services	01 DHR 1623	Wade	11/14/01	
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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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Alarm Systems Licensing Board

Edward James Summers v. Alarm Systems Licensing Board	01 DOJ 0352	Morrison	06/13/01	
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Julio Eduardo Riofrio v. Alarm System Licensing Board	01 DOJ 1814	Morrison	12/06/01	
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Sheriffs' Education & Training Standards Commission

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Joshua Craig Brothers v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1558	Elkins	06/12/01	
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Darrick Harris v. NC Sheriffs' Educ. & Training Standards Comm.	00 DOJ 2267	Wade	10/17/01	
Anita Allen Coats v. NC Criminal Justice & Training Stds. Comm.	01 DOJ 0023	Morrison	09/07/01	
Alan Henry Roebuck v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 0444	Gray	11/30/01	
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	
Kevin Hoover v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1601	Elkins	12/04/01	

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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	16:12 NCR 1252
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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	
Angela & Larry Freeman v. Brunswick Co. Health Department	00 EHR 0635	Conner	11/29/01	
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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
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Acreege Brokers, Inc., Doug Golightly, Officer, James T. Gullely Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214	Gray	08/07/01	16:05 NCR 463
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STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
97 EHR 0791

COUNTY OF PENDER

JAMES W. and WINNIFRED KING,
Petitioners,

vs.

DIVISION OF COASTAL MANAGEMENT,
Respondent.

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RECOMMENDED DECISION

This matter came on for hearing before the Honorable Meg Scott Phipps, Administrative Law Judge, on the 8th of December, 1997, in Carolina Beach, North Carolina. The Honorable Beecher R. Gray, Administrative Law Judge, was subsequently appointed to preside over this matter. The hearing was reconvened in Hampstead, North Carolina, on the 9th of October, 2001, to hear evidence on the current conditions on the property.

APPEARANCES

Petitioners: James W. King
Winnifred King
51 Oak Drive
Holly Ridge, NC 28445

Respondent: David G. Heeter
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

ISSUES

- 1. Did the Town of Surf City Local Permit Officer err in denying a Coastal Area Management Act (CAMA) permit to allow the Kings to build a house on their oceanfront lot in Surf City because she found that their application was inconsistent with the rules of the Coastal Resources Commission and provisions in the Surf City Land Use Plan?
- 2. Should the Coastal Resources Commission grant a variance from the minimum erosion setback requirement of 60 feet in order to allow the issuance of a CAMA permit to build the house on the King’s lot?

STATUTES AND RULES IN ISSUE

- N.C. Gen. Stat. 113A-100, *et seq.*
- N.C. Gen. Stat. 113A-120
- N.C. Gen. Stat. 113A-120.1
- Rule 15A N.C.A.C. 7H .0304
- Rule 15A N.C.A.C. 7H .0305
- Rule 15A N.C.A.C. 7H .0306
- Rule 15A N.C.A.C. 7J .0703
- Rule 15A N.C.A.C. 7J .0210

FINDINGS OF FACT

Evidence Heard on December 8, 1997

- 1. The Petitioners, James W. and Winifred King, own an oceanfront lot at 1606 N. Shore Dr., Town of Surf City, Pender County, NC.

2. The King lot is located within the Ocean Hazard Area of Environmental Concern (AEC) designated by the Coastal Resources Commission (CRC) in Rule 15A NCAC 7H .0304.

3. Rule 15A NCAC 7H .0306(a) of the CRC establishes an erosion setback line which oceanfront development must comply with.

4. The erosion setback line requires oceanfront development to be located far enough landward to protect it from erosion over its anticipated lifespan. (Kirk, p. 23; Stroud, pp. 124-25.)

5. Rule 15A NCAC 7H .0306(a)(1) provides as follows:

If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than two feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.

(Respondent's Exhibit 6.)

6. The long-term annual erosion rate for Surf City is two feet per year so 30 times the annual erosion rate is 60 feet, the same as the minimum 60 setback. (Russell, pp. 39-40.)

7. The erosion setback is measured from the first line of stable natural vegetation because the vegetation's root system helps to hold the sand in place and provide protection from wind and water. (Russell, pp. 41-42.)

8. By 1989, the vegetation line on the King's lot was just oceanward of the house on the King's lot, and house was no longer sited in compliance with the minimum 60 foot erosion setback. (Respondent's Exhibits 5A and 5B; Russell, pp. 45-46.)

9. When the house on the King's lot was built in the early 1980s, it had to comply with the minimum 60 foot erosion setback, but some 50 or so feet of lot had eroded away by 1989. (Russell, p. 46)

10. The King's lot is located at the north end of Surf City, and some ten surrounding blocks were particularly hard hit by Hurricanes Bertha and Fran in 1996. (Kirk pp. 29-31; Respondent's Exhibits 11A-B.)

11. Hurricanes Bertha and Fran were Category 3 hurricanes, and Bertha lowered the beach profile so the tides during Fran caused greater damage. (Stroud, p. 126.)

12. In 1996, the house on the King lot was destroyed during Hurricane Fran, and there was extensive erosion of the shoreline during Hurricanes Bertha and Fran.

13. On April 17, 1997, the Kings applied to Jane Kirk, Local Permit Officer (LPO), Town of Surf City, for a CAMA minor development permit to build a house on the lot. (Respondent's Exhibit 1.)

14. Surf City has a Land Use Plan approved by the Coastal Resources Commission (CRC), and the Surf City LPO has the authority to grant or deny applications for CAMA minor development permits within the Town. (N.C. Gen. Stat. 113A-118(b); Respondent's Exhibit 9.)

15. Because of the great number of permit applications which were filed after the two hurricanes, the Surf City LPO asked the Division of Coastal Management (DCM) for assistance in determining where the erosion setback line should be measured from on the King lot. (Kirk, p.21.)

16. The DCM determined that there was no primary or frontal dune on the King lot and thus the erosion setback line should be measured from the first line of stable natural vegetation. (Russell, p. 40.)

17. Because the lot had eroded so badly, the DCM determined that there was no longer a first line of stable natural vegetation on the lot as defined in Rule 15A NCAC 7H .0305(e). (Respondent's Exhibit 7; Russell, p. 44.)

18. Using aerial photography taken after Hurricane Bertha, the DCM attempted to extrapolate a measurement line (in lieu of a first line of stable natural vegetation) but was unsuccessful due to the lack of any vegetation for some three blocks to the south and seven blocks to the north. (Russell, pp. 44-45; Stroud, pp. 118-20.)

19. The FEMA emergency berm that was pushed up along the upper end of the beach did not play any role in determining whether the erosion setback requirement had been complied with, and the area between the FEMA berm and the road was not build able since there was no vegetation line. (Russell, pp. 48, 59 & 65.)

20. In a letter dated June 16, 1997, Janet Russell, DCM, informed Mr. and Mrs. King that she had been unable to establish a vegetation line or measurement line on their lot and that it would be necessary to wait until the natural vegetation became reestablished to determine an erosion setback line for building purposes. (Respondent's Exhibit 2.)

21. Because so much erosion had occurred, the beach came back almost to the road, and there was no buildable area on the King's lot. (Kirk, pp. 22-23; Russell, pp. 50-51.)

22. In a letter dated June 19, 1997, Jane Kirk, Surf City LPO, informed the Kings that their permit application was denied under N.C. Gen. Stat. 113A-120(a)(8) because it was inconsistent with the erosion setback requirement in Rule 15A N.C.A.C. 7H .0306(a)(1). (Respondent's Exhibit 3; Kirk, pp. 22-23.)

23. Ms. Kirk also informed the Kings that their application was denied under N.C. Gen. Stat. 113A-120(a)(8) because of a provision in the Surf City Land Use Plan requiring that all development in the Ocean Hazard AEC be located "so as to maximize a structure's protection from wind and water and to minimize damage to the protective land forms of dunes and beaches in accordance with CAMA regulations." (Respondent's Exhibits 3 and 9, p. 4; Kirk, pp. 25-27.)

24. Mr. and Mrs. King timely filed a contested case petition with the Office of Administrative Hearings challenging the denial of their permit application.

25. The Kings also petitioned the Coastal Resources Commission under N.C. Gen. Stat. 113A-121.1 and Rule 15A N.C.A.C. 7J .0703 for a variance from the erosion setback requirement and Land Use Plan. (Respondent's Exhibit 10, p.40.)

26. The DCM moved to consolidate the hearings on the King's permit appeal and variance request, and this motion was granted. (The King's Variance Request is attached to the Respondent's Motion to Consolidate.)

27. Prior to Hurricanes Bertha and Fran, there were other lots in the vicinity of the King's lot which could no longer comply with the erosion setback. (Kirk, p. 29.)

28. Because of Hurricane Fran, there were other lots in the vicinity of the King's lot where houses were destroyed or damaged so badly that they had to be demolished. (Kirk, p. 29; Russell, p. 49; Stroud, pp. 122-23.)

29. During Hurricanes Bertha and Fran, there were other lots in the vicinity of the King's lot which were badly eroded. (Kirk, pp. 29 & 32-33; Stroud, pp. 122-23.)

30. Following Hurricanes Bertha and Fran, applications for permits to rebuild houses were denied for other lots in the vicinity of the King's lot. (Kirk, p. 29; Russell, p. 49.)

31. To facilitate reestablishing a vegetation line and trapping moving sand, property owners may install sand fencing, sprig vegetation, and take other steps. (Russell, pp. 52-53.)

32. Neither the Town of Surf City nor the Division of Coastal Management favored pushing the FEMA berm towards the ocean to expand the lots since any material which was pushed oceanward would likely erode over the winter and weaken the berm system. (Russell, pp. 61-62 & 65-69.)

Evidence Heard on October 9, 2001

33. On October 4, 2001, Bob Stroud, Wilmington District Manager, Division of Coastal Management, inspected the King's lot at Surf City. (Stroud, October 4, 2001, Transcript.)

34. He determined that a first line of stable natural vegetation has formed along the crest of the sand berm located immediately landward of the erosion escarpment. (*Id.*)

35. The 60 foot erosion setback as measured from the vegetation line on the King lot falls some ten feet short of the street right-of-way. (*Id.*)

36. The King's lot is 70 feet deep as measured from the vegetation line to the street right-of-way, and thus the buildable area is only ten feet deep. (*Id.*)

37. There are six or seven lots immediately to the south of the King's lot where houses were destroyed or damaged and severe erosion occurred as a result of Hurricanes Bertha and Fran. (Id.)

38. These other lots are also unbuildable because the erosion setback line falls near the street right-of-way. (Id.)

39. The King's lot and the other nearby lots impacted by the Hurricanes have not recovered to the point where a residence can be constructed on them with any degree of safety. (Id.)

CONCLUSIONS OF LAW

In General

1. The Office of Administrative hearings has jurisdiction over the parties and the subject matter and there is no question of joinder or misjoinder.

Denial of Permit Application

2. The burden is upon the Petitioners to show by clear and convincing evidence that the Surf City Local Permit Officer erred in denying their CAMA permit application.

3. All development within the Ocean Hazard AEC must be located landward of the erosion setback line unless it falls within the list of exceptions in Rule 15A NCAC 7H.0307 which does not include single-family residences.

4. Rule 15A NCAC 7H.0306(a(1)) requires that the erosion setback line for development on an oceanfront lot should be measured from the first line of stable natural vegetation wherever there is no frontal or primary dune on or landward of the lot.

5. The sand berm which the Town of Surf City pushed up along the beach did not qualify as a frontal or primary dune as defined in Rule 15A NCAC 7H.0305 because it offered little or no protective value in the event of a storm, and it played no role in locating the erosion setback.

6. There being no frontal or primary dune on or landward of the King lot, the erosion setback line on the King lot should be measured from the first line of stable natural vegetation.

7. On December 8, 1997, there was no first line of stable natural vegetation on the King lot as defined in Rule 15A NCAC 7H.0305(e).

8. The area in the vicinity of the King lot was so impacted by the 1996 hurricanes that a measurement line could not be extrapolated using aerial photography taken after Hurricane Bertha as provided in Rule 15A NCAC 7H.0305(e).

9. So much of the King lot eroded away during the 1996 hurricanes that the beach came almost back to the road, and a house could not have been located on the lot consistent with the erosion setback even if there had been a vegetation line.

10. On December 9, 1997, the King lot could not be developed consistent with the applicable rules of the Coastal Resources Commission, and the Surf City Local Permit Officer properly found that their permit application was inconsistent with the Commission's rules.

11. The Surf City Land Use Plan requires that all development in the Ocean Hazard AEC must be in accordance with CAMA regulations, and the Surf City Local Permit Officer properly found that the King's permit application was inconsistent with the Land Use Plan.

12. The Surf City Local Permit Officer did not err when she denied the King's CAMA permit application under N.C. Gen. State §113A-110(a)(8) because of inconsistency with the rules of the Coastal Resources Commission and the Land Use Plan for Surf City.

13. There is presently a first line of stable natural vegetation on the King lot as defined in Rule 15A NCAC 7H .0305(e).

14. The minimum erosion setback as measured from the vegetation line presently falls some ten feet from the street right-of-way.

CONTESTED CASE DECISIONS

15. The buildable area on the King lot is only some ten feet deep, thus leaving insufficient space on the lot to construct a house.

Variance Request

16. The burden is upon the Petitioners to show that they can satisfy the four variance criteria in Rule 15A NCAC 7J.0703 by clear and convincing evidence. (The criteria are taken from N.C. Gen. Stat. §113A-120.1).

17. Under Rule 15A NCAC 7H.0703(f)(1), the Petitioners must show that they will suffer unnecessary hardship or practical difficulty if the applicable development standards are strictly enforced.

18. The Kings have shown that they will suffer financial hardship if they cannot rebuild a residence on their lot, but this is true of many other owners of oceanfront lots who lost their residences during the 1996 hurricanes but cannot rebuild them because of the inability to comply with the erosion setback requirement.

19. Under Rule 15A NCAC 7H.0703(f)(2), the Petitioners must show that the unnecessary hardship or practical difficulty results from conditions peculiar to their property.

20. Unfortunately, there is nothing unusual about the conditions which exist on the King's lot since many other lots in Surf City and elsewhere were severely eroded and the residences on them were destroyed or damaged during the 1996 hurricanes.

21. Under Rule 15A NCAC 7J.0703(f)(3), the Petitioners must show that such conditions could not reasonably have been anticipated by the Commission when it adopted the applicable development standards.

22. What happened to the King's lot was anticipated by the Commission when it designated the Ocean Hazard Area of Environmental Concern in Rule 15A NCAC 7H §.0300 and adopted its erosion setback and other development standards in an effort to reduce the risks to life and property during major storm events.

23. Under Rule 15A NCAC 7J.0703(f)(4), the Petitioners must show that their proposed development is consistent with the spirit, purpose, and intent of the Commission's regulations.

24. So much of the King's lot was eroded away that there is not enough area to rebuild a residence which would have any degree of protection from the natural forces and which would be consistent with the spirit, purpose, and intent of the erosion setback and other applicable development standards.

25. The Petitioners have failed to show that the Coastal Resources Commission should grant a variance from its development standards in order to allow the issuance of a CAMA permit to rebuild a residence on their lot at Surf City.

26. If their lot accretes to the point where it become buildable, the Kings may reapply for a CAMA minor development permit to develop a residence on their lot.

Based on the above Conclusions of Law, the undersigned makes the following:

RECOMMENDATIONS

That the denial of the Petitioners' CAMA permit application be **AFFIRMED**; and that the Petitioners' variance request be **DENIED**.

ORDER

It is hereby ordered that the agency serve a copy of its final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699 in accordance with N.C. Gen. Stat. §150B-36(b).

NOTICE

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

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

This the 21st day of November, 2001.

Beecher R. Gray
Administrative Law Judge

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
01 EHR 0558

TERRY PETERSON RESIDENTIAL TWENTY, LLC)

Petitioner,)

v.)

COUNTY OF DURHAM)

Respondent.)

ORDER AMENDING DECISION

This matter was heard before Administrative Law Judge James L. Conner, II, on September 13, 2001, in Durham, North Carolina.

BACKGROUND

Petitioner initiated this contested case with the Office of Administrative Hearings (OAH) on March 29, 2001, appealing the decision of Respondent Durham County to assess a civil penalty against it in the amount of \$ 1,508.00 per day for violations of the Durham City/County Sedimentation and Erosion Control Ordinance (Ordinance). Petitioner's petition asserted that this decision was made erroneously. During the presentation of its case, Petitioner also asserted that this decision was reached arbitrarily and capriciously and the Administrative Law Judge considered it on those grounds as well.

APPEARANCES

Petitioner: John T. Stewart, Esq.
Levine & Stewart
143 W. Franklin Street, Suite 202 University Square
Chapel Hill, North Carolina, 27516

Respondent: Curtis Massey
Assistant County Attorney
Post Office Box 3508
Durham, North Carolina 27701

ISSUES

1. Whether Respondent acted erroneously in assessing a civil penalty against the Petitioner for violating the Ordinance?
2. Whether Respondent acted arbitrarily or capriciously in assessing a civil penalty against the Petitioner for violating the Ordinance?

STATUTES, RULES & POLICIES IN ISSUE

N.C. GEN. STAT. § 113A-50, et. seq.
Durham County Ordinances § 14-51, et. seq.

WITNESSES

Petitioner presented the following witnesses: Charles A. Herr, Bryan Surak, Paul K. Craig and Neil Varner.

Respondent presented the following witnesses: Preston Leon Beddingfield and Glen Whisler.

PETITIONER'S EXHIBITS

The following exhibits were admitted into evidence by Petitioner:

CONTESTED CASE DECISIONS

1. Excerpts of the Construction Sequence Notes appearing on the Original Plans approved by Sedimentation and Erosion Control on July 17, 2000, (plan pages C-3A, C-3B, and D-2), which notes constituted page 1 of the Exhibit) and the Construction Sequence Notes from a subsequently prepared plan which was not submitted to Sedimentation and Erosion Control for approval (plan pages C-3A and C-3B), which notes constituted page 2 of the exhibit)
2. Notice of Violation dated December 27, 2000
3. Rescind Notification dated February 14, 2001
4. Notice of Violation dated February 22, 2001
5. Notice of Civil Penalty Assessment dated March 1, 2001
6. Fax Coversheet dated March 9, 2001, and appended to a Civil Penalty Worksheet dated March 1, 2001

RESPONDENT'S EXHIBITS

The following exhibits were admitted into evidence by Respondent:

1. Affidavit of Garry Umstead dated September 5, 2001 (Durham City/County Sedimentation and Erosion Control Ordinance)
2. Financial Responsibility/Ownership Form dated June 9, 2000
3. Approved Sedimentation & Erosion Control Plans (Pages 1, C-1, C-3A, C-3B, C-14, C-15, C-16 and D-2 of the total plan)
4. Letter of Approval dated July 19, 2000
5. Land Disturbing Permit dated September 1, 2000
6. Not admitted
7. Inspection Report dated February 21, 2001
8. Notice of Violation dated February 22, 2001
9. Inspection Report dated February 23, 2001
10. Inspection Report dated February 28, 2001
11. Civil Penalty Worksheet dated March 1, 2001
12. Notice of Civil Penalty Assessment dated March 1, 2001
13. Inspection Report dated March 13, 2001
14. Rescind Notification dated March 19, 2001

Upon consideration of the documents filed in this matter, the testimony taken, the admitted exhibits, and all relevant evidence, the undersigned makes the following:

FINDINGS OF FACT

1. The parties received notice of hearing more than fifteen (15) days prior to the originally set date for the hearing of this contested case.
2. Durham County administers a joint City/County Sedimentation and Erosion Control Program which is authorized by Article 4 of Chapter 113A of the North Carolina General Statutes. This program requires land disturbing activities

in excess of 12,000 square feet to obtain a permit, and for activities in excess of one acre, a sedimentation and erosion control plan must be submitted.

3. On or about June 14, 2000, the Petitioner submitted an application for a land disturbing permit for a site approximately 29.9 acres in size. This application included a Financial Responsibility/Ownership Form and Sedimentation and Erosion Control Plans. These plans were prepared by a Professional Engineer, in this case Craig Wilson, P.E., of the John R. McAdams Company, Inc. The site permitted by the Petitioner was one of several job sites located in what is commonly referred to as the Auburn Subdivision. The Petitioner's job site is referred to as Pod 5B of that subdivision.

4. The Financial Responsibility/Ownership Form lists Terry Peterson Residential Twenty, LLC, (the Petitioner) as the firm which is financially responsible for this land disturbing activity and lists John H. Peterson, Jr, of 4640 Shore Drive, Suite 111, Virginia Beach, Va, 23455, as the individual to whom official notices from the Sedimentation & Erosion Control Program should be sent.

5. The sedimentation and erosion control plans submitted by Petitioner were approved on July 17, 2000, and constituted pages C-1, C-3A, C-3B, C-14, C-15, C-16 and D-2 of the entire plan. Pages C-3A and C-3B show the placement of erosion control measures and detail the dimensions of sediment traps. Pages C-14, C-15, C-16 and D-2 provide construction detail on individual sedimentation and erosion control measures. Page C-14 is for Pond 1, C-15 is for Pond 2, C-16 is for Pond 3/Sand Filter, and D-2 is for all other measures. These plans detail Ponds 1, 2, and 3, which were intended to be permanent features first serving as sedimentation and erosion control devices and then serving as a stormwater control measures. The plans also detail the placement of sediment traps and diversion ditches which would channel water and sediment into these traps and the ponds. The plans include sequencing notes detailing the order of construction, where the various measures are to be installed, and the specifics of their construction, including their size and the materials to be used.

7. Petitioner has conducted work in North Carolina before and is familiar with the requirements of the Ordinance, which are similar to other local programs enacted pursuant to Article 4 of Chapter 113A of the North Carolina General Statutes.

8. Prior to commencing construction on the permitted site, Petitioner held a preconstruction meeting with local enforcement officials in August. Petitioner's direct representative at this meeting was Mr. Charles Herr, P.E. Mr. Leon Beddingfield, the Sedimentation & Erosion Control Officer for Respondent was supposed to attend, but was unable to do so. Mr. Bryan Surak, P.E., of the John R. McAdams Company was also present.

9. Mr. Herr is employed by the Petitioner as a Land Development Manager and is a licensed Professional Engineer in the states of Virginia and North Carolina. He had supervision of this construction project and reviewed all of the plans that were prepared by the John R. McAdams Company in conjunction with this project, including the sediment and erosion control plans.

10. Mr. Herr was not present at the permitted site on February 21, 2001, and did not have personal knowledge of its condition on that date. He did not personally visit and inspect the site until March 29, 2001, approximately two weeks after it had been brought into compliance.

11. Mr. Surak is an employee of the John R. McAdams Company and has been a licensed Professional Engineer since 2000. His company was employed by the Petitioner to design the erosion control measures for the permitted site. He had provided general direction on the measures to be installed at the permitted site and, prior to their submittal, reviewed the plans which were approved by the Respondent on July 17, 2000.

12. Mr. Surak was not present at the permitted site on February 21, 2001, and did not have personal knowledge of its condition on that date.

13. Mr. Surak admitted that the goal of the Ordinance was that no sediment should leave the job site. He also testified that the plans he had prepared, and which were approved by the Respondent, reflected his professional opinion as to the measures which would be sufficient to retain all sediment on the permitted site. Mr. Surak contradicted himself by also testifying that the goal of the Ordinance was not feasible and some sediment always left a job site.

14. At the August 2000 meeting Mr. Herr directed certain changes be made to the previously approved plans. He directed that the construction sequence notes on pages C-3A and C-3B be revised to specifically state that the forebays shown as part of the three ponds shown on those plans would not be installed until after the completion of all other construction. Mr. Herr felt that the existing language was ambiguous and could lead enforcement officials to expect the forebays would be installed at the beginning of construction for use as a sediment and erosion control device. Mr. Herr felt that the size of the ponds alone was a sufficient sedimentation and erosion control measure.

15. The Construction Sequence Notes on pages C-3A and C-3B of the approved plans read as follows:
1. Construct a minimal pathway to riser basins (Pond 1, Pond 2 and Sand Filter)
 2. Construct basin structures including outlet structures
 3. Refer to General Construction Sequence on Detail Sheet D-2 for subsequent sequencing
 4. Upon completion of drainage structures and erosion control measures, dewater and desilt basins
 5. Construct basin forebays for permanent function as riser basins.

16. Mr. Surak had the relevant notes modified and also revised the detail of construction of certain of the sediment traps detailed on the approved plans. These were Sediment Traps 2 and 3. The changes in design converted them from an individual sediment trap into a butterfly design with a gravel check dam in between the two traps which was intended to divert water into the traps.

17. The revised notes on the plans which were not submitted to the Respondent for approval (hereinafter referred to as the "September Plans"), read, in pertinent part:

2. Construct permanent outlet structures and entire pond basin without forebays.
4. Once all of the disturbance upstream of the ponds is stabilized, dewater the pond, desilt the pond build forebays and berms and refine grading to details and specifications shown in the construction plans.

18. The General Construction Sequence notes appearing on page D-2 of the original plans, and which were added to pages C-3A and C-3B of the September Plans read, in pertinent part:

1. OBTAIN LAND DISTURBING PERMIT.
2. INSTALL GRAVEL CONSTRUCTION ENTRANCE(S), DIVERSION DITCHES, SILT FENCES, SEDIMENT BASINS AND/OR OTHER MEASURES AS SHOWN ON THE APPROVED PLAN AND ANY SPECIAL CONDITIONS NOTED IN "LETTER OF APPROVAL."

19. All of the changes made to the plans were made on pages C-3A and C-3B which are specifically noted as being the "Storm Drainage & Erosion Control Plan." Upon their completion in September 2000, Petitioner submitted the revised plans to the City of Durham's Stormwater Office for approval but intentionally did not submit them to Respondent for approval. Petitioner's witnesses testified that they did not believe that it was necessary to submit the September Plans to Respondent for approval because the intent of the plans had not been changed.

20. The Sedimentation and Erosion Control Office has divided Durham County into geographic regions and assigned each region to a different inspector.

21. Due to staffing shortfalls, and during the times relevant to this matter, only Mr. Beddingfield and one other individual, Mr. Armbrust, were working in the Sedimentation and Erosion Control Office. They were responsible for inspecting over 300 active job sites.

22. Petitioner's job site was within the area where Mr. Beddingfield was acting as inspector.

23. On December 27, 2000, Mr. Armbrust found, in his area of responsibility, an unpermitted dump site where fill dirt was being deposited in violation of the Ordinance.

24. Mr. Armbrust determined that some of the earth being dumped on this unpermitted site was coming from the Petitioner's job site. This dirt was being removed from the permitted site and illegally dumped by Jones Brothers.

25. Under the Ordinance, responsibility for this improper dumping is assigned to both the owner of the land where the dumping is taking place, and the owner, or in this case the permittee, of the site where the earth is being removed from. Accordingly, on December 27, 2000, Petitioner was issued a Notice of Violation for that dumping.

26. By February 17, 2001, the unpermitted site had been brought into compliance and Mr. Armbrust rescinded the previous Notice of Violation. Mr. Armbrust's rescission was not based on, nor did it consider, the conditions of the Petitioner's permitted site. Since Mr. Armbrust was not responsible for the Petitioner's job site, he had not, and normally would not, inspect it.

27. Due to his workload, Mr. Beddingfield had not conducted a detailed inspection of the Petitioner's job site before February 21, 2001.

28. On February 21, 2001, Mr. Leon Beddingfield, the Sedimentation & Erosion Control Officer conducted an inspection of the permitted site. On that day he was accompanied by his immediate supervisor, Mr. Glen Whisler, P.E., the Durham County Engineer, and the Assistant County Attorney, Curtis Massey.

29. At the time of the hearing, Mr. Beddingfield was no longer employed by the Respondent. He testified that he had been employed by the Respondent, as an Erosion & Sediment Control Inspector, and then as the Erosion Control Officer, for 16 years. Mr. Beddingfield's duties, while so employed, included the evaluation of applications for erosion control permits, reviewing submitted plans to determine if they would adequately prevent sediment from leaving a job site, and the inspection of permitted sites to ensure they adhered to the terms of their permit, and the Ordinance, and that sediment was being retained on a job site.

30. Mr. Glen Whisler, the County Engineer, has been a licensed Professional Engineer for approximately 20 years. He is licensed in the states of Ohio and North Carolina. His experience in the field of sediment and erosion control comes from classes he took to obtain his degree as a civil engineer and from practical experience with these type programs.

31. When Mr. Beddingfield inspected the Petitioner's job site on February 21, 2001, he detected numerous violations of the Ordinance. The entire job site had been cleared of vegetation and mass graded. Accordingly, all of the erosion control devices called for on the plans should have been installed and functioning. Contrary to the measures detailed on the approved plans, and the requirements of the Ordinance, the following violations were present:

- a. The forebays shown on the approved plans had not been constructed in Pond 1, which is shown on page C-3A at approximately lots number 26-28.
- b. The forebay shown on the approved plans had not been constructed in Pond 2, which is shown on page C-3B at approximately lot number 106.
- c. Pond/Sand Filter number 3, which is shown on page C-3B at approximately lot number 117, had not been constructed at all.
- d. The diversion ditches which were supposed to channel water into Pond 3, which are shown on page C-3B at lots 123-118, had not been constructed at all.
- e. Sediment Trap 4, which is shown on page C-3B at approximately lot number 124, had not been constructed at all.
- f. The diversion ditches which were supposed to channel water into Sediment Trap 4, which are shown on page C-3B at lots 133-124, had not been constructed at all.
- g. Sediment Trap 2, which is shown on page C-3A at approximately lot number 21, had been constructed in a different method than that detailed in the approved plans. It had been built in a butterfly design, and water was leaving the site without going through that sediment trap because the gravel filter between the two traps/wings had been washed out.
- h. Sediment Trap 3, which is shown on page C-3B at approximately lot number 140, had been constructed in a different method than that detailed in the approved plans. It had been built in a butterfly design, and water was leaving the site without going through that sediment trap because the gravel filter between the two traps/wings had been washed out.
- i. The diversion ditches intended to convey water to Sediment Trap 3 would not function because the trap was at a higher elevation than the diversion ditches, which are shown on page C-3B at approximately lot number 143-140 and 134-140.

32. Mr. Beddingfield also found that a sewer easement had been cut across a stream which ran parallel to the Northeast property line of the site on page C-3A. At that crossing no measures to retain sediment had been installed, the site was not stabilized and sediment had entered the stream. This stream crossing was between lots 20 and 21. Based on site calculations, Mr. Beddingfield determined that the amount of sediment in the stream was approximately 9.2 cubic yards.

33. Petitioner did not dispute that this volume of off-site sedimentation had occurred, or the cause of it, but did contend that it was insignificant compared to the overall amount of earth moved on the job site.

34. Mr. Beddingfield had previously discussed the installation of this sewer easement with Mr. Craig as the approved plans did not detail any sediment and erosion control measures connected with the installation of this utility.

35. In his previous discussions with Mr. Beddingfield, Mr. Craig had represented that they were going to do the utility installation in approximately one day, or possible a day and a half. He also represented that immediately after they completed the work they could stabilize the site with seed and straw. Based upon these representations, Mr. Beddingfield agreed to permit the utility installation without requiring other erosion control measures to be installed.

36. Following his inspection on February 21, 2001, Mr. Beddingfield met with the Petitioner's on-site representative, Mr. Neil Varner, and Mr. Paul Craig, an employee of the grading contractor Petitioner had engaged, Jones Brothers Inc.

37. Mr. Neil Varner has been an employee of the Petitioner for approximately three years. He was the day to day supervisor for this construction project and been in that position since construction was started in September 2000.

38. Mr. Varner testified that he regularly walked the site and inspected it, including the erosion control devices. Mr. Varner testified that he did not conduct these inspections with a copy of the sedimentation and erosion control plans, nor did he have any real training or experience in the evaluation of erosion control measures, but that he would look for “something I consider to be excessive runoff of our site...” Mr. Varner did not prepare any records of these inspections, of the condition of the job site, or of the maintenance the erosion control measures required or received.

39. Mr. Paul Craig is an employee of Jones Brothers Inc., the contractor which Petitioner engaged to do grading work at the site and to install and maintain the erosion control devices. Mr. Craig had been working as Jones Brothers supervisor at the site since January 2001.

40. Mr. Craig testified that he, or one of his foremen, would regularly inspect the site, especially after major rainfalls, to determine if the erosion control measures were properly functioning. Mr. Craig did not prepare any records of these inspections, of the condition of the job site, or of the maintenance the erosion control measures required or received.

41. Mr. Beddingfield informed Mr. Varner and Mr. Craig of each of the discrepancies he had detected and directed them to take immediate action to bring the site into compliance.

42. On February 21, 2001, and during the hearing of this matter, Petitioner’s witnesses (Mr. Varner and Mr. Craig) acknowledged that the condition of the job site on February 21, 2001, was as Mr. Beddingfield described it in his testimony, and as set out in Finding of Fact 31, supra. On direct examination by Petitioner’s counsel, Mr. Craig also testified that the condition of the site on February 21, 2001, was identical with its condition four days earlier on February 17, 2001.

43. On February 21, 2001, Mr. Varner and Mr. Craig assured Mr. Beddingfield that they would take corrective action, except as to installation of the forebays which they contended were not required on their plans, which were the September Plans, until all other construction was completed.

44. Following this representation Mr. Beddingfield and Mr. Whisler both explained that the plans approved by the Respondent showed the forebays in place as an erosion control measure and they demanded the Petitioner install them immediately.

45. Pond 3, Sediment Trap 4, and the diversion ditches leading to them had never been installed when clearing of the permitted site began in September 2000.

46. Pond 3, Sediment Trap 4, and the diversion ditches leading to them were undisputably detailed on, and required by, the approved plans.

47. Petitioner’s witness (Mr. Craig) asserted that the natural condition and terrain of the southeast section of the property, which is where Pond 3 and Sediment Trap 4 were to be installed was sufficient to retain sediment. Mr. Craig also testified that there was an earthen berm along the southeast border of the property where the diversion ditches were to be installed which he contended worked the same as a diversion ditch.

48. Mr. Beddingfield testified that this earthen berm was no more than a loose pile of dirt which included rootballs from grading activity. Mr. Beddingfield explained that this loose earth presented a sediment and erosion control problem of its own since it was adjacent to the property line and there was no silt fence in place to restrain it on the permitted site.

49. Petitioner’s failure to install Pond 3, Sediment Trap 4, or the diversion ditches designed to channel water to them was the result of a conscious decision to wait for definite proof that off-site sedimentation was occurring before constructing these measures.

50. Before the approved plans were deviated from, the Respondent should have been consulted and its concurrence obtained.

51. Respondent’s interpretation of the plans submitted to it for review and what it construed them to require is controlling on the Petitioner.

52. On February 22, 2001, Mr. Beddingfield sent to the Petitioner a Notice of Violation (NOV) which informed it of the multiple violations present at its site and directing it to immediately bring the site into compliance. A copy of the inspection report compiled by Mr. Beddingfield on February 21, 2001 was included with the NOV. The NOV was sent via certified mail and received by the Petitioner on February 26, 2001.

53. Petitioner initiated action on February 21, 2001 to remedy several of the noted violations, but deferred installation of the forebays while it sought to convince Respondent that they were not needed. Petitioner was consistently informed by

Respondent's employees, including Mr. Beddingfield and Mr. Whisler, that the forebays were a required measure which must be installed.

54. On March 1, 2001, Mr. Beddingfield prepared a civil penalty assessment against the Petitioner for its ongoing violation of the Ordinance. In determining the amount of the civil penalty, Mr. Beddingfield used a worksheet he had adapted from the one used by the North Carolina Department of Energy and Natural Resources in assessing civil penalties in its enforcement of Article 4 of Chapter 113A. This worksheet incorporates the factors required to be considered by N.C.G.S. § 113A-64 and Section 14-69 of the Ordinance in assessing a civil penalty.

55. The amount of the civil penalty assessed against Petitioner was \$ 1,508.00 per day. Petitioner was informed that this penalty was assessed starting from February 21, 2001, the day the violations were first detected and would continue to accrue until Respondent certified that the site had been brought into compliance. This Notice of Civil Penalty Assessment (Civil Penalty) was sent via certified mail and received by the Petitioner on March 5, 2001.

56. Of the factors considered in fixing the amount of the civil penalty, the amount of damage occurring from off-site sedimentation was only a fraction of the total penalty assessed.

57. Upon being informed that a civil penalty had assessed against it, the Petitioner requested a conference with Mr. Beddingfield's supervisors. This meeting included his direct supervisor, Mr. Whisler, and the appropriate Assistant County Manager, Mr. Wendell Davis. At that meeting Petitioner was informed that the Respondent stood by its insistence that the forebays were a necessary sediment and erosion control measure.

58. Following this meeting, the Petitioner, being specifically aware that the civil penalty would continue to accrue until they brought the site into full compliance, decided to install the forebays detailed in the erosion control plans approved by the Respondent, and which Mr. Beddingfield and Mr. Whisler had insisted were necessary and must be installed on February 21, 2001.

59. On March 13, 2001, Mr. Beddingfield again inspected the permitted site and determined that it was in compliance with the Ordinance and prepared a Rescind Notification informing Petitioner that the site was in compliance and that the entire amount of the civil penalty due was \$30,160.00 since the site had been in violation for 20 days from February 21 through March 12, 2001.

60. Petitioner's witnesses (Mr. Herr, Mr. Surak and Mr. Craig) testified that Ponds 1, 2, and 3, (once Pond 3 was constructed) functioned adequately as sediment control devices without the forebays being installed.

61. Mr. Beddingfield and Mr. Whisler testified that the forebays functioned as a sediment control measure because they caused the water to pool and then the sediment would settle out before water crested over the forebay berm and passed into the main pond. An outlet from the main pond permitted this cleaner water to leave the permitted site.

62. Petitioner's witnesses (Mr. Herr, Mr. Surak and Mr. Craig) testified that the forebays were only intended to be installed as a stormwater control device. They explained that their function was to hold back stormwater carrying nutrients, petroleum products, and run off from impervious surfaces after the construction was completed. They explained that the forebays would retain the water containing these substances and give them an opportunity to settle out before the cleaner water would pass over the forebay and exit the pond.

63. Petitioner's witnesses (Mr. Herr and Mr. Surak) testified that these forebays, being a stormwater control, were a water quality measure which was very different from a sediment control device.

64. Mr. Surak testified that the installation of the forebays decreased the effectiveness of the ponds as a sediment control device because it reduced the volume of the pond available for sediment to settle out.

65. Petitioner's failure, and continuing refusal, to construct the forebays detailed in the approved plans for Ponds 1, 2 and (after its construction) 3, was the result of a conscious decision to try and reduce its construction costs by not having to dewater, desilt, and regrade, the ponds at the end of construction.

66. The approved plans, on pages C-3A and C-3B, show diversion ditches designed to channel water on the permitted site emptying into the forebays for each of the ponds shown on the approved plans.

67. The approved detail plans for Ponds 1, 2 and 3 (C-14, C-15, and C-16, respectively) show the forebays and do not indicate that they will not be installed until after all other construction was completed.

68. On cross examination Petitioner's witnesses (Mr. Herr and Mr. Surak) admitted that sediment is a pollutant and a particulate matter which will settle out of water if the water is held in place for a period of time.

69. On cross examination Petitioner's witnesses (Mr. Herr and Mr. Surak) admitted that sediment is a water quality issue.

70. On cross examination Petitioner's witnesses (Mr. Herr and Mr. Surak) agreed that the sediment traps were designed to retard the flow of water and to permit sediment to settle out before it left the permitted site.

71. Mr. Beddingfield testified that in his 16 years of experience every time a pond with forebays was shown on the approved plans, the forebays had been installed at the beginning of construction.

72. Mr. Beddingfield testified that if he had understood that Petitioner did not intend to install the forebays at the beginning of the construction then he would not have approved the plans submitted to him unless and until they included some other measure sufficient to remove sediment from water entering the pond before it left the job site.

73. Prior to conducting his inspection on February 21, 2001, Mr. Beddingfield had received complaints from citizens concerning the condition of the permitted sites in the Auburn Subdivision. These had come to him directly from citizens and had been forwarded to him by members of the Board of County Commissioners (BOCC).

74. In August 2000, during an appeal of a permit revocation Mr. Beddingfield and Mr. Whisler had received direction from the BOCC that they had not made adequate use of civil penalties as an enforcement tool. The BOCC had expressed the belief that they could obtain better compliance from the development community if they faced financial liability for their actions.

75. This view was expressed again to Mr. Beddingfield and Mr. Whisler by the BOCC during the revision of the Ordinance in October and December 2000.

76. Mr. Beddingfield received no specific direction, nor was he under any compulsion, either as to finding the Petitioner's job site in violation of the Ordinance or in assessing a civil penalty against the Petitioner.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Ordinance at § 14-51 states that:

This article is adopted for the purposes of:

- (1) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses and other public and private property by sedimentation;...

2. The Ordinance, at § 14-55(4) states: "All land disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage."

3. The Ordinance, at § 14-62 states:

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this article, the Act or any order adopted pursuant to this article or the Act...

4. The Ordinance, at § 14-68(c) states:

If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this article, or rules or orders adopted or issued pursuant to them, or has failed to obtain a land-disturbing permit or has failed to comply with an approved plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, this article, or rules, or orders adopted pursuant to this article and inform the person of the actions that need to be taken to comply with the Act, this article, or rules or orders adopted pursuant to this article. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

5. The Ordinance, at § 14-69(b)(1) states:

Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article or who initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit shall be subject to a civil

CONTESTED CASE DECISIONS

penalty. The maximum civil penalty for a violation shall be \$5,000.00. A civil penalty may be imposed from the date the violation was detected. Each day of continuing violation shall constitute a separate violation.

6. North Carolina General Statute, Section 113A-51 states:

The sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this State will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken.

7. North Carolina General Statute, Section 113A-60 authorizes local governmental entities, such as the City and County of Durham, to establish sedimentation and erosion control programs, so long as they are at least as stringent as the one defined in the General Statutes and its implementing regulations.

8. North Carolina General Statute, Section 113A-64 authorizes the imposition of civil penalties as an enforcement tool for violations of a local sediment and erosion program.

9. The purpose of the Ordinance is to reduce water pollution caused by sediment leaving job sites due to land disturbing activities, such as construction. This off-site sedimentation most normally occurs as a result of sediment being transported by stormwater.

10. The Ordinance accomplishes its goal by imposing an affirmative obligation on property owners, and persons holding a land disturbing permit, to design, install and maintain, measures which will retain all sediment on their property before, and while, engaging in land disturbing activity. The purpose of most control measures is to restrict the flow of water leaving the permitted site thereby (1) giving the suspended sediment a chance to settle out, or (2) filtering the sediment from the water before it leaves the permitted site, or (3) both.

11. The testimony of Petitioner's witnesses that forebays do not serve a sediment and erosion control purpose and that they did not need to be installed at the beginning of construction on this job site was not credible.

12. The testimony of Petitioner's witnesses that there was no need, from a sediment and erosion control standpoint, to install Pond 3, Sediment Trap 4, or the diversion ditches designed to channel water to them was not credible.

13. The testimony of Respondent's witnesses, individuals with far more extensive professional experience in this field, as to the measures which had been designed for the job site, the need for those measures, how forebays function as a sediment and erosion control measure and the need for them on this job site, was credible.

14. From at least February 21, 2001, Petitioner was in knowing, willful and ongoing violation of the Ordinance for the violations detailed in Finding of Fact 31, supra.

15. Respondent's decision to assess a civil penalty in this matter was consistent with its decision to pursue greater compliance with the Ordinance and made in the belief that regulated parties, such as the Petitioner, would be more compliant with the Ordinance's goals and spirit if they faced financial loss for violating it.

16. The fact that Respondent had not previously assessed many civil penalties prior to February 21, 2001, does not act as legal restriction on its ability to do so since the North Carolina General Statutes and the Ordinance both explicitly authorize them as an enforcement mechanism.

17. The daily penalty assessed by Respondent was the result of a careful and deliberate analysis of the facts present in this matter and of those factors which it is required to consider per the North Carolina General Statutes and the Ordinance.

18. The decision of the Respondent, acting through Mr. Beddingfield, to impose a civil penalty starting from February 21, 2001, was erroneous in that the Ordinance, at section 14-68(c), requires that the Petitioner must be given written notice of the violations and a deadline for remedying them. Before a civil penalty can begin to accrue the deadline specified must have passed and the site must still be in violation.

Based upon the foregoing Conclusions of Law, the undersigned makes the following:

DECISION

The daily penalty issued in the amount of \$1,508.00 per day is **AFFIRMED**, as it was not issued erroneously, nor was it the result of an arbitrary or capricious action by the Respondent.

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However, the total amount of the civil penalty assessed is **ADJUSTED** by reducing it by five days, this being the number of days from when the penalty was first assessed until the deadline given to the Respondent to bring the site into compliance. Accordingly the total amount of the civil penalty which should be affirmed is \$22,620.00.

ORDER

It is hereby ordered that the Board of County Commissioners serve a copy of the Final Decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. GEN. STAT. § 150B-36(b).

NOTICE

Before the Board of County Commissioners makes the FINAL DECISION, it is required by N.C. GEN. STAT. § 150B-36(a) to give each party an opportunity to file exceptions to this DECISION, and to present written arguments to the Board of County Commissioners since they will make the final decision.

Consistent with that procedural right, and as detailed in section 14-69(b) of the Ordinance, the parties have the opportunity to submit their exceptions and objections to this recommended decision within 30 days after it is issued by the undersigned. The exceptions and objections must be specific, made in writing, filed with the Clerk to the Board, and served upon both the other parties to this action and the Office of Administrative Hearings.

The Board of County Commissioners 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.

This the 3rd day of December, 2001.

James L. Conner, II
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
01 EHR 0992

NANCY D. TUCHSCHERER,
Petitioner,

v.

CAMA – COASTAL AREAS MGMT. ASSOC.
Respondent.

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DECISION

This matter came on for hearing before the Honorable Beecher R. Gray, Administrative Law Judge, on the 8th of October, 2001, in Southport, North Carolina.

APPEARANCES

Petitioner: Nancy D. Tuchscherer
4907 Crooked Oak Lane
Charlotte, NC 28226

Respondent: David G. Heeter
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

ISSUE

Whether damages in the amount of \$450.00 (\$100.00 for permit application fee and \$350.00 for survey) should be awarded to the Petitioner?

FACTS

1. The subject property is located at 2027 W. Beach Dr., Oak Island, Brunswick County, North Carolina. (Respondent’s Exhibit 1 & 2.)
2. There is an existing single family residence on the lot. (Respondent’s Exhibit 2.)
3. In 1999, when Hurricane Floyd struck Brunswick County, William and Elizabeth Ducker owned the lot and residence. (Knight, Transcript page 12. Hereinafter Tp.)
4. Hurricane Floyd destroyed a 12 by 17 foot free standing wooden deck located on the oceanward side of the residence. (Id.)
5. On March 21, 2001, Mr. and Mrs. Ducker submitted an application to the Town of Oak Island, Local Permit Officer, for a CAMA minor development permit to rebuild the wooden deck. (Respondent’s Exhibit 1.)
6. Their daughter, Nancy Tuchscherer, helped the Duckers apply for the CAMA permit, but she was not listed as their authorized agent on their permit application. (Knight, Tp. 25.)
7. In order to rebuild the deck, it was necessary to obtain both a CAMA permit and building permit from the Town of Oak Island. (Knight, Tp. 11.)
8. J. M. Tuchscherer paid the \$100.00 CAMA permit application fee to the Town of Oak Island on May 21, 2001. (Knight, Tpp. 12-13; Respondent’s Exhibit 1.)

9. The Coastal Resources Commission had recently raised the application fee for a CAMA minor development permit from \$50.00 to \$100.00, and the Division of Coastal Management had not yet amended the forms it provides to the local governments. (Knight, Tp. 24.)

10. In a letter dated May 22, 2001, Kerri Knight, CAMA Local Permit Officer, informed Mr. and Mrs. Ducker that their permit application was incomplete and certain additional information was required. (Knight, Tpp. 14-15; Respondent's Exhibit 4.)

11. Kerri Knight also informed the Duckers that a decision would be made on their permit application within 25 days after the additional information was received. (Id.)

12. At some point, Nancy Tuchscherer acquired the property from her parents, and she notified the Town of Oak Island of this by E-mail on May 23, 2001. (Knight, Tpp. 15-16; Respondent's Exhibit 5.)

13. On May 23, 2001, the Town of Oak Island published a Public Notice of the Ducker permit application in the *State Port Pilot*. (Respondent's Exhibit 3.)

14. Steve Edwards, another Oak Island LPO, talked with Nancy Tuchscherer about obtaining a permit in her name and told her she could either apply in her own name or have her parent's permit transferred to her. (Edwards, Tpp. 49-50.)

15. On May 30, 2001, Steve Edwards mailed Nancy Tuchscherer a CAMA permit application and a building permit application to be made in her own name. (Respondent's Exhibit 6.)

16. On May 30, 2001, Nancy Tuchscherer sent an E-Mail to Jerry Parker, Division of Coastal Management, questioning Oak Island's policy of requiring a survey with a CAMA permit application. (Tuchscherer, Tp.72.)

17. Jerry Parker did not recall receiving her E-Mail but testified that the Division supports a town if it requires a survey to be provided with a permit application. (Parker, Tp. 72.)

18. Nancy Tuchscherer never submitted an application to the Town applying for a permit in her own name. (Knight, Tp. 16.)

19. The Ducker's permit application was never modified to list Ms. Tuchscherer as their authorized agent. (Edwards, Tp. 51.)

20. During the 1996 hurricanes, there was damage to other houses and lots in the vicinity of the Ducker's lot, and the deck on it was damaged during Hurricane Floyd. (Edwards, Id.)

21. The dune system on the lot is approximately 12 feet wide, and the proposed deck would be located over the crest of the dune. (Respondent's Exhibit 2.)

22. The proposed deck would be located seaward of the current first line of stable natural vegetation. (Edwards, Tpp. 48-49.)

23. The Town of Oak Island requires an applicant for a CAMA minor development permit to provide a copy of the survey to make sure that the conditions on the property have not changed and there are no nonconformities on it. A survey also helps determine if any special conditions need to be attached to any permit. (Knight, Tpp. 13-14 & 19.)

24. The need to provide a copy of the property survey is indicated on the Town's Directions For Filling Out A CAMA Minor Permit which is given to permit applicants. (Knight Tpp. 17-18; Edwards, Tp. 46; Respondent's Exhibit 8.)

25. The rebuilding of the destroyed deck required both a CAMA minor development permit and a building permit. (Knight, Tp. 11.)

26. The Town of Oak Island Building Code, ARTICLE XIII, ADMINISTRATION AND ENFORCEMENT, Section 13.1, requires that each application for a building permit shall be accompanied by a plot plan showing certain features, including the actual survey showing the dimensions of the lot. (Knight, Tpp. 21-22; Respondent's Exhibit 11.)

27. Before issuing a building permit, the Town of Oak Island requires a "current" property survey for any project which requires any permanent footings and/or foundation. (Knight, Tpp. 19-21; Edwards, Tp. 46; Respondent's Exhibit 9.)

CONTESTED CASE DECISIONS

28. The need to provide a "current survey" is set forth in the Procedure Guide for Addition, Remodeling, Decks, Docks, Piers, and Accessory Structures provided by the Town of Oak Island. (Id.)
29. The rebuilding of the damaged deck required a permanent piling system. (Knight, Tp. 21.)
30. Rule 15A NCAC 7H .0601 of the Coastal Resources Commission provides that "No development shall be allowed in any AEC which would result in a contravention or violation of any rules, regulations, or laws of the State of North Carolina or local government in which the development takes place." (Respondent's Exhibit 10.)
31. The Duckers had a survey which was prepared in 1988 but was no longer current because the natural conditions on the property had changed as a result of the passage of time and storms. (Edwards, Tpp. 51-52.)
32. Nancy Tuchscherer had Boney Land Surveyors prepare a Property Survey and Preliminary site plan showing the rebuilt deck in relation to the property boundaries, dune crest, and dune toes. (Respondent's Exhibit 2.)
33. Ms. Tuchscherer testified that she had been granted permits in the past without having to provide a survey, but that was before the Town of Oak Island came into being on July 1, 1999. (Tuchscherer, Tpp. 85-88; Knight, Tp. 33.)
34. On May 31, 2001, Steve Edwards inspected the subject property and determined that the proposed deck would be located seaward of the vegetation line next to the Ducker residence. (Edwards, Tpp. 47-50 & 65.)
35. In a letter which Nancy Tuchscherer received on June 1, 2001, Steve Edwards denied the permit application because the proposed deck was inconsistent with Rule 15A N.C.A.C. 7H .0306(a) which requires that all development be located landward of the first line of stable natural vegetation consistent with the erosion setback requirement. (Respondent's Exhibit 7.)
36. The Petitioner claims damages in the amount of \$450.00 (\$100.00 for permit application fee and \$350.00 for surveying fee) because she says the Town should have told her informally that a permit would not be issued. (Tuchscherer, Tp. 78.)
37. The permit application fee helps offset the costs of processing the application, inspecting the property, publishing the public notice, sending out mailings, etc., and these costs are basically the same regardless of whether the permit application is granted or denied. (Knight, Tpp. 25-26.)
38. Steve Edwards inspected the Ducker property in late March, 2001, while he was a Building Inspector for the Town but before he became a CAMA LPO. (Edwards, Tpp. 44-45.)
39. Subsequent to Steve Edwards' March, 2001, inspection, the Ducker permit application was filed with the Town of Oak Island. (Respondent's Exhibit 1.)

CONCLUSIONS OF LAW

In General

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter.

Claim for Reimbursement

2. Rebuilding the damaged deck required a CAMA minor development permit and a building permit from the Town of Oak Island.
3. Pursuant to its local ordinances, the Town of Oak Island requires a current survey for any CAMA permit application and for any building permit for a structure with a permanent foundation.
4. Rule 15A NCAC 7J .0601 provides that no development shall be allowed in any AEC with would violate any law of the local government where the development is proposed.
5. The Town of Oak Island Local Permit Officer acted properly in requiring that a current survey of the Ducker lot be provided with the Ducker CAMA permit and building permit applications.
6. The application fee for a CAMA minor development permit was increased by the Coastal Resources Commission from \$50.00 to \$100.00 before the Ducker permit application was filed.

CONTESTED CASE DECISIONS

7. The Town of Oak Island Local Permit Officer acted properly in requiring that a \$100.00 application fee be paid when the Ducker CAMA permit application was filed.

8. There is no basis for the Petitioner's claim that she should be reimbursed \$450.00 for the cost of the survey and CAMA permit application fee.

Based on the above Conclusions of Law, the undersigned makes the following:

RECOMMENDATIONS

Petitioner's claim for damages be DENIED.

ORDER

It is hereby ordered that the agency serve a copy of its final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699 in accordance with N.C. Gen. Stat. §150B-36(b).

NOTICE

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

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

This the 14th day of November, 2001.

Beecher R. Gray
Administrative Law Judge