NORTH CAROLINA

REGISTER

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

IN THIS ISSUE

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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

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Note: Title 21 contains the chapters of the various occupational licensing boards.

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Publication Schedule for January 2002 – December 2002

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
					non-substantial economic impact			substantial economic impact			
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	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	270th day from issue date
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/28/02	03/04/02	03/20/02	05/28/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/28/02	03/18/02	03/20/02	05/28/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/28/02	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	05/28/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
16:19	04/01/02	03/08/02	06/03/02	04/16/02	05/01/02	05/20/02	01/29/03	05/31/02	06/20/02	01/29/03	12/27/02
16:20	04/15/02	03/22/02	06/17/02	04/30/02	05/15/02	05/20/02	01/29/03	06/14/02	06/20/02	01/29/03	01/10/03
16:21	05/01/02	04/10/02	07/01/02	05/16/02	05/31/02	06/20/02	01/29/03	07/01/02	07/22/02	01/29/03	01/26/03
16:22	05/15/02	04/24/02	07/15/02	05/30/02	06/14/02	06/20/02	01/29/03	07/15/02	07/22/02	01/29/03	02/09/03
16:23	06/03/02	05/10/02	08/15/02	06/18/02	07/03/02	07/22/02	01/29/03	08/02/02	08/20/02	01/29/03	02/28/03
16:24	06/17/02	05/24/02	09/03/02	07/02/02	07/17/02	07/22/02	01/29/03	08/16/02	08/20/02	01/29/03	03/14/03
17:01	07/01/02	06/10/02	09/03/02	07/16/02	07/31/02	08/20/02	01/29/03	08/30/02	09/20/02	01/29/03	03/28/03
17:02	07/15/02	06/21/02	09/16/02	07/30/02	08/14/02	08/20/02	01/29/03	09/13/02	09/20/02	01/29/03	04/11/03
17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
17:04	08/15/02	07/25/02	10/15/02	08/30/02	09/16/02	09/20/02	01/29/03	10/14/02	10/21/02	01/29/03	05/12/03
17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
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17:08	10/15/02	09/24/02	12/16/02	10/30/02	11/14/02	11/20/02	01/29/03	12/16/02	12/20/02	05/00/04	07/12/03
17:09	11/01/02	10/11/02	01/02/03	11/16/02	12/02/02	12/20/02	05/00/04	12/31/02	01/21/03	05/00/04	07/29/03
17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

(1) temporary rules;
(2) notices of rule-making proceedings;
(3) text of proposed rules;
(4) text of permanent rules approved by the Rules Review Commission;
(5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
(6) Executive Orders of the Governor;
(7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
(8) orders of the Tax Review Board issued under G.S. 105-241.2; and
(9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD

(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

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

U.S. Department of Justice

Civil Rights Division

JDR:MJP:ALP:nj
DJ 166-012-3
2002-1055
2002-1385

Voting Section.
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

April 19, 2002

Linda A. Miles, Esq.
City Attorney
P.O. Box 3136
Greensboro, NC 27402-3136

Dear Ms. Miles:

This refers to three nonresidential annexations (Ordinance Nos. 01-228, 01-230, 02-1) and their designation to districts of the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on February 20 and March 1, 2002.

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

Sincerely,

Joseph D. Rich
Chief, Voting Section

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 13 – SOLID WASTE MANAGEMENT

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

Citation to Existing Rule Affected by this Rule-making: *15A NCAC 13B .0800 - Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 130A-291.1(a)*

Statement of the Subject Matter: *This Rule defines the permitting, application and management of septage land application sites and septage management firms.*

Reason for Proposed Action: *House Bill 1019, titled Septage Management/On-Site Wastewater/Liability, adopted in the 2001 NC General Assembly requires the preparation of temporary septage management rules. The bill also requires that permanent rules be written later. Rule changes will address educational requirements, education committees, and siting, permitting and operation requirements for septage firms and facilities.*

Comment Procedures: *All persons wishing to provide comments regarding these Rules are encouraged to submit written comments to Ted Lyon, Compost and Land Application Branch, Division of Waste Management – Solid Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646.*

* * * * * * * * * * * * * * * * * * * *

CHAPTER 27 - WELL CONTRACTOR CERTIFICATION RULES

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

Citation to Existing Rule Affected by this Rule-making: *15A NCAC 27 .0301 - Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 87-98.6; 87-98.9; 143B-301.11; S.L. 2001-440*

Statement of the Subject Matter: *This rulemaking is to implement the requirements of Senate Bill 312 (Session Law 2001-440 and to implement changes deemed necessary by the Well Contractors Certification Commission. On October 1, 2001, the North Carolina General Assembly adopted Senate Bill 312 (Session Law 2001-440) which amended certain statutes that govern Well Contractor Certification in North Carolina. Among the changes specified in this bill were amendments to continuing education requirements. Over the last few months the Well Contractor Certification Commission has examined legislative changes in Session Law 2001-440. As a result of this effort, the Commission proposes to change the criteria for demonstrating that a well contractor has adequate experience to conduct well contractor activities in this Rule. The Commission believes that requiring well contractors to have two years or 24 months of experience in this Rule is burdensome. It is proposed that this time frame be reduced from 24 to18 months in Paragraphs (f)(1-3) of this Rule. Under Paragraph (f) of this Rule, letters from businesses, suppliers, and government agencies attesting to a well contractor performance will no longer be considered as proof that a well contractor meets the experience requirement. Acceptable proof may also include an affidavit showing that the well contractor has been working in the trade for six months as shown in Subparagraph (f)(4) of this Rule if the applicant can furnish information showing that he has completed either a Commission approved course of study through the N.C. Community College system, an apprenticeship program approved by the Department of Labor, or a similar course or apprenticeship approved by the Well Contractor Certification Commission. No other changes are proposed to the Well Contractor Certification Rules.*

Reason for Proposed Action: *This amendment will revise this Rule to change the time frame that well contractors must be in the trade from a period of 18 to 24 months as one of the criteria for the Well Contractors Certification Commission to accept applications. The rule also changes the information that the Well Contractor Certification Commission will accept in applications for well contractor certification or renewal of certification as proof that well contractors meet this experience requirement. The necessity to begin temporary rulemaking and to provide advanced notice of temporary rule changes to this Rule is the result of action taken by the Well Contractors Certification Commission on May 7, 2002. At the meeting, the Commission approved a draft of a temporary rule for publication in the North Carolina Register. Section 1.5 of Session Law 2001-440, gives the Well Contractor Certification Commission authority to adopt temporary rules. It requires that the Commission receive written comments for a period of at least 30 days on the notice and proposed rule published in the North Carolina Register. After*

that time and upon completion of responses to public comments received by that date, a final temporary rule will be published in the North Carolina Register that will serve as notice of permanent rule changes to this Rule.

Comment Procedures: *Written comments on the proposed temporary rule shall be accepted for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register. Questions and written comments may be submitted through July 3, 2002 to David A. Hance, DENR, Division of Water Quality, Groundwater Section, 1636 Mail Service Center, Raleigh, NC 27699-1636. Written comments may also be submitted to Mr. Hance by fax to 919-715-0588 or by email to David.Hance@ncmail.net.*

15A NCAC 27 .0301 is amended as a draft temporary rule as follows:

15A NCAC 27. 0301 APPLICATION REQUIREMENTS FOR CERTIFICATION

(a) The Commission shall accept applications and renewal requests for certification as a well contractor from any person who is at least 18 years of age and whose application meets all the following conditions:

(1) Each application shall be submitted on forms provided by the Commission, which are designed for requesting certification as a well contractor by way of reexamination, certification without examination, or temporary certification and just be properly and accurately completed and submitted with an appropriate fee to the office of the chairman of the Commission.

(2) Each application has been determined as complete. Incomplete applications and applications not accompanied by an appropriate fee and attachments cannot be processed and shall be returned to the applicant.

(3) Each application shall contain proof of experience as provided in Paragraph (f) of this Rule.

(4) Each application shall include a request for the well contractor examination or include documentation that the applicant meets the requirement for certification without examination as provided in Section .0500 of this Chapter.

(b) Applicants who have intentionally supplied false information must wait 12 months before resubmitting an application for certification.

(c) The Commission shall not schedule an applicant to take the required examination until his application has been reviewed and the applicant has met all other conditions for certification. The applicant must pass the examination within three attempts or within a one year period of time after application submittal or a new application shall be required. An applicant who has failed the examination after three consecutive attempts shall be required to obtain eight PDH units prior to resubmittal of an application for certification.

(d) A certification shall not be issued until the applicant successfully passes the required examination or meets the requirements for certification without examination.

(e) A certification issued by the Commission shall be valid in every county in the state.

(f) Proof of ~~two years~~ 18 months experience in well contractor activities shall be demonstrated by providing one of the following:

(1) A list of at least 25 wells, together with their locations, major use and approximate depth and diameter, for which the applicant has supervised or assisted in the construction, repair or abandonment process. This list shall provide the name and address of the owner or owners of each well, and the approximate date the construction of each well was completed. A copy of the completion report for each well shall accompany the list. Completion dates of the 25 wells shall be distributed over a consecutive ~~24~~ 18 month period.

~~(2) Letters from three persons in a business related to well contractor activities (such as, state or local government well inspectors, employing well contractors, competitors, and well materials suppliers) who attest that the applicant has been working in a well contractor activity for a minimum of 24 months.~~

~~(3)~~(2) A letter from at least one currently certified well contractor attesting that the applicant has been working in a well contractor activity for a minimum of ~~24~~ 18 months.

~~(4)~~(3) Any other proof of working in well contractor activities for a minimum of ~~24~~ 18 months may be presented to the Commission and may be accepted on an individual basis.

(4) An affidavit from at least one currently certified well contractor attesting that the applicant has been working for the certified well contractor in well construction for a minimum of six months may be accepted, if the applicant also furnishes proof of completion of one of the following:

(A) Completion of a course of study in well construction techniques approved by the Well Contractor's Certification Commission and offered by a community college within the N.C. Department of Community Colleges with a passing grade; or

(B) Completion of an apprenticeship program approved by the Well Contractor's Certification Commission and approved by the N.C. Department of Labor in well construction; or

(C) Completion of a similar course of study or apprenticeship program as approved by the Well Contractor's Certification Commission.

Authority G.S. 87-98.6; 87-98.9; 143B-301.11; S.L. 2001-440.

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 11 – DEPARTMENT OF INSURANCE

Notice *is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt the rules cited as 11 NCAC 12 .1710-.1720, and repeal the rules cited as 11 NCAC 12 .1701-.1709. Notice of Rule-making Proceedings was published in the Register on April 1, 2002.*

Proposed Effective Date: *April 1, 2003*

Public Hearing:
Date: *June 25, 2002*
Time: *10:00 a.m.*
Location: *3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC*

Reason for Proposed Action: *S.L. 2001-436 creates new laws dealing with viatical settlements and repeals the existing law upon which our present rules are predicated. The new rules are necessary to compliment the new law.*

Comment Procedures: *Written comments may be sent to Jean Holliday, Life & Health Division, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611. Comments will be received through July 3, 2002.*

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (**≥$5,000,000**)**
☒ **None**

CHAPTER 12 – LIFE & HEALTH DIVISION

SECTION .1700 – VIATICAL SETTLEMENTS

11 NCAC 12 .1701 DEFINITIONS

~~(a) The definitions in G.S. 58-58-42(a) are incorporated into this Section by reference.~~
~~(b) As used in this Section, "Division" means the Life and Health Division of the Department of Insurance.~~
~~(c) As used in this Section:~~
~~(1) "Broker" has the same meaning as "Viatical Settlement Broker."~~
~~(2) "Provider" has the same meaning as "Viatical Settlement Provider."~~
~~(3) "Representative" has the same meaning as "Viatical Settlement Representative."~~

Authority G.S. 58-2-40; 58-58-42.

11 NCAC 12 .1702 VIATICAL SETTLEMENT PROVIDERS

~~(a) An application for provider registration shall be filed with the Division.~~
~~(b) Only those individuals named in the application may act as providers.~~
~~(c) A provider shall submit with the application a plan of operation, including full particulars on the manner in which the provider proposes to operate in North Carolina and the type or types of insurance policies or contracts it intends to viaticate.~~
~~(d) The provider's plan of operation shall be a narrative overview of the provider's business and shall include the following information:~~
~~(1) A certified copy of the provider's charter and by laws, if a corporation, and a copy of the partnership agreement, if a partnership.~~
~~(2) A chart showing the relationship of the provider to any parent, affiliated, or subsidiary corporation.~~
~~(3) A detailed description of the provider's marketing techniques, including a description of training programs for those individuals who will have direct contact with viators.~~
~~(4) A list of the names of provider's directors and management personnel, including job title and a brief description of the job duties.~~
~~(5) A schedule listing the names of financial institutions with which the provider has escrow trust agreements, indicating the balance on each account and copies of all escrow and trust agreements.~~
~~(6) A detailed description of what steps through which the viator will have access to funds, including the source that will make such funds available.~~
~~(7) A schedule listing the names of all financing entities with which the provider participates in financing transactions.~~
~~(8) A statement fully disclosing the identities of all stockholders directly or indirectly holding 10% or more of the provider, and all partners, directors, officers, and employees of the provider, depending on whether the provider is a partnership, corporation, or limited liability company.~~
~~(e) A provider shall notify the Division of any change in the address of the provider and of any change in the partners, officers, and directors of the within 10 business days after the change.~~
~~(f) Each provider shall notify the Division of any change in the plan of operation or financial information filed with its application within 10 business days after the change.~~
~~(g) A power of attorney designating the Commissioner as the provider's agent for service of legal process shall be filed by every provider.~~

Authority G.S. 58-2-40; 58-16-30; 58-58-42.

11 NCAC 12 .1703 VIATICAL SETTLEMENT BROKERS AND REPRESENTATIVES

(a) No person shall act as a broker or representative without first registering with the Agent Services Division.

(b) The Commissioner shall suspend, revoke, or refuse to renew the registration of any broker or representative if the Commissioner finds that:

(1) There was any misrepresentation in the application for registration;

(2) The broker or representative has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be financially irresponsible; or

(3) The broker or representative has placed or attempted to place a contract with an unregistered provider.

(c) In the absence of a written agreement between a viatical settlement representative and a viatical settlement broker naming the representative as the broker's agent, a representative is presumed to be an agent of the provider.

(d) A broker shall not, without the written agreement of the viator obtained before performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

(e) A power of attorney designating the Commissioner as the agent of the broker or representative for service of legal process shall be filed by every broker and representative.

Authority G.S. 58-2-40; 58-16-30; 58-58-42.

11 NCAC 12 .1704 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

In order to assure that each viator receives a reasonable return for viaticating a policy, the following shall be minimum discounts:

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	[80%]
At least 6 but less than 12 months	[70%]
At least 12 but less than 18 months	[65%]
At least 18 but less than 24 months	[60%]
Twenty-four months or more	[50%]

Authority G.S. 58-2-40; 58-58-42(j).

11 NCAC 12 .1705 REPORTING

On or before March 1 of each year, each provider shall file with the Division a financial report, audited by an independent certified public accountant, for the previous calendar year. As part of the report, each provider shall file an experience exhibit in a form prescribed by the Commissioner. The information for the previous calendar year shall include:

(1) For each policy viaticated; the

(a) date the contract was entered into;

(b) life expectancy of the viator on the date of the contract;

(c) face amount of the policy;

(d) amount paid by the provider under the contract; and

(e) date of death of the viator and the total insurance premiums paid by the provider to maintain the policy in force if the viator has died.

(2) A breakdown of applications received, accepted, and rejected, by disease category.

(3) A breakdown of policies viaticated by issuer and policy type.

(4) The number of secondary market vs. primary market transactions.

(5) The portfolio size.

(6) The amount of outside borrowings.

Authority G.S. 58-2-40; 58-58-42(e).

11 NCAC 12 .1706 CONTRACTS AND PAYMENT OF PROCEEDS

(a) Every viatical settlement contract to be used by a provider or broker shall be approved by the Commissioner before the marketing or solicitation of the contract. Two specimen copies of each contract, application, and information booklet shall be filed with the Division.

(b) In addition to the requirements in G.S. 58-58-42, every contract shall include the following provisions:

(1) That if the viator elects the right to rescind the contract, the provider's rights or interest in the policy will terminate immediately upon the viator giving notice of the rescission and tendering of the settlement proceeds together with any escrow interest received by the viator; provided, however, the provider's right or interest in the policy shall be limited to the amount of settlement proceeds actually received by the viator but not returned by the viator.

(2) That if the viator dies before the end of the unconditional refund period, it shall be deemed that the viator rescinded the contract;

(3) The amount of the fee or fees to be paid by the viator to the provider in conjunction with the contract shall be clearly stated, along with any conditions of payment or receipt of the fee or fees.

(4) That the contract together with the application shall constitute the entire contract between the parties.

(5) That, if the contract provides for the payment of an additional settlement amount to the viator upon the exercise of a guaranteed insurability option by the viator, the contract shall disclose the amount of the additional settlement and the terms upon which it shall be payable.

(6) If the policy to be viaticated provides a guaranteed insurability option, the option may only be exercised for the benefit of a person who has an insurable interest in the life to be insured.

(c) Every application for a contract shall:

(1) Set forth a notice in boldface and not less than 10-point type to read as follows:

"Receipt of payment under a viatical settlement may affect your eligibility for public assistance programs, such as medical assistance (Medicaid), aid to families with dependent children, supplementary social security income, and AIDS drug assistance programs; and it also may be taxable and subject to claims of your creditors. Before applying for a viatical settlement, you should consult with the appropriate social services agency concerning how receipt could affect your eligibility and that of your spouse or dependents; and consult with a tax advisor.";

(2) Contain the viator's consent to the viatical settlement, an acknowledgment by the viator that he or she has a catastrophic or life threatening illness, and the viator's representation that he or she has a full and complete understanding of the viatical settlement.

(3) Contain a provision that the proposal that the provider will deliver to the viator before the contract is signed will not include a detailed description of how the payment amount was determined unless the viator specifically requests in the application the detailed description, which description shall also include the assumed life expectancy of the viator.

(4) Contain the viator's representation that he or she has a full and complete understanding of the benefits of the policy; a release, in compliance with applicable requirements, by the viator of his or her medical records; and an acknowledgment that the viator has entered into the contract freely and voluntarily.

(5) Be duly witnessed and authorized by a person who does not have a financial or beneficial interest, directly or indirectly, in the contract or policy.

(6) Provide for an acknowledgment of receipt of the information booklet.

(d) With respect to a policy containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator before the execution of the contract; to such other beneficiary, other than the provider, as the viator may thereafter designate; or in the absence of a designation, to the estate of the viator.

(e) Payment of the proceeds under the contract shall be by means of wire transfer to the account of the viator or by certified check payable to the viator, and shall be made in a lump sum. Retention of a portion of the proceeds by the provider or escrow agent is not permissible. Installment payments shall not be made unless the provider has purchased an annuity or similar instrument issued by a licensed insurance company for the benefit of the viator.

Authority G.S. 58-2-40; 58-58-42.

11 NCAC 12 .1707 SOLICITATION

(a) A provider, representative, or broker shall not discriminate in the solicitation or making of contracts on the basis of race, age, sex, natural origin, creed, or religion.

(b) A provider, representative, or broker shall not pay or offer to pay any finder's fee, commission, or other compensation to any viator's physician, attorney, accountant, or other person providing medical, legal, or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

(c) A provider, representative, or broker shall not solicit any investor who could influence the treatment of the illness of the viator whose coverage would be the subject of the investment.

(d) Contacts for the purpose of determining the health status of a viator by a provider, representative, or broker after the contract has been signed shall be limited to once every three months for viators with a life expectancy of more than one year, and to no more than one per month for viators with a life expectancy of one year or less. The provider, representative, or broker shall explain the procedure for these contacts before the contract is executed.

Authority G.S. 58-2-40; 58-58-42.

11 NCAC 12 .1708 ADVERTISING STANDARDS

(a) All advertising material shall be filed simultaneously with the contract for which the advertisement is intended to solicit. All advertising material shall be in final form. The Commissioner shall accept a printer's proof with the written understanding that final printed material will be filed before use of the advertisement. Advertising material shall be submitted to the Division by the provider within 30 days before its intended use.

(b) Advertising shall be truthful and not misleading by fact or implication.

(c) If the advertiser emphasizes the speed with which viatication will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by a viator.

(d) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six months.

Authority G.S. 58-2-40; 58-58-42; 58-63-15; 58-63-65.

11 NCAC 12 .1709 DISCLOSURE

~~(a) Every provider shall deliver an information booklet to every viator. Delivery of the booklet shall be acknowledged by the viator in the application form. The information booklet shall include the following~~

~~(1) How viatical settlements operate.~~

~~(2) Possible alternatives to viatical settlements for persons with catastrophic or life threatening illnesses, including accelerated death benefits offered by the issuer of the life insurance policy or certificate or loans secured by the life insurance policy or certificate.~~

~~(3) Any tax consequences that may result from entering into a contract.~~

~~(4) Any consequences of interruption or loss of assistance as provided by medical or public assistance programs.~~

~~(5) The viator's right to rescind a contract.~~

~~(6) The identity of any person who will receive any fee or compensation from the provider with respect to the contract and the amount and terms of such compensation.~~

~~(7) The provider's complete name, main office address, and telephone number.~~

~~(b) The provider shall disclose to the viator, either on the application or through the information booklet, that the proceeds payable to the viator may not be exempt from the viator's creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts.~~

~~(c) The provider shall disclose to each viator, either on the application or through the information booklet, that the proceeds under a contract will be made in a lump sum. The disclosure shall state that the installment payments are not permissible unless the provider is a licensed insurance company or the provider has effected the purchase of an annuity or similar financial instrument issued by a licensed insurance company.~~

~~(d) The provider shall disclose on the application or through the information booklet that medical, financial, or other personal information obtained from the viator will not be disclosed to any other person without the viator's specific written consent.~~

~~(e) The provider shall disclose on the application or through the information booklet the procedures available concerning the payment of death benefit proceeds for any insured other than the viator or for the payment of accidental death proceeds.~~

~~(f) The provider, upon receipt of an application to viaticate and after determining the value to be offered in return for the assignment or transfer of the death benefit or ownership of a life insurance policy or certificate to the provider, shall deliver a proposal to the viator before the contract is to be signed. The proposal shall disclose the following information:~~

~~(1) Insurance contract death benefit in each of the next 10 years if the insurance contract is not viaticated;~~

~~(2) Amount of death benefit to be viaticated;~~

~~(3) Policy cash value before deducting any loan;~~

~~(4) Policy net cash value after deducting any loan;~~

~~(5) Policy death benefit less net cash value;~~

~~(6) Amount offered to viator;~~

~~(7) Whether any supplemental benefit or benefits including the following benefits, are present, will be continued and, if so, the source of premium payment and the beneficiary of the proceeds of such supplemental benefit, and the provider's interest in each benefit:~~

~~(A) Accidental death and dismemberment benefit, including the amount of the benefit;~~

~~(B) Disability income;~~

~~(C) Waiver of premium or of monthly deduction waiver;~~

~~(D) Guaranteed insurability options; or~~

~~(E) Children or spouse coverage;~~

~~(8) Name of the insurer, and whether the insurer does or does not have an accelerated death benefit program for which the viator qualifies; and~~

~~(9) Theinformationrequired by G.S. 58-58-42(g1).~~

~~(g) The proposal shall include a notice stating that a detailed description of how the payment amount was determined, including interest rate, expense factors, and the assumed life expectancy used in the determination, may be obtained by a written request made to the provider.~~

~~(h) Upon a written request by the viator for a detailed description of how the payment amount was determined, the provider shall provide a detailed description stating the assumed life expectancy in months, the interest rate used to discount the amount at risk, the adjustments, if any, for future premiums, dividends and additional amounts, broker's or representative's compensation, and retention for other expenses, risk charge, and profit.~~

~~(i) Every broker and representativeshall provide a written statement to every viator before completion of any application to viaticate that describes how the broker and representativewill be compensated.~~

~~(j) The provider shall disclose to the viator, either on the application or in the information booklet, the provision in G.S. 58-58-42(g)(7).~~

~~(k) The provider shall disclose on the application or in the information booklet that the identity of the viator will not be disclosed except under the conditions set forth in G.S. 58-58-42(e1)(1) through (3) or as otherwise allowed or required by law. The provider shall provide the conditions in G.S. 58-58-42(e1)(1) through (3) to the viator.~~

Authority G.S. 58-2-40; 58-58-42.

11 NCAC 12 .1710 DEFINITIONS

(a) The definitions contained in G.S. 58-58-205 are incorporated into this Section by reference.

(b) In addition to the definitions contained in G.S. 58-58-205, the following definitions apply to this Section:

(1) "Division" means the Life and Health Division of the Department of Insurance;

(2) "Insured" means the person covered under the policy being considered for viatication;

(3) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data;

(4) "Net death benefit" means the amount of the life insurance policy or certificate to be

viaticated less any outstanding debts or liens; and

(5) "Patient identifying information" includes an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, or social security number.

Authority G.S. 58-2-40; 58-58-300.

11 NCAC 12 .1711 LICENSE REQUIREMENTS

(a) In addition to the information required by G.S. 58-58-210, applicants for provider licenses shall submit the following:

(1) A plan of operation, including full particulars on the manner in which the provider proposes to operate in North Carolina and the type or types of insurance policies or contracts it intends to viaticate;

(2) The provider's plan of operation shall be a narrative overview of the provider's business and shall include the following information:

(A) A certified copy of the provider's charter and by-laws, if a corporation or limited liability company, and a copy of the partnership agreement, if a partnership;

(B) A chart showing the relationship of the provider to any parent, affiliated, or subsidiary corporation;

(C) A detailed description of the provider's marketing techniques, including a description of training programs for those individuals who will have direct contact with viators;

(D) A list of the names of the provider's directors and management personnel, including job titles and a brief descriptions of the job duties;

(E) A schedule listing the names of financial institutions with which the provider has escrow trust agreements, indicating the balance on each account and copies of all escrow and trust agreements;

(F) A detailed description of what steps through which the viator will have access to funds, including the source that will make such funds available;

(G) A complete financing plan, with all financing documents;

(H) A statement fully disclosing the identities of all stockholders directly or indirectly holding 10% or more of the provider, and all partners, directors, officers, members, and employees of the provider, depending on whether the provider is a partnership, corporation, or limited liability company; and

(I) An antifraud plan, as specified in G.S. 58-58-268(b);

(3) Each provider shall notify the Division of any change in the address of the provider and of any change in the partners, officers, and directors within 20 business days after the change;

(4) Each provider shall notify the Division of any change in the plan of operation or financial information filed with its application within 20 business days after the change; and

(5) Every nonresident provider shall file a power of attorney designating the Commissioner as the provider's agent for service of legal process in accordance with G.S. 58-58-210(g).

(b) A provider license may be renewed yearly by payment of the applicable fee, a notarized certification from the company's president attesting there has been no change to information on file required by G.S. 58-58-210 and this Rule, a current copy of a letter of good standing obtained from the provider's domiciliary regulator, and current evidence of maintenance of financial responsibility required by this Rule.

(c) If a provider's license expires under G.S. 58-58-210(c) and the provider has, on the license renewal date, viatical settlements where the insured has not died, it shall do one of the following:

(1) Renew or maintain its current license status until the earlier of the following events:

(A) The date the provider properly assigns, sells or otherwise transfers the viatical settlements where the insured has not died; or

(B) The date that the last insured covered by viatical settlement transaction has died.

(2) Appoint, in writing, either the provider that entered into the viatical settlement, the broker who received commissions from the viatical settlement, if applicable, or any other provider or broker licensed in this state to make all inquiries to the viator, or the viator's designee, regarding health status of the viator or any other matters.

Authority G.S. 58-2-40; 58-58-210; 58-58-300.

11 NCAC 12 .1712 VIATICAL SETTLEMENT BROKERS

(a) Applications for broker licenses shall be made with the Agent Services Division of the Department of Insurance.

(b) A broker shall not, without the written agreement of the viator obtained before performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

(c) Every nonresident broker shall file a power of attorney designating the Commissioner as the broker's agent for service of legal process in accordance with G.S. 58-58-210(g).

Authority G.S. 58-2-40; 58-16-30; 58-58-300.

11 NCAC 12 .1713 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

A provider or broker shall not enter into a viatical settlement that provides a payment to the viator that is unreasonable. In

determining whether a payment is unreasonable, the Commissioner shall consider the life expectancy of the insured, the applicable rating of the insurance company that issued the subject policy by a rating service recognized by the insurance industry, regulators, and consumer groups, and the prevailing discount rates in the viatical settlement market in North Carolina. If discount rate data is not available for North Carolina, the Commissioner shall consider the prevailing rates nationally or in other states that maintain this data. A provider shall not offer a payment that is less than the cash surrender value of the policy.

Authority G.S. 58-2-40; 58-58-300.

11 NCAC 12 .1714 REPORTING REQUIREMENTS

(a) On June 1 of each calendar year, each licensed provider shall make a report, in the format designated by the Commissioner, of all viatical settlement transactions in which the viators are residents of this state, and for all states in the aggregate. The report shall contain the following information for the previous calendar year:

(1) For viatical settlements contracted during the reporting period:
- (A) Date of viatical settlement contract;
- (B) Viator's state of residence at the time of the contract;
- (C) Mean life expectancy of the insured at time of contract in months;
- (D) Face amount of policy viaticated;
- (E) Net death benefit viaticated;
- (F) Estimated total premiums to keep policy in force for mean life expectancy;
- (G) Net amount paid to viator;
- (H) Source of policy (B-Broker; D-Direct Purchase; SM-Secondary Market);
- (I) Type of coverage (I-Individual or G-Group);
- (J) Within the contestable or suicide period, or both, at the time of viatical settlement (yes or no);
- (K) Primary ICD Diagnosis Code in numeric format, as defined by the international classification of diseases, as published by the U.S. Department of Health and Human Services or CPT Code; and
- (L) Type of funding (P-purchaser; L-licensee; I-accredited investor; F-financing entity; S-special purpose entity; R-related provider trust);

(2) For viatical settlements where death has occurred during the reporting period:
- (A) Date of viatical settlement contract;
- (B) Viator's state of residence at the time of the contract;
- (C) Mean life expectancy of the insured at time of contract in months;
- (D) Net death benefit collected;
- (E) Total premiums paid to maintain the policy (WP-Waiver of Premium; NA-Not Applicable);
- (F) Net amount paid to viator;
- (G) Primary ICD Diagnosis Code, in numeric format, as defined by the International classification of diseases, as published by the U.S. Department of Health and Human Services or CPT Code;
- (H) Date of death;
- (I) Amount of time between date of contract and date of death in months; and
- (J) Difference between the number of months that passed between the date of contract and the date of death and the mean life expectancy in months as determined by the reporting company;

(3) Name and address of each viatical settlement broker through whom the reporting company purchased a policy from a viator who resided in this state at the time of contract;

(4) Number of policies reviewed and rejected; and

(5) Number of policies purchased in the secondary market as a percentage of total policies purchased.

(b) On June 1 of each calendar year, each licensed broker shall make an annual report of all viatical settlement transactions during the previous calendar year in which the viators are residents of this state. The report shall be in the format prescribed by the NAIC in Appendix D of the model regulation. A copy of the format may be obtained from the Department.

Authority G.S. 58-2-40; 58-58-225; 58-58-300.

11 NCAC 12 .1715 GENERAL RULES

(a) With respect to a policy containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator before entering into the viatical settlement contract, or to such other beneficiary, other than the provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.

(b) Payment of the proceeds of a viatical settlement under G.S. 58-58-250(i) shall be by means of wire transfer to the account of the viator or by certified check or cashier's check.

(c) Payment of the proceeds to the viator under a viatical settlement shall be made in a lump sum except where the provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds by the provider or escrow agent is not permissible.

(d) A provider or broker shall not pay or offer to pay any finder's fee, commission, or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal, or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a broker, with respect to the viatical settlement.

(e) A provider shall not knowingly solicit purchasers who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.

(f) If a provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following provisions;

(1) A provision that the provider shall effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. The insurance company shall pay benefits in excess of the amount viaticated directly to the viator's beneficiary;

(2) A provision that the provider will, upon acknowledgment of the perfection of the transfer, either:

(A) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or

(B) Send a copy of the instrument sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy; and

(3) A provision that apportions the premiums to be paid by the provider and the viator. It is permissible for the viatical settlement contract to specify that all premiums shall be paid by the provider. The contract may also require that the viator reimburse the provider for the premiums attributable to the retained interest.

Authority G.S. 58-2-40; 58-58-250; 58-58-300.

11 NCAC 12 .1716 CONTRACTS AND PAYMENT OF PROCEEDS

(a) Two specimen copies of each contract, application, brochure, and proposal shall be filed with the Division for approval under G.S. 58-58-220.

(b) In addition to the requirements in G.S. 58-58-250, every contract shall include the following provisions:

(1) If the viator elects the right to rescind the contract, the provider's rights or interest in the policy will terminate immediately upon the viator giving notice of the rescission and tendering of the settlement proceeds together with any escrow interest received by the viator; provided, however, the provider's right or interest in the policy shall be limited to the amount of settlement proceeds actually received by the viator but not returned by the viator;

(2) The amount of the fee or fees to be paid by the viator to the provider in conjunction with the contract shall be clearly stated, along with any conditions of payment or receipt of the fee or fees;

(3) The contract together with the application constitutes the entire agreement between the parties;

(4) If the contract provides for the payment of an additional settlement amount to the viator upon the exercise of a guaranteed insurability option by the viator, the contract shall disclose the amount of the additional settlement and the terms upon which it shall be payable; and

(5) If the policy to be viaticated provides a guaranteed insurability option, the option may only be exercised for the benefit of a person who has an insurable interest in the life to be insured.

(c) Every application for a contract shall:

(1) Contain the viator's signature;

(2) Contain a provision that the proposal that the provider will deliver to the viator before the contract is signed will not include a detailed description of how the payment amount was determined unless the viator specifically requests in the application the detailed description, which description shall also include the assumed life expectancy of the viator;

(3) Be duly witnessed and authorized by a person who does not have a financial or beneficial interest, directly or indirectly, in the policy or viatical settlement contract; and

(4) Provide for an acknowledgment by the viator of receipt of the information booklet required by G.S. 58-58-245(a)(8).

Authority G.S. 58-2-40; 58-58-220; 58-58-300.

11 NCAC 12 .1717 ADVERTISING MATERIAL

All advertising material shall be submitted to the Division under G.S. 58-58-220 in final form. The Division shall accept a printer's proof with the written understanding that final printed material will be filed before use of the advertisement. The provider shall submit advertising material to the Division within 30 days before its intended use.

Authority G.S. 58-2-40; 58-58-220; 58-58-300.

11 NCAC 12 .1718 DISCLOSURE

(a) The provider, upon receipt of an application to viaticate and after determining the value to be offered in return for the assignment or transfer of the death benefit or ownership of a policy to the provider, shall deliver a proposal to the viator before the contract is to be signed. The proposal shall disclose the following information:

(1) Policy death benefits in each of the next 10 years if the policy is not viaticated;

(2) Amount of death benefit to be viaticated;

(3) Policy cash value before deducting any loan;

(4) Policy net cash value after deducting any loan;

(5) Policy death benefit less net cash value;

(6) Amount offered to viator;

(7) Whether any supplemental benefit or benefits including the following benefits, are present, will be continued and, if so, the source of premium payment and the beneficiary of the proceeds of such supplemental benefit, and the provider's interest in each benefit:

(A) Accidental death and dismemberment benefit, including the amount of the benefit;
(B) Disability income;
(C) Waiver of premium or of monthly deduction waiver;
(D) Guaranteed insurability options; or
(E) Children or spouse coverage;

(8) Name of the insurer, and whether the insurer does or does not have an accelerated death benefit program for which the viator qualifies.

(b) The proposal shall include a notice stating that a detailed description of how the payment amount was determined, including interest rate, expense factors, and the assumed life expectancy used in the determination, may be obtained by a written request made to the provider.

(c) Upon a written request by the viator for a detailed description of how the payment amount was determined, the provider shall provide a detailed description stating the assumed life expectancy in months, the interest rate used to discount the amount at risk, the adjustments, if any, for future premiums, dividends and additional amounts, broker's compensation, and retention for other expenses, risk charge, and profit.

(d) The provider shall disclose on the application or in the brochure that the identity of the viator will not be disclosed except under the conditions set forth in G.S. 58-58-225 or as otherwise allowed or required by law. The provider shall provide an explanation of the conditions in G.S. 58-58-225 to the viator.

Authority G.S. 58-2-40; 58-58-225; 58-58-245; 58-58-300.

11 NCAC 12 .1719 PROHIBITED PRACTICES

(a) A provider or broker shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure.

(b) If a provider or broker is compelled by a court of competent jurisdiction by order or subpoena to produce records containing patient identifying information, the provider or broker shall notify the viator and the insured in writing at their last known addresses within five business days after receiving notice of the court's order or subpoena.

(c) A provider shall not act as a broker and provider in the same viatical settlement contract.

(d) A provider shall not use a longer life span than is expected for the viator in order to reduce a viatical settlement contract amount paid to a viator.

Authority G.S. 58-2-40;; 58-58-225; 58-58-245; 58-58-300.

11 NCAC 12 .1720 INSURANCE COMPANY PRACTICES

(a) Every life insurance company licensed in this State shall respond to a request for verification of coverage from a provider or a broker within 30 calendar days after the date a request is received. The insurer shall inform the provider or broker whether the insurer intends to pursue an additional investigation regarding possible fraud or the validity of the insurance contract, subject to the following conditions:

(1) A current authorization consistent with applicable law, signed by the policyholder or certificateholder, accompanies the request;

(2) If the policy to be viaticated is an individual policy, a verification of coverage form, completed by the provider or broker, substantially similar to the format prescribed by the NAIC in Appendix B of the NAIC Viatical Settlements Model Regulation accompanies the request. A copy to the format is on file at the Department; and

(3) If the viatication involves a group insurance certificate, a verification of coverage form, completed by the provider or the broker, substantially similar to the format prescribed by the NAIC in Appendix C of the NAIC Viatical Settlements Model Regulation accompanies the request. A copy of the format is on file at the Department.

(b) A life insurance company shall not charge a fee for responding to a request for information from a provider or broker in accordance with this Rule above any usual and customary charges to insureds for similar services.

(c) A life insurance company shall send an acknowledgment of receipt of the request for verification of coverage to the viator and, where the viator is not the insured, also to the insured. The acknowledgment shall contain a general description of any accelerated death benefit that is available under a provision of or rider to the policy.

Authority G.S. 58-2-40; 58-6-6; 58-58-250; 58-58-300.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rules cited as 15A NCAC 19A .0901-.0907 and amend the rules cited as 15A NCAC 19A .0202, .0204, .0401. Notice of Rule-making Proceedings was published in the Register on September 4, 2001, October 1, 2001, December 17, 2001, February 1, 2002, and March 15, 2002.*

Proposed Effective Date: *April 1, 2003*

Public Hearing:
Date: *June 26, 2002*
Time: *1:00 p.m.*
Location: *Room G-1A, 1330 St. Mary's St., Raleigh, NC*

Reason for Proposed Action:
15A NCAC 19A .0202 – *Revisions are proposed to expand and update the HIV/STD control measures to ensure compliance with national standards.*
15A NCAC 19A .0204 – *The revised language will require that all pregnant women be tested for chlamydia at their first prenatal visit and that pregnant women less than 25 years of age and women who are at increased risk of exposure (i.e., women who have a new partner or more than one partner, or whose partner is known to have had other partners) be tested for*

chlamydia in the third trimester. The rule also specifies that pregnant women be tested for syphilis at the first prenatal visit and between 28-30 weeks of gestation instead of early pregnancy and in the third trimester as currently stated in the rule. This Rule mirrors language from the 2001 CDC STD Treatment Guidelines. Data obtained from chlamydia testing in public health prenatal clinics indicates a positivity rate above 7 percent.

15A NCAC 19A .0401 – *CDC recommends a varicella vaccine requirement. This action will add varicella vaccine to the requirements for immunization. Senate Bill 736 has appropriated funds for a childhood varicella vaccine program. The United State has experienced an intermittent supply shortage for many vaccines. Vaccine shortages impact immunization requirements. This action will give the State Health Director the authority to delay any portion of the requirements of the immunization rules due to emergency conditions, such as the unavailability of vaccines.*

15A NCAC 19A .0901-.0907 – *Recent bioterrorism in the US necessitates the creation and active maintenance of a Biological Agency Registry in North Carolina to track and otherwise investigate suspected or confirmed instances of bioterrorism.*

Comment Procedures: *Written comments concerning this rule-making action may be submitted within 30 days after the date of publication in this issue of the North Carolina Register. Comments must be submitted to Chris G. Hoke, Rule-making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001. Comments will be accepted through July 3, 2002.*

Fiscal Impact

☒ **State** *15A NCAC 19A .0202, .0204, .0401*
☐ **Local**
☐ **Substantive (**≥$5,000,000**)**
☒ **None** *15A NCAC 19A .0901-.0907*

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

15A NCAC 19A .0202 CONTROL MEASURES - HIV

The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection:

(1) Infected persons shall:
- (a) refrain from sexual intercourse unless condoms are used; exercise caution when using condoms due to possible condom failure;
- (b) not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;
- (c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
- (d) have a skin test for tuberculosis;
- (e) notify future sexual intercourse partners of the infection; if the time of initial infection is known, notify persons who have been sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, notify persons who have been sexual intercourse and needle partners for the previous year.

(2) The attending physician shall:
- (a) give the control measures in Item (1) of this Rule to infected patients, in accordance with 15A NCAC 19A .0210;
- (b) If the attending physician knows the identity of the spouse of an HIV-infected patient and has not, with the consent of the infected patient, notified and counseled the spouse appropriately, the physician shall list the spouse on a form provided by the Division of ~~Epidemiology~~ Public Health and shall mail the form to the Division; the Division will undertake to counsel the spouse; the attending physician's responsibility to notify exposed and potentially exposed persons is satisfied by fulfilling the requirements of Sub-Items (2)(a) and (b) of this Rule;
- (c) advise infected persons concerning proper clean-up of blood and other body fluids;
- (d) advise infected persons concerning the risk of perinatal transmission and transmission by breastfeeding.

(3) The attending physician of a child who is infected with HIV and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.
- (a) If the child is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include appropriate school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local

health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee.

(i) If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee.

(ii) If the superintendent or private school director does not establish such a committee within three days of notification, the local health director shall establish such a committee.

(b) If the child is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:

(i) notify the parents;

(ii) notify the committee;

(iii) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;

(iv) determine if an alternative educational setting is necessary to protect the public health;

(v) instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by appropriate school personnel; and

(vi) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the HIV infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.

(c) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

(4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that, if the source were infected with HIV, would pose a significant risk of HIV transmission, the following shall apply:

(a) When the source person is known:

(i) The attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and shall test the source for HIV infection unless the source is already known to be infected. The attending physician of the exposed person shall be notified of the infection status of the source.

(ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred, and, if the source person was HIV infected, give the exposed person the control measures listed in Sub-Items (1)(a) through (c) of this Rule. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality.

(b) When the source person is unknown, the attending physician of the exposed person shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable

intervals up to one year to determine whether transmission occurred.

(c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.

(5) The attending physician shall notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person, in good faith, has reasonable cause to suspect a person infected with HIV is not following control measures and is thereby causing a significant risk of transmission.

(6) When the local health director is notified pursuant to Item (5) of this Rule, of a person who is mentally ill or mentally retarded, the local health director shall confer with the attending mental health physician or appropriate mental health authority and the physician, if any, who notified the local health director to develop an appropriate plan to prevent transmission.

(7) The Director of Health Services of the North Carolina Department of Correction and the prison facility administrator shall be notified when any person confined in a state prison is determined to be infected with HIV. If the prison facility administrator, in consultation with the Director of Health Services, determines that a confined HIV infected person is not following or cannot follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making appropriate recommendations to the unit housing classification committee.

(8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.

(9) Local health departments shall provide testing for HIV infection with pre- and post-test counseling at no charge to the patient. Third party payors may only be billed for HIV counseling and testing when such services are provided ~~as a part of family planning and maternal and child health services.~~ and the patient provides appropriate written consent. ~~By August 1, 1991, the State Health Director shall designate a minimum of 16 local health departments to provide anonymous testing. Beginning September 1, 1991, only cases of confirmed HIV infection identified by anonymous tests conducted at local health departments designated as anonymous testing sites pursuant to this Sub-Item shall be reported in accordance with 15A NCAC 19A .0102(a)(3). All other cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2). Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).~~

(10) Appropriate counseling for HIV testing shall include risk assessment, risk reduction guidelines, appropriate referrals for medical and psychosocial services, and, when the person tested is found to be infected with HIV, control measures. Pre-test counseling may be done in a group or individually, as long as each individual is provided the opportunity to ask questions in private. Post-test counseling must be individualized.

(11) A local health department or the Department may release information regarding an infected person pursuant to G.S. 130A-143(3) only when the local health department or the Department has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released.

(12) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with G.S. 130A-145, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual and may include one or more of the following available and appropriate services:

(a) substance abuse counseling and treatment;

(b) mental health counseling and treatment; and

(c) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission.

(13) The Division of ~~Epidemiology~~ Public Health shall conduct a partner notification program to assist in the notification and counseling of partners of HIV infected persons. All partner identifying information obtained as a part of the partner notification program shall be destroyed within two years.

(14) Every pregnant woman shall be given HIV pre-test counseling, as described in 15A NCAC 19A .0202(10), by her attending physician as early in the pregnancy as possible. At the time this counseling is provided, ~~the physician shall encourage the pregnant woman to be tested for HIV~~

~~infection. If~~ and after informed consent is obtained, the attending physician shall test the pregnant woman for HIV ~~infection as early in the pregnancy as possible~~ infection, unless the pregnant woman refuses the HIV test.

Authority G.S. 130A-133; 130A-135; 130A-144; 130A-145; 130A-148(h).

15A NCAC 19A .0204 CONTROL MEASURES – SEXUALLY TRANSMITTED DISEASES

(a) Local health departments shall provide diagnosis, testing, treatment, follow-up, and preventive services for syphilis, gonorrhea, chlamydia, nongonococcal urethritis, mucopurulent cervicitis, chancroid, lymphogranuloma venereum, and granuloma inguinale. These services shall be provided upon request and at no charge to the patient.

(b) Persons infected with, exposed to, or reasonably suspected of being infected with gonorrhea, chlamydia, non-gonococcal urethritis, and mucopurulent cervicitis shall:

(1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;

(2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for gonorrhea, chlamydia, nongonococcal urethritis, and mucopurulent cervicitis, and are incorporated by reference including subsequent amendments and editions. A copy of this publication is on file for public viewing with the HIV/STD Control Branch located at 225 N. McDowell Street, Cooper Building, Raleigh, N.C. 27611-7687 or a copy may be obtained free of charge by writing the HIV/STD Control Branch, P.O. Box 27687, Raleigh, N.C. 27611-7687, and requesting a copy. However, urethral Gram stains may be used for diagnosis of males rather than gonorrhea cultures unless treatment has failed;

(3) Notify all sexual partners from 30 days before the onset of symptoms to completion of therapy that they must be evaluated by a physician or local health department.

(c) Persons infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid shall:

(1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;

(2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by t h e U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid, except that chancroid cultures shall not be required;

(3) Give names to a disease intervention specialist employed by the local health department or by the HIV/STD Control Branch for contact tracing of all sexual partners and others as listed in this Rule:

(A) for syphilis:

(i) congenital - all immediate family members;

(ii) primary - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions;

(iii) secondary - all partners from six months before the onset of symptoms to completion of therapy and healing of lesions; and

(iv) latent - all partners from 12 months before the onset of symptoms to completion of therapy and healing of lesions and, in addition, for women with late latent, spouses and children;

(B) for lymphogranuloma venereum:

(i) if there is a primary lesion and no buboes, all partners from 30 days before the onset of symptoms to completion of therapy and healing of lesions; and

(ii) if there are buboes all partners from six months before the onset of symptoms to completion of therapy and healing of lesions;

(C) for granuloma inguinale - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions; and

(D) for chancroid - all partners from ten days before the onset of symptoms to completion of therapy and healing of lesions.

(d) All persons evaluated or reasonably suspected of being infected with any sexually transmitted disease shall be tested for syphilis, encouraged to be tested confidentially for HIV, and counseled about how to reduce the risk of acquiring sexually transmitted disease, including the use of condoms.

(e) All pregnant women shall be tested for ~~syphilis~~ syphilis, chlamydia and gonorrhea ~~early in pregnancy and in the third trimester. Pregnant women at high risk for exposure to syphilis and gonorrhea shall also be tested for syphilis and gonorrhea at the time of delivery.~~ at the first prenatal visit. All pregnant women shall be tested for syphilis between 28 and 30 weeks of gestation. Pregnant women at increased risk for exposure to

syphilis shall be tested for syphilis again, at the time of delivery. All pregnant women shall be tested for gonorrhea in the third trimester. Pregnant women at increased risk for exposure to gonorrhea shall be tested for gonorrhea again, at the time of delivery. Pregnant women less than 25 years of age and women who are at increased risk of exposure to chlamydia, i.e., women who have a new partner or more than one partner or whose partner has other partners, shall be tested for chlamydia in the third trimester.

(f) All newborn infants shall be treated prophylactically against gonococcal ophthalmia neonatorum in accordance with the STD Treatment Guidelines published by the U. S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required prophylactic treatment against gonococcal ophthalmia neonatorum.

Authority G. S. 130A-135; 130A-144.

SECTION .0400 – IMMUNIZATION

15A NCAC 19A .0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

(a) Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

(1) Diphtheria, tetanus, and whooping cough vaccine - five doses: three doses by age seven months and two booster doses, one by age 19 months and the second on or after the fourth birthday and before enrolling in school (K-1) for the first time. The requirements for booster doses of diphtheria, tetanus, and whooping cough vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987. However:

(A) An individual who has attained his or her seventh birthday without having been immunized against whooping cough shall not be required to be immunized with a vaccine preparation containing whooping cough antigen;

(B) Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose;

(C) Individuals attending school, college or university or who began their tetanus/diphtheria toxoid series on or after the age of seven years shall be required to have three doses of tetanus/diphtheria toxoid of which one must have been within the last 10 years.

(2) Poliomyelitis vaccine--four doses: two doses of trivalent type by age five months; a third dose trivalent type before age 19 months, and a booster dose of trivalent type on or after the fourth birthday and before enrolling in school (K-1) for the first time. However:

(A) An individual attending school who has attained his or her 18th birthday shall not be required to receive polio vaccine;

(B) Individuals who receive the third dose of poliomyelitis vaccine on or after the fourth birthday shall not be required to receive a fourth dose;

(C) The requirements for booster doses of poliomyelitis vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.

(3) Measles (rubeola) vaccine--two doses of live, attenuated vaccine administered at least 30 days apart: one dose on or after age 12 months and before age 16 months and a second dose before enrolling in school (K-1) for the first time. However:

(A) An individual who has been documented by serological testing to have a protective antibody titer against measles shall not be required to receive measles vaccine;

(B) An individual who has been diagnosed prior to January 1, 1994, by a physician licensed to practice medicine as having measles (rubeola) disease shall not be required to receive measles vaccine;

(C) An individual born prior to 1957 shall not be required to receive measles vaccine;

(D) The requirement for a second dose of measles vaccine shall not apply to individuals who enroll in school (K-1) or in college or university for the first time before July 1, 1994.

(4) Rubella vaccine--one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:

(A) An individual who has been documented by serologic testing to have a protective antibody titer against rubella shall not be required to receive rubella vaccine;

(B) An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine;

(C) An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 shall not required to meet the requirement for rubella vaccine.

(5) Mumps vaccine--one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months. However:

(A) An individual born prior to 1957 shall not be required to receive mumps vaccine;

(B) The requirements for mumps vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987 or in college or university before July 1, 1994. An individual who has been documented by serological testing to have a protective antibody titer against mumps shall not be required to receive mumps vaccine.

(6) *Haemophilus influenzae, b,* conjugate vaccine--three doses of HbOC or two doses of PRP-OMP before age seven months and a booster dose of any type on or after age 12 months and by age 16 months. Individuals born before October 1, 1988 shall not be required to be vaccinated against *Haemophilus influenzae, b.* Individuals who receive the first dose of *Haemophilus influenzae,* b, vaccine on or after 12 months of age and before 15 months of age shall be required to have only two doses of HbOC or PRP-OMP. Individuals who receive the first dose of *Haemophilus influenzae, b,* vaccine on or after 15 months of age shall be required to have only one dose of any of the *Haemophilus influenzae* conjugate vaccines, including PRP-D. However, no individual who has passed their fifth birthday shall be required to be vaccinated against *Haemophilus influenzae*, b.

(7) Hepatitis B vaccine--three doses: one dose by age three months, a second dose before age five months and a third dose by age 19 months. Individuals born before July 1, 1994 shall not be required to be vaccinated against hepatitis B.

(8) Varicella vaccine--one dose administered on or after age 12 months and before age 19 months. However:

(A) an individual with a laboratory test indicating immunity or with a history of varicella disease, documented by a health care provider, parent, guardian or person in loco parentis shall not be required to receive varicella vaccine. Serologic proof of immunity or documentation of previous illness must be presented whenever a certificate of immunization is required by North Carolina General Statute. The documentation shall include the name of the individual with a history of varicella disease and the approximate date or age of infection. Previous illness shall be documented by:

(i) a written statement from a health care provider documented on or attached to the lifetime immunization card or certificate of immunization; or

(ii) a written statement from the individual's parent, guardian or person in loco parentis attached to the lifetime immunization card or certificate of immunization;

(B) an individual born prior to April 1, 2001 shall not be required to receive varicella vaccine.

(b) The State Health Director may suspend temporarily any portion of the requirements of these immunization rules due to emergency conditions, such as the unavailability of vaccine. The Department shall give notice in writing to all local health departments and other providers currently receiving vaccine from the Department when the suspension takes effect and when the suspension is lifted. When any vaccine series is disrupted by such a suspension, the next dose shall be required to be administered within 90 days of the lifting of the suspension and the series resumed in accordance with intervals determined by the most recent recommendations of the Advisory Committee on Immunization Practices.

Authority G.S. 130A-152(c); 130A-155.1.

SECTION .0900 – BIOLOGICAL AGENT REGISTRY

15A NCAC 19A .0901 GENERAL

The biological agent registry established by G.S. 130A-149 is administered by the N.C. Department of Health and Human Services, Division of Public Health, Epidemiology Section, 225 N. McDowell Street, Raleigh, N.C. 27603.

Authority G.S. 130A-149.

15A NCAC 19A .0902 BIOLOGICAL AGENTS TO BE REPORTED

The biological agents that shall be reported to the registry shall be those agents listed as select agents in 42 C.F.R. Part 72, Appendix A which is adopted herein by reference including subsequent amendments and editions. Copies of this federal provision may be inspected at and copies obtained from the N.C. Department of Health and Human Services, Division of Public Health, Epidemiology Section, 225 N. McDowell Street, Raleigh, N.C. 27603, at a cost of ten cents ($.10) per page at the time of adoption of this Rule.

Authority G.S. 130A-149.

15A NCAC 19A .0903 WHEN TO REPORT

A person possessing and maintaining a listed biological agent on the effective date of these Rules shall make a report within 45 days of the effective date of these Rules. A person who does not possess and maintain any listed biological agents on the effective date of these Rules shall make a report within seven days of receipt of such agents. A person shall make an amended report within seven days of any change in the information contained in

the report. A person shall make a report within 24 hours of any suspected release, loss or theft of any listed biological agent.

Authority G.S. 130A-149.

15A NCAC 19A .0904 WHAT TO REPORT

The report shall be made on a form created by the Department and shall identify the listed biological agents possessed and maintained at the facility; shall specify the use of the agents for vaccine production, research purposes, quality control or other use; shall indicate the form of the agents; shall identify the physical location of the laboratories and the storage areas; and shall identify the person in charge of the agents.

Authority G.S. 130A-149.

15A NCAC 19A .0905 EXEMPTION FROM REPORTING

A person who detects a listed biological agent in a clinical or environmental sample for the purpose of diagnosing disease, epidemiological surveillance, exposure assessment, reference, verification or proficiency testing, and who discards the agent within fourteen calendar days of receiving notice of the completion of confirmation testing, or discards the agent within 14 calendar days of using the agent for reference, verification or proficiency testing, is not required to make a report.

Authority G.S. 130A-149.

15A NCAC 19A .0906 SECURITY

All persons possessing and maintaining a listed biological agent must demonstrate compliance with all safeguards contained in 42 C.F.R. Part 72 and the rules promulgated thereunder, and must employ those federal safeguards over the agents they possess and maintain, regardless of whether the mere possession of the agent is itself required to be registered under federal law. The safeguards contained in 42 C.F.R. Part 72 and the rules promulgated thereunder are adopted herein by reference including subsequent amendments and additions. Copies of this federal provision may be inspected at and copies obtained from the N.C. Department of Health and Human Services, Division of Public Health, Epidemiology Section, 225 N. McDowell Street, Raleigh, N.C. 27603, at a cost of ten cents ($.10) per page at the time of adoption of this Rule.

Authority G.S. 130A-149.

15A NCAC 19A .0907 RELEASE OF INFORMATION

The Department shall release information contained in the Biological Agents Registry only by order of the State Health Director upon a finding that the release is necessary for the conduct of a communicable disease investigation or for the investigation of a release, theft or loss of a biological agent.

Authority G.S. 130A-149.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 15A NCAC 21A .0822 and amend the rules cited as 15A NCAC 21A .0815-.0821; 21H .0111. Notice of Rule-making Proceedings was published in the Register on December 17, 2001, January 2, 2002, January 15, 2002 and March 15, 2002.*

Proposed Effective Date: *April 1, 2003*

Public Hearing:
Date: *June 26, 2002*
Time: *1:00 p.m.*
Location: *Room G1-A, 1330 St. Mary's St., Raleigh, NC*

Reason for Proposed Action:
15A NCAC 21A .0815-.0822 – *The 2001 Session of the North Carolina General Assembly approved Session Law 2001-424 on September 21, 2001. Governor Easley signed it into law on the 26th of September, repealing G.S. 130A-131.15, the statutes that served as the authority for the rules for Adolescent Pregnancy Prevention activities. Temporary rules were adopted effective December 1, 2001 and need to be made permanent.*
15A NCAC 21H .0111 – *Program expenditures have exceeded available recurring funds for three consecutive years. Program expenditures increased by 30% in FY 00 and 19% in FY 01. The average cost per patient per year has risen to $4,729.00. Existing program funds will be exhausted seven months into the new fiscal year. To avoid a total interruption in program services for the 203 low-income persons enrolled in the program, payment for inpatient services will be discontinued beginning July 1, 2002. The preventive services (i.e., outpatient and drug services) will be continued. These options have been developed and reviewed with the NC Sickle Cell Advisory Council.*

Comment Procedures: *Written comments concerning this rule-making action may be submitted within 30 days after the date of publication in this issue of the North Carolina Register. Comments must be submitted to Chris G. Hoke, Rule-making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001. Comments will be accepted through July 3, 2002.*

Fiscal Impact
☒ **State** *15A NCAC 21A .0815-.0822*
☒ **Local** *15A NCAC 21A .0815-.0822*
☐ **Substantive (**≥$5,000,000**)**
☒ **None** *15A NCAC 21H .0111*

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21A - WOMEN'S PREVENTIVE HEALTH

SECTION .0800 - TEEN PREGNANCY PREVENTION

15A NCAC 21A .0815 GENERAL

(a) The ~~Adolescent~~ Teen Pregnancy Prevention ~~Program~~ Initiatives shall be administered by the Division of ~~Maternal and Child~~ Public Health, North Carolina Department of ~~Environment,~~ Health and ~~Natural Resources,~~ Human Services, ~~Post Office Box 27687,~~ Mail Service Center 1929, Raleigh, North Carolina, ~~27611,~~ 27699-1929, (919) 733-7791.

(b) In order to implement recently approved legislative actions in a timely fashion, the Division of Public Health will take the

following actions prior to the end of State Fiscal Year 2001-2002: All currently funded Teen Pregnancy Prevention Projects will be notified that they have been assigned to one of four groups, based upon the date that their Teen Pregnancy Prevention funding was initiated. This grouping will allow the Division to phase out, in an orderly manner, those projects funded under the former rules of operation. Some of the projects, the Adolescent Parenting Programs, have operated under the assurance of continued funding from year to year without a requirement of reapplication. These projects will be grouped as follows:

(1) Group one will be informed that they have one year of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2002 for grants beginning on July 1, 2003;

(2) Group two will be informed that they have two years of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2003 for grants beginning on July 1, 2004;

(3) Group three will be informed that they have three years of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2004 for grants beginning on July 1, 2005; and

(4) Group four will be informed that they have four years of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2005 for grants beginning on July 1, 2006.

(c) Notwithstanding Paragraph (b) of this Rule, Adolescent Pregnancy Prevention Program Projects that were approved for funding prior to December 1, 2001 will receive their annually decreasing funding amount until the end of the original five-year agreement. These projects shall be placed in the groups described in Paragraph (b) of this Rule according to the years remaining on their original agreements. Any existing project that decides to forgo its remaining years of APPP funding and to submit an application for stable funding under the revised program rules, may do so only after submission of a notice of voluntary program termination no later than six months prior to the start of the next fiscal year.

Authority G.S. 130A-124; S.L. 1989, c. 752, s. 136.

15A NCAC 21A .0816 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

(1) ~~"APPP"~~ "TPPI" means the Teen Pregnancy Prevention Initiatives which covers the Adolescent Pregnancy Prevention Program and Adolescent Parenting Program administered by the Division of ~~Maternal and Child~~ Public Health;

(2) "~~Division of~~ ~~MCH~~ DPH " means the Division of ~~Maternal and Child~~ Public Health, Department of ~~Environment,~~ Health and ~~Natural Resources.~~ Human Services;

(3) "Contractor" means a county or district health department or department of social services or other public or private agency receiving ~~APPP Project funds~~ Teen Pregnancy Prevention Initiatives funding;

(4) "Adolescent" means any individual 19 years of age and under;

(5) "Major Equipment" means any fixed asset that has a unit cost of two thousand dollars ($2,000) or more;

(6) "Minor Remodeling" means any building or facility reconstruction project having a total cost of two thousand dollars ($2,000) or less;

(7) "Primary pregnancy prevention" means prevention of first pregnancy;

(8) "Department" means the Department of Health and Human Services;

(9) "The Commission" means the Commission for Health Services; and

(10) "Secondary pregnancy prevention" means prevention of second and higher order pregnancies.

Authority G.S. 130A-124; 130A-131.15.

15A NCAC 21A .0817 GRANT APPLICATIONS

(a) Grants shall be awarded through a request for ~~proposal~~ applications ~~(RFP)~~ (RFA)process that includes notification of potential applicant agencies of the eligibility criteria and requirements for funding.

~~(b) Grant proposals shall include information specified in G.S. 130A-131.15.~~

~~(c) The Division of MCH, in reviewing proposals of equal merit, shall give priority to those proposals focusing on male responsibility.~~

~~(d) The Division of MCH must allocate at least 75 percent of APPP funds for projects whose main focus is primary pregnancy prevention.~~

(b) Any local agency or organization or combination of agencies and organizations may apply to the DPH for an allocation of money to operate a project aimed at preventing primary or secondary adolescent pregnancy.

(c) The application shall contain an analysis of adolescent pregnancy and related problems in the locality the project would serve, and a description of how the funded project would attempt to prevent the problems.

(d) The application shall state how much money is needed to operate the project and how the money shall be spent.

(e) The Department shall conduct annually a pre-application conference that shall be attended by a representative of any agency that wishes to apply for funding; that session shall define the criteria for accountability and evaluation that the Department requires of funded projects. That session shall also provide information about additional funding sources to which agencies might turn.

(f) Application Requirements – The Department shall apply the following minimum standards to agencies applying for first-year funding:

(1) Each agency shall have a plan of action that extends throughout their funding cycle;

(2) Each agency shall have realistic, specific, and measurable goals and objectives for the prevention of adolescent pregnancy; and

(3) Each agency, before submitting its application, shall send a representative to the pre-application conference held by the Department.

Authority G.S. 130A-124; 130A-131.15.

15A NCAC 21A .0818 MAXIMUM FUNDING LEVEL

The maximum level of funding for any one project ~~in the first year~~ shall be seventy-five thousand dollars ($75,000). Local projects are required to contribute a minimum of $10,000 in-kind match annually.

Authority G.S. 130A-124; 130A-131.15.

15A NCAC 21A .0819 OPERATING STANDARDS

(a) Upon approval of ~~a proposal~~ an application for grant funds a budget shall be negotiated and a contract shall be signed between the Contractor and the ~~MCH Division~~DPH.

(b) Project funds shall be used solely for the purposes detailed in the approved ~~proposal~~ application and budget. Expenditures for equipment require prior ~~MCH Division~~ DPH approval.

(c) Contractors shall not use ~~APPP~~ TPPI funds for purposes that are prohibited by statute, or for the following purposes:

(1) purchase of inpatient care;

(2) purchase or improvement of land;

(3) purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;

(4) purchase of major equipment without prior approval of DPH;

(5) purchase or prescriptions of contraceptives;

(6) transportation to or from abortion services; or

(7) abortions.

(d) ~~APPP~~ TPPI projects shall not impose charges on clients for services.

(e) Staff qualifications, training, and experiences shall be appropriate for implementing project activities.

(f) Each project shall participate in ~~regional meetings~~ required trainings with state staff and other project staff.

(g) The start-up period before project activities are implemented shall not exceed six months.

(h) Each project shall obtain approval from the ~~MCH Division~~ DPH prior to making changes in program goals, objectives, and target populations ~~during the Five Year Funding period~~.

~~(i) Each project shall establish and implement a program review process on an ongoing basis.~~

~~(j) APPP projects shall not distribute contraceptives on school property.~~

(i) Each project shall have an advisory group composed of members both within and outside the sponsoring agency of the project. These groups shall meet at least quarterly and advise project staff on project policies and operations.

(j) Each project shall comply with reporting, contracting, and evaluation requirements of the Department. This shall include entering data on the TPPI internet-based database.

(k) Each project shall define and maintain cooperative ties with other community institutions.

(l) Each project shall demonstrate its ability to attract financial support from sources other than the State, including sources in the local community.

Authority G.S. 130A-124; S.L. 1989, c. 752, s. 136.

15A NCAC 21A .0820 EVALUATION AND MONITORING

(a) The ~~Division of MCH~~ DPH shall make site reviews of Contractors to assess program performance.

(b) The ~~Division of MCH~~ DPH shall make periodic site visits to contractors to provide technical assistance and consultation.

(c) The Contractor shall submit in a format established by the ~~Division of MCH,~~ DPH ~~a mid-year~~ regular progress reports, ~~report, and an annual report of each year,~~ including requested evaluation data, on a schedule to be determined by the ~~Division of MCH.~~ DPH. ~~The report shall include an evaluation addressing progress in meeting the objectives outlined in the application.~~

Authority G.S. 130A-124; S.L. 1989, c. 752, s. 136.

15A NCAC 21A .0821 RENEWAL OF GRANT FUNDS

(a) Contracts for ~~APPP~~ TPPI projects are subject to annual renewal for a ~~5~~ four year period based upon criteria established by the program and contingent upon the availability of funds for this purpose.

(b) A contractor that violates any of the provisions of these rules may have ~~APPP~~ TPPI funding reduced or discontinued. The Department shall make the final decision to reduce or discontinue funding ~~shall be made by~~ based upon the advice of the ~~Commission for Health Services~~. Commission.

Authority G.S. 130A-124; S.L. 1989, c. 752, s. 136.

15A NCAC 21A .0822 CRITERIA FOR PROJECT SELECTION

(a) The Department shall make funding recommendations to the Commission from among the applicants that meet the minimum standards in Rule .0817 of this Subchapter. Recommendations shall also be based upon the best selection of projects according to the following criteria:

(1) Degree of need of the locality, including that the service area has a significant adolescent pregnancy problem as evidenced by its adolescent pregnancy rate, attributable risk score, and/or percentage of repeat adolescent births;

(2) Adequacy of agency and staff to meet project objectives;

(3) Level of community support. There should be sufficient documentation such as letters or statements of commitment from partnering organizations to show strong support for the application; and

(4) Existing or formerly TPPI-funded projects shall demonstrate that they have provided an effective intervention for reducing adolescent pregnancy rates among their participants.

(b) The Department shall make its recommendations for funding to the Commission. The Commission shall make the final

determination of which projects are to be funded. The Commission shall consider the recommendations of the Department, but shall not be bound by them. The Department shall notify the projects that are to be funded by June 1 of each year.

Authority G.S. 130A-124; 130A-131.15.

SUBCHAPTER 21H - SICKLE CELL SYNDROME: GENETIC COUNSELING: CHILDREN AND YOUTH SECTION

SECTION .0100 - SICKLE CELL SYNDROME PROGRAM

15A NCAC 21H .0111 MEDICAL SERVICES COVERED

~~(a) The North Carolina Sickle Cell Syndrome Program shall provide services only when they are not available through other sources or agencies. Prior to requesting services, it shall be determined that the patient is not eligible for services through the division of services for the blind; Medicaid and Medicare programs; school health programs; vocational rehabilitation; workmen's compensation or civilian health and medical programs of the uniformed services (CHAMPUS).~~

~~(b) If an individual meets the eligibility requirements, he shall be provided the following medical services:~~

Covered medical services, which must be determined to be related to sickle cell disease and approved by the Program, include:

~~(1) inpatient care;~~

~~(2)~~(1) 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)~~(2) ~~routine visits to the~~ physicians' office visits;

~~(4)~~(3) ~~prescription~~ drugs on the Program's formulary. A copy of this formulary may be obtained by writing to the Sickle Cell Program;

~~(5) general analgesics;~~

~~(6)~~(4) ~~appliances;~~ medical supplies and equipment.

~~(7)~~(5) preventive and limited maintenance dentistry; and

~~(8) obstetrical care (excluding delivery of baby);~~

~~(9)~~(6) eye care (when the division of services for the blind will not provide coverage);

~~(10) psychiatric; and~~

~~(11) psychological counseling~~.

Authority G.S. 130A-129.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Highways intends to adopt the rules cited as 19A NCAC 02F .0101-.0103. Notice of Rule-making Proceedings was published in the Register on February 15, 2002.*

Proposed Effective Date: *April 1, 2003*

Public Hearing:
Date: *June 25, 2002*
Time: *2:00 p.m. & 6:30 p.m.*
Location: *Transportation Bldg. Auditorium, 1 South Wilmington St., Raleigh, NC*

Reason for Proposed Action: *These Rules are proposed for adoption pursuant to the authority granted by the North Carolina General Assembly in Section 27.22 of Session Law 2001-424. Temporary rules were published in the November 1, 2001 NC Register. Comments were received through the Clearinghouse and revised temporary rules were published in the February 15, 2002 NC Register. Additional Clearinghouse comments were received through April, 2002. The rules are necessary to set environmental minimum criteria conditions under which highway projects may be constructed.*

Comment Procedures: *Any interested person may comment by submitting written comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699, by July 5, 2002.*

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (**≥$5,000,000**)**
☒ **None**

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02F - DEPARTMENT OF TRANSPORTATION'S MINIMUM CRITERIA

SECTION .0100 - MINIMUM CRITERIA

19A NCAC 02F .0101 PURPOSE

This Section establishes minimum criteria to be used in determining when the preparation of environmental documents pursuant to the North Carolina Environmental Policy Act (NCEPA) is not required.

Authority G.S. 113A-11; 143B-10.

19A NCAC 02F.0102 MINIMUM CRITERIA

The following minimum criteria are established as an indicator of the types and classes of thresholds of activities at and below which environmental documentation under the NCEPA is not required:

(1) Approval of:
  (a) installation of utilities along or across a transportation facility;
  (b) grade separated crossings of highways by railroads or highway; or
  (c) grading, commercial driveways, and other encroachments on the highway right-of-way;
(2) Construction of bicycle and pedestrian lanes, paths, and facilities;

(3) Construction of safety projects such as guardrails, grooving, glare screen, safety barriers, and energy attenuators;

(4) Installation of noise barriers or alterations to existing public buildings to provide for noise reduction;

(5) Landscaping of highway, railroad, and rest area projects;

(6) Installation of fencing, signs, pavement markings, small passenger shelters, lighting, traffic signals, and railroad signal systems and warning devices;

(7) Repair, rehabilitation, or replacement of a highway or railway facility in general conformance with the original design and alignment, which is commenced immediately after the occurrence of a natural disaster or catastrophic failure, to restore the highway for the health, welfare, and safety of the public;

(8) Highway or railway modernization by means of the following activities, which involves less than a total of 10 cumulative acres of ground surface previously undisturbed by highway or railway construction, limited to a single project, noncontiguous to any other project making use of this provision:

(a) resurfacing, restoration, or reconstruction;

(b) adding lanes for travel, parking, weaving, turning, or climbing;

(c) correcting substandard curves and intersections;

(d) adding shoulders or minor widening;

(e) adding or extending passing sidings;

(f) lengthening of railway spirals; or

(g) flattening of railway curves;

(9) Reconstruction of existing crossroad or railroad separations and existing stream crossings, including, but not limited to, pipes, culverts, and bridges;

(10) Approval of oversized and overweight permits;

(11) Approval of outdoor advertising permits;

(12) Maintenance of the state highway or railway system to include work such as:

(a) Grading and stabilizing unpaved roads;

(b) Maintaining unpaved shoulders;

(c) Cleaning ditches and culverts;

(d) Patching paved surfaces;

(e) Maintaining bridges;

(f) Removing snow and ice;

(g) Controlling erosion and vegetation growth;

(h) Manufacturing and stockpiling material;

(i) Paving secondary roads; and

(j) Timber and surfacing of rail lines;

(13) Assumption of maintenance of roads constructed by others;

(14) Making capital improvements constructed at an existing DOT facility that:

(a) Require less than one acre of exposed, erodible ground surface; and

(b) Require the use of structures which do not involve handling or storing hazardous materials which exceed the threshold planning limits of Title 3 of the Superfund Amendments and Reauthorization Act of 1986;

(15) Construction of a new two-lane highway in accordance with accepted design practices and DOT standards and specifications involving less than a total of 25 cumulative acres of ground surface limited to a single project, noncontiguous to any other project making use of this provision;

(16) Reconstructing, rehabilitating, resurfacing, or maintaining existing runways, taxiways, aircraft aprons, access roads, and automobile parking lots;

(17) Constructing, reconstructing, rehabilitating, or upgrading of lighting associated with runways, taxiways, and apron edges; visual approach aids; instrument approach aids; wind indicators; rotating beacons; obstruction lights; area lights; security lights; and the electrical distribution systems and control systems for such facilities;

(18) Construction of terminal buildings, railway stations, maintenance buildings, and hangars involving less than five acres of previously undisturbed ground;

(19) Acquiring property to meet Federal or State standards, requirements, or recommendations directly relating to aviation safety;

(20) Acquiring 10 acres or less of property for future airport development;

(21) Construction on existing airport property which has previously been disturbed by clearing, grubbing, or grading on land involving less than 10 acres of exposed, erodible ground surface;

(22) Planning airport projects to include master plans, noise and compatibility plans, preliminary construction project plans, and special planning studies such as economic impact studies;

(23) Rehabilitating, maintaining, and improving airport drainage systems on airport property to include landscaping and erosion control facilities involving less than five acres of previously undisturbed ground;

(24) Reconstructing or rehabilitating rail lines on existing alignment;

(25) Purchasing vehicles for mass transportation purposes;

(26) Maintaining and improving railroad track and bed in the existing right of way;

(27) Implementation of any project which qualifies as a "categorical exclusion" under the National

Environmental Policy Act by one of the Agencies of the U.S. Department of Transportation;

(28) Acquisition and construction of wetland, stream, and endangered species mitigation sites; and

(29) Remedial activities involving the removal, treatment or monitoring of soil or groundwater contamination pursuant to state or federal remediation guidelines.

Authority G.S. 113A-9; 113A-11; 143B-10(j).

19A NCAC 02F .0103 EXCEPTIONS TO MINIMUM CRITERIA

Any activity falling within the parameters of the minimum criteria set out in Rule .0102 of this Section shall not routinely be required to have environmental documentation under the NCEPA. However, the Secretary of Transportation or his designee shall determine if environmental documents are required in any case where a Division Director or Branch Manager makes one of the following findings as to a proposed activity:

(1) The proposed activity may have significant adverse effects on wetlands, parklands, prime or unique agricultural lands, or areas of recognized scenic, recreational, archaeological, or historical value; or would endanger the existence of a species identified on the Department of Interior's threatened and endangered species list.

(2) The proposed activity could cause changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create significant adverse water quality, air quality, or ground water impacts; or have a significant adverse effect on long-term recreational benefits or shellfish, finfish, wildlife, or their natural habitats.

(3) The secondary or cumulative impacts of the proposed activity, which are not generally covered in the approval process, may result in a significant adverse impact to human health or the environment.

(4) The proposed activity is of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been expressed to the agency.

Authority G.S. 113A-9; 113A-11; 143B-10(j).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

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 rule cited as 21 NCAC 36 .0405. Notice of Rule-making Proceedings was published in the Register on January 15, 2002.*

Proposed Effective Date: *April 1, 2003*

Public Hearing:
Date: *September 26, 2002*
Time: *1:00 p.m.*
Location: *NC Board of Nursing, 3724 National Dr., Suite 201, Raleigh, NC*

Reason for Proposed Action: *The Board has been evaluating all of its regulatory activities and making changes to become more cost efficient in carrying out our responsibilities. Board's statutory authority does not require Board approval of clinical agencies of nurse aide education programs, therefore an annual savings would be recognized as a result of the changes to this Rule.*

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 September 26, 2002.*

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (**≥$5,000,000**)**
☒ **None**

SECTION .0400 - UNLICENSED PERSONNEL: NURSE AIDES

21 NCAC 36 .0405 APPROVAL OF NURSE AIDE EDUCATION PROGRAMS

(a) The Board of Nursing shall accept those programs approved by DFS to prepare the nurse aide I.

(b) The North Carolina Board of Nursing shall approve nurse aide II programs. Nurse aide II programs may be offered by an individual, agency, or educational institution after the program is approved by the Board.

(1) Each entity desiring to offer a nurse aide II program shall submit a program approval application at least 60 days prior to offering the program. It shall include documentation of the following standards:

(A) students will be ~~policy established which provides for~~ supervised by qualified faculty for clinical experience with faculty/student ratio not to exceed 1:10;

(B) the selection and utilization of clinical facilities must support the program curriculum as outlined in Part (b)(2) of this Rule; ~~Board of Nursing approval of each clinical facility for student use as defined in 21 NCAC 36 .0322(b);~~

(C) a written contract shall exist between the program and clinical facility prior to ~~admitting students to the facility~~

~~for~~ student clinical ~~experience;~~ experience in the facility;

(D) admission requirements ~~which~~ shall include:

(i) successful completion of nurse aide I training program or Board of Nursing established equivalent and current nurse aide I listing on DFS Registry; and

(ii) GED or high school diploma; and

(iii) other admission requirements as identified by the program; and

(E) a procedure for timely ~~policy regarding the~~ processing and disposition of program and student ~~complaints.~~ complaints shall be established.

(2) Level II nurse aide programs shall include a minimum of 80 hours of theory and 80 hours of supervised clinical instruction consistent with the legal scope of practice as defined by the Board of Nursing in Rule .0403(b) of this Section. Changes made by the Board of Nursing in content hours or scope of practice in the nurse aide II program shall be published in the Bulletin. Requests by the programs to modify the nurse aide II course content shall be directed to the Board office.

(3) ~~The Board shall identify and publish minimum~~ Minimum competency and qualifications for faculty for the nurse aide Level II ~~programs. These are:~~ programs shall include:

(A) ~~hold~~ a current unrestricted license to practice as a registered nurse in North Carolina;

(B) have had at least two years of direct patient care experiences as an R.N.; and

(C) have experience teaching adult learners.

(4) Each nurse aide II program shall furnish the Board records, data, and reports requested by the Board in order to provide information concerning operation of the program and any individual who successfully completes the program.

(5) When an approved nurse aide II program closes, the Board shall be notified in writing by the program. The Board shall be informed as to permanent storage of student records.

(c) An annual program report shall be submitted by the Program Director to the Board of Nursing on Board form by March 15 of each year. Failure to submit annual report shall result in administrative action affecting approval status as described in Paragraphs (d) and (e) of this Rule. ~~21 NCAC 36 .0405(5)(d) and (e).~~ Complaints regarding nurse aide II programs may result in an on site survey by the North Carolina Board of Nursing.

(d) Approval status shall be determined by the Board of Nursing using the annual program report, survey report and other data submitted by the program, agencies, or students. The determination shall result in full approval or approval with stipulations.

(e) If stipulations have not been met as specified by the Board of Nursing, a hearing shall be held by the Board of Nursing regarding program approval status. A program may continue to operate while awaiting the hearing before the Board. EXCEPTION: In the case of summary suspension of approval as authorized by G.S. 150B(3)(c), the program must immediately cease operation.

(1) When a hearing is scheduled, the Board shall cause notice to be served on the program and shall specify a date for the hearing to be held not less than 20 days from the date on which notice is given.

(2) If the Board determines from evidence presented at hearing that the program is complying with the Law and all rules, the Board shall assign the program Full Approval status.

(3) If the Board, following a hearing, finds that the program is not complying with the Law and all rules, the Board shall withdraw approval.

(A) This action constitutes discontinuance of the program; and

(B) The parent institution shall present a plan to the Board for transfer of students to approved programs or fully refund tuition paid by the student. Closure shall take place after the transfer of students to approved programs within a time frame established by the Board; and

(C) The parent institution shall notify the Board of the arrangements for storage of permanent records.

Authority G.S. 90-171.20(2)(4)(7)d.,e.,g.; 90-171.39; 90-171.40; 90-171.43(4); 90-171.55; 90-171.83; 42 U.S.C.S. 1395i-3 (1987).

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CHAPTER 54 - NORTH CAROLINA PSYCHOLOGY BOARD

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Psychology Board intends to adopt the rules cited as 21 NCAC 54 .2801-.2806. Notice of Rule-making Proceedings was published in the Register on September 2, 1997.*

Proposed Effective Date: *April 1, 2003*

Reason for Proposed Action: *To specify the titles which may be used by ancillary services personnel, the activities in which they may engage, the nature and extent of supervision which must be provided, the qualifications of such individuals, and the nature of the responsibility assumed by the employing or supervising psychologist.*

Comment Procedures: *Any interested person may submit written comments addressed to Martha Storie, Executive Director, North Carolina Psychology Board, 895 State Farm Road, Suite101, Boone, NC 28607, no later than July 31, 2002.*

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (**≥$5,000,000**)**
☒ **None**

SECTION .2800 - ANCILLARY SERVICES

21 NCAC 54 .2801 SCOPE

(a) Pursuant to G.S. 90-270.21, licensed psychologists (provisional and permanent), licensed psychological associates, or temporary licensees, all of whom shall be identified as "psychologists" under G.S. 90-270.2(9), may employ or supervise unlicensed individuals to provide ancillary services. The psychologist shall, at all times, retain full professional responsibility for the quality of the services rendered and for the effects of the services upon the client, patient, or other individuals. This responsibility for the quality of services delivered by supervisees and for the welfare of the client or patient shall be no different than if the psychologist had provided the services in person. The psychologist shall have had face-to-face contact during the course of services with all patients, clients, or other recipients of services who are provided ancillary services by unlicensed persons as part of the psychologist's services.

(b) Ancillary services shall be considered to be only those activities which an individual shall engage in for the purpose of providing assistance to a psychologist in providing psychological services to patients, clients, and their families. Not included as ancillary services are those clerical and administrative services which are not directly related to assisting a psychologist in the provision of psychological services.

(c) Any psychologist who employs individuals to provide ancillary services shall be subject to disciplinary action under G.S. 90-270.15(a) for violations of the provisions of the North Carolina Psychology Practice Act. Failure of any psychologist to train ancillary services personnel properly, or to ensure that training has occurred properly, may subject that psychologist to disciplinary action pursuant to G.S. 90-270.15(a). Failure of any psychologist to supervise ancillary services personnel properly may also subject that psychologist to disciplinary action pursuant to G.S. 90-270.15(a).

Authority G.S. 90-270.9; 90-270.21.

21 NCAC 54 .2802 TITLES

Titles of individuals providing ancillary services shall not indicate either that these individuals are licensed or trained in psychology or that the individuals are providing services defined as the practice of psychology in G.S. 90-270.2(8). Unlicensed individuals providing ancillary services shall not use any title incorporating the words "assessment," "associate," "clinical," "counseling," "diagnostic," "evaluation," "examiner," "psychologic," "psychological," "psychologist," "psychology," or derivatives of such. Examples of titles that unlicensed individuals may use include "aide," "assistant," "behavioral," "testing," "technician," "psychometrist," or derivatives of these titles.

Authority G.S. 90-270.9; 90-270.21.

21 NCAC 54 .2803 EMPLOYMENT AND SUPERVISION OF UNLICENSED INDIVIDUALS

(a) Any psychologist who employs or supervises unlicensed individuals who provide ancillary services as specified in Rule .2801 of this Section shall maintain documentation of the relationship between the psychologist and the unlicensed individual beginning with the date upon which the relationship is initiated. Written documentation that includes the responsibilities of both parties shall be maintained by the licensee. Except when prevented from doing so by circumstances beyond the psychologist's control, the psychologist shall maintain documentation of the relationship with the unlicensed individual for a minimum of seven years after the termination of the relationship and shall present the documentation to the Board upon written request. If the unlicensed individual is supervised by more than one psychologist, there shall be a psychologist appointed to have primary responsibility for the coordination of and provision of ancillary services by the unlicensed individual. The appointed psychologist shall have responsibility for clinical record keeping with regard to the ancillary services provided by the unlicensed individual. Any psychologist supervising or employing persons who provide ancillary services shall not submit records regarding ancillary services personnel to the Board unless ordered to do so pursuant to G.S. 90-270.9.

(b) The psychologist shall be competent to render all ancillary services specified in Rule .2801 of this Section that the employee or supervisee shall render, except that clearly defined areas of an employee's or supervisee's supervision may be delegated to other psychologists affiliated with the employment setting whose competence in the delegated areas has been demonstrated by previous education, training, and experience.

(c) Any qualified psychologist who employs or supervises individuals to provide ancillary services shall be accessible at all times, either on-site or through electronic communication, and shall be available to render assistance when needed to the unlicensed individual and patient or client, or shall have arranged for another qualified psychologist to be readily accessible in the absence of the supervising psychologist. Psychologists shall meet with all unlicensed individuals whom they supervise to the extent necessary to provide appropriate supervision for the activities in which the unlicensed individual is engaged. The psychologist shall maintain documentation of supervisory sessions, including dates, appointment times, and length of time of each supervision session, for a period of at least seven years following the termination of ancillary services by ancillary services personnel.

(d) A psychologist whose license has been revoked or suspended or who has otherwise been subject to action by the Board pursuant to G.S. 90-270.15 shall not continue to employ or supervise unlicensed individuals and shall not initiate subsequent employee or supervisory relationships without the prior approval of the Board. The Board shall have the authority to restrict or revoke a psychologist's privilege to utilize unlicensed individuals to provide ancillary services if the Board

finds that an unlicensed person in the psychologist's employment or under the psychologist's supervision has violated any provision of G.S. 90-270.15(a) which would otherwise apply to licensed individuals.

Authority G.S. 90-270.9; 90-270.21.

21 NCAC 54 .2804 QUALIFICATIONS AND TRAINING

(a) Prior to the provision of ancillary services by an unlicensed individual, the psychologist supervising or employing the individual shall provide training in and establish that the individual has sufficient knowledge and understanding of confidentiality, exceptions to confidentiality including mandated reporting of suspected abuse or neglect, and professional ethics, and shall ensure that documentation is maintained in writing that the individual is properly trained in the aforementioned areas. Documentation of training shall include, but not be limited to, the date(s) on which training occurred, the purpose of the training, the identity of the individual(s) providing the training, and the total number of hours of training for each date on which the training occurred. Training in professional ethics shall include applicable areas of the Code of Conduct contained in the North Carolina Psychology Practice Act at G.S. 90-270.15(a). Documentation of qualifications and training that occurred prior to the effective date of this Rule shall not be required for ancillary services personnel who were employed prior to the effective date of this Rule and who continue in the same ancillary services position with the same agency or practice. Training occurring for any ancillary services personnel after the effective date of this Rule shall be documented as described in this Rule.

(b) Any psychologist supervising or employing an unlicensed individual to provide ancillary services shall provide instruction in and establish that the individual shall have received training sufficient to perform the activities delegated to the unlicensed individual, or otherwise shall ensure that documentation is maintained in writing that the individual is properly trained to perform the activities. The psychologist shall maintain documentation of the employee's or supervisee's training for at least seven years following the termination of ancillary services by ancillary services personnel.

(c) Unless provided prior approval by the Board, a psychologist may not employ or supervise individuals to provide ancillary services who have previously been licensed or certified to practice psychology who have relinquished their licenses or certification or who have had their licenses or certification restricted, suspended, or revoked by the Board in North Carolina or any other jurisdiction.

Authority G.S. 90-270.9; 90-270.21.

21 NCAC 54 .2805 SERVICES APPROPRIATE FOR ANCILLARY SERVICES PERSONNEL

(a) Clerical functions requiring a minimum of judgment shall be deemed as appropriate activities in which unlicensed individuals may engage. Examples of these activities include responding to telephone inquiries, scheduling appointments, filing insurance claims, typing psychological reports, and completing data entry of test results after a patient or client has responded to such items as questionnaires, forms, etc. These activities shall be appropriate for ancillary services personnel to provide under the supervision of a psychologist. A psychologist who employs or supervises unlicensed individuals to provide only the services described in this Paragraph shall otherwise be exempt from the requirements of Rule .2803, Paragraph (a) of this Section.

(b) Tasks requiring technical skills and training but minimal judgment during execution shall be deemed as appropriate activities in which unlicensed individuals could be engaged. Examples of these activities include obtaining demographic histories; implementing biofeedback techniques; administering and scoring specific parts of psychological tests, including neuropsychological tests, which are scored on a pass/fail, multiple choice, or true/false basis, or for which scores are based on speed or quantity of performance; and implementing specific behavioral interventions that are part of a detailed treatment plan. A psychologist may delegate such technical tasks to an unlicensed individual upon determining that the tasks can be performed adequately, given the client or patient's characteristics and circumstances, in a manner consistent with the unlicensed individual's training and skills.

(c) Tasks requiring technical skills and training and some degree of judgment during execution shall be deemed as appropriate activities in which properly trained unlicensed individuals could be engaged. Examples of these activities include administration of individually administered intelligence tests and administration of other psychological tests in which the patient or client's performance may alter the length of the protocol, require adjustment or the number of items administered, or require that a decision be made to probe a response of the patient or client provided that ancillary services have been deemed by the licensee to have met the training requirements of the test publisher. A psychologist may delegate such technical tasks to an unlicensed individual upon determining that the tasks can be performed adequately, given the client or patient's characteristics and circumstances, in a manner consistent with the unlicensed individual's training and skills.

(d) Pursuant to G.S. 90-270.15(a)(17), a dated entry shall be made in the patient or client's records at any time that an ancillary service is provided at the request or direction of the licensee. This requirement shall include all ancillary services provided and billed to a third party or paid by the patient or client to the licensee and all ancillary services for which there is no charge. Unlicensed individuals providing ancillary services who make clinical record entries regarding services they provide shall sign such entries and indicate their titles under Rule .2802 of this Section as providers of ancillary services. The psychologist shall ensure that case notes, financial statements, and other records of services clearly identify whether the psychologist or the unlicensed individual was the direct provider of the service.

Authority G.S. 90-270.9; 90-270.21.

21 NCAC 54 .2806 SERVICES NOT APPROPRIATE FOR UNLICENSED INDIVIDUALS

Individuals providing ancillary services shall not engage in tasks involving judgment during the execution of those services when training in the foundation of psychology for the level of judgment is characteristically based on academic preparation at the master's, specialist, or doctoral level in psychology.

Examples of these activities include administration of projective techniques; psychological evaluation report writing; and all forms of diagnostic interviewing, counseling, and psychotherapy. Psychological services of the type noted in this Paragraph shall be provided only by psychologists licensed by the Board as either licensed psychologists (provisional or permanent) or licensed psychological associates or by qualified applicants and shall not be performed by ancillary services personnel. Psychological test results shall not, under any circumstances, be interpreted by ancillary services personnel to recipients of services or their duly designated representative(s).

Authority G.S. 90-270.9; 90-270.21.

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

Rule-making Agency: *NC Division of Facility Services*

Rule Citation: *10 NCAC 03R .3301-.3305*

Effective Date: *May 15, 2002*

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

Authority for the rulemaking: *G.S. 131E-177(1); 131E-183(b); 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 143-540 to update existing EMS terminology, definitions, roles and responsibilities. As such, temporary rules were adopted (effective January 1, 2002) by the NC Medical Care Commission at 10 NCAC 03D to ensure compliance with the new laws. Amendments and a repeal to 10 NCAC 03R .3301-.3305 are needed to ensure consistency with those temporary rules as well as compliance with the new laws. This rule-making action deals with the certificate of need process for EMS air ambulances. 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 Services Center, Raleigh, NC 27699-2701.*

CHAPTER 03 - FACILITY SERVICES

SUBCHAPTER 03R - CERTIFICATE OF NEED REGULATIONS

SECTION .3300 - CRITERIA AND STANDARDS FOR AIR AMBULANCE

10 NCAC 03R .3301 DEFINITIONS

The following definitions shall apply to all rules in this Section:

(1) "Air ambulance" as defined in G.S. 131E-176(1a).

(2) "Air ambulance service" means an entity engaged in the operation of an air ambulance transporting patients.

(3) "Air ambulance service area" means a geographic area defined by the applicant from which the project's patients originate.

(4) "Approved air ambulance" means either a rotary air ambulance or a fixed wing air ambulance that was not operational prior to the beginning of the review period but which had been acquired prior to March 18, 1993 in accordance with S.L. 1993, c. 7, s. 12.

~~(5) "Audit and review panel" as defined in 21 NCAC 32H .0100.~~

~~(6)~~(5) "Capacity of fixed wing air ambulance" means the maximum number of hours the aircraft can be operated as defined by the aircraft manufacturer.

~~(7) "Category IV (A) ambulance" as defined in 10 NCAC 03D .0801(b)(4)(A).~~

~~(8) "Category IV (B) ambulance" as defined in 10 NCAC 03D .0801(b)(4)(B).~~

~~(9)~~(6) "Existing air ambulance" means either a rotary air ambulance or a fixed wing air ambulance in operation prior to the beginning of the review period.

~~(10) "Ground mobile intensive care ambulance service" means a ground based emergency vehicle that meets the definition of a <mobile intensive care unit> as defined in 21 NCAC 32H .0100.~~

~~(11)~~(7) "Inter-facility patient transport" means the transport of a patient from one facility to another facility.

~~(12)~~(8) "Level 2 trauma center" as defined in North Carolina's Trauma Center Criteria developed by the OEMS pursuant to G.S. 131E-162(7a).

~~(13) "Medical crew member" as defined in 10 NCAC 03D .0800.~~

~~(14) "Medical director" as defined in 21 NCAC 32H .0100.~~

~~(15) "Office of Emergency Medical Services" (OEMS) as defined in 10 NCAC 03D .0800 and 21 NCAC 32H .0100.~~

~~(16)~~ (9) "Patient" as defined in G.S. 131E-155(6).

~~(17)~~(10) "Scene transport" means the transport of a patient from the scene of a medical emergency.

~~(18) "Sponsor hospital" as defined in 21 NCAC 32H .0102.~~

History Note: *Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Eff. February 1, 1994;
Temporary Amendment Eff. May 15, 2002.

10 NCAC 03R .3302 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to acquire an air ambulance shall use the Acute Care Facility/Medical Equipment Application Form.

(b) The applicant shall also provide the following additional information:

(1) the number of air ambulance aircraft by type and make currently operated and to be operated in the "air ambulance" service area following completion of the proposed project;

(2) if the applicant is a current air ambulance service provider, documentation of the applicant's experience in transporting patients via air ambulance during the past 12 months, including:

(A) the number of scene transports by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing); and

(B) the number of inter-facility patient transports by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing);

(3) if the applicant is a health service facility proposing to establish a new air ambulance service, the applicant shall provide documentation of:

(A) the number of scene transports to their facility by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing) during the past 12 months; and

(B) the number of inter-facility patient transports during the past 12 months by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing) to their facility from other facilities and from their facility to other facilities;

(4) the number of patients from the proposed air ambulance service area that are projected to require air ambulance service by type of aircraft and the patients' county of residence and county from which transported in each of the first 12 calendar quarters of operation following completion of the project, including the methodology and assumptions used for the projections;

(5) the projected utilization of the air ambulance service per aircraft for each of the first 12 calendar quarters following completion of the proposed project by type of patient (e.g., neonatal, pediatric, cardiac), including the methodology and assumptions used for these projections;

(6) documentation which demonstrates that existing air ambulance services in the State are unable to accommodate the applicant's projected need for an additional air ambulance;

(7) as appropriate to the type of aircraft proposed, documentation of referral sources for air ambulance patients and evidence of the willingness of hospitals to participate;

(8) documentation which demonstrates the applicant's capability to communicate with and access emergency transportation resources including, but not limited to ground mobile intensive care ambulance services;

(9) evidence of the applicant's capability to provide air ambulance services on a 24 hour per day, seven day per week basis except as precluded by weather, maintenance and other factors as applicable;

(10) documentation of appropriate inservice training or continuing education programs for staff;

(11) documentation of written policies and procedures for the operation of the air ambulance service, which shall be in effect at the time the proposed air ambulance becomes operational, for at least the following:

(A) alternative arrangements for transport of a patient when patient transport cannot be provided by the applicant; e.g. a current Mutual Aid Agreement with one or more permitted air ambulance services;

(B) written criteria for patient transport;

(C) medical crew contact with medical control;

(D) operation of an audit and review panel;

(E) patient treatment protocols;

(F) patient transfer protocols;

(G) communication, including incoming calls, dispatch, and on-going communication with air ambulance flight and medical crew and other emergency medical service providers;

(H) role in disaster ~~plans;~~ plans; and

~~(I) if the applicant proposes a Category IV (A) ambulance, the proposed role and responsibility of participating hospitals as outlined in 21 NCAC 32H;~~

~~(J) if the applicant proposes a Category IV (A) ambulance, medical control as outlined in 21 NCAC 32H; and~~

~~(K)~~(I) coordination with local emergency medical service systems in the proposed air ambulance service area or other providers as appropriate given the type of aircraft and service proposed;

(12) if the applicant is an existing air ambulance service provider, copies of the following, as applicable:

(A) the current permit(s) issued by the OEMS and evidence that the permit(s) has not been denied or revoked,

(B) the current FAA Part 135 or Part 91 Certificate; and

(C) the current FCC radio license;

(13) if an applicant does not currently operate an air ambulance, evidence that the OEMS, FCC and FAA are aware of the proposed air ambulance and that the applicant expects to be able to obtain all required permits, licenses or ~~certifications~~certifications; ~~and an indication of the category of ambulance proposed, i.e., Category IV (A) or category IV (B) ambulance;~~

(14) documentation of the aircraft selection analysis used by the applicant and reason for selection of the aircraft proposed;

(15) documentation of a financial analysis of a lease versus purchase option for acquisition of the proposed aircraft and the method (e.g., hire own versus contract) of providing personnel to fly the aircraft and the reason for selection of the option proposed; and

~~(16) if the applicant proposes a Category IV (A) ambulance, evidence of the existence of a sponsor hospital that meets criteria set forth in 21 NCAC 32H; and~~

~~(17)~~(16) if the applicant proposes the acquisition of a fixed wing air ambulance, documentation of the capacity of each existing fixed wing air ambulance based in the state.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1994;
Temporary Amendment Eff. May 15, 2002.

10 NCAC 03R .3303 REQUIRED PERFORMANCE STANDARDS

An applicant proposing to acquire an air ambulance shall demonstrate that the project meets the following standards:

(1) For the acquisition of a rotary air ambulance [unless 10 NCAC 03R .3303(6) is applicable or unless the applicant is proposing to acquire an air ambulance that will be based at a site that is 75 air miles or more from the base of another air ambulance ~~service]:~~service];

~~(a) existing rotary air ambulances based in the State of North Carolina shall have flown an average of 60 patient flights per month per rotary aircraft for the last year [calculated as follows: (total number of patient flights in the last year flown in the state by rotary air ambulances based in the state) divided by (total number of rotary air ambulances based in the state) divided by (12)]; and~~

~~(b)~~ each rotary air ambulance proposed to be acquired by the applicant shall be utilized at an average rate of at least 60 patient requests per month, measured during the fourth quarter of the second year following completion of the project (the applicant shall document the assumptions and provide data supporting the methodology used for the ~~projections); and~~ projections).

~~(c) existing or approved rotary air ambulances based in the state are projected to be utilized at an average of no less than 60 patient requests per month per rotary aircraft measured during the fourth quarter of the third year after the operation of the new air ambulance [calculated as follows: (total projected number of patient requests in the fourth quarter of the third year after the operation of the new air ambulance by existing or approved rotary air ambulances based in the state) divided by (total number of existing or approved rotary air ambulances based in the state in the fourth quarter of the third year after the operation of the new air ambulance) divided by (three)] (the applicant shall document the assumptions and provide data supporting the methodology used for the projections); and~~

(2) For the acquisition of a rotary air ambulance [unless 10 NCAC 03R .3303(6) is applicable], an applicant proposing to add a rotary air ambulance to an existing rotary air ambulance service shall demonstrate that all of its existing rotary air ambulances have had at least 60 patient requests per month in the last year;

(3) For the acquisition of a fixed wing air ambulance [unless 10 NCAC 03R .3303(6) is applicable or unless the applicant is proposing to acquire an air ambulance that will be based at a site that is 75 air miles or more from the base of another air ambulance ~~service]:~~service];

~~(a) existing fixed wing air ambulances based in the State of North Carolina were utilized at an average of 60% of capacity transporting patients for the last year [calculated as follows: (total utilized capacity transporting patients in the last year of fixed wing air ambulances based in the state) divided by (total potential capacity of fixed wing air ambulances based in the state in the last year) times (100)]; and~~

~~(b)~~ each fixed wing air ambulance proposed to be acquired by the applicant shall be utilized at an average of no less than 60% of

capacity transporting patients (determined based on the type aircraft), measured during the fourth quarter of the second year following completion of the project (the applicant shall document the assumptions and provide data supporting the methodology used for the ~~projections); and~~ projections).

~~(c) existing or approved fixed wing air ambulances based in the state are not projected to fall below an average 60% of capacity transporting patients measured during the fourth quarter of the third year after the operation of the new air ambulance [calculated as follows: (total projected utilized capacity transporting patients in the fourth quarter of the third year after the operation of the new air ambulance of existing or approved fixed wing air ambulances based in the state) divided by (total potential capacity of existing or approved fixed wing air ambulances based in the state in the fourth quarter of the third year after the operation of the new air ambulance) times (100)] (the applicant shall document the assumptions and provide data supporting the methodology used for the projections); and~~

(4) For the acquisition of a fixed wing air ambulance [unless 10 NCAC 03R .3303(6) is applicable], an applicant proposing to add a fixed wing air ambulance to an existing fixed wing air ambulance service shall demonstrate that all of its existing fixed wing air ambulances have been utilized at no less than 60% of capacity transporting patients for the last year.

(5) For all proposed projects involving the development of a new air ambulance service (rotary or fixed wing), the new service shall be developed in conjunction with at least a level two designated trauma center and another air ambulance service shall not be based within 60 air miles of the base of the proposed new service; and

(6) For acquisition of an air ambulance that shall be utilized less than 25% of the time flown for purposes defined in G.S. 131E-176(1a), the applicant shall provide the following information:

(a) documentation that the aircraft shall be utilized less than 25% of the time flown in any given quarter for purposes defined in G.S. 131E-176(1a) (the applicant shall document the assumptions and provide data supporting the methodology used for the projections); and

(b) a detailed description of all circumstances and conditions under which the aircraft will be utilized including the number of hours the aircraft will be flown for each of these ~~circumstances; and~~ circumstances.

~~(c) if the proposal is for a rotary wing aircraft, existing rotary air ambulances based in the State are projected to be utilized at an average of no less than 60 patient requests per month per rotary aircraft measured during the fourth quarter of the first year after the operation of the new air ambulance [calculated as follows: (total projected number of patient requests in the fourth quarter of the first year after the operation of the new air ambulance by existing or approved rotary air ambulances based in the state) divided by (total number of existing or approved rotary air ambulances based in the state in the fourth quarter of the first year after the operation of the new air ambulance) divided by (three)] (the applicant shall document the assumptions and provide data supporting the methodology used for the projections); and~~

~~(d) if the proposal is for a fixed wing air ambulance, the utilization of existing fixed wing air ambulances based in the State are not projected to fall below an average 60% of capacity transporting patients measured during the fourth quarter of thefirst year after the operation of the new air ambulance [calculated as follows: (total projected utilized capacity transporting patients in the fourth quarter of the first year after the operation of the new air ambulance of existing or approved fixed wing air ambulances based in the state) divided by (total potential capacity of existing or approved fixed wing air ambulances based in the state in the fourth quarter of the first year after the operation of the new air ambulance) times (100)] (the applicant shall document the assumptions and provide data supporting the methodology used for the projections).~~

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

Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1994;
Temporary Amendment Eff. May 15, 2002.

10 NCAC 03R .3304 REQUIRED SUPPORT SERVICES/EQUIPMENT

~~(a) The applicant shall demonstrate that the following services or equipment shall be available on a 24 hour per day, seven day per week basis:~~

~~(1) two way voice radio licensed by the FCC that meets the capabilities outlined in 10 NCAC 03D;~~
~~(2) internal voice communication system as outlined in 10 NCAC 03D;~~
~~(3) aircraft and patient compartment that meet standards of 10 NCAC 03D; and~~
~~(4) equipment as outlined in 10 NCAC 03D.~~

~~(b) The applicant shall demonstrate that a community outreach and aircraft related accident prevention education program shall be provided on an ongoing basis.~~

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1994;
Temporary Repeal Eff. May 15, 2002.

10 NCAC 03R .3305 REQUIRED STAFFING AND STAFF TRAINING

(a) The applicant shall demonstrate that the following staff shall be available to provide air ambulance services:

~~(1) a North Carolina licensed physician who is designated as the medical director and who meets the requirements of 21 NCAC 32H;~~
~~(2) medical crew members trained in accordance with 10 NCAC 03D and available in accordance with 21 NCAC 32H;~~
~~(3) flight crew members to fly the aircraft in accordance with 10 NCAC 03D;~~
~~(4)~~(1) if applicable, personnel available as needed for transport of special care patients (e.g., neonatal, cardiac); and
~~(5)~~(2) personnel that are trained to operate the ground communication network.

(b) The applicant shall provide an organized program of staff education and training which is integral to the air ambulance service and ensures improvements in technique and the proper training of ~~personnel~~personnel. ~~including flight and medical crew members as required by 10 NCAC 03D and 21 NCAC 32H.~~

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1994;
Temporary Amendment Eff. May 15, 2002.

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Rule-making Agency: *DHHS – Division of Medical Assistance*

Rule Citation: *10 NCAC 26H .0212-.0213*

Effective Date: *May 15, 2002*

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

Authority for the rulemaking: *G.S. 108A-25(b); 108A-54; 108A-55(c); 42 C.F.R. 447, Subpart C; 42 C.F.R. 447.321*

Reason for Proposed Action: *These changes are necessary to ensure the continuing availability of an adequate level of services to Medicaid and uninsured persons.*

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 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

10 NCAC 26H .0212 EXCEPTIONS TO DRG REIMBURSEMENT

(a) Covered psychiatric and rehabilitation inpatient services provided in either specialty hospitals, Medicare recognized distinct part units (DPU), or other beds in general acute care hospitals shall be reimbursed on a per diem methodology.

(1) For the purposes of this Section, psychiatric inpatient services are defined as admissions where the primary reason for admission would result in the assignment of DRGs in the range 424 through 432 and 436 through 437.
For the purposes of this Section, rehabilitation inpatient services are defined as admissions where the primary reason for admissions would result in the assignment of DRG 462. All services provided by specialty rehabilitation hospitals are presumed to come under this definition.
(2) When a patient has a medically appropriate transfer from a medical or surgical bed to a psychiatric or rehabilitative distinct part unit within the same hospital, or to a specialty hospital the admission to the distinct part unit or the specialty hospital shall be recognized as a separate service which is eligible for reimbursement under the per diem methodology.
Transfers occurring within general hospitals from acute care services to non-DPU psychiatric or rehabilitation services are not eligible for reimbursement under this Section.

The entire hospital stay in these instances shall be reimbursed under the DRG methodology.

(3) The per diem rate for psychiatric services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing psychiatric services as derived from the most recent as filed cost reports.

(4) Hospitals that do not routinely provide psychiatric services shall have their rate set at the median rate.

(5) The per diem rate for rehabilitation services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing rehabilitation services as derived from the most recent filed cost reports.

(6) Rates established under this Paragraph are adjusted for inflation consistent with the methodology under Rule .0211 Subparagraph (d)(5) of this Section.

(b) To assure compliance with the separate upper payment limit for State-operated facilities, the hospitals operated by the Department of Health and Human Services and all the primary affiliated teaching hospitals for the University of North Carolina Medical Schools shall be reimbursed their reasonable costs in accordance with the provisions of the Medicare Provider Reimbursement Manual. This Manual referred to as, (HCFA Publication #15-1) is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC. Copies may be obtained from the U.S. Department of Commerce, National Technical Information Service, Subscription Department, 5285 Port Royal Road, Springfield, VA 22161 at a cost of one hundred ~~forty~~ seventy seven dollars ($177.00). ~~($147.00).~~ Purchasing instructions may be received by calling 1-800-363-2068 ~~(703) 487-4650~~. Updates are available for an additional fee. The Division shall utilize the DRG methodology to make interim payments to providers covered under this Paragraph, setting the hospital unit value at a level which can best be expected to approximate reasonable cost. Interim payments made under the DRG methodology to these providers shall be retrospectively settled to reasonable cost.

(c) When the Norplant contraceptive is inserted during an inpatient stay the current Medicaid fee schedule amount for the Norplant kit shall be paid in addition to DRG reimbursement. The additional payment for Norplant shall not be paid when a cost outlier or day outlier increment is applied to the base DRG payment.

(d) Hospitals operating Medicare approved graduate medical education programs shall receive a per diem rate adjustment which reflects the reasonable direct and indirect costs of operating these programs. The per diem rate adjustment shall be calculated in accordance with the provisions of Rule .0211 Paragraph (f) of this Section.

~~(e) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the 12 month period ending September 30, 2000 shall be entitled to an additional payment for inpatient and outpatient hospital services in an amount determined by the Director of the Division of Medical Assistance, subject to the following provisions:~~

~~(1) To ensure that the payments authorized by this Subparagraph for qualified public hospitals that qualify under the criteria in Part (A) of this Subparagraph, do not exceed the upper limits established by 42 C.F.R. 447.272 and 42 C.F.R. 447.321, the maximum payments authorized for qualified public hospitals shall be determined for all such qualified public hospitals for the 12-month period ending September 30, 1999 by calculating the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services; plus the reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs; less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:~~

~~(A) A qualified public hospital is a hospital that meets the other requirements of this Paragraph; and:~~

~~(i) was owned or operated by a State (or by an instrumentality or a unit of government within a State) from September 18 through and including September 30, 2000;~~

~~(ii) verified its status as a public hospital by certifying State, local, hospital district or authority government control on the most recent version of Form HCFA 1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services on or before September 18, 2000; and~~

~~(iii) files with the Division on or before September 18, 2000 by use of a form prescribed by the Division a certificate of public expenditures to support a portion of the non-federal share of the payment it shall receive pursuant to this Subparagraph. This provision shall not apply to qualified public hospitals that are also designated by North Carolina as Critical Access Hospitals pursuant to 42 USC 1395i-4.~~

(B) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.

(C) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.

(2) Qualified public hospitals shall receive a payment under this Paragraph in an amount (including the public expenditures certified to the Division by each hospital for the non-federal share) not to exceed each hospital's Medicaid Deficit.

(3) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the 12-months ending September 30, 2000 that are not qualified public hospitals as defined in this Paragraph shall be entitled to an additional payment under this Subparagraph for the Medicaid Deficit calculated in accordance with Subparagraph (1) of this Paragraph in an amount not to exceed the Medicaid Deficit.

(4) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services during the payment fiscal year 2000. Subject to availability of funds the Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on cost reports for fiscal year ending in 1999 filed before September 18, 2000 and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.

(5) To ensure that estimated payments pursuant to Subparagraph (4) of this Paragraph do not exceed the state aggregate upper limits to such payments established by applicable federal law and regulation (42 C.F.R. 447.272 and 42 C.F.R. 447.321), such payments shall be cost settled within twelve months of receipt of the completed cost reports covering the 12 month period ending September 30, 2000 or December 31, 2001, whichever date is earliest. There shall be separate a cost settlement procedure for inpatient and outpatient hospital services. In addition for both inpatient and outpatient hospital services, there shall be a separate aggregate cost settlement pool for qualified public hospitals that are owned or operated by the State, for qualified public hospitals that are owned or operated by an instrumentality or unit of government within a State and for hospitals qualified for payment under this Paragraph that are not qualified public hospitals. As to each of these separate cost settlement procedures, if it should be determined that aggregate payments under this Paragraph exceed aggregate upper limits for such payments, any hospital that received payments under this Paragraph in excess of unreimbursed reasonable costs as defined in this Paragraph shall promptly refund its proportionate share of aggregate payments in excess of aggregate upper limits. The proportionate share of each such hospital shall be ascertained by calculating for each such hospital its percentage share of all payments to all members of the cost settlement group that are in excess of unreimbursed reasonable costs, and multiplying that percentage times the amount by which aggregate payments being cost settled exceed aggregate upper limits applicable to such payments. No additional payments shall be made in connection with these cost settlements.

(6) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

(e) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the fiscal years ending September 30, 2000 and thereafter shall be entitled to a lump sum payment for the period from September 18, 2000 through September 30, 2000, and lump sum payments for subsequent fiscal years calculated and paid no less frequently than annually and no more frequently than quarterly for inpatient and outpatient hospital services in amounts or percentages determined by the Director of the Division of Medical Assistance, for periods preceding or following the payment date subject to the provisions of Subparagraphs (1) through (7) of this Paragraph.

(1) To ensure that the payments authorized by this Paragraph do not exceed the applicable upper limits, such payments (when added to Medicaid payments received or to be received for these services) shall not exceed for the 12-month period ending September 30th of the year for which payments are made the applicable percentage of:

(A) The reasonable cost of inpatient and outpatient hospital Medicaid services; plus

(B) The reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs.

(2) For purposes of this Paragraph the phrase "applicable percentage" refers to the upper payment limit as a percentage of reasonable

costs established by 42 C.F.R. 447.272 and 42 C.F.R. 447.321 for different categories of hospitals.

(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.

(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.

(3) Qualified public hospitals shall receive payments under this Paragraph in amounts (including the expenditures described in Subpart (A)(iii) of this Subparagraph not to exceed the applicable percentage of each hospital's Medicaid costs for the 12-month period ending September 30th of the fiscal year for which such payments are made, less any Medicaid payments received or to be received for these services.

(A) A qualified public hospital is a hospital that meets the other requirements of this Paragraph; and

(i) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments are made;

(ii) Verified its status as a public hospital by certifying State, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U. S. Department of Health and Human Services at least 30 days prior to the date of any such payment that remains valid as of the date of any such payment; and

(iii) Files with the Division on or before 10 working days prior to the date of any such payment by use of a form prescribed by the Division certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b). This provision shall not apply to qualified public hospitals that are also designated by North Carolina as Critical Access Hospitals pursuant to 42 USC 1395i-4.

(4) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the fiscal years ending September 30, 2000 and thereafter that are not qualified public hospitals as defined in this Paragraph shall be entitled to lump sum payments in amounts that do not exceed the applicable percentage of each hospital's Medicaid costs (calculated in accordance with Subparagraph (1) of this Paragraph) for the 12 month period ending September 30th of the fiscal year for which such payments are made less any Medicaid payments received or to be received for these services.

(5) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.

(6) To ensure that estimated payments pursuant to Subparagraph (5) of this Paragraph do not exceed the aggregate upper limits to such payments established by applicable federal law and regulation (42 C.F.R. 447.272 and 42 C.F.R. 447.321), such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost reports for the period for which payments are made. There shall be a separate cost settlement procedure for inpatient and outpatient hospital services. In addition for both inpatient and outpatient hospital services, there shall be a separate aggregate cost settlement pool for qualified public hospitals that are owned or operated by the State, for qualified public hospitals that are owned or operated by an instrumentally or unit of government within a State and for hospitals qualified for payment under this Paragraph that are not qualified public hospitals. As to each of these separate cost settlement procedures, if it is determined that aggregate payments under this Paragraph exceed aggregate upper limits for such payments, any hospital that received payments under this Paragraph in excess of unreimbursed reasonable costs as defined in this Paragraph

shall promptly refund its proportionate share of aggregate payments in excess of aggregate upper limits. The proportionate share of each such hospital shall be ascertained by calculating for each such hospital its percentage share of all payments to all members of the cost settlement group that are in excess of unreimbursed reasonable costs, and multiplying that percentage times the amount by which aggregate payments being cost settled exceed aggregate upper limits applicable to such payments. No additional payment shall be made in connection with the cost settlement.

(7) The payments authorized under this Paragraph shall be effective in accordance with G.S. 108A-55(c).

~~(f) Subject to the availability of funds, hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for any fiscal year ending September 30, commencing with September 30, 2000 that are not qualified public hospitals as defined in Subparagraph (e)(1)(A) of this Paragraph; that operate Medicare approved graduate medical education programs and reported Medicaid costs attributable to such programs to the Division on cost reports for fiscal years ending in 1995 through 1999; and that incur for the 12-month period ending September 30, 1999 unreimbursed costs for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars ($2,500,000) shall be eligible for a lump sum payment subject to the following provisions:~~

~~(1) Qualification for any 12-month period ending September 30 shall be based on cost report data and uninsured patient data certified to the Division by hospitals on or before September 1 of each year, for the fiscal year ending in the preceding calendar year.~~

~~(2) To ensure that the payments authorized by this Paragraph for any fiscal year do not exceed the upper limits established by 42 C.F.R. 447.272 and 42 C.F.R.447.321:~~

~~(i) Subject to the limitations in Subparagraph (5),of this Paragraph, the lump sum payment shall be the reasonable cost of inpatient and outpatient hospital Medicaid services; plus~~

~~(ii) The reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs, less Medicaid payments received or to be received for these services.~~

~~(3) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.~~

~~(4) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received, but shall include all Medicaid payments received other than disproportionate share hospital payments, calculated after any payments made pursuant to Paragraph (e) of this Rule.~~

~~(5) Under no circumstances shall the payment authorized by this Paragraph exceed a percentage of the Hospital's unreimbursed cost for providing services to uninsured patients determined by the Division under Paragraph (e) of Rule .0213.~~

~~(6) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for Medicaid inpatient and outpatient services during the fiscal year to which the payment relates. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid inpatient and outpatient services as reported on cost reports for fiscal years ending during the calendar year preceding the year to which the payment relates filed before September 1 of the year to which the payment relates, and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.~~

~~(7) To ensure that estimated payments pursuant to Subparagraph (6) of this Paragraph do not exceed the state aggregate upper limit to such payments established by applicable federal law and regulation (42 C.F.R. 447.272 and 447.321), such payments shall be cost settled within 12 months of receipt of the completed cost report for the year for which such payments were made. The cost settlement shall be as described in Subparagraph (e)(5) of this Rule.~~

~~(8) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).~~

(f) Subject to availability of funds, hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the fiscal years ending September 30th and thereafter, that are not qualified public hospitals as defined in Part (e)(3)(A) of this Rule; that operate Medicare approved graduate medical education programs and reported on cost reports filed with the Division of Medical Assistance Medicaid costs attributable to such programs; and that incur unreimbursed costs for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars ($2,500,000) shall be eligible for a lump sum payment for the period from September 18, 2000 through September 30, 2000, and lump sum payments for subsequent fiscal years calculated and paid no less frequently than annually

and no more frequently than quarterly in amounts or percentages determined by the Director of the Division of Medical Assistance, for periods preceding or following the payment date subject to the provisions of Subparagraphs (1) through (7) of this Paragraph.

(1) Qualification for 12-month periods ending September 30th of each year shall be based on the most recent cost report data and uninsured patient data filed with and certified to the Division by hospitals at least 60 days prior to the date of any payment under this Paragraph.

(2) To ensure that the payments authorized by this Paragraph do not exceed the applicable upper limits, such payments (when added to Medicaid payments received or to be received for these services) shall not exceed for the 12-month period ending September 30th of the year for which payments are made the applicable percentage of:

(A) The reasonable cost of inpatient and outpatient hospital Medicaid Services; plus

(B) The reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs.

(3) For purposes of this Paragraph the phrase "applicable percentage" refers to the upper payment limit as a percentage of reasonable costs established by 42 C.F.R. 447.272 and 42 C.F.R. 447.321 for different categories of hospitals.

(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.

(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received, but shall include all Medicaid payments received other than disproportionate share hospital payments, calculated after any payments made pursuant to Paragraph (e) of this Rule.

(4) Under no circumstances shall the payment authorized by this Paragraph exceed a percentage of the hospital's unreimbursed cost for providing services to uninsured patients determined by the Division under Paragraph (e) of Rule .0213 of this Section.

(5) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for Medicaid services during the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid inpatient and outpatient services as reported on the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.

(6) To ensure that estimated payments pursuant to Subparagraph (5) of this Paragraph do not exceed the aggregate upper limit to such payments established by applicable federal law and regulation (42 C.F.R. 447.272 and 42 C.F.R. 447.321), such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost reports for the period for which such payments were made. The cost settlement shall be as described in Subparagraph (e)(6) of this Rule.

(7) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55(c); 42 C.F.R. 447, Subpart C; 42 C.F.R. 447.321;
Eff. February 1, 1995;
Filed as a Temporary Amendment Eff. September 15, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
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Temporary Amendment Eff. September 16, 1998;
Temporary Amendment Expired on June 13, 1999;
Temporary Amendment Eff. September 22, 1999;
Temporary Amendment Expired on July 11, 2000;
Temporary Amendment Eff. June 13, 2001; September 18, 2000;
Temporary Amendment Eff. May 15, 2002.

10 NCAC 26H .0213 DISPROPORTIONATE SHARE HOSPITALS (DSH)

(a) Hospitals that serve a disproportionate share of low-income patients and have Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance (Division) on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective July 1 of any particular year are based on each hospital's fiscal year ending in the

preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

(1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and

(2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or

(3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:

(A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and

(B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges; or

(4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or

(5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50 percent of the total Medicaid patient days provided by all hospitals in the State; or

(6) It is a Psychiatric hospital operated by the North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) or UNC Hospitals operated by the University of North Carolina.

(b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.

(c) An additional one time payment for the 12-month period ending September 30th, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the Public hospitals that are the primary affiliated teaching hospitals for the University of North Carolina Medical Schools less payments made under authority of Paragraph (d) of this Rule. The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to this payment require that when this payment is added to other Disproportionate Share Hospital payments, the additional disproportionate share payment will not exceed 100 percent of the total cost of providing inpatient and outpatient services to Medicaid and uninsured patients less all payments received for services provided to Medicaid and uninsured patients. The total of all payments ~~may~~ shall not exceed the limits on DSH funding as set for the State by HCFA.

(d) Effective July 1, 1994, hospitals eligible under Subparagraph (a)(6) of this Rule shall be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstances specified in Subparagraphs (1), (2) and (3) of this Paragraph.

(1) An eligible hospital ~~will~~ shall receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.

(2) This payment shall be in addition to the disproportionate share payments made in accordance with Subparagraphs (a)(1) through (5) of this Rule. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraphs (a)(1) through (5) of this Rule.

(3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (5) of this Rule divided by three. In Subparagraph (d)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided. Low income persons include those persons that have been determined eligible for medical assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made. Disproportionate share payments to hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923(g), limit on amount of payment to hospitals.

(e) Subject to the availability of funds, hospitals that: qualify as disproportionate share hospitals under Subparagraphs (a)(1) through (a)(5) of this Rule for the fiscal years ended September 30th, 1995, through 2000; operate Medicare approved graduate medical education programs and reported Medicaid costs attributable to such programs to the Division on cost reports for fiscal years ending in 1995, through 2000; and incur for the 12-month period ending September 30th, 2000 unreimbursed costs (calculated without regard to payments under either this Paragraph or Paragraph (f) of this Rule) for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars ($2,500,000); and meet the definition of qualified public hospital set forth in Subparagraph (f)(6) of this Rule shall be eligible for disproportionate share payments for such services from a disproportionate share pool under the circumstances specified in Subparagraphs (1) through (8) of this Paragraph.

(1) Qualification for the 12-month period ending September 30th, 1996 shall be based on cost report data and uninsured patient data certified to the Division by hospitals on or before September 23, 1996 for fiscal years ending in 1995, in connection with the disproportionate share hospital application process. Qualification for subsequent 12-month periods ending September 30th of each year shall be based on cost report data and uninsured patient data certified to the Division by hospitals on or before September 1 of each subsequent year, for the fiscal year ending in the preceding calendar year.

(2) Any payments made pursuant to this Paragraph shall be calculated and paid no less frequently than annually, and prior to the calculation and payment of any disproportionate share payments pursuant to Paragraph (f) of this Rule.

(3) For the 12-month period ending September 30th, 1996 a payment shall be made to each qualified hospital in an amount determined by the Director of the Division of Medical Assistance based on a percentage (not to exceed a maximum of 23 percent) of the unreimbursed costs incurred by each qualified hospital for inpatient and outpatient services provided to uninsured patients.

(4) In subsequent 12-month periods ending September 30thth of each year, the percentage payment shall be ascertained and established by the Division by ascertaining funds available for payments pursuant to this Paragraph divided by the total unreimbursed costs of all hospitals that qualify for payments under this Paragraph for providing inpatient and outpatient services to uninsured patients.

(5) The payment limits of the Social Security Act, Title XIX, section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital specific basis that when this payment is added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed 100 percent of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients. The total of all disproportionate share hospital payments shall not exceed the limits on disproportionate share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f).

(6) For purposes of this Paragraph, a qualified public hospital is a hospital that: qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (a)(5) of this Plan; does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this plan; was owned or operated by a State (or by an instrumentality or a unit of government within a State) as of September 1 through and including September 30th, of the year for which payments under this paragraph are being ascertained; verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services on or before September 1 of the year for which payments under this Paragraph are being ascertained; files with the Division on or before September 1 of the year for which payments under this paragraph are being ascertained by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients during the fiscal year ending in the calendar year preceding the fiscal year for which payments under this paragraph are being ascertained; and submits to the Division on or before September 1 of the year for which payments under this paragraph are being ascertained by use of a form prescribed by the Division a certificate of public expenditures.

(7) To ensure that the estimated payments pursuant to Paragraph (e) do not exceed the State aggregate upper limits to such payments established by applicable federal law and regulation, described in Subparagraph (f)(5) of this Rule such payments shall be cost settled within 12 months of receipt of the completed cost report covering the period for which such payments are made. If any hospital receives payments, pursuant to this Subparagraph in excess of the percentage established by the Director under Subparagraph (e)(3) or (e)(4) of this Rule, ascertained without regard to other disproportionate share hospital payments that

~~may have been received for services during the 12-month period for which such payments were made, such excess payments shall promptly be refunded to the Division. No additional payment shall be made to qualified hospitals in connection with the cost settlement.~~

~~(8) The payments authorized by Subparagraph (6) shall be effective in accordance with G.S. 108A-55(c).~~

(e) Subject to the availability of funds, hospitals licensed by the State of North Carolina shall be eligible for disproportionate share payments for such services from a disproportionate share pool under the following conditions and circumstances:

(1) For purposes of this Paragraph eligible hospitals are hospitals that for the fiscal year for which payments are being made and either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or for such earlier period as may be determined by the Director:

(A) Qualify as disproportionate share hospitals under Subparagraphs (a)(1) through (a)(5) of this Rule;

(B) Operate Medicare approved graduate medical education programs and reported on cost reports filed with the Division of Medical Assistance Medicaid costs attributable to such programs;

(C) Incur unreimbursed costs (calculated without regard to payments under either this Paragraph or Paragraph (f) of this Rule) for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars ($2,500,000); and

(D) Meet the definition of qualified public hospitals set forth in Subparagraph (7) of this Paragraph;

(2) Qualification for 12-month periods ending September 30th of each year shall be based on the most recent cost report data and uninsured patient data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph;

(3) Payments made pursuant to this Paragraph shall be calculated and paid no less frequently than annually, and prior to the calculation and payment of any disproportionate share payments pursuant to Paragraph (f) of this Rule, and may cover periods within the fiscal year preceding or following the payment date;

(4) For the 12-month period ending September 30, 1996 a payment shall be made to each qualified hospital in an amount determined by the Director of the Division of Medical Assistance based on a percentage (not to exceed a maximum of 23 percent) of the unreimbursed costs incurred by each qualified hospital for inpatient and outpatient services provided to uninsured patients;

(5) In subsequent 12-month periods ending September 30thth of each year, the percentage payment shall be ascertained and established by the Division by ascertaining funds available for payments pursuant to this Paragraph divided by the total unreimbursed costs of all hospitals that qualify for payments under this Paragraph for providing inpatient and outpatient services to uninsured patients;

(6) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when this payment is added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients. The total of all disproportionate share hospital payments shall not exceed the limits on disproportionate share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f);

(7) For purposes of this Paragraph, a qualified public hospital is a hospital that:

(A) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (a)(5) of this Rule;

(B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;

(C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;

(D) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payments;

(E) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a

certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as shall be determined by the Director; and

(F) Submits to the Division on or before 10 working days prior to the date any such payments under this Paragraph by use of a form prescribed by the Division a certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b);

(8) To ensure that the estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments established by applicable federal law and regulation described in Subparagraph (6) of this Paragraph, such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. If any hospital received payments pursuant to this Paragraph in excess of the percentage established by the Director under Subparagraph (4) or (5) of this Paragraph, ascertained without regard to other disproportionate share hospital payments that may have been received for services during the 12 month period ending September 30th for which such payments were made, such excess payments shall promptly be refunded to the Division. No additional payment shall be made to qualified hospitals in connection with the cost settlement; and

(9) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

~~(f) An additional one time disproportionate share hospital payment during the 12 month period ending September 30th, 2000 (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to qualified public hospitals. For purposes of this Paragraph, a qualified public hospital is a hospital that qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (5) of this Rule; does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule; was owned or operated by a State (or by an instrumentality or a unit of government within a State) from September 18, 2000 through and including September 30th, 2000 verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA 1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services on or before September 18, 2000; files with the Division on or before September 18, 2000, by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients during the fiscal year ending in 1999 and submits to the Division on or before September 18, 2000 by use of a form prescribed by the Division a certificate of public expenditures.~~

~~(1) The payment to qualified public hospitals pursuant to this Paragraph for the 12-month period ending September 30th, 2000 shall be based on and shall not exceed the unreimbursed charges certified to the Division by each such hospital by use of a form prescribed by the Division for inpatient and outpatient services provided to uninsured patients for the fiscal year ending in 1999, to be converted by the Division to unreimbursed cost by multiplying unreimbursed charges times the cost to charge ratio established by the Division for each hospital for the fiscal year ending in 1999. Payments authorized by this Paragraph shall be made no less frequently than annually.~~

~~(2) Any payments pursuant to this Paragraph shall be ascertained, paid and cost settled after any disproportionate share hospital payments that may have been or may be paid by the Division pursuant to Paragraphs (d) and (e) of this Rule.~~

~~(3) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to this payment require on a hospital specific basis that when this payment is added to other disproportionate share hospital payments, the total disproportionate share hospital payments will not exceed 100 percent of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division may not exceed the limits on disproportionate share hospital funding as established for this State by HCFA in accordance with the Social Security, Title XIX, Section 1923(f) for the fiscal year in which such payments are made.~~

~~(4) To ensure that estimated payments pursuant to Paragraph (f) do not exceed the upper limits to such payments established by applicable federal law and regulation described in the preceding Subparagraph, such payments shall be cost settled within 12 months of receipt of the completed cost report covering the 12 month period for which such payments are made. The federal portion of any payments in excess of either of the upper limits described in Subparagraph (f)(3) of this Rule will be promptly repaid. Subject to the availability of funds, and to the upper limits described in Subparagraph (f)(3) of this Rule, additional payments shall be made as part of the cost settlement process to hospitals qualified for payment under this Paragraph in an amount not to exceed the hospital specific upper limit for each such hospital.~~

~~(5) The payments authorized by Paragraph (f) of this Rule shall be effective in accordance with G.S. 108A-55(c).~~

(f) Additional disproportionate share hospital payments for the 12 month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to qualified public hospitals licensed by the State of North Carolina. For purposes of this Paragraph, a qualified public hospital is a hospital that:

(1) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (a)(5) of this Rule;

(2) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;

(3) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;

(4) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payment;

(5) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director; and

(6) Submits to the Division on or before 10 working days prior to the date of any such payment under this Paragraph by use of a form prescribed by the Division a certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b).

(A) The payments to qualified public hospitals pursuant to this Paragraph for any given period shall be based on and shall not exceed the unreimbursed charges certified to the Division by each such hospital by use of a form prescribed by the Division for inpatient and outpatient services provided to uninsured patients either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or for such earlier period as may be determined by the Director, to be converted by the Division to unreimbursed cost by multiplying unreimbursed charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. Payments authorized by this Paragraph shall be made no more frequently than quarterly or less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.

(B) Any payments pursuant to this Paragraph shall be ascertained, paid and cost settled after any other disproportionate share hospital payments that may have been or may be paid by the Division for the same fiscal year.

(C) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year in which such payments are made.

(D) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Part (C) of this Subparagraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. The federal portion of any payments in excess of either of the upper limits described in Part (C) of this Subparagraph will be promptly repaid. Subject to the availability of

funds, and to the upper limits described in Part (C) of this Subparagraph, additional payments shall be made as part of the cost settlement process to hospitals qualified for payment under this Paragraph in an amount not to exceed the hospital-specific upper limit for each such hospital.

(E) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55 (c).

(g) Effective with dates of payment beginning October 31, 1996, hospitals that provide services to clients of State Agencies are considered to be a Disproportionate Share Hospital (DSH) when the following conditions are met:

(1) The hospital has a Medicaid inpatient utilization rate not less than one percent and has met the requirements of Subparagraph (a)(1) of this Rule; and

(2) The State Agency has entered into a Memorandum of Understanding (MOU) with the Division of Medical Assistance (Division); and

(3) The inpatient and outpatient services are authorized by the State Agency for which the uninsured client meets the program requirements.

(A) For purposes of this Paragraph, uninsured patients are those clients of the State Agency that have no third parties responsible for any hospital services authorized by the State Agency.

(B) DSH payments are paid for services to qualified uninsured clients on the following basis:

(i) For inpatient services the amount of the DSH payment is determined by the State Agency in accordance with the applicable Medicaid inpatient payment methodology as stated in Rule .0211 of this Section.

(ii) For outpatient services the amount of the DSH payment is determined by the State Agency in accordance with the applicable Medicaid outpatient payment methodology as stated in Section 24 of Chapter 18 of the 1996 General Assembly of North Carolina.

(iii) No federal funds are utilized as the non-federal share of authorized payments unless the federal funding is specifically authorized by the federal funding agency as eligible for use as the non-federal share of payments.

(C) Based upon this subsection DSH payments as submitted by the State Agency ~~are to~~ shall be paid monthly in an amount to be reviewed and approved by the Division of Medical Assistance. The total of all payments ~~may~~ shall not exceed the limits on Disproportionate Share Hospital funding as set forth for the state by HCFA.

~~(h) An additional disproportionate share hospital payment during the 12 month period ending September 30th, 2000 (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to Hospitals that qualify for disproportionate share hospital status under Subparagraph (a)(1) through (5) of this Rule and provide inpatient or outpatient hospital services to Medicaid Health Maintenance Organizations ("HMO") enrollees during the year ending September 30th, 2000. For purposes of this Paragraph, a Medicaid HMO enrollee is a Medicaid beneficiary who receives Medicaid services through a Medicaid HMO; a Medicaid HMO is a Medicaid managed care organization, as defined in Section 1903 (m)(1)(A), that is licensed as a HMO and provides or arranges for services for enrollees under a contract pursuant to Section 1903 (m)(2)(A)(i) through (xi). To qualify for a DSH payment under this Paragraph, a hospital must also file with the Division on or before September 18, 2000 by use of a form prescribed by the Division a certification of its charges for inpatient and outpatient services provided to Medicaid HMO enrollees during the fiscal year ending in 1999. The payment to qualified hospitals pursuant to this Paragraph for the 12 month period ending September 30th, 2000 shall be based on charges certified to the Division by each hospital by use of a form prescribed by the Division for inpatient and outpatient Medicaid HMO services for the fiscal year ending in 1999, converted by the Division to cost by multiplying charges times the cost to charge ratio established by the Division for each hospital for the fiscal year ending in 1999.~~

~~(1) The payment shall then be determined by multiplying the cost times a percentage determined annually by the Division. The payment percentage established by the Division will be calculated to ensure that the Medicaid HMO DSH payment authorized by this Paragraph is equivalent (as a percentage of reasonable cost) to the Medicaid supplemental payment (calculated without regard to the certified public expenditures portion of such payment) authorized by Paragraph (e) of Rule 10 NCAC 26H .0212.~~

~~(2) The payment limits of the Social Security Act, Title XIX, Section 1923 (g)(1) applied to this payment require on a hospital specific basis that when this payment is added to other disproportionate share hospital payments, the total disproportionate share hospital payments will not exceed 100 percent of the total costs of providing inpatient and outpatient services~~

~~to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division may not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923 (f) for the fiscal year for which such payments are made.~~

~~(3) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in the preceding Subparagraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed cost report covering the 12 month period for which such payments are made. No additional payments shall be made in connection with the cost settlement.~~

~~(4) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55 (c).~~

(h) Additional disproportionate share hospital payments for the 12 month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals licensed by the State of North Carolina that qualify for disproportionate share hospital status under Subparagraph (a)(1) through (a)(5) of this Rule and provide inpatient or outpatient hospital services to Medicaid Health Maintenance Organization (HMO) enrollees during the period for which payments under this Paragraph are being ascertained.

(1) For purposes of this Paragraph, a Medicaid HMO enrollee is a Medicaid beneficiary who receives Medicaid services through a Medicaid HMO. A Medicaid HMO is a Medicaid managed care organization, as defined in the Social Security Act, Title XIX, Section 1903(m)(1)(A), that is licensed as an HMO and provides or arranges for services for enrollees under a contract pursuant to the Social Security Act, Title XIX, Section 1903 (m)(2)(A)(i) through (xi).

(2) To qualify for a DSH payment under this Paragraph, a hospital shall also file with the Division at least 10 working days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its charges for inpatient and outpatient services provided to Medicaid HMO enrollees either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director.

(A) The payments to qualified hospitals pursuant to this Paragraph for any given period shall be based on charges certified to the Division by each hospital by use of a form prescribed by the Division for inpatient and outpatient Medicaid HMO services either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director to be converted by the Division to cost by multiplying charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. The payment shall then be determined by multiplying the cost times a percentage determined annually by the Division. The payment percentage established by the Division shall be calculated to ensure that the Medicaid HMO DSH payment authorized by this Paragraph is equivalent as a percentage of reasonable cost to the Medicaid Supplemental payment (calculated without regard to the certified public expenditures portion of such payment) authorized by Paragraph (e) of Rule .0212 of this Section. Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.

(B) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section

1923(f) for the fiscal year in which such payments are made.

(C) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Part B of this Subparagraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with the cost settlement.

(D) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

~~(i) An additional disproportionate share hospital payment during the twelve month period ending September 30th, 2000 (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to large free-standing inpatient rehabilitation hospitals that are qualified public hospitals. For purposes of this Paragraph, a large free-standing inpatient rehabilitation hospital is a hospital licensed for more than 100 rehabilitation beds. For purposes of this Paragraph, a qualified public hospital is a hospital that: either qualifies for disproportionate share hospital status under Subparagraph (a)(1) of this Rule or did not offer nonemergency obstetric services to the general population as of December 21,1987; qualifies for disproportionate share hospital status under Subparagraphs (a)(2) through (a)(5) of this Rule; does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule; was owned or operated by a State (or by an instrumentality or a unit of government within a State) from September 18, 2000 through and including September 30th, 2000, and verifies its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA 1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services on or before September 18, 2000.~~

~~(1) The payment to qualified public hospitals pursuant to this Paragraph for the twelve month period ending September 30th, 2000 shall be based on and shall not exceed the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:~~

~~(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule 10 NCAC 26H .0212;~~

~~(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.~~

~~(2) The disproportionate share hospital payments to qualified public hospitals shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services during the payment fiscal year 2000. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on cost reports for the fiscal year ending in 1999 and filed before September 18, 2000 and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.~~

~~(3) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to this payment require on a hospital specific basis that when this payment is added to other disproportionate share hospital payments, the total disproportionate share hospital payments will not exceed 100 percent of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year forwhich such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division may not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year for which such payments are made.~~

~~(4) To ensure that estimated payments pursuant to this paragraph do not exceed the upper limits to such payments described in the preceding Subparagraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed cost report covering the 12 month period for which such payments are made. No additional payments shall be made in connection with the cost settlement.~~

~~(5) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A 55(c).~~

(i) Additional disproportionate share hospital payments for the 12 month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to large free-standing inpatient rehabilitation hospitals that are qualified public hospitals licensed by the State of North Carolina.

(1) For purposes of this Paragraph a large free-standing inpatient rehabilitation hospital is a

hospital licensed for more than 100 rehabilitation beds.

(2) For purposes of this Paragraph a qualified public hospital is a hospital that:

(A) Qualifies for disproportionate share hospital status under Subparagraph (a)(1) through (a)(5) of this Rule;

(B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;

(C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained; and

(D) Verifies its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Paragraph that is still valid as of the date of any such payment.

Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.

(3) Payments authorized by this Paragraph for any given period shall be based on and shall not exceed for the 12-month period ending September 30th of the year for which payments are made the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:

(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule.0212 of this Section; and

(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.

(4) The disproportionate share hospital payments to qualified public hospitals shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by an analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.

(5) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year for which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on DSH funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year for which such payments are made.

(6) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph (3) of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with the cost settlement.

(7) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

~~(j) An additional disproportionate share hospital payment for any fiscal year ending September 30th, commencing with September 30th, 2000 (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals that: are designated as critical access hospitals under 42 U.S.C. 1395i-4 for the fiscal year to which such payment relates; incurred for the 12-month period ending September 30th of the fiscal year to which such payments relate unreimbursed costs for providing inpatient and outpatient services to Medicaid patients; and qualify as a disproportionate share hospital under the minimum requirements specified by 42 U.S.C. 1396r-4(d).~~

~~(1) Qualification for any 12-month period ending September 30th shall be based on cost report data and uninsured patient data certified to the Division by qualified hospitals on or before~~

~~September 1 of each year, for the fiscal year ending in the preceding calendar year.~~

~~(2) Payments made pursuant to this Paragraph shall be calculated and paid annually after the calculation and payment of all other Medicaid payments of any kind to which a hospital may be entitled for any fiscal year.~~

~~(3) The payment to qualified hospitals under this Paragraph for any fiscal year shall be based on and shall not exceed the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:~~

~~(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule .0212.~~

~~(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.~~

~~(C) The disproportionate share hospital payments to qualified hospitals pursuant to this Paragraph shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services during the fiscal year to which the payment relates. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on cost reports for fiscal years ending during the calendar year preceding the year to which the payment relates filed before September 1 of the year to which the payment relates, and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.~~

~~(D) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital specific basis that when this payment is added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed 100% of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year for which such payments are made, less all payments received for services to Medicaid and uninsured patients. The total of all disproportionate share hospital payments shall not exceed the limits on disproportionate share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year for which such payments are made.~~

~~(E) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments established by applicable federal law and regulation described in the preceding Subparagraph, such payments shall be cost settled within 12 months of receipt of the completed cost report covering the period for which such payments are made. No additional payments shall be made in connection with such cost settlement.~~

~~(F) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).~~

(j) Additional disproportionate share hospital payments for the 12-month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals licensed by the State of North Carolina that are designated as critical access hospitals under 42 U.S.C. 1395i-4 for the period to which such payment relates; incurred for the 12-month period ending September 30th of the fiscal year to which such payments relate unreimbursed costs for providing inpatient and outpatient services to Medicaid patients; and qualify as a disproportionate share hospital under the minimum requirements specified by 42 U.S.C. 1396r-4(d).

(1) Qualification for 12-month periods ending September 30th shall be based on the most recent cost report data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph.

(2) Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually, may cover periods within the fiscal year preceding or following the payment date, and shall be calculated, paid and cost settled after any other Medicaid payments of any kind to which a hospital may be entitled for the same fiscal year.

(3) Payments to qualified hospitals under this Paragraph for any period shall be based on and shall not exceed the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be

calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:

(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule .0212 of this Section;

(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received;

(C) The disproportionate share hospital payments to qualified hospitals pursuant to this Paragraph shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which the payment relates. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made, and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant;

(D) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on DSH hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923 (f) for the fiscal year in which such payments are made;

(E) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Part D of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with such cost settlement; and

(F) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C;
Eff. February 1, 1995;
Amended Eff. July 1, 1995;
Filed as a Temporary Amendment Eff. September 15, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Filed as a Temporary Amendment Eff. September 29, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 1, 1996;
Temporary Amendment Eff. September 25, 1996;
Temporary Amendment Eff. April 15, 1997;
Temporary Amendment Eff. September 30th, 1997;
Temporary Amendment Eff. September 16, 1998;
Temporary Amendment Expired on June 13, 1999;
Temporary Amendment Eff. September 22, 1999;
Temporary Amendment Expired on July 11, 2000;
Temporary Amendment Eff. September 21, 2000;
Temporary Amendment Eff. June 2, 2001;
Temporary Amendment Eff. May 15, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 68 - CERTIFICATION BOARD FOR SUBSTANCE ABUSE PROFESSIONALS

Rule-making Agency: *NC Substance Abuse Professional Certification Board*

Rule Citation: *21 NCAC 68 .0216*

Effective Date: *May 15, 2002*

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

Authority for the rulemaking: *G.S. 90, Article 5C*

Reason for Proposed Action: *This Rule is necessary to provide a standard for background investigations of applicants as a part of the process of awarding certifications.*

Comment Procedures: *Written comments may be submitted to Jim Scarborough, Executive Director, NC Substance Abuse Professional Certification Board, PO Box 10126, Raleigh, NC 27605.*

SECTION .0200 – CERTIFICATION

21 NCAC 68 .0216 BACKGROUND INVESTIGATION

(a) Every applicant for registration or certification shall provide, at her or his expense, a global criminal history report when:

(1) An applicant has met all requirements for registration; or

(2) The applicant has met all requirements for certification; or

(3) The Board receives information indicating a possible conviction.

(b) If an applicant was registered more than one year earlier, an additional criminal history report is required when applying for certification.

(c) The applicant shall disclose and provide complete information regarding all misdemeanor and felony convictions. Failure to make full and accurate disclosure shall be grounds for immediate application denial, or other disciplinary action applicable to registration or certification.

(d) Applications with criminal histories from any jurisdiction shall be categorized according to the seriousness of the offense. The category shall be determined by the most serious offense, as defined by North Carolina law.

(e) These categories are as follows:

(1) Category I. The following crimes:
- (A) Homicide and attempted murder; or
- (B) Sexual assault, including but not limited to attempted sexual assault, rape, indecent liberties with a child, molestation, and sexual assault of a child;

(2) Category II. Crimes that primarily result in physical or emotional harm to others, including but not limited to:
- (A) Manslaughter;
- (B) Kidnapping or attempted kidnapping;
- (C) First degree arson;
- (D) Robbery or attempted robbery;
- (E) Assault (felony);
- (F) Larceny from person; and
- (G) Habitual DWI;

(3) Category III. Crimes that do not primarily result in physical or emotional harm to others, including but not limited to:
- (A) Any combination of three or more misdemeanors from Category IV;
- (B) Assault (misdemeanor);
- (C) Burglary;
- (D) Three or more DWIs;
- (E) Larceny (felony but not from the person);
- (F) Forgery (felony);
- (G) Possession of a controlled substance (felony);
- (H) Delivery of a controlled substance (felony);
- (I) Financial transaction card theft or fraud;
- (J) Unauthorized use of a motor vehicle;
- (K) Unlawfully carrying a weapon (felony or misdemeanor);
- (L) Burglary of a vehicle;
- (M) Falsification of government documentation (felony); and
- (N) Second degree arson;

(4) Category IV. Misdemeanors which do not result in physical or emotional harm to others. Three or more Category IV convictions (committed as separate incidents) shall be reclassified as a Category III offense. Category IV offenses include but are not limited to:
- (A) Two DWIs;
- (B) Possession of a controlled substance;
- (C) Injury or damage to property;
- (D) Resisting arrest;
- (E) Larceny;
- (F) Prostitution;
- (G) Criminal mischief;
- (H) Driving while license suspended or revoked; and
- (I) Falsification of government documents; and

(5) Category V. Three or more Category V convictions other than a DWI (committed as separate incidents) shall be reclassified as a Category IV offense. Category V offenses include but are not limited to:
- (A) One DWI;
- (B) Disorderly conduct;
- (C) Three or more bad checks; and
- (D) Intoxicated and disruptive in public.

(f) The Board shall determine if the conviction is directly related to the duties and responsibilities of a substance abuse professional. The Board shall consider the following factors:

(1) The nature and seriousness of the crime;

(2) The relationship of the crime to the purposes for requiring a registration or certification as a substance abuse professional;

(3) The extent to which a registration or certification might offer an opportunity to engage in further criminal activity of the same type; and

(4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a substance abuse professional.

(g) If the Board determines that the conviction does not relate to the duties and responsibilities of a substance abuse professional, the Board shall process the registration or certification application according to standard procedures.

(h) If the Board determines that the conviction does relate to the duties and responsibilities of a substance abuse professional, the Board shall evaluate the present fitness of the individual to provide substance abuse services.

(i) The Board shall use the following guidelines in evaluating an individual's present fitness:

(1) An applicant with a Category I conviction shall have at least 12 to 15 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category I conviction to be eligible for registration or certification;

(2) An applicant with a Category II conviction shall have at least 7 to 12 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category II conviction to be eligible for registration or certification;

(3) An applicant with a Category III conviction shall have at least three to seven years since the applicant has completed all aspects of his or her sentence received as a result of the last Category III conviction to be eligible for registration or certification;

(4) An applicant with a Category IV conviction shall have at least three years since the applicant has completed all aspects of his or her sentence received as a result of the last Category IV conviction to be eligible for registration or certification; and

(5) An applicant with a Category V conviction shall have at least one year since the applicant has completed all aspects of his or her sentence received as a result of the last Category V conviction to be eligible for registration or certification.

(j) The Board shall also consider the following factors in determining the present fitness of a person who has been convicted of a crime which relates to the duties and responsibilities of a substance abuse professional:

(1) The age at the time each crime was committed;

(2) The conduct and work history of the person before and after the criminal conviction;

(3) Evidence of the person's rehabilitation efforts and outcome;

(4) The extent and nature of the past criminal history;

(5) Two letters of recommendation from qualified credentialed counselors; and

(6) Other evidence of fitness that may be relevant to the Board's assessment, such as a psychological test, mental health status report, substance abuse assessment, etc.

(k) If the person's criminal activity is related to a history of chemical dependency, the Board shall also consider the person's efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency shall demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.

(l) An individual whose application is denied or whose registration is suspended or revoked may request a hearing under the procedure established in G.S. 90, Article 5C and G.S. 150B.

History Note: *Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.40; 90-113.41A; 90-113.44; Temporary Adoption Eff. May 15, 2002.*

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of March 21, 2002 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
02	NCAC	09G	.0101	16:12 NCR
02	NCAC	09L	.1101	16:11 NCR
02	NCAC	09L	.1102*	16:11 NCR
02	NCAC	09L	.1103	16:11 NCR
02	NCAC	09L	.1106	16:11 NCR
02	NCAC	09L	.1108-.1110	16:11 NCR
02	NCAC	39	.0101	16:12 NCR
02	NCAC	42	.0401*	16:12 NCR
02	NCAC	52B	.0212-.0213*	16:12 NCR
02	NCAC	52C	.0701	16:12 NCR
05	NCAC	02C	.0901	16:13 NCR
05	NCAC	02D	.0310	16:13 NCR
05	NCAC	02D	.0501	16:13 NCR
05	NCAC	02D	.0503	16:13 NCR
05	NCAC	02D	.0802	16:13 NCR
05	NCAC	02E	.0101-.0102	16:13 NCR
05	NCAC	02E	.0201	16:13 NCR
05	NCAC	02E	.0210	16:13 NCR
05	NCAC	02E	.0221	16:13 NCR
05	NCAC	02E	.0223	16:13 NCR
05	NCAC	02E	.0226-.0228	16:13 NCR
05	NCAC	02E	.0234	16:13 NCR
05	NCAC	02E	.0701	16:13 NCR
05	NCAC	02E	.1301	16:13 NCR
05	NCAC	02E	.1401-.1404	16:13 NCR
05	NCAC	02E	.1406	16:13 NCR
05	NCAC	02F	.0103	16:13 NCR
05	NCAC	02F	.0105-.0107	16:13 NCR
05	NCAC	02F	.0208	16:13 NCR
05	NCAC	02F	.0401-.0403	16:13 NCR
05	NCAC	02F	.0504	16:13 NCR
05	NCAC	02F	.0506	16:13 NCR
05	NCAC	02F	.1503-.1507	16:13 NCR
05	NCAC	02F	.2001	16:13 NCR
05	NCAC	02F	.2007	16:13 NCR
05	NCAC	02F	.2304	16:13 NCR
05	NCAC	02F	.2501	16:13 NCR
05	NCAC	02F	.2504	16:13 NCR
05	NCAC	02F	.2601-.2602	16:13 NCR
05	NCAC	02G	.0208	16:13 NCR
05	NCAC	02G	.0304	16:13 NCR
05	NCAC	02G	.0306	16:13 NCR
05	NCAC	02G	.0308-.0309	16:13 NCR
05	NCAC	02G	.0311-.0312	16:13 NCR
05	NCAC	02G	.0401	16:13 NCR

05	NCAC	02N	.0101-.0102	16:13 NCR
05	NCAC	02N	.0104-.0105	16:13 NCR
10	NCAC	14J	.0204-.0205*	16:04 NCR
10	NCAC	14J	.0207*	16:04 NCR
10	NCAC	14Q	.0303*	16:04 NCR
10	NCAC	14V	.0208	16:04 NCR
10	NCAC	14V	.0304	16:04 NCR
10	NCAC	14V	.0801-.0802	16:04 NCR
10	NCAC	14V	.0803*	16:04 NCR
10	NCAC	19A	.0601*	16:09 NCR
10	NCAC	19C	.0207*	16:09 NCR
10	NCAC	19C	.0209*	16:09 NCR
10	NCAC	19C	.0309*	16:09 NCR
10	NCAC	19C	.0311*	16:09 NCR
10	NCAC	19C	.0410*	16:09 NCR
10	NCAC	19C	.0504*	16:09 NCR
10	NCAC	19C	.0511*	16:09 NCR
10	NCAC	19C	.0607*	16:09 NCR
10	NCAC	19C	.0701-.0702*	16:09 NCR
10	NCAC	19C	.0704	16:09 NCR
10	NCAC	19G	.0105*	16:09 NCR
10	NCAC	19G	.0107*	16:09 NCR
10	NCAC	19G	.0805-.0806*	16:09 NCR
10	NCAC	19H	.0102	16:09 NCR
10	NCAC	19H	.0103*	16:09 NCR
10	NCAC	20A	.0102*	16:09 NCR
10	NCAC	20C	.0304*	16:09 NCR
10	NCAC	20C	.0314	16:09 NCR
10	NCAC	30	.0218	16:01 NCR
10	NCAC	35E	.0303*	16:08 NCR
10	NCAC	41F	.0401*	16:14 NCR
10	NCAC	41F	.0402-.0403	16:14 NCR
10	NCAC	41F	.0404*	16:14 NCR
10	NCAC	41F	.0405-.0407	16:14 NCR
10	NCAC	41F	.0501	16:14 NCR
10	NCAC	41F	.0703	16:14 NCR
10	NCAC	41F	.0707	16:14 NCR
10	NCAC	41F	.0801	16:14 NCR
10	NCAC	41F	.0803*	16:14 NCR
10	NCAC	41F	.0804	16:14 NCR
10	NCAC	41F	.0809-.0810*	16:14 NCR
10	NCAC	41F	.0813	16:14 NCR
10	NCAC	41N	.0101-.0102*	16:14 NCR
10	NCAC	41N	.0212-.0214	16:14 NCR
10	NCAC	41N	.0215*	16:14 NCR
10	NCAC	41N	.0216	16:14 NCR
10	NCAC	41N	.0217*	16:14 NCR
10	NCAC	41O	.0101-.0102	16:14 NCR
10	NCAC	41O	.0206	16:14 NCR
10	NCAC	41O	.0209	16:14 NCR
10	NCAC	42E	.0901*	16:08 NCR
10	NCAC	42E	.1103*	16:08 NCR
10	NCAC	42Z	.0502	16:08 NCR
10	NCAC	42Z	.0804	16:08 NCR
11	NCAC	05A	.0302*	not required [G.S. 150B-21.5(a)(3)], Eff. August 1, 2002
11	NCAC	08	.1401-.1403*	16:13 NCR
11	NCAC	08	.1404	16:13 NCR
11	NCAC	08	.1405-.1406*	16:13 NCR
11	NCAC	08	.1407-.1411	16:13 NCR
11	NCAC	08	.1412-.1415*	16:13 NCR
11	NCAC	08	.1416	16:13 NCR

11	NCAC	08	.1417*	16:13 NCR
11	NCAC	08	.1419-.1422	16:13 NCR
11	NCAC	08	.1423-.1424*	16:13 NCR
11	NCAC	08	.1425	16:13 NCR
11	NCAC	08	.1426*	16:13 NCR
11	NCAC	08	.1427-.1428	16:13 NCR
11	NCAC	08	.1429*	16:13 NCR
11	NCAC	08	.1430-.1431	16:13 NCR
11	NCAC	08	.1432*	16:13 NCR
11	NCAC	12	.0307*	16:13 NCR
11	NCAC	12	.1002*	16:13 NCR
11	NCAC	12	.1004*	16:13 NCR
11	NCAC	12	.1012*	not required (G.S. 150B-21.5(a)(3)), Eff. August 1, 2002
11	NCAC	12	.1013-.1015*	16:13 NCR
11	NCAC	12	.1017	16:13 NCR
11	NCAC	12	.1018*	16:13 NCR
11	NCAC	12	.1026-.1027*	16:13 NCR
11	NCAC	12	.1029*	16:13 NCR
12	NCAC	09D	.0101-.0103	16:11 NCR
12	NCAC	09D	.0104-.0105*	16:11 NCR
12	NCAC	09D	.0106	16:11 NCR
12	NCAC	10B	.0301*	16:08 NCR
12	NCAC	10B	.0305*	16:08 NCR
12	NCAC	10B	.0705*	16:08 NCR
12	NCAC	10B	.0706-.0708*	16:08 NCR
12	NCAC	10B	.0710-0712*	16:08 NCR
15A	NCAC	02B	.0302*	16:08 NCR
15A	NCAC	02B	.0304	16:02 NCR
15A	NCAC	02D	.0504*	16:12 NCR
15A	NCAC	02D	.0538*	16:12 NCR
15A	NCAC	02D	.0542*	16:12 NCR
15A	NCAC	02D	.0927*	16:12 NCR
15A	NCAC	02D	.0932*	16:12 NCR
15A	NCAC	02D	.1201-.1206*	16:12 NCR
15A	NCAC	02D	.1208*	16:12 NCR
15A	NCAC	02D	.1210*	16:12 NCR
15A	NCAC	02H	.0802-.0803*	16:08 NCR
15A	NCAC	02H	.0805*	16:08 NCR
15A	NCAC	02Q	.0104*	16:12 NCR
15A	NCAC	02Q	.0202*	16:12 NCR
15A	NCAC	02Q	.0702*	16:12 NCR
15A	NCAC	02S	.0102-.0103*	16:12 NCR
15A	NCAC	02S	.0201-.0202	16:12 NCR
15A	NCAC	02S	.0301-.0302	16:12 NCR
15A	NCAC	02S	.0401	16:12 NCR
15A	NCAC	07H	.0209*	16:01 NCR
15A	NCAC	07H	.0305*	16:12 NCR
15A	NCAC	07H	.1703*	16:13 NCR
15A	NCAC	07K	.0203	16:13 NCR
15A	NCAC	09C	.0401-.0402*	16:14 NCR
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15A	NCAC	09C	.0508	16:14 NCR
15A	NCAC	09C	.0511-.0512*	16:14 NCR
15A	NCAC	09C	.0515	16:14 NCR
15A	NCAC	09C	.0517*	16:14 NCR
15A	NCAC	09C	.0602	16:14 NCR
15A	NCAC	09C	.0606*	16:14 NCR
15A	NCAC	11	.0111	16:12 NCR
15A	NCAC	11	.0117*	16:12 NCR
15A	NCAC	11	.0321*	16:12 NCR
15A	NCAC	11	.1105*	16:12 NCR

15A	NCAC	11	.1405*	16:12 NCR
15A	NCAC	11	.1409	16:12 NCR
15A	NCAC	11	.1412	16:12 NCR
15A	NCAC	11	.1414-.1415*	16:12 NCR
15A	NCAC	11	.1419	16:12 NCR
15A	NCAC	11	.1422	16:12 NCR
15A	NCAC	11	.1423*	16:12 NCR
15A	NCAC	11	.1608	16:12 NCR
15A	NCAC	11	.1614*	16:12 NCR
15A	NCAC	11	.1625	16:12 NCR
15A	NCAC	11	.1627*	16:12 NCR
15A	NCAC	11	.1635	16:12 NCR
15A	NCAC	11	.1640*	16:12 NCR
16	NCAC	06D	.0101*	16:12 NCR, Eff. April 1, 2002
16	NCAC	06D	.0305*	16:12 NCR, Eff. April 1, 2002
16	NCAC	06G	.0305*	16:12 NCR, Eff. April 1, 2002
18	NCAC	05A	.0101-.0102	16:02 NCR
18	NCAC	05A	.0201-.0209	16:02 NCR
18	NCAC	05A	.0301-.0303	16:02 NCR
18	NCAC	05A	.0305-.0306	16:02 NCR
18	NCAC	05A	.0401-.0403	16:02 NCR
18	NCAC	05B	.0102	16:02 NCR
18	NCAC	05B	.0104*	16:02 NCR
18	NCAC	05B	.0201-.0205*	16:02 NCR
18	NCAC	05B	.0206-.0207	16:02 NCR
18	NCAC	05B	.0301-.0304*	16:02 NCR
18	NCAC	05B	.0305	16:02 NCR
18	NCAC	05B	.0306-.0307*	16:02 NCR
18	NCAC	05B	.0308	16:02 NCR
18	NCAC	05B	.0309*	16:02 NCR
18	NCAC	05B	.0311-.0312*	16:02 NCR
18	NCAC	05B	.0401*	16:02 NCR
18	NCAC	05B	.0403-.0409*	16:02 NCR
18	NCAC	05B	.0501-.0504*	16:02 NCR
18	NCAC	05B	.0505	16:02 NCR
18	NCAC	05B	.0601-.0602*	16:02 NCR
18	NCAC	05B	.0603	16:02 NCR
21	NCAC	01	.0301*	16:08 NCR
21	NCAC	12	.0204*	16:05 NCR
21	NCAC	16B	.0305*	16:10 NCR
21	NCAC	16C	.0305*	16:10 NCR
21	NCAC	16D	.0105*	16:10 NCR
21	NCAC	16E	.0104*	16:10 NCR
21	NCAC	16F	.0103	16:10 NCR
21	NCAC	16I	.0104*	16:10 NCR
21	NCAC	16I	.0107*	16:10 NCR
21	NCAC	16Q	.0203-.0205*	16:10 NCR
21	NCAC	16Q	.0303*	16:10 NCR
21	NCAC	16Q	.0401*	16:10 NCR
21	NCAC	16R	.0103*	16:10 NCR
21	NCAC	16Y	.0105*	16:10 NCR
21	NCAC	36	.0221*	not required [G.S. 150B-21.5(a)(2)], Eff. April 1, 2002
21	NCAC	36	.0310	16:13 NCR
21	NCAC	36	.0315	16:13 NCR
21	NCAC	36	.0322*	16:13 NCR
21	NCAC	36	.0325	16:13 NCR
21	NCAC	46	.1814*	16:05 NCR
21	NCAC	50	.0106	16:11 NCR
21	NCAC	50	.0301*	16:11 NCR
21	NCAC	50	.0304	16:11 NCR
21	NCAC	50	.0306*	16:11 NCR

21	NCAC	50	.0307-.0309	16:11 NCR
21	NCAC	50	.0409*	16:11 NCR
21	NCAC	50	.0411	16:11 NCR
21	NCAC	50	.0501*	16:11 NCR
21	NCAC	50	.0508	16:11 NCR
21	NCAC	50	.0511	16:11 NCR
21	NCAC	50	.1101-.1102*	16:11 NCR
21	NCAC	50	.1103-.1104	16:11 NCR
21	NCAC	58E	.0302*	16:08 NCR
21	NCAC	61	.0201-.0202*	16:12 NCR
21	NCAC	61	.0304-.0305*	16:12 NCR
21	NCAC	61	.0307*	16:12 NCR
21	NCAC	61	.0401*	16:12 NCR
21	NCAC	68	.0101*	16:14 NCR
21	NCAC	68	.0201	16:14 NCR
21	NCAC	68	.0204*	16:14 NCR
21	NCAC	68	.0206*	16:14 NCR
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21	NCAC	68	.0211	16:14 NCR
21	NCAC	68	.0212*	16:14 NCR
21	NCAC	68	.0214	16:14 NCR
21	NCAC	68	.0302	16:14 NCR
21	NCAC	68	.0305-.0306	16:14 NCR
21	NCAC	68	.0611*	16:14 NCR
21	NCAC	68	.0620	16:14 NCR

TITLE 2 – DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES

02 NCAC 09L .1102 DEFINITIONS

(a) Certified applicator-any individual who is certified to use or supervise the use of any restricted use pesticide.

(b) Private pesticide applicator-a person who uses or supervises the use of any restricted use pesticide under the following conditions:

(1) for the purpose of producing any agricultural commodity on property owned or rented by him or his employer, or

(2) if applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

(c) Private pesticide applicator certification standards review-a comprehensive training session designed to advance a private pesticide applicator's practical knowledge in areas such as the pest problems and pest control practices associated with agricultural operations; proper storage, use, handling, and disposal of pesticides and their containers; labels and labeling information; local environmental situations that must be considered during application to avoid contamination; recognition of poisoning symptoms and procedures to follow in case of a pesticide accident; protective clothing, equipment, and other appropriate worker protection standards; appropriate federal and state pesticide laws and regulations and the applicator's related legal responsibility; current agricultural production-related pesticide technology; and sources of advice and guidance necessary for the safe and proper use of each pesticide related to his/her certification. These training sessions will be taught by Cooperative Extension Service pesticide training agents or other individuals approved by the Board.

(d) Continuing certification credit - one hour of continuing certification training. Continuing certification training must be approved by the Board. Such training may be offered during grower meetings, seminars, short courses, or other Board-approved presentations taught by Cooperative Extension Service pesticide training agents, or other privately or publicly sponsored training organizations. Private applicators may also earn continuing certification credits by attending approved training sessions for which credit has been assigned in the following commercial categories:

(1) aquatic;
(2) agricultural pest - animal;
(3) agricultural pest - plant;
(4) ornamentals and turf;
(5) forest; and
(6) seed treatment,

as defined in 02 NCAC 09L .0505(1)(a) through (1)(h).

History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Amended Eff. October 1, 2002; November 1, 1988; July 1, 1987; February 5, 1978; April 20, 1977.

02 NCAC 42 .0401 LABELING OF DISPENSING DEVICES

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

(1) for gasoline, the registered brand name;

(2) for diesel fuel, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type and/or grade of product;

(3) for gasoline-oxygenate blends containing at

least one percent by volume of methanol, the registered brand name plus an additional label which states that the blend "contains methanol." The label shall be composed of letters at least one inch in height, minimum one-eighth inch stroke, which contrast distinctly with the label background and shall be affixed to the dispenser front panel in a position clear and conspicuous from the driver's position. Exceptions to this Rule are:

(A) for fuels not covered by an EPA waiver, the additional label shall identify the percent by volume of ethanol or methanol in the blend; and

(B) for fuels meeting the EPA's "Substantially Similar" rule and which do not contain methanol, no additional label is required.

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

(1) Kerosene shall be labeled as either 1-K Kerosene or 2-K Kerosene. In addition, each dispenser shall contain one of the following legends as appropriate:

(A) On 1-K kerosene dispensers, the legend "Suitable For Use In Unvented Heaters"; or

(B) On 2-K kerosene dispensers, the legend "May Not Be Suitable For Use In Unvented Heaters";

(2) Other products shall be labeled with either the applicable generic name or a brand name which identifies the type of product.

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

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

History Note: Authority G.S. 119-27;
Eff. December 1, 1981;
Amended Eff. August 1, 2002; June 1, 1987; December 1, 1985; November 1, 1983.

02 NCAC 52B .0212 IMPORTATION REQUIREMENTS: WILD ANIMALS

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

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

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

(c) Camelids, bison, and other bovidae other than domestic cattle may be imported into the State if accompanied by an official health certificate issued by a licensed, accredited veterinarian, as defined in 02 NCAC 52B .0401, which states that:

(1) all animals six months of age or older have tested negative for brucellosis within 30 days prior to importation; and

(2) all animals six months of age or older have tested negative for tuberculosis within 60 days prior to importation; and

(3) the herd of origin has had no brucellosis or tuberculosis diagnosed within the past 12 months.

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

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

(e) In order to prevent the introduction of Chronic Wasting Disease (CWD), the following additional requirements apply to the importation of cervidae:

(1) No cervidae may be imported into North Carolina from a herd located in a county in which CWD has been diagnosed, or from a herd located in a county which is contiguous to a county in which CWD has been diagnosed.

(2) All cervidae entering North Carolina must also be accompanied by an importation permit issued by the North Carolina State Veterinarian. The request for an importation permit must be made by a licensed, accredited veterinarian, as defined in 02 NCAC 52B .0401, and must be accompanied by a copy of the official health certificate and a copy of the captivity permit issued by the North Carolina Wildlife Resources Commission.

(3) The official health certificate must include the following statement: "All cervidae on this certificate originate from a Chronic Wasting Disease (CWD) monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd or in any herd contributing cervidae to this herd for the previous five years."

History Note: Authority G.S. 106-317; 106-400;
Eff. April 1, 1984;

Amended Eff. July 1, 1998; February 1, 1996; May 1, 1992;
Temporary Amendment Eff. February 18, 2002;
Amended Eff. August 1, 2002.

02 NCAC 52B .0213 IMPORTATION REQUIREMENTS: CERVIDAE

(a) No cervidae may be imported into North Carolina from a herd located in a county in which Chronic Wasting Disease (CWD) has been diagnosed or from a county which is contiguous to a county in which CWD has been diagnosed.

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

(1) an official health certificate issued within 30 days prior to arrival;

(2) individual identification, such as a bangle-type ear tag, with lettering two inches or greater that can be viewed from a distance and noted on the health certificate;

(3) an importation permit issued by the North Carolina State Veterinarian. The request for an importation permit must be made by a licensed, accredited veterinarian, as defined in 02 NCAC 52B .0401, and must be accompanied by a copy of the official health certificate and a copy of the captivity permit issued by the North Carolina Wildlife Resources Commission;

(4) the following statement must also appear on the health certificate: "All cervidae on this certificate originate from a Chronic Wasting Disease (CWD) monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd or any herd contributing to this herd for the previous five years.";

(5) proof of a negative test for brucellosis for all animals six months of age or older within 30 days prior to arrival. The herd of origin must have had no diagnosis of brucellosis in the 12 months preceding shipment; and

(6) proof of a negative single cervical test for tuberculosis for animals six months of age or older conducted within 60 days prior to arrival if the animal originates from a tuberculosis accredited or qualified herd. If the animal is six months of age or older and originates from a herd of unknown status, two negative single cervical tests for tuberculosis will be required with the second being greater than 90 days from the initial test and within 60 days prior to arrival. If the animal is less than six months of age and from a herd of unknown status, one negative single cervical test will be required. The herd of origin and commingled susceptible species must have had no diagnosis of tuberculosis in the 36 months preceding shipment.

History Note: Authority G.S. 106-307.5; 106-317; 106-400; Eff. August 1, 2002.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10 NCAC 14J .0204 INDICATIONS FOR USE OF SECLUSION AND ISOLATION TIME-OUT

Seclusion and isolation time-out shall be used only:

(1) in those situations specified in G.S. 122C-60;

(2) after less restrictive measures have been attempted and have proven ineffective. Less restrictive measures that shall be considered include:

(a) counseling;

(b) environmental changes;

(c) education techniques; and

(d) interruptive or re-direction techniques; and

(3) after consideration of the client's physical and psychological well-being as specified in Rule .0203(b) of this Section.

History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 143B-147;
Eff. October 1, 1984;
Amended Eff. November 1, 1993; April 1, 1990; July 1, 1989;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002.

10 NCAC 14J .0205 INDICATIONS FOR USE OF PHYSICAL RESTRAINTS

Physical restraints shall be used only:

(1) in those situations specified in G.S. 122C-60;

(2) after consideration of the client's physical and psychological well-being as specified in Rule .0203(b) of this Section; and

(3) after a less restrictive alternative has been attempted or has been determined and documented to be clinically inappropriate or inadequate to avoid injury. Less restrictive alternatives that shall be considered include but are not limited to:

(a) counseling;

(b) environmental changes;

(c) education techniques; and

(d) interruptive or re-direction techniques.

History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 143B-147;
Eff. October 1, 1984;
Amended Eff. November 1, 1993; April 1, 1990; July 1, 1989;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002.

10 NCAC 14J .0207 PROTECTIVE DEVICES

(a) Whenever protective devices that cannot be removed at will by the client are utilized, the state facility shall:

(1) assure that the protective device shall be used only to promote the client's physical safety;

(2) assure that the factors putting the client's physical safety at risk are fully explored and addressed in treatment planning with the participation of the client and legally responsible person if applicable;

(3) document the utilization of protective device in the client's nursing care plan, when applicable, and treatment/habilitation plan;

(4) document what positive alternatives and less restrictive alternatives were considered, whether those alternatives were tried, and why those alternatives were unsuccessful;

(5) assure that the protective device is used only upon the written order of a qualified professional that specifies the type of protective device and the duration and circumstances under which the protective device is used;

(6) assure and document that the staff applying the protective device is trained and has demonstrated competence to do so;

(7) inspect to ensure that the devices are in good repair and free of tears and protrusions;

(8) determine, at the time of application of the protective device, the degree of observation needed to assure the safety of those placed in restraints. The type of protective device used, the individual patient situation, and the existence of any specific manufacturer's warning concerning the safe use of a particular product shall all be considered in determining the degree of observation needed. Observation shall include direct line of sight or the use of video surveillance. In no instance shall observation be less frequent than at 30-minute intervals.

(9) assure that whenever the client is restrained and subject to injury by another client, a state facility employee shall remain present with the client continuously;

(10) assure that the person is released as needed, but at least every two hours;

(11) re-evaluate need for and impact on client of protective device at least every 30 days; and

(12) assure that observations and interventions shall be documented in the client record.

(b) In addition to the requirements specified in Paragraph (a) of this Rule, protective devices used for behavioral control shall comply with the requirements specified in Rule .0203 of this Section.

History Note: Authority G.S. 122C-51; 122C-57; 143B-147; Eff. October 1, 1984;
Amended Eff. November 1, 1993; July 1, 1989;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002.

10 NCAC 14Q .0303 INFORMED CONSENT

(a) Each client, or legally responsible person, shall be informed, in a manner that the client or legally responsible person can understand, about:

(1) the alleged benefits, potential risks, and possible alternative methods of treatment/habilitation; and

(2) the length of time for which the consent is valid and the procedures that are to be followed if he chooses to withdraw consent. The length of time for a consent for the planned use of a restrictive intervention shall not exceed six months.

(b) A consent required in accordance with G.S. 122C-57(f) or for planned interventions specified by the rules in Subchapter 14R, Section .0100, shall be obtained in writing. Other procedures requiring written consent shall include, but are not limited to, the prescription or administration of the following drugs:

(1) Antabuse; and

(2) Depo-Provera when used for non-FDA approved uses.

(c) Each voluntary client or legally responsible person has the right to consent or refuse treatment/habilitation in accordance with G.S. 122C-57(d). A voluntary client's refusal of consent shall not be used as the sole grounds for termination or threat of termination of service unless the procedure is the only viable treatment/habilitation option available at the facility.

(d) Documentation of informed consent shall be placed in the client's record.

History Note: Authority G.S. 122C-51; 122C-57; 143B-147; Eff. February 1, 1991;
Amended Eff. January 4, 1993; January 1, 1992;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002.

10 NCAC 14V .0803 REPORTING REQUIREMENTS

(a) Upon learning of the death of a client currently receiving services, a facility shall file a report in accordance with G.S. 122C-31 and these Rules. A facility shall be deemed to have learned of a death when any facility staff obtains information that the death occurred.

(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for deaths occurring within seven days of physical restraint or seclusion of a client.

(c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.

(d) Written notice may be submitted in person, telefascimile or electronic mail. If the reporting facility does not have the capacity or capability to submit a written notice immediately, the information contained in the notice can be reported by telephone following the same time requirements under Subparagraph (b) and (c) of this Rule until such time the written notice can be submitted. The notice shall include at least the following information:

(1) Reporting facility: name, address, county, license number (if applicable); Medicare/Medicaid provider number (if applicable); facility director and telephone number; name and title of person preparing report; first person to learn of death and first staff to receive report of death; facility

telephone number; and date and time report prepared;

(2) Client information: name, client record number, unit/ward (if applicable); Medicare/Medicaid number (if applicable); date of birth, age, height, weight, sex, race, competency, admitting diagnoses, primary or secondary mental illness, developmental disability or substance abuse diagnoses, primary/secondary physical illness/conditions diagnosed prior to death, date(s) of last two medical examinations (if known), date of most recent admission to a state-operated psychiatric, developmental disability or substance abuse facility (if known); and date of most recent admission to an acute care hospital for physical illness (if known);

(3) Circumstances of death: place and address where decedent died; date and time death was discovered; physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within seven days of death and if so, a description of the type of restraint and its usage; whether or not decedent was in seclusion at the time of death or within seven days of death and if so, a description of the seclusion episode(s); and a description of the events surrounding the death; and

(4) Other information: list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.

(e) The facility shall submit a written report, using a form pursuant to G.S. 122C-31(f). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.

(f) In addition, the facility shall:

(1) notify the division specified in Rule .0801 of this Section, immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;

(2) submit to the division specified in Rule .0801 of this Section, immediately after it becomes available, any information required by this Rule that was previously unavailable; and

(3) provide, upon request by the division specified in Rule .0801 of this Section, other information the facility obtains regarding the death, including, but not limited to, death certificates, autopsy reports, and reports by other authorities.

(g) With regard to any client death under circumstances described in G.S. 130A-383, a facility shall notify law enforcement authorities so the medical examiner of the county in which the body is found can be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the division specified in Rule .0801 of this Section, upon request.

(h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next-of-kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389.

(i) If the circumstances surrounding any client death reveal reason to believe that one or more disabled adults at the facility may be abused, neglected or exploited and in need of protective services, the facility shall initiate the procedures outlined in G.S. 108A, Article 6.

(j) If the circumstances surrounding any client death reveal reason to believe that one or more juveniles at the facility may be abused, neglected or exploited and in need of protective services, the facility shall initiate the procedures outlined in G.S. 7B, Article 3.

History Note: Authority G.S. 122C-26; 122C-131;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.

10 NCAC 19A .0601 NON-DISCRIMINATION

No individual seeking or receiving services through any program administered by the Division of Services for the Blind shall be discriminated against on the basis of race, national origin, gender, religion, or disabling condition.

History Note: Authority G.S. 143B-157;
Eff. August 1, 2002.

10 NCAC 19C .0207 ELIGIBILITY FOR LICENSING

(a) The Division shall interview prospective licensees as referred by the rehabilitation program and shall make written recommendations to the Chief of Business Enterprises concerning the potential of the referral commensurate with the specific job requirements of the Business Enterprises Program.

(b) To be licensed:

(1) The consumer must meet the definition of legally blind as outlined in 34 CFR 395.1;

(2) The consumer must be at least 18 years of age;

(3) The consumer must be physically able to perform all the duties as further detailed in this Chapter;

(4) All consumers must be evaluated for and demonstrate proficiency of skill in basic mobility, activities of daily living, mathematics and basic food service practices;

(5) The consumer must be familiar with the rules and regulations for Business Enterprises facility operators. The consumer must successfully complete the Business Enterprises training program sponsored by the Division and must be certified by the Division as capable of operating a Business Enterprises facility; and

(6) The consumer must be a citizen of the United States.

History Note: Authority G.S. 111-27; 34 C.F.R. 395;
20 U.S.C. sec. 107;

Eff. October 1, 1978;
Amended Eff. August 1, 2002; August 1, 1990; February 1, 1986; June 1, 1982.

10 NCAC 19C .0209 FILLING OF VACANCIES

(a) The Division shall make available a listing of available Business Enterprises facilities to all licensees.

(b) Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief of Business Enterprises.

(c) Transfers and promotions shall be based on the following procedures:

(1) The Division shall send a notice of available facilities to all operators and licensees on the last working day of the month. The notice shall provide a short description of the vacancy and who to contact for more information.

(2) All applications shall be post-marked by the 10th of the following month and mailed to the office of the Chief of Business Enterprises.

(3) Interviews shall be conducted on the second Friday of the month which follows the application deadline.

(4) At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant shall calculate the applicant's points for sanitation, seniority, Financial Analysis/Operating Standards [Subparagraphs (d)(1), (2), (3) of this Rule] and inform the applicant of his point total. The applicant shall have five working days to review the point total and request any adjustments.

(5) After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d)(1), (2), (3), (4), (5), (6), (7) of this Rule] for each applicant, the applicant with the highest point total (if above 60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on. In the case of an exact tie, the applicant with the most time in the Business Enterprises Program shall be awarded the location.

(6) Applicants shall be notified as soon as possible after their interview whether or not they have been awarded a location. This notification shall be by telephone and followed up in writing.

(7) Upon being awarded a location, the applicant shall have 30 days to fill the vacancy. The Division shall agree to a different time frame if adhering to the 30-day time frame would cause a hardship to the applicant awarded the facility. The location shall not be filled for 15 working days following the award to allow time for administrative appeals to be filed. If an appeal is filed, the location shall not be filled until the appeal is resolved. If there is only one applicant for a location, the 15-day waiting period shall not apply.

(8) If an applicant is awarded a facility and does not accept the position, the applicant shall not be able to apply for another position for one year. An applicant may withdraw his application up to two days prior to his interview and avoid the penalty. Applicants who apply for and are awarded more than one location shall not be penalized as long as they accept one award.

(9) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the last two years, and the applicant did not meet his financial analysis and operating standards for the last 12 months that his agreement was in effect, the applicant shall repeat the necessary on-the-job-training. The Interview Committee may also recommend refresher course training to assure qualified management.

(10) Licensees/operators not selected may file an administrative appeal as provided for in Subchapter 19C Section .0400. The fifteen-day limit to file an appeal shall begin from the date the licensee/operator is informed by telephone of the results of the award.

(11) An applicant must have operated a Business Enterprises location for six months prior to the cut-off date for calculating financial performance according to standards to be considered an operator, otherwise, the operator shall be in licensee status. The cut-off date is defined as the 12-month period ending with the last day of the same month in which the vacancy is advertised.

(12) If an operator leaves the Business Enterprises Program and then applies for a location within 12 months of leaving, his financial performance according to standards for the 12 months prior to his leaving shall be used to calculate points in the Financial Performance Section.

(13) Financial analyses of facilities shall be done every two years. The analysis shall be on the facility not the operator; however, an operator may request a new analysis after at least four months in the new facility. If an applicant's financial analysis is more than two years old but less than two and one half years old and the applicant's performance is neither above 100% nor below 85% on either measure, the financial analysis shall be considered current.

(14) An applicant who does not hold the required level of license for the vacancy may be awarded the facility contingent upon successfully completing the required training. Applicants who hold the required level of license but have not operated a facility at that

level for at least two years shall complete refresher on-the-job training if the applicant did not meet his financial analysis and operating standards for the last 12 months that his agreement was in effect.

(15) An operator may not sit on the Interview Committee for a location for which he/she is applying or if a member of his/her immediate family has applied for a vacant facility. For this purpose immediate family shall be defined as spouse, parent, child, brother and sister. Also included are the step, half and in-law relationships. If the Vice-Chairman and the Chairman of the Elected Committee of Vendors and the Chairman of the sub-committee on Transfer and Promotion are all restricted from sitting on the Interview Committee under this Rule, those three must pick another Elected Committee of Vendors member to sit on the Interview Committee.

(16) The schedule for awarding vacancies may be changed to accommodate holidays, too many applications to process in one day, or at any time necessary due to program conflicts as determined by the chief of Business Enterprises and the Vice-Chairman of the Elected Committee of Vendors. All applicants shall be notified in writing of the date, time and place of their interview.

(17) Applicants shall be reimbursed for their expenses to come to the interview at the state's established per diem rates. The Business Enterprises Program shall only reimburse for two interviews per year. After that, applicants shall bear their own expenses for coming to interviews. Licensees who have active rehabilitation cases shall be reimbursed through the rehabilitation program.

(d) The Division shall use the following criteria in determining points:

(1) Sanitation:

(A) Ten point maximum;

(B) One point for each sanitation grade point above ninety;

(C) Sanitation grade to be arrived at by averaging all sanitation scores received during last two years;

(D) Five points shall be subtracted for any adjusted B grade in the last two years;

(E) The Business Enterprises Counselor shall determine an adjusted grade by adding back in any points subtracted for deficiencies over which the operator has no control. Operator shall inform Business Enterprises Counselor when an inspection has occurred so he can review the inspection and adjust the grade if needed. It is the operator's responsibility to make sure the Business Enterprises Counselor has copies of every sanitation inspection form from the relevant period so that he or she can calculate an accurate grade.

(2) Seniority:

(A) Five point maximum;

(B) Seniority points shall be awarded as follows:

Years in Business Enterprises Program - Points

0 to 4.99 - 0 points
5 to 9.99 - 1 point
10 to 14.99 - 2 points
15 to 19.99 - 3 points
20 to 24.99 - 4 points
25 and over - 5 points

(C) Seniority is defined as the amount of time in yearly increments an individual has been working in the Business Enterprises Program as an operator. An operator must work 51% of the working days in a month to receive credit for that month. The cutoff date for accruing time in the Program shall be the end of the month when the vacancy is advertised. Business Enterprises operators shall receive credit for one year of seniority for any combined 12-month period.

(3) Performance According to Financial Analysis/Operating Standards: Operating standards shall be determined by tabulating all the invoices for purchases for resale for each facility for a period of three months. The optimum sales and gross profit percentage shall be determined by computing the maximum potential for sales and gross profit without consideration for theft, waste or poor management. Each operator is required to maintain 85% of the optimum standard established for each facility for sales and gross profit. Eighty-five percent of the optimum sales and gross profit percentage shall be considered the operating standard for each facility.

(A) 50 Points Maximum;

(B) Applicants shall receive 20 points for meeting or exceeding 85% of their sales standard;

(C) Applicants shall receive 20 points for meeting or exceeding 85% of their gross profit percentage standard;

(D) Applicants shall receive five points for meeting or exceeding 92.5% of their sales optimum;

(E) Applicants shall receive five points for meeting or exceeding 92.5% of their gross profit percentage optimum;

(F) Points according to Financial Analysis/Operating Standards in this

Section shall be calculated using the established optimum standards as determined by the current financial analysis for both sales and gross profit percentages. The optimum standard shall be determined by computing the maximum potential sales volume and gross profit percentage for a consecutive three-month period.

(i) Use sales and gross profit figures for the twelve-month period ending with the last day of the same month in which the vacancy is advertised. This is the cut-off date for financial performance calculations.

(ii) Take the facility's average monthly sales for the past twelve months, and calculate what percentage of the established optimum it is. If it is over 85%, the applicant gets 20 points; if it is 92.5% or more, the applicant gets an additional five points.

(iii) Take the facility's gross profit percentage for the last twelve months and calculate what percentage of the established optimum it is. If it is over 85%, the applicant gets 20 points. If it is 92.5% or more, the applicant gets an additional five points.

(4) Customer and Building Management Relations:

(A) Five points shall be deducted for each written site management complaint in the past two years, up to a maximum of 10 points.

(B) If the applicant has more than three written site management complaints, he shall not be considered for the award. No site management complaint that is more than three years old may be used against an operator. Site management is defined as the property official for the property on which a BEP facility is located.

(5) Oral Exam/Interview:

(A) 30 points maximum.

(B) Interview shall be face to face (no conference calls).

(C) All applicants shall be interviewed.

(D) The Interview Committee shall consist of:

(i) The Chief of Business Enterprises, or Deputy Chief or Assistant Director of Programs and Facilities as designated by Chief,

(ii) The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the vacancy occurs, and

(iii) The Vice-Chairman of the Elected Committee of Vendors or the Chairman in his absence, or in the absence of the Chairman, the Chairman of the Transfer and Promotion subcommittee.

(E) The Oral Exam part shall consist of 10 questions drawn either from a pool of standard questions or developed by the Interview Committee prior to the interview. The oral exam questions shall relate to any special needs of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. Each member of the Interview Committee shall evaluate the applicant's response to each question in the oral exam. The applicant shall receive one point by demonstrating basic knowledge, the applicant shall receive one and one-half points for demonstrating above average knowledge, and the applicant shall be awarded two points for demonstrating exceptional knowledge for each interview question. There shall be at least one question involving a calculation and a talking calculator shall be provided, although applicants may bring their own. The oral exam shall yield a possible 20 points.

(F) The interview part shall consist of a variety of questions in a give and take format. Each member of the Interview Committee shall evaluate the applicant's response to the interview questions and shall award up to 10 additional points based on the applicant's previous food service experience, knowledge and/or financial performance. If the applicant meets the requirements for the facility, the applicant will receive five additional points. If the applicant's qualifications exceed the requirements of the facility, he may be awarded up to ten additional points. The interview shall include the following elements: questions related to business philosophy to

promote general discussion to enable the interview panel to evaluate the applicant's expertise, maturity, experience and ability; a discussion of any related work experience outside the Business Enterprises Program; at least two business math questions. Since points are awarded for seniority, time in the Business Enterprises Program shall not be considered as a reason to award points; however, relevant work experience in the Business Enterprises Program may be discussed and taken into consideration. Applicants may bring letters of recommendation, certificates, and other documents that would aid the Interview Committee in awarding its discretionary points.

(G) Each interviewer shall award discretionary points individually and the total score of Oral Exam and Interview points from each interviewer shall be averaged and added to the applicant's points from the other Sections.

(6) Licensees and trainees:

(A) A licensee who has no previous experience in the North Carolina Business Enterprises Program shall be assigned 35 points in the Financial Analysis/Operating Standards category. If the licensee scores 90% or above on the National Restaurant Association's ServSafe exam, he/she shall be awarded three points in the sanitation category.

(B) A licensee with previous Business Enterprises experience shall be assigned 35 points in the Financial Analysis/Operating Standards category. Previous sanitation records shall be considered, if available; or the applicant may take the National Restaurant Association's ServeSafe exam. If the licensee scores 90% or above on the ServSafe exam, he/she shall be given three points in the Sanitation Section.

(C) Applicants shall have satisfactorily completed Level I training or have a Level I license to be interviewed. The four levels of Business Enterprises facilities are defined as follows:

Level I has no cooking or on-site food preparation and includes only service via vending machines or over the counter service. To include snacks, candy, pre-packaged sandwiches, coffee, and assorted beverages.

Level II service is similar to a deli operation where hot and cold food is prepared on site.

Level III service includes all of the above with the addition of a grill and fryer.

Level IV service consists of full-service cafeteria style facilities.

An applicant shall score at least 60 total points to be awarded a location. If the applicant scores at least 55 points but less than 60 points, the interview panel may make a conditional award if the panel agrees it is in the best interest of the Business Enterprises Program.

History Note: Authority G.S. 111-27; 143B-157;
20 U.S.C. sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986; February 1, 1981.

10 NCAC 19C .0309 TEMPORARY CLOSING

(a) A facility may be temporarily closed due to the closing of a public building, industry, or institution caused by an emergency condition such as snow days, fire, or death of a company official.

(b) If a facility is closed for an extended period of time through no fault of the operator, that operator may be eligible for financial assistance through the Business Enterprises Program's Emergency Relief Fund. This fund is supported through Federal Unassigned Vending based on a majority vote of the operators in the Program. The following guidelines apply:

(1) Facility must be closed an entire calendar month due to no fault of the operator.

(2) Facility must have a target date for reopening.

(3) The closing is not covered by insurance or all coverage must be exhausted before the Emergency Fund is used.

(4) The Elected Committee of Vendors shall establish the monthly rate to be paid to operators who qualify for use of the Fund.. The monthly rate set by the Committee shall appear in the minutes from the Committee meeting when the rate was set and the rate shall be on file in the Office of the Chief of Business Enterprises Program, 309 Ashe Avenue, Raleigh, NC, 27606.

(5) The operator may be subsidized for an initial period up to six months after which the situation will be reassessed by Committee members as appointed by the Chair and by the Chief of the Business Enterprises Program. They shall determine if an extension should be allowed and if so, for how long.

(6) If a feasible satellite facility is available, the operator must apply for that location. Failure to apply for any satellite facility for which the

operator is qualified shall result in immediate forfeiture of the Emergency Relief Funds for the period of time the satellite facility is available. If the operator applies for the satellite facility and is not awarded the facility, no penalty shall apply. If applying for the satellite facility would pose a financial hardship on the operator, the Division shall waive this requirement.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. sec. 107; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; October 1, 1978.

10 NCAC 19C .0311 MOVING EXPENSES

After consultation with the Elected Committee of Vendors, the Division shall participate in the funding of moving expenses for operators who are forced to relocate due to the closing of a Business Enterprises facility. The operator must have applied for and been awarded a new Business Enterprises facility to receive compensation for moving expenses. The operator is not eligible for compensation if the closing of his previous Business Enterprises facility was a direct result of his performance. The total amount funded by the Division shall not exceed one thousand five hundred dollars ($1,500). This expenditure is based on the availability of funding.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002.

10 NCAC 19C .0410 PROCEDURE

(a) The operator/licensee shall discuss the problem with the Division staff person taking the action with which the operator is dissatisfied and request specific action in writing to resolve the grievance. This discussion shall be held within 15 working days of the occurrence of the action challenged by the operator. The operator/licensee shall receive a response within five working days following the discussion. Any decision made by agency personnel at this step shall be subject to supervisory review and approval.

(b) If the complaint is not resolved and the operator/licensee is not satisfied with the outcome of Paragraph (a) of this Rule, he shall have 15 working days to ask for a review by the operator relations committee in writing. Within five working days after asking for a review, the operator/licensee shall be notified of the date of the hearing, which shall be held within 25 working days after the operator's/licensee's request for a hearing. The committee shall render its decision within 20 working days after the hearing.

(c) If the decision reached in step of Paragraph (b) of this Rule is not satisfactory to the operator/licensee or the Division staff person responsible for the initial action, the matter may be referred by the operator/licensee or the Division staff person to the director of the Division. Any request for review shall be submitted within 15 working days after the operator relations committee has presented its recommendation. The party requesting the referral shall provide a written summary of the specific facts of the complaint and request for specific action to resolve the grievance, copies of which shall be provided at the same time to all other parties concerned. The director shall make the decision for the Division within 15 working days, and his decision shall be announced immediately to all parties concerned.

(d) If the complaint is not resolved and the operator/licensee is not satisfied with steps of Paragraphs (a) through (c) of this Rule, then the operator/licensee may file a complaint with the Division requesting a full evidentiary hearing.

(e) If a blind operator/licensee requests a full evidentiary hearing, such request shall be made within 15 working days after the director's adverse direction rendered through the procedures in this Rule.

(f) A blind operator/licensee shall request a full evidentiary hearing in writing. This request shall be transmitted to the director of the Division personally or by certified mail, return receipt requested, transmitted through the Elected Committee of Vendors in accordance with 34 C.F.R. 395.14(b)(2). This hearing shall be held in accordance with G.S. 150B, Article 3, the extent that such article does not conflict with these Rules pertaining to grievance procedures or any federal law or regulation.

(g) A blind operator/licensee shall be entitled to legal counsel or other representation in a full evidentiary hearing. The Division shall reimburse the operator for costs of legal counsel at a rate of 50% of the total amount not to exceed a total expenditure by the Division of one thousand five hundred dollars ($1,500). This expenditure is based on the availability of funds.

(h) Reader services or other communication services shall be arranged for the blind operator/licensee should he so request. Transportation costs and per diem shall be provided also to the blind operator/licensee during the pendency of the evidentiary hearing, if the location of the hearing is in a city other than the legal residence of the operator/licensee.

(i) The hearing shall be held at a time and place convenient and accessible to the blind operator/licensee requesting a full evidentiary hearing. The blind operator/licensee shall be entitled to have the hearing held in the county of his residence unless he waives this right. A hearing held during regular Division working hours shall be deemed among the convenient times. The hearing shall be scheduled by the Division within 15 working days of its receipt of such a request, unless the Division and the blind operator/licensee mutually, in writing, agree to some other period of time. The Division shall notify the blind operator/licensee in writing of the time and place fixed for the hearing and of his right to be represented by legal or other counsel. The Division shall provide the blind operator/licensee a copy of the hearing procedures and other relevant information necessary to enable him to prepare his case for the hearing.

(j) The presiding officer at the hearing, to be appointed by the Secretary of the Department of Health and Human Services, shall be impartial, unbiased, have knowledge in conducting hearings, and have no involvement either with the Division action which is at issue in the hearing or with the administration or operation of the Randolph-Sheppard Business Enterprises Program.

(k) The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient record of the proceedings for a full and true disclosure of the facts and

issues. To accomplish these ends, the presiding officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the conduct of the hearing.
(l) Both the blind operator/licensee and the Division shall be entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be required for a full and true disclosure of all facts bearing on the issue.
(m) All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.
(n) A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay all transcript costs and shall provide the blind operator/licensee with at least one copy of the transcript.
(o) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.
(p) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working days after the receipt of the official transcript. The decision shall be mailed promptly to the blind operator/licensee and the division.
(q) If the dispute(s) is not resolved to the satisfaction of a blind operator/licensee after provision of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of Education for the convening of an arbitration panel.
(r) The results of the arbitration shall be considered the final agency action and the operator/licensee shall have exhausted his administrative remedies.

History Note: Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1984; February 1, 1983; December 1, 1981.

10 NCAC 19C .0504 ELECTION
The Division shall provide for biennial election among the operators in the program to elect a state committee of blind operators called the Elected Committee of Vendors. This Elected Committee of Vendors shall be representative of operators on the basis of geography and shall be proportionally representative of operators on federal property. The Elected Committee of Vendors shall consist of representatives from the four geographical regions and one region comprised of all Federal facilities.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1986.

10 NCAC 19C .0511 FUNCTIONS
The Elected Committee of Vendors shall actively participate with the Division in major administrative decisions and policy and program development decision affecting the overall administration of the Business Enterprises Program. The Division and the Elected Committee of Vendors shall comply with the terms and conditions set forth in 34 C.F.R. 395.14.

History Note: Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; February 1, 1984.

10 NCAC 19C .0607 EQUIPMENT: MERCHANDISE: SUPPLIES: CASH
(a) Each operator shall sign a receipt for all equipment, merchandise, supplies, and cash for which he is entrusted when initially placed in a Business Enterprises facility, and shall be held accountable for those assets.
(b) Each operator shall maintain the equipment assigned to him, and shall ensure that the equipment is used only for the purposes of operating the business.
(c) All assets vested in the Division shall be safeguarded and protected.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; February 1, 1984.

10 NCAC 19C .0701 MINIMUM FAIR RETURN AND DEFINITIONS
(a) Operators may be guaranteed a fair minimum return as determined by the Division after consultation with the Elected Committee of Vendors.
(b) Definitions which apply to all of 10 NCAC 19C .0700:
(1) Net profits means the amount remaining after subtracting the cost of goods sold and the operating expenses from the gross revenues.
(2) Income means the net profit of the facility less any funds which must be set aside.
(3) Net operating balance means the amount remaining at the end of the calendar year after subtracting the income paid year-to-date to the operator, from the income earned by the operation of the facility.
(4) Fair minimum return is the amount determined by the Elected Committee of Vendors and agreed upon by the Division as the minimum monthly income to be received by any Business Enterprises operator without regard to the profit or loss of the facility. Fair minimum return shall not exceed an amount equal to the hourly Federal Minimum Wage based on a 160-hour work month. This amount is applicable to all Business Enterprises Operators regardless of the size or type of facility they currently manage.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. sec. 107;

Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; October 1, 1978.

10 NCAC 19C .0702 SET-ASIDE

(a) "Set-aside" and "Net Proceeds" are used as defined in 34 CFR 395.1.

(b) The Division shall set aside funds from the net proceeds of each facility to be used for the purposes outlined in 34 C.F.R. 395.9.

(c) The set-aside shall not exceed an amount determined to be reasonable by the Commissioner of the Rehabilitation Services Administration.

(d) Any set-aside collected in excess of the amount needed to cover the purposes in this Rule and in excess of any reasonable reserve necessary to assure that such purposes can be achieved on a consistent basis, shall be refunded on a pro rata basis at the end of the fiscal year.

(e) Set-aside rates may be adjusted to meet program goals and objectives and shall be determined by the Division in conjunction with the NC Commission for the Blind.

History Note: Authority G.S. 111-12.5; 111-13; 111-27; 111-50; 143B-157; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; May 1, 1996; January 1, 1990; July 1, 1987; February 1, 1986; July 1, 1980.

10 NCAC 19G .0105 MAINTENANCE

(a) Maintenance shall be provided by the Division only in order to enable an applicant or eligible consumer to derive the full benefit of other vocational rehabilitation services being provided. Service costs shall be limited to the amount of increased costs that are in excess of the normal expenses that are necessitated by the applicant or the eligible consumer's participation in a rehabilitation program.

(b) The major types of living expenses covered by maintenance payments are as follows:

(1) board;
(2) room;
(3) laundry;
(4) clothing; and
(5) other subsistence expenses necessary to achieve the eligible consumer's vocational rehabilitation outcome.

(c) The Division may provide maintenance or partial maintenance following placement only until the eligible consumer receives his first full minimum remuneration. In case of a self-employed person, maintenance may not exceed a period of 30 days.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.41(a)(5); 34 C.F.R. 361.48(g); 34 C.F.R. 361.5(b)(35);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. February 1, 1982;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002.

10 NCAC 19G .0107 ESTABLISHMENT OF SMALL BUSINESS OPERATIONS

(a) The Division shall provide technical assistance and other services to eligible individuals for whom it has been determined that self-employment through a small business operation is the employment outcome to be achieved through services outlined on the Individualized Plan for Employment. These services include market analyses, development of a business plan, and provision of funds that will in full or in part support the business operation as outlined on the IPE at a level agreed upon by the consumer and the Division's counselor. The employment outcome must allow the eligible individual to become a successful entrepreneur with projected income equivalent to, or above, the level of Substantial Gainful Activity (SGA) as established by the Social Security Administration annually. Outside resources, such as the University of North Carolina's Small Business and Technology Development Centers, shall be used to develop a proposal for the establishment or expansion of a small business. The proposal shall consist of a business plan with the following data:

(1) A summary of product/service or the proposed business;
(2) Company background information;
(3) Detailed description of product/service;
(4) Market information specific to the proposed business location;
(5) Competition information specific to the proposed business location;
(6) Marketing strategies;
(7) Location of the small business with specific details;
(8) Management and operation plans, to include the eligible individual's role;
(9) Financial information including a projection of anticipated income per month (or per completed task) and the anticipated expenses of operating the business (If the consumer is unable to establish this independently, an accountant or CPA may be hired to conduct an independent objective assessment; and
(10) Specific costs of the establishment, including information of the eligible individual's contributions.

(b) All proposals must contain written approval by the Rehabilitation Counselor, the Area Rehabilitation Supervisor, and the Chief of Rehabilitation Field Services for sponsorship by the Division. The feasibility of the venture and the eligible individual's skills, knowledge, experience, competency and contribution of time and money are factors that shall be considered in the review of the proposals.

(c) Review and written approval by the Division's Projects Review Committee is required for the following and shall consider the feasibility of a business plan to include a summary, company background, product/service, competition, marketing of product/service, location, personnel management, and financial information:

(1) Proposals requesting Division sponsorship of less than under five thousand dollars ($5,000) as requested by the Chief of Rehabilitation Field Services when feasibility of the proposal is not clear, and

(2) All proposals requesting Division sponsorship of five thousand dollars ($5,000) or above.

(d) The Division shall set thirty thousand dollars ($30,000) as the maximum amount of Division contribution for the establishment of small business ventures by eligible individuals. The Division may modify the maximum level based on availability of funds. The Division may exceed the maximum level on a case-by-case basis when all of the following conditions are met:

(1) The business plan as described in Paragraph (a) of this Rule contains evidence that:

(A) Funds in excess of thirty thousand dollars ($30,000) are required in order to establish or expand the proposed small business; and

(B) All other sources of funding have been researched by the consumer;

(2) The projected annual income is above the Substantial Gainful Activity (SGA) level established by the Social Security Administration; and

(3) Funds are available.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(s); 34 C.F.R. 361.50(c)
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002.

10 NCAC 19G .0805 SCHEDULING AND NOTICE OF ADMINISTRATIVE REVIEW AND MEDIATION

(a) Administrative Review

(1) If an administrative review is to be conducted, the area rehabilitation supervisor or his designee shall:

(A) set a date, time and place for the administrative review;

(B) send written notification by certified mail to the applicant or consumer and the individual's parent or guardian if the individual is a minor, or his or her representative if one has been designated, with a statement of the date, time and place for the administrative review;

(C) advise the applicant or consumer in a written notice that the hearing officer will be appointed by the Director to conduct a hearing if the matter is not resolved in the administrative review (or mediation, if requested) and that the applicant or consumer will also receive a written notice from the hearing officer regarding the impartial due process hearing which will be held after the administrative review; and

(D) notify the Director of the Client Assistance Program (CAP) and the parties to be involved in the administrative review of the request and the date, time and place for the administrative review. This notification may be by phone or in writing.

(2) Prior to the administrative review, the area rehabilitation supervisor or his designee shall review all previous decisions and casework related to the applicant or consumer and seek whatever consultation, explanation, documentation, or other information that is deemed necessary, utilizing the CAP Director if deemed necessary.

(b) Mediation

(1) Upon receipt of the applicant's or the consumer's request for mediation from the area rehabilitation supervisor, the Director shall arrange for the appointment of a qualified and impartial mediator who is mutually agreed upon by the Director and the individual or individual's representative. The appointment shall come from an Agency-maintained pool of qualified mediators who are:

(A) certified by the North Carolina Resolution Dispute Commission or approved by the Mediation Network of North Carolina, and

(B) knowledgeable of Federal and State law and policies governing vocational rehabilitation and independent living rehabilitation programs.

(2) The mediator shall arrange a mediation session at a date, time and location that is convenient for the applicant or consumer and the individual's representative, if one has been designated, and the agency representative, and to the impartial due process hearing. The mediation process shall not be used to deny or delay a due process hearing.

(3) The mediator shall provide the applicant or consumer and the individual's representative, the Division, and the Client Assistance Program written notice of the mediation session. The written notice shall:

(A) Identify the agreed date, time and place for the mediation session.

(B) Advise the applicant or consumer that the hearing officer will be appointed by the Director to conduct an impartial due process hearing if the matter is not resolved in mediation (or in an administrative review, if conducted) and that the applicant or consumer will receive a written notice from the hearing officer regarding the impartial due process hearing, which will be after the mediation session (and administrative review, if applicable).

History Note: Authority G.S. 143B-157; 150B-(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;

Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002.

10 NCAC 19G .0806 APPOINTMENT OF HEARING OFFICER AND MEDIATOR

Upon receipt of the applicant's or consumer's request for an impartial due process hearing from the area rehabilitation supervisor, the Director shall arrange for the appointment of an impartial hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative, if one has been designated.

History Note: Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.5; 34 C.F.R 361.57; P.L. 102-569;
Eff. December 1, 1990;
Amended Eff. January 1, 1996;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002.

10 NCAC 19H .0103 APPLICATION FOR SERVICES

(a) In order to be determined eligible for services, pursuant to this Subchapter, the resident must:

(1) have been determined to be ineligible for medicaid and other state or federal programs that offer eye care services or eligible for Medicaid but required to meet a spend-down before Medicaid coverage becomes effective;
(2) complete the application for services in person or by mail; and
(3) verify income in the form of a statement from their employer or written proof of other sources of income.

(b) Individuals wishing to apply for services may contact either the county department of social services or the Division of Services for the Blind field office to determine where application should be made.

History Note: Authority G.S. 111-8; 143B-157;
Eff. February 1, 1976;
Amended Eff. August 1, 1977; January 1, 1977;
February 19, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990;
December 1, 1983; July 1, 1981; June 1, 1978.

10 NCAC 20A .0102 DEFINITIONS

As used in this Chapter, the following terms have the meaning specified:

(1) "Division" means the Division of Vocational Rehabilitation Services of the Department of Health and Human Services.
(2) "Division Director" or "Director" means the Director of the Division of Vocational Rehabilitation Services.
(3) "Division's Modification Review Committee" means a committee of Division staff from the State Office appointed by the Division Director and chaired by the Chief of Operations to review for approval or disapproval:
    (a) amounts for residence or job site modifications that exceed standard amounts specified in 10 NCAC 20C .0316; and
    (b) purchase of vehicles as set forth in 10 NCAC 20C .0316.
(4) "Functional Capacity" means the ability to perform in the following areas:
    (a) communication;
    (b) interpersonal skills;
    (c) mobility;
    (d) self-care
    (e) self-direction
    (f) work skills; and
    (g) tolerance.
(5) "Individual with a severe disability" has the meaning specified in P.L. 102-569, Section 7(15) which is incorporated by reference.
(6) "Individual with the most severe disability" means an individual with a severe disability whose impairment seriously limits three or more functional capacities in terms of an employment outcome.
(7) "Permanent disability" means any physical or mental condition which is expected to remain regardless of medical or psychological intervention, and which is highly unlikely to go into full or permanent remission.
(8) "Post-employment services" means one or more services that are provided subsequent to the achievement of an employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's abilities, capabilities, and interests.
(9) "Transferable work skills" means skills, educational level, talents, abilities, and knowledge that will allow employment consistent with the individual's strengths, resources, priorities, concerns, capabilities, interest and informed choice.

The section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the section of the Public Law so incorporated may be obtained at no cost from the Division.

History Note: Authority G.S. 143-545.1; 150B-21.6;
P.L. 102-569, s. 7(15); s. 101(a)(5)(A);
Eff. February 1, 1976;
Amended Eff. February 1, 1996; October 1, 1994;
April 1, 1988;
Temporary Amendment Eff. May 1, 2002; July 3, 2001;
Amended Eff. August 1, 2002.

10 NCAC 20C .0304 VOCATIONAL AND OTHER TRAINING

(a) Vocational and other training may be provided only to those clients determined eligible for rehabilitation services or for

extended evaluation. These services shall be provided only to extent necessary to achieve the job choice. Training shall be provided in licensed and approved public or private facilities as specified in 10 NCAC 20D .0207. The Division's funding for training expenses shall be as specified in Rule .0205 of this Subchapter.

(b) Vocational and other training may include on-the-job training; training at community rehabilitation programs; supported employment training; and postsecondary training. Postsecondary training may include:

(1) vocational training at business schools, trade schools, community colleges, technical institutes, nonprofit schools, or proprietary schools, or

(2) college or university training including college parallel programs at community colleges and graduate school.

(c) Vocational and other training services may be provided to clients who require these services in order to become employed and when direct job placement for a client with transferable work skills is not a suitable option due to disability-related issues. Specific criteria for sponsorship of all types of training include:

(1) Clients with Prior Work Experience:

(A) If the client's disability creates impediments to performance in the client's current or previous occupation and the client does not possess transferable work skills that will match requirements of a new occupation, the client may be considered for sponsorship of training.

(B) If the client's disability is such that it does not interfere with satisfactory performance in the current or previous occupation, the client shall not be considered for sponsorship of training.

(2) Clients with No Prior Work Experience:

(A) If the client's disability will place the client at a greater disadvantage in securing employment than peers who are not disabled, the client may be considered for sponsorship of training.

(B) If the client's disability is expected to prevent the client from holding employment compatible with the client’s capabilities, the client may be considered for sponsorship of training.

(3) Clients who were previously precluded from maximizing their potential for employment due to impediments caused by their disability may be considered for further training contingent upon the job choice.

(4) Based on objective data and input from the client, the Division shall determine that the individual has the capacity to perform the essential functions of the job upon completion of training.

(5) The client and counselor shall complete an Individualized Plan for Employment (IPE) in which the job choice requires the training.

(d) Postsecondary Training

(1) In addition to meeting the general requirements for sponsorship of training specified in Paragraphs (b) and (c) of this Rule, a client shall meet the following requirements for the Division to sponsor postsecondary training:

(A) The Division shall obtain, analyze, and include in the client record objective data that ensures that the client is capable of successfully completing the training program. Sources of data may include, but not be limited to, SAT scores, placement test scores, secondary transcripts for those just out of high school, previous postsecondary transcripts, vocational evaluations and other psychometric assessments.

(B) Attendance Requirements:

(i) The client shall attend the training program on a full-time basis.

(ii) If there are factors related to the client's disability or need to work that may interfere with full-time attendance as defined by the training program, part-time attendance may be authorized if the counselor submits justification and the unit manager approves part-time attendance.

(iii) The unit manager may approve extension of a community college program from four to five semesters and extension of a college or university program from eight to ten semesters. The unit manager may approve attendance at summer school if such attendance will decrease the number of full-time semesters or quarters necessary to complete the training program. Exceptions regarding attendance beyond the limits set in this paragraph shall be approved by both the unit manager and the Chief of Operations.

(iv) Clients attending postsecondary programs

other than a college or university program shall meet the institution's requirements for full-time attendance or secure approval for an exception from the unit manager.

(v) If a student drops enough courses to change the courseload from full-time to part-time without prior approval of the Division, sponsorship shall be discontinued after the counselor notifies the student at least one quarter or semester before termination. The student may have one grading period to return to full-time status unless an exception has been approved.

(C) The Division may sponsor a client in a non-degreed curriculum on a limited basis. These courses must be completed as follows:

(i) The Division may sponsor a client as a "special student" or a student in a "provisional status" when the client cannot be accepted into a degreed program and there is strong evidence that such a plan is feasible according to the postsecondary training policy in Paragraph (d) of this Rule. The Division shall limit the sponsorship to 24 semester hours. Semester hours for these courses shall also be considered part of the 10 semesters for postsecondary training that is the Division's maximum limit.

(ii) The Division may sponsor remedial training courses if the client is accepted into a degreed curriculum contingent upon completion of these courses or as a part of a comprehensive assessment as outlined in 34 C.F.R. 361.5(b)(6). The Division shall sponsor no more than three remedial courses over a period of two semesters over the life of the case. An exception may be granted if more courses are needed because the client has a most severe disability and the exception is approved in writing by the Chief of Operations.

(D) The Division may sponsor clients enrolled in licensed or accredited distance learning programs as specified in 10 NCAC 20D .0207 when such programs are not available through traditional on-campus programs or when the client has special disability-related problems that prevent him or her from participating in an on-campus program. The client's participation in such a program shall be approved in writing by the unit manager. The Division shall not sponsor programs where the entire package or curriculum must be purchased initially. The Division may assist with required software for distance learning but shall purchase computer equipment only as permitted under Rule .0314 of this Section.

(E) The client shall meet the academic standards imposed by the postsecondary school and demonstrate steady progress toward completion of the training program. If the school does not have specific academic standards for completion of the program, the Division shall require the client to have at a minimum a 2.00 grade point average at entry into the junior year for the agency to continue sponsorship. If the client is in the community college system, he or she shall have a 2.00 average at the end of the second semester or the average required by the school or particular curriculum in order to graduate from the program. In other programs such as proprietary schools, the client shall meet the requirements of each specified progress period that will enable the student to graduate or achieve the competency-based requirements at regular intervals set by the school. If the client's grades fall below the minimum grade point average or other requirements set in this Paragraph, the counselor shall notify the client of the pending loss of Division assistance at least one quarter or semester before terminating assistance. The client may then have one grading period to improve to an acceptable level. Failure to maintain the prescribed

academic standards shall mean the loss of Division assistance with tuition, fees, books, interpreter services, maintenance, personal attendant services, and other authorized services directly related to the course of study.

(F) Graduate training may be sponsored for those clients who require this level of training to reach the job choice. For those clients who are either in or entering undergraduate school, graduate training shall be included as part of the original or amended IPE and shall be indicated when the client generally declares his or her major in undergraduate school. For those clients who have an undergraduate degree and require graduate training due to their disability, graduate training may be sponsored subject to the unit manager's approval.

(2) Counselors shall review in-state opportunities and discuss them with the client prior to considering out-of-state vendors. The unit manager shall approve all out-of-state training. Exceptions regarding out-of-state training shall be approved by the Chief of Operations.

(e) The Division shall not sponsor the following:

(1) professional improvement courses (including computer certification courses) after a client has completed the level of training for the job outlined in the original or amended Individual Plan for Employment and secured a job that meets the requirements in the IPE;

(2) training at the preparatory school level;

(3) training when the client cannot demonstrate that sufficient funds are available from other resources to cover expenses that are not covered by the Division; or

(4) programs that decline authorization with semester or incremental payments in favor of purchase as a complete package.

History Note: Authority G.S. 143-545.1; 143.546.1;
34 C.F.R. 361.5(b)(6); 34 C.F.R.; 361.48; 34 C.F.R.; 361.54;
P.L. 105-220 s. 103(a);
Eff. February 1, 1976;
Amended Eff. March 1, 1990;
Temporary Amendment Eff. July 3, 2001;
Amended Eff. August 1, 2002.

10 NCAC 35E .0303 DAY CARE SERVICES FOR ADULTS

(a) Primary Service. Day care services for adults is the provision of an organized program of services during the day in a community group setting for the purpose of supporting adults' personal independence, and promoting their social, physical, and emotional well-being. Services must include a variety of program activities designed to meet the individual needs and interests of the participants, and referral to and assistance in using appropriate community resources. Also included are medical examinations required for individual participants for admission to day care and periodically thereafter when not otherwise available without cost, and food and food services to provide a nutritional meal and snacks as appropriate to the program. Services must be provided in a home or center certified to meet state standards for such programs. Services include recruitment, study and development of adult day care programs, evaluation and periodic re-evaluation to determine if the programs meet the needs of the individuals they serve, and consultation and technical assistance to help day care programs expand and improve the quality of care provided. Transportation to and from the service facility is an optional service that may be provided by adult day care programs.

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

(1) adults who require complete, full-time daytime supervision in order to live in their own home or prevent impending placement in substitute care (e.g. nursing home, domiciliary home), and adults who need the service as part of a protective services plan;

(2) adults who need help for themselves with activities of daily living or support for their caregivers in order to maintain themselves in their own homes or both;

(3) adults who need intervention in the form of enrichment and opportunities for social activities in order to prevent deterioration that would lead to placement in group care;

(4) individuals who need time-limited support in making the transition from independent living to group care, or individuals who need time-limited support in making the transition from group care to independent living.

History Note: Authority G.S. 143B-153;
Eff. February 8, 1977;
Amended Eff. July 1, 1982; October 1, 1979; July 1, 1979;
October 1, 1977;
Transferred from T10.43D .0204 Eff. July 1, 1983;
Amended Eff. May 1, 1990; July 1, 1984;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

10 NCAC 41F .0401 PURPOSE

(a) The agency shall conduct a mutual home assessment study of the family 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 mental health treatment services for 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.

History Note: Authority G.S. 131D, Art. 1A; 143B-153;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. July 18, 2002.

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 and behavioral mental 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) 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 staff of the agency 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.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. July 18, 2002; May 1, 1990.

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 to the licensing authority.
(c) All relicensing material must be submitted at one time to the licensing authority.
(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.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1982;
Amended Eff. July 18, 2002; May 1, 1990; July 1, 1983.

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 shall not be renewed.

History Note: Authority G.S. 131D, Art. 1A; 143B-153;
Eff. July 1, 1982;
Amended Eff. July 18, 2002; April 1, 1984; July 1, 1983.

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, residential child-care facility or family foster home is licensed according to the standards of that state.
(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, 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, residential child-care facility or family foster home to be issued a license

identification number for foster care reimbursement purposes.

History Note: Authority G.S. 131D, Art. 1A; 143B-153;
Eff. July 1, 1982;
Amended Eff. July 18, 2002.

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 and adoptive homes, and who operate residential maternity homes. In addition, if the persons defined in 10 NCAC 41N .0202(b) provide behavior mental health treatment services, the rules in 10 NCAC 14V .0203 and .0204 shall apply.

History Note: Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153;
Eff. February 1, 1986;
Amended Eff. January1, 2002; July 1, 1990;
Temporary Amendment Eff. February 1, 2002;
Amended Eff. July 18, 2002.

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 of the licensing authority's decision to deny, suspend, or revoke a license.

History Note: Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153;
Eff. February 1, 1986;
Amended Eff. July 18, 2002; July 1, 1990.

10 NCAC 41N .0215 SEARCHES
(a) The agency shall have written policies and procedures regarding foster parents conducting searches of children's rooms and possessions that shall be discussed with each child and 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;
Eff. July 18, 2002.

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 and their birth parents or legal custodians prior to or upon placement.
(b) 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.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 18, 2002.

10 NCAC 42E .0901 GOVERNING BODY
(a) Responsibility for sound management rests with the governing body of the day care program. In a private for-profit program, responsibility for management rests with the owner or board of directors; in a private, non-profit program, with the board of directors; in a public agency, with the board of that agency.
(b) The governing body of a day care center shall establish and maintain sound management procedures, including:
(1) approval of organizational structure;
(2) adoption of an annual budget;
(3) regular review of financial status, making sure that the program is under sound fiscal management; This includes an annual budget, monthly accounts of income and expenditures to reflect against the projected budget, and an annual audit;
(4) appointment of the program director who may delegate responsibility for conduct of specific programmatic and administrative activities in accordance with policies adopted by the governing body;
(5) establishment of written policies regarding operation, including;
(A) program policy statement outlining program goals; enrollment criteria and procedures; hours of operation; types of services provided, including transportation if offered; rates and payments; medications; and any other information considered appropriate to include in this document; the policy statement must be designed so copies can be given to interested parties who request information about the day care program;
(B) personnel policies;
(C) any other policies deemed necessary, such as agreements with other agencies and organizations;
(D) all policies affecting clients shall be written in the most direct and understandable language.
(c) The operator of a day care home shall establish and maintain sound operating procedures, including the following:
(1) develop an annual budget;
(2) maintain monthly accounts of income and expenditures;

(3) establish written policies regarding operation, including:
(A) program policy statement outlining program goals; enrollment criteria and procedures; hours of operation; types of services provided, including transportation if offered; rates and payments; medications; and any other information considered appropriate to include in this document; the policy statement must be designed so copies can be given to interested parties who request information about the day care program;
(B) personnel policies;
(C) any other policies deemed necessary, such as agreements with other agencies and organizations;
(D) all policies affecting clients shall be written in the most direct and understandable language.

History Note: Authority G.S. 143B-153;
Eff. July 1, 1978;
Amended Eff. July 1, 1990; January 1, 1981;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

10 NCAC 42E .1103 TRANSPORTATION

(a) When the day care program provides transportation, the following requirements must be met to ensure the health and safety of the participants:
(1) Each person transported must have a seat in the vehicle.
(2) Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop.
(3) Vehicles used to transport participants shall be equipped with seatbelts. Participants shall be instructed to use seatbelts while being transported.

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

History Note: Authority G.S. 143B-153;
Eff. July 1, 1978;
Amended Eff. January 1, 1981;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 05A .0302 CERTIFICATION OF ELIGIBILITY

The certification form required by G.S. 58-84-46 shall be entitled "Report of Fire Conditions" and shall, in addition to the information required by G.S. 58-84-46, include the following:
(1) The name of the city, fire district, or sanitary district;
(2) Current number of personnel, type and amount of equipment and type of water supply used for fire suppression;
(3) Names of the "Board of Trustees of the Local Firemen's Relief Fund";
(4) Identity of the Treasurer of the Local Firemen's Relief Fund; and
(5) Membership status in the North Carolina State Firemen's Association;

History Note: Authority G.S. 58-2-40(1); 58-84-45;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. February 1, 1993; July 1, 1986;
Amended Eff. July 1, 2002.

11 NCAC 08 .1401 DEFINITIONS

As used in this Section:
(1) "Board" means the North Carolina Manufactured Housing Board, as defined in G.S. 143-143.9(1).
(2) "CE Administrator" means a person designated by the Board to receive all applications for course approval, course reports, course application and renewal fees, etc., on behalf of the Board for the CE program.
(3) "Continuing education" or "CE" means any educational activity approved by the Board to be a continuing education activity.
(4) "Course" means a continuing education course directly related to manufactured housing principles and practices or a course designed and approved for licensees.
(5) "Credit hour" means at least 50 minutes of continuing education instruction.
(6) "Licensee" means a manufactured housing salesperson or set-up contractor who holds a license issued by the Board in accordance with G.S. 143-143.11, but does not include a licensed manufacturer or dealer.
(7) "Qualifier" means the person or persons having passed the written Set-Up Contractor's Examination as administered by the Board and authorized in G.S. 143-143.11(h), and as defined in 11 NCAC 08 .0912(e), or a person who meets the requirements of 11 NCAC 08 .0912(e) and is designated by a licensee to obtain CE credits.
(8) "Sponsor" means an organization or individual who has submitted information to the Board as specified in this Section and has been approved by the Board to provide instruction for the purpose of CE.
(9) "Staff" means designated employees of the Manufactured Building Division of the Department of Insurance who are authorized to act on behalf of the Board with regard to continuing education matters.

History Note: Authority G.S. 143-143.10; 143-143.11B;
Eff. August 1, 2002.

11 NCAC 08 .1402 CE COURSES -- GENERAL

(a) Credit shall be given only for courses that have been approved by the Board. No other continuing education hours for other State occupational licenses shall be used by a licensee to satisfy the continuing education requirements in this Section.

(b) The Board may award CE credit for a course or related educational activity that has not been approved in accordance with 11 NCAC 08 .1405(c). Licensees who wish to have the Board consider an unapproved course or educational activity for possible CE credit shall provide documentation to the Board consisting of not less than the information required in 11 NCAC 08 .1405(a), together with a fee of fifty dollars ($50.00) for each course or educational activity to be reviewed. Fees shall be paid by check, money order, VISA, or MasterCard, made payable to the North Carolina Manufactured Housing Board, and are nonrefundable.

(c) The minimum credit hours that a licensee must obtain during the license year before renewal are as follows:

Salespersons -- six credit hours;

Set-up Contractors -- four credit hours.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1403 SPONSOR ADVANCE APPROVAL REQUIRED

A prospective sponsor of a CE course shall obtain written approval from the Board according to these Rules to conduct the course before offering or conducting the course and before advertising or otherwise representing that the course is or may be approved for continuing education credit in North Carolina. No retroactive approval to conduct a CE course shall be granted by the Board for any reason.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1405 ACCREDITATION STANDARDS

(a) Prospective sponsors of CE courses shall apply for approval from the Board by submitting the following information to the Board for consideration:

(1) The nature and purpose of the course;
(2) The course objectives or goals;
(3) The outline of the course, including the number of training hours for each segment;
(4) Copies of all handouts and materials to be furnished to students;
(5) The identity, qualifications, and experience of each instructor; and
(6) Inclement weather policies for courses conducted outdoors.

(b) A nonrefundable fee of one hundred fifty dollars ($150.00), in the form of check, money order, VISA, or MasterCard, payable to the North Carolina Manufactured Housing Board, must be received by the Board for each course submitted for approval. The Board will not review a prospective course application before receiving the fee.

(c) To determine if a course will receive approval, the Board shall complete the following review:

(1) The course shall be referred to the staff for review;
(2) The staff shall review the course to determine if the course is pertinent to the industry, if the course meets its stated objectives, and if the instructor(s) meets the requirements of 11 NCAC 08 .1418; and
(3) The staff shall issue written documentation of approval to the course sponsor, with copies to the Board, for all courses deemed to be acceptable. A written report shall be issued to the course sponsor for all courses found not to be acceptable, documenting specific reasons for the disapproval. A course sponsor may appeal the staff's disapproval of a course to the Board and be heard at the next scheduled meeting of the Board.

(d) Once a course has been approved, neither the content of the course nor any handouts or any teaching aids may be changed without prior written approval from the staff.

History Note: Authority G.S. 143-143.10; 143-143.11B; 143-143.25;
Eff. August 1, 2002.

11 NCAC 08 .1406 CE COURSE SUBJECT MATTER

(a) CE courses shall help assure that licensees possess the knowledge, skills, and competence necessary to function as manufactured home salespersons or set-up contractors in a manner that protects and serves the public interest. The knowledge or skills taught in a CE course shall enable licensees to better serve manufactured home consumers and the subject matter shall be directly related to manufactured home sales and set-up operations.

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

(c) Instructors shall not communicate any misinformation about or contradiction of any statute, court decision, administrative rule, or order that has been issued by the Board.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1412 DENIAL OR WITHDRAWAL OF APPROVAL OF COURSE OR COURSE SPONSOR

The Board shall deny or withdraw approval of any course or course sponsor upon finding that:

(1) The course sponsor has made any false statements or presented any false information in connection with an application for course or sponsor approval or renewal of the approval.
(2) The course sponsor or any official or instructor employed by or under contract with the course

sponsor has refused or failed to comply with any of the provisions of this Section.

(3) The course sponsor or any official or instructor employed by or under contract with the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the Board.

(4) The course sponsor has engaged in a pattern of consistently canceling scheduled courses.

(5) The course sponsor has knowingly paid fees to the Board with a check that was dishonored by a bank.

(6) An instructor employed by or under contract with the course sponsor fails to conduct approved courses in a manner that demonstrates compliance with the instructor requirements described in 11 NCAC 08 .1418.

(7) Any court of competent jurisdiction has found the course sponsor to have violated, in connection with the offering of CE courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

(8) The course sponsor has failed to comply with cancellation and refund policies as outlined in 11 NCAC 08 .1411.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1413 RENEWAL OF COURSE AND SPONSOR APPROVAL

(a) Board approval of all CE courses and course sponsors shall expire one year following the date of approval. In order to assure continuous approval, renewal applications shall be accompanied by the prescribed renewal fee and filed with the Board not later than 30 days prior to the date of expiration. Any incomplete renewal application received 30 days or more prior to the date of expiration that is not completed within 10 days after notice of the deficiency, as well as any renewal application received less than 30 days prior to the date of expiration, shall not be accepted. For renewal applications received less than 30 days prior to the date of expiration, the sponsor shall file an application for original approval in accordance with 11 NCAC 08 .1405 on or after July 1 in order to be reapproved. Fees as prescribed in 11 NCAC 08 .1405 shall apply for all such reapprovals.

(b) The fee for renewal of Board approval shall be seventy-five dollars ($75.00) for each CE course for sponsors meeting the deadlines specified in Paragraph (a) of this Rule. Fees shall be paid by check, money order, or Visa / MasterCard made payable to the North Carolina Manufactured Housing Board and are nonrefundable.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1414 SPONSOR CHANGES DURING APPROVAL PERIOD

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

(b) Course sponsors shall obtain prior approval from the Board for any proposed changes in the content or number of hours for CE courses. The Board shall approve the changes if they satisfy the accreditation requirements of 11 NCAC 08 .1405. Changes in course content that are solely for the purpose of assuring that information provided in a course is current, such as code amendments, changes in regulations, etc., need not be reported until the time the sponsor requests renewal of course approval as specified in 11 NCAC 08 .1413. Requests for approval of changes shall be in writing.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1415 CE REQUIREMENTS

(a) In order to renew an active manufactured housing salesperson or set-up contractor license for license periods beginning on or after July 1, 2003, and in accordance with G.S. 143-143.11B(a), a licensee shall have completed the number of credit hours specified in this Paragraph, by June 30 of the previous license year. Salespersons shall complete six credit hours and set-up contractors shall complete four credit hours. If a licensee exceeds the number of credit hours specified in this Paragraph, the excess credit hours may be carried forward into the next license year, but the number of carry over credit hours may not exceed the number specified in this Paragraph.

(b) For set-up contractors originally licensed on or after July 15, 1999, the person obtaining the required credit hours must be a qualifier. If a set-up contractor licensed on or after July 15, 1999 has more than one qualifier, each qualifier must obtain the required number of CE credits for the license period. For set-up contractors originally licensed prior to July 15, 1999, the licensee shall designate an individual, known as the "qualifier", who is associated with the licensee and is actively engaged in the work of the licensee for a minimum of 20 hours per week or a majority of the hours operated by the licensee, whichever is less. The qualifier shall be the person who obtains CE credits on behalf of the licensee. Each licensee shall notify the Board in writing within 10 days after the qualifier no longer meets the preceding requirements. If a qualifier has obtained excess credit hours which may be carried over into the subsequent license year, and no longer meets the requirements of this Section, the carry over credits shall not apply to the licensee. If the qualifier becomes employed by another licensee and meets the requirements of this Section, the qualifier's carry over credit hours may by applied to the licensee with whom the qualifier is newly employed for the current license year. A licensee whose qualifier no longer meets the requirements of this Section must designate another qualifier who shall obtain the required credit hours for the subsequent license year.

(c) A licensee who is initially licensed on or after January 1 in any license year is exempt from this Section for the license period expiring on the next June 30.

(d) A licensee who is qualified as an instructor in accordance with 11 NCAC 08 .1418 and who serves as an instructor for an approved CE course shall receive the maximum credits for the course taught by the instructor that are awarded to a student for the course. However, teaching credit is valid for teaching an approved CE course or seminar for the first time only.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1417 MONITORING ATTENDANCE

(a) Continuing Education Coordinators, or their designees, shall monitor attendance for the duration of each class session to assure that all students reported as satisfactorily completing a course have attended at least 90 percent of the scheduled classroom hours, regardless of the length of the course. Students shall not be admitted to a class session after 10 percent of the scheduled classroom hours have been conducted. A student shall not be allowed to sign a course attendance roster report, shall not be issued a course completion certificate, and shall not be reported to the Board as having completed a course unless the student fully satisfies the attendance requirement. Sponsors and instructors shall not make any exceptions to the attendance requirement for any reason.

(b) Sponsors shall assure that, if necessary, adequate personnel in addition to the instructor are present during all class sessions to assist the instructor in monitoring attendance and performing the administrative tasks associated with conducting a course. Sponsors shall assure that time required for administrative tasks does not interfere with designated minimum instruction time.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1423 CLASSROOM FACILITIES

A classroom in which a course is provided shall:

(1) Accommodate all enrolled students;
(2) Be equipped with student desks, worktables with chairs, or other seating arrangement which provides a surface whereby each student can sit and write;
(3) Have light, heat, cooling, and ventilation;
(4) Have, if required, a public address system such that all students can hear the instructor clearly;
(5) Provide a direct, unobstructed line of sight from each student to the instructor and all teaching aids; and
(6) Be free of distractions that would disrupt class sessions.

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

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1424 STUDENT CHECK-IN

Upon initially checking in for a class session, sponsors and instructors shall require licensees to provide their manufactured housing salesperson license number or set-up contractor license number and qualifier number. Student identity shall be verified by a photo identification issued to the student by a federal, state or local government agency. The CE Administrator shall verify information reported in accordance with 11 NCAC 08 .1426(a) regarding each student's license number, qualifier number, and current license status. Any student providing false information to a course sponsor shall not receive CE credits for the course, shall not be entitled to a refund of course fees, and may be subject to disciplinary action by the Board.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1426 COURSE COMPLETION REPORTING

(a) The Continuing Education Coordinator designated by the sponsor in accordance with 11 NCAC 08 .1416 shall prepare and submit to the Board reports verifying completion of a CE course for each licensee who satisfactorily completes the course according to the criteria in 11 NCAC 08 .1417 and 11 NCAC 08 .1419. The reports shall be submitted in the manner and format as prescribed by this Rule. Sponsors shall submit these reports to the attention of the CE Administrator such that receipt by the Board within 15 calendar days following the course is assured, but in no case later than June 1 for courses conducted before that date. The report shall be submitted to the attention of the CE Administrator. For each course taken, such report shall include a certificate of course completion that is signed by at least one course instructor and shall indicate the name and license number of the licensee who completed the course, the date of course completion, and the number of credit hours granted to the licensee. A fee of five dollars ($5.00) per credit hour per licensee must be provided by the sponsor with this information, and shall be by check, money order, or Visa / MasterCard made payable to the North Carolina Manufactured Housing Board. The same course shall not be repeated and reported for credit by a licensee within any three year period. No refund of required fees shall be issued for any course credits that are rejected for this reason. The sponsor shall make a separate fee payment for each separate class session.

(b) Course sponsors shall provide licensees enrolled in each CE course an opportunity to complete an evaluation of each approved CE course. Sponsors shall submit the completed evaluation forms to the Board along with the reports that verify completion of a CE course. Evaluation forms shall be reviewed to determine course problem areas and to verify compliance with these Rules.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved CE course according to the criteria in 11 NCAC 08 .1417 and 11 NCAC 08 .1419 a course completion certificate. Sponsors shall provide the certificates to licensees within 15 calendar days following the course, but in no case later than June 1 for any course completed before that date. The certificate may be retained by the licensee as proof of having completed the course.

(d) When a licensee does not comply with the participation standards in 11 NCAC 08 .1419, the course sponsor shall advise the Board of this matter in writing at the time the sponsor submits the reports verifying completion of the course as specified in Paragraph (a) of this Rule. The sponsor who determines that a licensee failed to comply with either the Board's attendance or student participation standards in 11 NCAC 08 .1417 and 11 NCAC 08 .1419 shall not provide the

licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education. Such persons shall be reported to the CE Administrator as specified in 11 NCAC 08 .1419(c).

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1429 CHANGE IN SPONSOR OWNERSHIP

The approval granted to a course sponsor may be transferred to a new or different person, firm, or corporation only with the prior approval of the Board. The Board shall approve the transfer if the transferee satisfies the accreditation requirements as specified in 11 NCAC 08 .1405. If the ownership of an approved course sponsor is to be sold or otherwise changed, the sponsor shall obtain Board approval of the ownership change. The Board shall approve the ownership change if the proposed new owner satisfies the requirements of the Rules in this Section. All requests for Board approval of transfers or changes in ownership shall be in writing and shall be accompanied by a fee of one hundred fifty dollars ($150.00). Fees shall be paid by check, money order, or Visa / MasterCard made payable to the North Carolina Manufactured Housing Board and are nonrefundable.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 08 .1432 NON-COMPLIANCE

If a licensee fails to complete the CE requirements specified in these Rules by June 30 of a given license year, his or her license shall not be renewed. A licensee may renew at any time prior to the following June 30, but may not operate as either a manufactured housing salesperson or set-up contractor until such time as documentation of having completed the CE requirements is furnished to the Board and the license has been renewed. A licensee who has not completed the CE requirements within one year of the original expiration shall be required to pass written State examinations in order to be re-licensed.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002.

11 NCAC 12 .0307 FILING APPROVAL: LIFE: ACCIDENT AND HEALTH FORMS

(a) The following procedure shall be used in filing life, annuity, and accident and health and health maintenance organization forms for approval by the Department:

(1) A filing letter shall be submitted in duplicate with the Federal Employee Identification Number (FEIN); forms shall be listed by number and descriptive title; the filer shall indicate if the form is new and briefly describe the use of the form; if the form is a revision the filer shall identify the form being replaced by its number and approval date;

(2) If riders, endorsements or certificates are filed separately, the filer shall indicate policy forms with which they are used;

(3) Forms shall be submitted in duplicate and each form shall be identified by a form number in the lower left-hand corner of the first page. Forms filed for Medicare supplement insurance shall be filed in triplicate. For the purposes of approval all forms shall be in final print. The Commissioner shall not accept photocopies as final print;

(4) All forms shall be completed with specimen data;

(5) Rates by age and mode of payment including the actuarial memorandum shall be attached to each form requiring a premium;

(6) The filer shall submit evidence of approval of the subject identical filing by the filer's state of domicile;

(7) The filer shall submit a listing of states in which any subject identical filing has been submitted and a listing of states that have:

(A) approved; or

(B) disapproved, including the reasons for disapproval;

(8) The filer shall submit copies of any endorsements, riders or changes in the subject filing required by any other jurisdiction as a condition of approval;

(9) Subparagraphs (6), (7), and (8) of this Paragraph shall not be applicable to domestic insurers;

(10) The filer shall submit copies of sales promotion material to be used in North Carolina for annuities, interest-sensitive life, Medicare supplement, and long-term care products. All such advertisements shall be identified by a unique form number in the lower left-hand corner of the first page.

(b) Individual accident and health premium rate revisions for which Department approval is required by G.S. 58 must be filed in triplicate and include evidence of the Department's approval of that policy's most recent rate revision.

(c) A written notice must be given to the Department by the filer before forms or rates are deemed by statute to be approved.

(d) If the filer does not respond to a forms filing disapproval letter within 90 days of disapproval the Department shall close the file.

History Note: Authority G.S. 58-2-40; 58-6-5; 58-51-1; 58-54-35; 58-55-30; 58-58-1; 58-65-1; 58-65-40; 58-67-50; 58-67-150;
Eff. February 1, 1976;
Amended Eff. November 1, 1976;
Readopted Eff. September 26, 1978;
Amended Eff. February 1, 1996; February 1, 1992;
April 1, 1989;
Amended Eff. August 1, 2002.

11 NCAC 12 .1002 DEFINITIONS

(a) As used in this Section, "insurer" means an entity licensed under G.S. 58 that writes long-term care insurance.

(b) As used in this Section, "exceptional increase" means only those increases filed by an insurer as exceptional for which the

Commissioner determines the need for the premium rate increase is justified: due to changes in laws or rules applicable to long-term care coverage in this state; or due to increased and unexpected utilization that affects the majority of insurers of similar products. Except as provided in 11 NCAC 12 .1028, exceptional increases are subject to the same requirements as other premium rate schedule increases. The Commissioner may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase. The Commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claim costs.

(c) As used in 11 NCAC 12 .1028(k), "incidental" means that the value of the long-term care benefits provided is less than ten percent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

(d) As used in this Section, "qualified actuary" means a member in good standing of the American Academy of Actuaries.

(e) As used in this Section, "similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in G.S. 58-55-20(3)a. are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.

(f) The definitions contained in G.S. 58-1-5 and in G.S. 58-55-20 are incorporated in this Section by reference.

History Note: Authority G.S. 58-2-40(1); 58-55-30(a);
Eff. September 1, 1990;
Amended Eff. February 1, 1996; December 1, 1993;
December 1, 1992;
Amended Eff. August 1, 2002.

11 NCAC 12 .1004 POLICY PRACTICES AND PROVISIONS

(a) The terms "guaranteed renewable" or "noncancellable" may not be used in any individual policy without further explanatory language in accordance with the disclosure requirements of 11 NCAC 12 .1006. No such policy issued to an individual shall contain renewal provisions other than "guaranteed renewable" or "noncancellable".

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums; during which period the insurer has no unilateral right to make any change in any provision of the policy while the policy is in force and can not refuse to renew: Provided that rates may be revised by the insurer on a class basis.

(c) The term "level premium" may be used only when the insurer does not have the right to change the premium.

(d) The word "noncancellable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums and during which period the insurer has no right to unilaterally make any change in any provision of the policy or in the premium rate.

(e) No policy may limit or exclude coverage by type of illness, treatment, medical condition, or accident, except as follows:

(1) preexisting conditions as specified in G.S. 58-55-30;
(2) mental or nervous disorders, except for Alzheimer's Disease;
(3) alcoholism and drug addiction;
(4) illness, treatment, or medical condition arising out of:
  (A) war or act of war (whether declared or undeclared);
  (B) participation in a felony, riot, or insurrection;
  (C) service in the armed forces or units auxiliary thereto;
  (D) suicide, attempted suicide, or intentionally self-inflicted injury; or
  (E) aviation activity as a nonfare-paying passenger;
(5) treatment provided in a government facility (unless otherwise required by law); services for which benefits are available under Medicare (unless otherwise required by law), under any other governmental program (except Medicaid), or under any state or federal workers' compensation, employer's liability, or occupational disease law; services provided by the insured's parents, spouse, children or siblings; and services for which no charge is normally made in the absence of insurance;
(6) exclusions and limitations for payment for services provided outside the United States; and
(7) legitimate variations in benefit levels to reflect differences in provider rates.

(f) Termination of a policy shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the policy was in force and continues without interruption after termination. Such extension of benefits beyond the period during which the policy was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits; and may be subject to any policy waiting period and all other applicable provisions of the policy.

History Note: Authority G.S. 58-2-40(1); 58-55-30(a);
Eff. September 1, 1990;
Amended Eff. February 1, 1996; December 1, 1993;
December 1, 1992;
Amended Eff. August 1, 2002.

11 NCAC 12 .1012 RESERVE STANDARDS

(a) When long-term care benefits are provided through the acceleration of benefits under group or individual life insurance policies or riders to such policies, policy reserves for such benefits shall be determined in accordance with G.S. 58-58-50. Claim reserves must also be established in the case when such policy or rider is in claim status.

(b) Reserves for policies and riders subject to this Rule shall be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(c) In the development and calculation of reserves for policies and riders subject to this Rule, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations that have an effect on projected claim costs, including the following: definition of insured events; covered long-term care facilities; existence of home convalescence care coverage; definition of facilities; existence or absence of barriers to eligibility; premium waiver provision; renewability; ability to raise premiums; marketing method; underwriting procedures; claims adjustment procedures; waiting period; maximum benefit; availability of eligible facilities; margins in claim costs; optional nature of benefit; delay in eligibility for benefit; inflation protection provisions; and guaranteed insurability option.

(d) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(e) When long-term care benefits are provided other than as in Paragraphs (a) through (d) of this Rule, reserves shall be determined in accordance with 11 NCAC 11F .0200.

History Note: Authority G.S. 58-2-40(1); 58-55-30(a);
Eff. September 1, 1990;
Amended Eff. August 1, 2002.

11 NCAC 12 .1013 LOSS RATIO

(a) This Rule shall apply to all long-term care insurance policies except those subject to 11 NCAC 12 .1014 and .1028. Further, 11 NCAC 12 .0555(b)(3) shall not apply to policies or certificates covered under 11 NCAC 12 .1014 and .1028.

(b) Benefits under long-term care insurance policies shall be deemed to be reasonable in relation to premiums, provided that the expected loss ratio is at least 60 percent for individual policies and 75 percent for group policies, and is calculated in a manner that provides for reserving of the long-term care insurance risk. In evaluating the expected loss ratio, consideration shall be given to all relevant factors, including:

(1) statistical credibility of incurred claims experience and earned premiums;
(2) the period for which rates are computed to provide coverage;
(3) experienced and projected trends;
(4) concentration of experience within early policy duration;
(5) expected claim fluctuation;
(6) experience refunds, adjustments, or dividends;
(7) renewability features;
(8) expense factors;
(9) interest;
(10) experimental nature of the coverage;
(11) policy reserves;
(12) mix of business by risk classification; and
(13) product features such as long elimination periods, high deductibles, and high maximum limits.

(c) Paragraph (b) of this Rule shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

(1) The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
(2) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of G.S. 58-58-55;
(3) The policy meets the disclosure requirements of G.S. 58-55-30;
(4) Any policy illustration meets the applicable requirements of 11 NCAC 04 .0500; and
(5) An actuarial memorandum is filed with the Commissioner that includes:
    (A) A description of the basis on which the long-term care rates were determined;
    (B) A description of the basis for the reserves;
    (C) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
    (D) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;
    (E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
    (F) The estimated average annual premium per policy and the average issue age;
    (G) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(H) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

History Note: Authority G.S. 58-2-40(1); 58-55-30(a);
Eff. September 1, 1990;
Amended Eff. August 1, 2002.

11 NCAC 12 .1014 FILING REQUIREMENT

(a) Before an insurer offers a group policy to a resident of North Carolina pursuant to G.S. 58-55-25, it shall file with the Commissioner evidence that the group policy has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those of North Carolina.

(b) This Rule applies to any long-term care policy issued in this state on or after February 1, 2003. An insurer shall provide the information listed in this paragraph to the commissioner 45 days prior to making a long-term care insurance form available for sale.

(1) A copy of the disclosure documents required in 11 NCAC 12 .1027, and

(2) An actuarial certification consisting of at least the following:

(A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(B) A statement that the policy design and coverage provided have been reviewed and taken into consideration;

(C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(D) A complete description of the basis for contract reserves that are anticipated to be held under the form to include:

(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(iii) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and

(iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship. If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration based on a standard age distribution; and

(E) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(c) The Commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences; relevant and credible data from other studies; or both.

(d) In the event the Commissioner asks for additional information under this provision, the period in Paragraph (b) of this Rule does not include the period during which the insurer is preparing the requested information.

History Note: Authority G.S. 58-2-40(1); 58-55-30(a);
Eff. September 1, 1990;
Amended Eff. August 1, 2002.

11 NCAC 12 .1015 STANDARD FORMAT OUTLINE OF COVERAGE

(a) The outline of coverage shall be a free-standing document, using no smaller than ten-point type.

(b) The outline of coverage shall contain no material of an advertising nature.

(c) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

(d) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(e) Format for outline of coverage:

[COMPANY NAME]
[ADDRESS - CITY & STATE]
[TELEPHONE NUMBER]
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE
[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).
2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!
3. FEDERAL TAX CONSEQUENCES.
   This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

   OR

   Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.
4. Terms Under Which the Policy OR Certificate May Be Continued in Force or Discontinued.
   (a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:
      (1) Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.
      (2) [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.
   (b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;]
   (c) [Describe waiver of premium provisions or state that there are not such provisions.]
5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.
   [In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]
6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.
   (a) [Provide a brief description of the right to return–"free look" provision of the policy.]
   (b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.
   (a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.
   (b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.
8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.
   This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]
9. BENEFITS PROVIDED BY THIS POLICY.
   (a) [Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.]
   (b) [Institutional benefits, by skill level.]
   (c) [Non-institutional benefits, by skill level.]
   (d) Eligibility for Payment of Benefits
   [Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]
   [Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers must accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]
10. LIMITATIONS AND EXCLUSIONS.
    [Describe:
    (a) Preexisting conditions;
    (b) Non-eligible facilities and provider;
    (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
    (d) Exclusions and exceptions;
    (e) Limitations.]
    [This section must provide a brief specific description of any policy provisions that limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in Number 6 above.]
    THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.
11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:
    (a) That the benefit level will not increase over time;
    (b) Any automatic benefit adjustment provisions;
    (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
    (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any restrictions or limitations;
    (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]
12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.
    [State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]
13. PREMIUM.
    [(a) State the total annual premium for the policy;
    (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]
14. ADDITIONAL FEATURES.
    [(a) Indicate if medical underwriting is used;
    (b) Describe other important features.]
15. CONTACT THE NORTH CAROLINA SENIORS' HEALTH INSURANCE INFORMATION PROGRAM (SHIIP) IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

History Note: Authority G.S. 58-2-40(1); 58-55-30(a);
Eff. September 1, 1990;
Amended Eff. August 1, 2002.

11 NCAC 12 .1018 STANDARDS FOR MARKETING

(a) Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:
   (1) Establish marketing procedures and agent training requirements to assure that:
      (A) Any marketing activities, including any comparison of policies, by its agents or other producers will be fair and accurate; and
      (B) Excessive insurance is not sold or issued.
   (2) Display prominently by type, stamp or other means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(3) Provide copies of the disclosure forms required in 11 NCAC 12 .1027(d) to the applicant.

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required.

(5) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this Rule.

(6) Every insurer providing long-term care insurance in this State shall at the time of solicitation provide the address and toll-free telephone number of the North Carolina Seniors' Health Insurance Information Program (SHIIP).

(7) For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to this Section.

(8) Provide an explanation of contingent benefit upon lapse as provided for in 11 NCAC 12 .1026.

(b) In addition to the practices prohibited in G.S. 58, Article 63, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue influence. As used in this Subparagraph, "undue influence" means a fraudulent influence over the mind and will of another to the extent that the professed action is not freely done but is in truth the act of the one who procures the result.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(4) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

(c) With respect to the obligations set forth in this Rule, the primary responsibility of an association, as defined in G.S. 58-55-20(3)(c), when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold. The insurer shall file with the Commissioner the following material:

(1) The policy and certificate,

(2) A corresponding outline of coverage, and

(3) All advertisements requested by the Commissioner.

(d) The association shall disclose in any long-term care insurance solicitation:

(1) The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

(2) A brief description of the process under which the policies and the insurer issuing the policies were selected.

(3) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

(4) The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(e) The association shall also:

(1) At the time of the association's decision to endorse, engage the services of a long term care insurance expert who is not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;

(2) Monitor the marketing efforts of the insurer and its agents; and

(3) Review and approve all marketing materials or other insurance communications used to

promote sales or sent to members regarding the policies or certificates.

(4) Paragraphs (e)(1) through (e)(3) of this Rule shall not apply to qualified long-term care insurance contracts.

(f) No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the Commissioner the information required in this Rule.

(g) The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this rule.

(h) Failure to comply with the filing and certification requirements of this rule constitutes an unfair trade practice in violation of G.S. 58, Article 63.

History Note: Authority G.S. 58-2-40(1); 58-55-30(a); 58-63-15(9);
Eff. December 1, 1992;
Amended Eff. August 1, 2002.

11 NCAC 12 .1026 NONFORFEITURE BENEFIT REQUIREMENTS

(a) This Rule does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(b) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of G.S. 58-55-31:

(1) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Paragraph (g) of this Rule; and

(2) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(c) If the offer required to be made under G.S. 58-55-31 is rejected, the insurer shall provide the contingent benefit upon lapse described in this Rule.

(d) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificate-holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(e) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in this Paragraph based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 45 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(f) On or before the effective date of a substantial premium increase as defined in Paragraph (e) of this Rule, the insurer shall:

(1) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(2) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Paragraph (g) of this Rule. This option may be elected at any time during the 120-day period; and

(3) Notify the policyholder or certificate-holder that a default or lapse at any time during the 120-day period shall be deemed to be the election of the offer to convert.

(g) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, shall satisfy the following criteria:

(1) For purposes of this Paragraph, attained age rating is defined as a schedule of premiums starting from the issue date increases at least one percent per year prior to age 50 and at least three percent per year beyond age 50.

(2) For purposes of this Paragraph, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Paragraph (g)(3) of this Rule.

(3) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Paragraph (i) of this Rule.

(4) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter. For a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of: the end of the tenth year following the policy or certificate issue date; or the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(h) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(i) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

(j) There shall be no difference in the minimum nonforfeiture benefits as required under this Rule for group and individual policies.

(k) The requirements set forth in this Rule shall become effective August 1, 2003, and shall apply as follows:

(1) Except as provided for in Paragraph (k)(2) of this Rule, the provisions of this Rule apply to any long-term care policy issued in this state on or after August 1, 2002.

(2) For certificates issued on or after August 1, 2002, under a group long-term care insurance policy as defined in G.S. 58-55-20(3), which policy was in force at the time this Rule became effective, the provisions of this Rule shall not apply.

(l) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of 11 NCAC 12 .1013 treating the policy as a whole.

(m) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Paragraph (e) of this Rule, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(n) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

(1) The nonforfeiture provision shall be disclosed;

(2) The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and

(3) The nonforfeiture provision shall provide at least one of the following:

(A) Reduced paid-up insurance; or

(B) Extended term insurance; or

(C) Shortened benefit period.

History Note: Authority G.S. 58-2-40(1); 58-55-30(a); 58-55-31;
Eff. April 1, 1999;
Amended Eff. August 1, 2002.

11 NCAC 12 .1027 REQUIRED DISCLOSURE OF RATING PRACTICES TO CONSUMERS

(a) This Rule shall apply as follows:

(1) To any long-term care policy or certificate issued in this state on or after February 1, 2003, except as provided in Paragraph (a)(2) of this Rule.

(2) For certificates issued on or after August 1, 2002 under a group long-term care insurance policy as defined in G.S. 58-55-20(3), which policy was in force at the time this Rule became effective, the provisions of this Rule shall apply on the policy anniversary following July 1, 2003.

(b) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this Paragraph to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all required disclosure to the applicant no later than at the time of delivery of the policy or certificate. Required disclosure is as follows:

(1) A statement that the policy may be subject to rate increases in the future;

(2) An explanation of potential future premium rate revisions, and the policyholder's or certificate-holder's option in the event of a premium rate revision;

(3) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(4) A general explanation for applying premium rate or rate schedule adjustments that shall include:

(A) A description of when premium rate or rate schedule adjustments will be effective on either the next anniversary date or the next billing date; and

(B) The right to a revised premium rate or rate schedule as provided if the premium rate or rate schedule is changed;

(5) Information regarding history of rate increases:

(A) Information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this state or any other state that, at a minimum, identifies:

(i) The policy forms for which premium rates have been increased;

(ii) The calendar years when the form was available for purchase; and

(iii) The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics;

(B) An insurer shall have the right to exclude from the disclosure premium rate increases that apply only to blocks of business acquired from other non-affiliated insurers or the long-term care policies acquired from other non-affiliated insurers when those increases occurred prior to the acquisition;

(C) If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from non-affiliated insurers on or before August 1, 2002 or the end of a 24 month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with this Rule; and

(D) If the acquiring insurer referenced in Paragraph (b)(5)(C) of this Rule files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Paragraph (b)(5)(C) of this Rule, the acquiring insurer must make all disclosures required by this Rule, including disclosure of the earlier rate increase.

(c) An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under this Rule. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(d) An insurer shall use the NAIC Long-Term Care Insurance Model Regulation forms identified as Appendices B and F to comply with the requirements of Paragraphs (b) and (c) of this Rule.

(e) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate-holders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required under this Rule when the rate increase is implemented.

History Note: Authority G.S. 58-2-40(1); 58-55-30(a); 58-63-15(9);
Eff. August 1, 2002.

11 NCAC 12 .1029 SCOPE AND APPLICATION

(a) Except as otherwise specifically provided, this Section applies to all long-term care insurance policies and life insurance policies that accelerate benefits for long-term care delivered or issued for delivery in this state on or after the effective date by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations, prepaid health plans; health maintenance organizations and all similar organizations.

(b) This Section applies to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance if:

(1) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services; or

(2) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or

(3) Benefits under the policy may commence after the policyholder has reached Social Security's

normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

History Note: Authority G.S. 58-2-40; 58-2-210; Eff. August 1, 2002.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09D .0104 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .0102(a) of this Subchapter, an applicant for the Intermediate Law Enforcement Certificate shall have acquired the following combination of educational points or degrees, law enforcement training points and years of full-time law enforcement experience as set out in Rule .0102(b) of this Section.

Educational Degrees				AA/AS	AB/BS
Years of Law Enforcement Experience	8	6	4	4	2
Minimum Law Enforcement Training Points				16	8
Minimum Total Education and Training Points	32	40	48	16	8

(b) Educational points claimed must be issued by institutions recognized by the United States Department of Education and the Council for Higher Education Accreditation.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2002; August 1, 1995; May 1, 1986; January 1, 1983.

12 NCAC 09D .0105 ADVANCED LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .0102(a) of this Subchapter, an applicant for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of full-time law enforcement experience as set out in Rule .0102(b) of this Section.

Educational Degrees			AA/AS	AB/BS	GRAD./PRO.
Years of Law Enforcement Experience	12	9	9	6	4
Minimum Law Enforcement Training Points	-	-	36	24	16
Minimum Total Education and Training Points	48	60	36	24	16

(b) Educational points claimed must be issued by institutions recognized by the United States Department of Education and the Council for Higher Education Accreditation.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2002; August 1, 1995; May 1, 1986.

12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

(a) Every Justice Officer employed or certified in North Carolina shall:

(1) be a citizen of the United States;
(2) be at least 21 years of age;
(3) be a high school graduate, or the equivalent (GED);
(4) have been fingerprinted by the employing agency;
(5) have had a medical examination by a licensed physician;
(6) have produced a negative result on a drug screen administered according to the following specifications:
(A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a

confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and

(B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen; and

(C) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites; and

(D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost at the time of adoption of this Rule; and

(E) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment; and

(F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Part (C) of this Rule;

(G) every agency head shall make arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;

(7) within five working days notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged and all Domestic Violence Orders (50B) which are issued by a judicial official and which provide an opportunity for both parties to be present;and shall also give notification, in writing, to the Standards Division and the appointing department head following the adjudication of these criminal charges and Domestic Violence Orders (50B). This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable is 60 days or less. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions which shall be reported to the Division expressly include G.S. 20-139 (persons under the influence of drugs), G.S. 20-28(b) (driving while license revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency. The notifications of adjudication required must specify the nature of the offense, the court in which the case was handled and the date of disposition, and must include a certified copy of the final disposition from the Clerk of Court in the county of adjudication. The notifications of adjudication must be received by the Standards Division within 30 days of the date the case was disposed of in court. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing department head within 20 days of the date the case was disposed of in court. The department head, provided he has knowledge of the officer's charge(s) and Domestic Violence Orders (50B) shall also notify the Division within 30 days of the date the case or order was disposed of in court. Receipt by the Standards Division of timely notification of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, is sufficient notice for compliance with this Subparagraph;

(8) be of good moral as defined in: In re Willis, 299 N.C. 1, 215 S.E.2d 771 appeal dismissed 423 U.S. 976 (9175); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny;

(9) have a background investigation conducted by the employing agency, to include a personal interview prior to employment;

(10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.

(b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.

History Note: Authority G.S. 17E-7; 95-230: 95-231: 95-232: 95-233: 95-234: 95-235;
Eff. January 1, 1989;
Amended Eff. August 1, 2002; January 1, 1996; January 1, 1994; January 1, 1994; January 1, 1993.

12 NCAC 10B .0305 BACKGROUND INVESTIGATION

(a) Prior to the background investigation conducted by the employing agency to determine the applicant's suitability to perform essential job functions, the applicant shall complete the Commission's Personal History Statement (F-3) to provide a basis for the investigation. The Personal History Statement (F-3) submitted to the Division shall be completed no more than 120 days prior to the applicant's date of appointment.

(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of appointment the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all changes or a new Personal History Statement (F-3) must be completed.

(c) The employing agency shall ensure the proper dates, signatures, and notarizations are affixed to the Personal History Statement (F-3); and shall also certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement (F-3), and if not, provide the applicant the opportunity to update the F-3 prior to submission to the Division.

(d) The employing agency, prior to employment, shall examine the applicant's character traits and habits relevant to his/her performance as a justice officer and shall determine whether the applicant is of good moral character as defined in Rule .0301(a)(8). The investigator shall summarize the results of the investigation on the Commission-mandated Background Investigation Form (F-8) which shall be signed and dated by the investigator.

(e) The Background Investigation Form (F-8) shall include records checks from:

(1) a state-wide search of the Administrative Office of the Courts (AOC) computerized system;

(2) the national criminal record database accessible through the Division of Criminal Information (DCI) network;

(3) the North Carolina Department of Motor Vehicles, if the applicant has ever possessed a driver's license issued in North Carolina; and

(4) out-of-state motor vehicles check from the appropriate agency, if the applicant has ever been issued a driver's license by a state other than North Carolina.

(f) The Background Investigation must also include, if available, county-wide and certified records checks from each jurisdiction where the applicant has resided for the past 10 years and from the jurisdiction where the applicant attended high school. These records shall be performed on each name by which the applicant for certification has ever been known.

(g) The employing agency shall also forward to the Division certified copies of any criminal charge(s) and disposition(s) known to the agency or listed on the applicant's Personal History Statement (F-3) or both. The employing agency shall explain to the satisfaction of Division staff that charges or other violations which may result from the records checks required in Paragraph (e) of this Section do not pertain to the applicant for certification. This documentation shall be included with all other documentation required in 12 NCAC 10B .0408.

(h) The employing agency shall include a signed and notarized Release Authorization Form which authorizes the Division staff to obtain documents and records pertaining to the applicant for certification which may be required in order to determine whether certification can be granted.

History Note: Authority G.S. 17E-7;
Eff. January 1, 1989;
Amended Eff. August 1, 2002; January 1, 1994; January 1, 1993; January 1, 1992; January 1, 1990.

12 NCAC 10B .0705 QUALIFICATIONS TO ACT AS SCHOOL DIRECTORS

Any person designated to act as, or who performs the duties of, a school director in the delivery or presentation of a commission-accredited detention officer training course shall meet the following qualifications prior to commencing duties as such. Any designated school director will continuously maintain these qualifications during service as a school director.

(1) Submit a written designation as school director executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs;

(2) Be certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission;

(3) Attend or must have attended the most current offering of the school director's orientation as developed and presented by the Commission staff;

(4) Attend or must have attended the most current offering of the school director's conference as presented by the Commission staff and staff of the North Carolina Criminal Justice Education and Training Standards Commission and Standards Division;

(5) Not have had any type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause and such period of sanction is still in effect at the time of designation;

(6) Perform the duties and responsibilities of a school director as specifically required in Rule .0704;

(7) Maintain an updated copy of the "Detention Officer Certification Training Manual" assigned to each accredited school; and

(8) Ensure compliance with the Commission's accreditation requirements as set forth in 12 NCAC 10B .0703 and .0802.

History Note: Authority G.S. 17E-4;
Eff. January 1, 1989;
Amended Eff. August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1992; January 1, 1991.

12 NCAC 10B .0706 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION

History Note: Authority G.S. 17E-4;
Eff. January 1, 1989;
Amended Eff. August 1, 1998; January 1, 1996;
Repealed Eff. August 1, 2002.

12 NCAC 10B .0707 SUSPENSION: REVOCATION: OR DENIAL: SCHOOL DIRECTOR CERT

History Note: Authority G.S. 17E-4;
Eff. January 1, 1989;
Amended Eff. August 1, 1998;
Repealed Eff. August 1, 2002.

12 NCAC 10B .0708 ADMINISTRATION OF TELECOMMUNICATOR CERTIFICATION COURSE

(a) The executive officer or officers of the institution or agency sponsoring a Telecommunicator Certification Course shall have primary responsibility for implementation of these Rules and standards and for administration of the school.

(b) The executive officers shall designate a compensated staff member to be the school director. No more than two school directors shall be designated at each accredited institution/agency to deliver a Telecommunicator Certification Course. The school director shall have administrative responsibility for planning scheduling, presenting, coordinating, reporting, and generally managing each sponsored telecommunicator certification course and shall be readily available at all times during course delivery as specified in 12 NCAC 10B .0709(b).

(c) The executive officers of the institution or agency sponsoring the Telecommunicator Certification Course shall:

(1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;

(2) provide secretarial, clerical, and other supportive staff assistance as required by the school director; and

(3) provide or make available facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, as required in the "Telecommunicator Certification Course Management Guide."

History Note: Authority G.S. 17E-4;
Eff. April 1, 2001;
Amended Eff. August 1, 2002.

12 NCAC 10B .0710 QUALIFICATIONS OF SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE

Any person designated to act and who performs the duties of a school director in the delivery or presentation of a commission-accredited telecommunicator training course as of the effective date of this rule shall meet the following qualifications prior to commencing duties as such. Any designated school director will continuously maintain these qualifications during service as a school director.

(1) Submit a written designation as school director executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs;

(2) Be certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission;

(3) Have attended the most current offering of the school director's orientation as developed and presented by the Commission staff;

(4) Attend the most current offering of the school director's conference as presented by the Commission staff and staff of the North Carolina Criminal Justice Education and Training Standards Commission and Standards Division;

(5) Not have had any type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause and such period of sanction is still in effect at the time of designation;

(6) Perform the duties and responsibilities of a school director as specifically required in Rule .0709;

(7) Maintain an updated copy of the "Telecommunicator Certification Training Manual" assigned to each accredited school; and

(8) Ensure compliance with the Commission's accreditation requirements as set forth in 12 NCAC 10B .0708.

History Note: Authority G.S. 17E-4;
Eff. April 1, 2001;
Amended Eff. August 1, 2002.

12 NCAC 10B .0711 TERMS AND CONDITIONS OF TELECOMMUNICATOR SCHOOL DIRECTOR CERTIFICATION

History Note: Authority G.S. 17E-4;
Eff. April 1, 2001;

Repealed Eff. August 1, 2002.

12 NCAC 10B .0712 SUSPENSION: REVOCATION: OR DENIAL: TELECOMMUNICATOR SCHOOL DIRECTOR CERT

History Note: Authority G.S. 17E-4;
Eff. April 1, 2001;
Repealed Eff. August 1, 2002.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0302 HIWASSEE RIVER BASIN

(a) Places where the schedule may be inspected:

(1) Clerk of Court:
Cherokee County
Clay County;

(2) North Carolina Department of Environment, Health, and Natural Resources
Asheville Regional Office Interchange Building
59 Woodfin Place
Asheville, North Carolina.

(b) Unnamed Streams. Such streams entering Georgia or Tennessee shall be classified "C Tr."

(c) The Hiwassee River Basin Schedule of Classifications and Water Quality Standards was amended effective:

(1) August 9, 1981;
(2) February 1, 1986;
(3) March 1, 1989;
(4) August 1, 1990;
(5) August 3, 1992;
(6) July 1, 1995;
(7) August 1, 2002.

(d) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective March 1, 1989 as follows:

(1) Fires Creek (Index No. 1-27) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

(2) Gipp Creek (Index No. 1-52-23) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters(with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective July 1, 1995 with the reclassification of the Hiwassee River [Index Nos. 1-(42.7) and 1-(48.5)] from McComb Branch to the Town of Murphy water supply intake including tributaries from Classes WS-IV and WS-IV CA to Classes WS-IV, WS-IV CA, WS-V and C.

(g) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective August 1, 2002 with the reclassification of the Hiwassee River [portion of Index No. 1-(16.5)] from a point 1.2 mile upstream of mouth of McComb Branch to a point 0.6 mile upstream of McComb Branch (Town of Murphy proposed water supply intake) from Class WS-IV to Class WS-IV CA.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);
Eff. February 1, 1976;
Amended Eff. August 1, 2002; July 1, 1995; August 3, 1992; August 1, 1990; March 1, 1989.

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

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

(1) "Functionally dependent" means that structures, buildings or equipment are interconnected through common process streams, supply lines, flues, or stacks.

(2) "Indirect heat exchanger" means any equipment used for the alteration of the temperature of one fluid by the use of another fluid in which the two fluids are separated by an impervious surface such that there is no mixing of the two fluids.

(3) "Plant site" means any single or collection of structures, buildings, facilities, equipment, installations, or operations which:
(A) are located on one or more adjacent properties;
(B) are under common legal control; and
(C) are functionally dependent in their operations.

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

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

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

For a heat input between any two consecutive heat inputs stated in the preceding table, the allowable emissions of particulate matter shall be calculated by the equation E = 1.1698 (Q to the -

0.2230 power.) E = allowable emission limit for particulate matter in lb/million Btu. Q = Maximum heat input in million Btu/hour.

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

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. August 1, 2002; April 1, 1999; June 1, 1985; February 1, 1983.

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

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

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

(1) the production and subsequent storage of medical devices; or

(2) the packaging and subsequent storage of medical devices for sale;

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

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

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

(1) For sterilization chamber evacuation, a closed loop liquid ring vacuum pump, or equipment demonstrated to be as effective at reducing emissions of ethylene oxide shall be used;

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

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

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

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

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

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

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5); 143-215.108(c);
Eff. September 1, 1992;
Amended Eff. August 1, 2002.

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

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

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

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

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

(3) "Bale" means a compressed and bound package of cotton lint, nominally weighing 500 pounds.

(4) "Existing facility" means a cotton ginning operation that operated prior to July 1, 2002.

(5) "Ginning operation" means any facility or plant that removes seed, lint, and trash or one or more combination of these from raw cotton or bales of lint cotton.

(6) "Ginning season" means the period of time during which the gin is in operation, which is generally from September of the current year through January of the following year.

(7) "High pressure exhausts" means the exhaust air systems at a cotton gin that are not defined as "low pressure exhausts."

(8) "Low pressure exhausts" means the exhaust cotton handling systems located at a cotton gin that handle air from the cotton lint handling system and battery condenser.

(c) Applicability. This rule applies to all existing, new, and modified cotton ginning operations. Existing facilities with a maximum rated capacity of less than 20 bales per hour that do not have cyclones on lint cleaners and battery condensers as of July 1, 2002 shall not be required to add:

(1) the emission control devices in Paragraph (d)(1) of this Rule to lint cleaning exhausts if emissions from the lint cleaning are controlled by fine mesh screens; and

(2) the emission control devices in Paragraph (d)(2) of this Rule to battery condenser exhausts if the emissions from the battery condenser are controlled by fine mesh screens.

(d) Emission Control Requirements. The owner or operator of each cotton ginning operation shall control particulate emissions from the facility as follows.

(1) By no later than September 1, 2003, the owner or operator shall control all high pressure exhausts and lint cleaning exhausts with an emission control system that includes:

(A) one or more 1D-3D or 2D-2D cyclones to achieve 95% efficiency; or

(B) an equivalent device with a minimum of 95% efficiency.

(2) By no later than September 1, 2003, the owner or operator shall control low pressure exhausts, except lint cleaning exhausts, by an emission control system that includes:

(A) one or more 1D-3D or 2D-2D cyclones to achieve 90% efficiency; or

(B) an equivalent device with at least a 90% efficiency.

Efficiency is based on the removal of particulate matter between the cyclone's inlet and outlet; it is measured using test methods in Rule .0501 of this Section.

(e) Raincaps. Exhausts from emission points or control devices shall not be equipped with raincaps or other devices that deflect the emissions downward or outward after September 1, 2002.

(f) Operation and Maintenance. To ensure that optimum control efficiency is maintained, the owner or operator shall establish, based on manufacturers recommendations, an inspection and maintenance schedule for the control devices, other emission processing equipment, and monitoring devices that are used pursuant to this Rule. The inspection and maintenance schedule shall be followed throughout the ginning season. The results of the inspections and any maintenance performed on the control equipment, emission processing equipment, or monitoring devices shall be recorded in the log book required in Paragraph (k) of this Rule.

(g) Fugitive Emissions. The owner or operator shall minimize fugitive emissions from cotton ginning operations as follows.

(1) The owner or operator of a

(A) trash stacker shall:

(i) install, maintain, and operate as a minimum, a three sided enclosure with a roof whose sides are high enough above the opening of the dumping device to prevent wind from dispersing dust or debris; or

(ii) install, maintain, and operate a device to provide wet suppression at the dump area of the trash cyclone and minimize free fall distance of waste material exiting the trash cyclone; or

(B) trash stacker/trash composting system shall install, maintain, and operate a wet suppression system providing dust suppression in the auger box assembly and at the dump area of the trash stacker system. The owner or operator shall keep the trash material wet and compost it in place until the material is removed from the dump area for additional composting or disposal.

(3) Gin Yard. The owner or operator shall clean and dispose of accumulations of trash or lint on the non-storage areas of the gin yard daily.

(4) Traffic areas. The owner or operator shall clean paved roadways, parking, and other traffic areas at the facility as necessary to prevent re-entrainment of dust or debris. The owner or operator shall treat unpaved roadways, parking, and other traffic areas at the facility with wet or chemical dust suppressant as necessary to prevent dust from leaving the facility's property and shall install and maintain signs limiting vehicle speed to 10 miles per hour where chemical suppression is used and to 15 miles per hour where wet suppression is used.

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

dump area. The dump area shall be cleaned daily.

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

(1) the name and address of the petitioner;

(2) the location and description of the ginning operation;

(3) a description of the alternative control measure;

(4) a demonstration that the alternative control measure is at least as effective as the control device or method specified in this Rule.

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

(1) all the information required by Paragraph (h) of this Rule has been submitted; and

(2) the alternative control measure is at least as effective as the control device or method specified in this Rule.

(j) Monitoring.

(1) The owner or operator of each ginning operation shall install, maintain, and calibrate monitoring devices that measure pressures, rates of flow, and other operating conditions necessary to determine if the control devices are functioning properly.

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

(A) the calculated inlet velocity for each control device; and

(B) the pressure drop across each control device.

The owner or operator shall use Method 1 and Method 2 of 40 CFR Part 60 Appendix A to measure flow and static pressure and determine inlet velocity or the USDA method for determining duct velocity and static pressure in Agricultural Handbook Number 503, *Cotton Ginners Handbook*, dated December 1994. The Cotton Ginners Handbook method shall only be used where test holes are located a minimum of eight and one-half pipe diameters downstream and one and one-half pipe diameters upstream from elbows, valves, dampers, changes in duct diameter or any other flow disturbances. Where Method 2 is used a standard pitot tube may be used in lieu of the s-pitot specified in Method 2 subject to the conditions specified in Paragraph 2.1 of Method 2.

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

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

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

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

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

(1) Results of the baseline study as specified in Paragraph (j)(2) of this Rule;

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

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

(l) Reporting. The owner or operator shall submit:
(1) by March 1 of each year a report containing the following:
(2) the name and location of the cotton gin;
(3) the number of bales of cotton produced during the previous ginning season;
(4) a maintenance and repair schedule based on inspection of the facility at the conclusion of the previous cotton ginning season required in Paragraph (j)(6) of this Rule; and
(5) signature of the appropriate official as identified in 15A NCAC 02Q .0304(j), certifying as to the truth and accuracy of the report.

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. August 1, 2002.

15A NCAC 02D .0927 BULK GASOLINE TERMINALS

(a) For the purpose of this Rule, the following definitions apply:
(1) "Bulk gasoline terminal" means:
(A) breakout tanks of an interstate oil pipeline facility; or
(B) a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
(2) "Breakout tank" means a tank used to:
(A) relieve surges in a hazardous liquid pipeline system, or
(B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.
(3) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.
(4) "Contact deck" means a deck in an internal floating roof tank that rises and falls with the liquid level and floats in direct contact with the liquid surface.

(b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or trailer compartments.

(c) Gasoline shall not be loaded into any tank trucks or trailers from any bulk gasoline terminal unless:
(1) The bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding 35 milligrams per liter. The owner or operator shall obtain from the manufacturer and maintain in his records a pre-installation certification stating the vapor control efficiency of the system in use;
(2) Displaced vapors and gases are vented only to the vapor control system or to a flare;
(3) A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and
(4) All loading and vapor lines are equipped with fittings that make vapor-tight connections and that are automatically and immediately closed upon disconnection.

(d) Sources regulated by Paragraph (b) of this Rule shall not:
(1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation, or
(2) allow the pressure in the vapor collection system to exceed the tank truck or trailer pressure relief settings.

(e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or by December 1, 2002, whichever occurs first.

(f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome, at the next time that the tank is taken out of service or by December 1, 2002, whichever occurs first.

(g) The following equipment shall be required on all tanks storing gasoline at a bulk gasoline terminal:
(1) rim-mounted secondary seals on all external and internal floating roof tanks,
(2) gaskets on deck fittings, and
(3) floats in the slotted guide poles with a gasket around the cover of the poles.

(h) Decks shall be required on all above ground tanks with a capacity greater than 19,800 gallons storing gasoline at a bulk gasoline terminal. All decks installed after June 30, 1998 shall comply with the following requirements:
(1) deck seams shall be welded, bolted or riveted; and
(2) seams on bolted contact decks and on riveted contact decks shall be gasketed.

(i) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:

(1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and

(2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter,

the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved from compliance with this Rule, in the ratio of at least 1.3 to 1.

(j) The owner or operators of a bulk gasoline terminal that has received an air permit before December 1, 1992, to emit toxic air pollutants under 15A NCAC 02Q .0700 to comply with Section .1100 of this Subchapter shall continue to follow all terms and conditions of the permit issued under 15A NCAC 02Q .0700 and to bring the terminal into compliance with Section .1100 of this Subchapter according to the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (i) of this Rule.

(k) Within one year after December 1, 1996, the Director shall determine the incremental ambient benzene levels at the fence line of any bulk gasoline terminal cluster resulting from benzene emissions from such cluster and shall report his findings to the Commission.

(l) The owner or operator of a bulk gasoline terminal shall not load, or allow to be loaded, gasoline into any truck tank or trailer unless the truck tank or trailer has been certified leak tight according to Rule .0932 of this Section within the last 12 months.

(m) The owner or operator of a bulk gasoline terminal shall have on file at the terminal a copy of the certification test conducted according to Rule .0932 of this Section for each gasoline tank truck loaded at the terminal.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. August 1, 2002; July 1, 1998; July 1, 1996; July 1, 1994; December 1, 1992.

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

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

(1) "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.

(2) "Bulk gasoline plant" means a gasoline storage and distribution facility that has an average daily throughput of less than 20,000 gallons of gasoline and usually receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.

(3) "Bulk gasoline terminal" means:

(A) breakout tanks of an interstate oil pipeline facility; or

(B) a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of no less than 20,000 gallons of gasoline.

(4) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 psia or greater.

(5) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(6) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.

(7) "Truck tank" means the storage vessels of trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities and gasoline service stations.

(8) "Truck tank vapor collection equipment" means any piping, hoses, and devices on the truck tank used to collect and route gasoline vapors in the tank to or from the bulk gasoline terminal, bulk gasoline plant, gasoline dispensing facility or gasoline service station vapor control system or vapor balance system.

(9) "Vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(10) "Vapor collection system" means a vapor balance system or any other system used to collect and control emissions of volatile organic compounds.

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

(c) Gasoline Truck Tanks

(1) Gasoline truck tanks and their vapor collection systems shall be tested annually. The test procedure that shall be used is described in Rules .0940 and .0941 of this Section, and is according to Rule .0912 of this Section. The gasoline truck tank shall not be used if it sustains a pressure change greater than 3.0

inches of water in five minutes when pressurized to a gauge pressure of 18 inches of water or when evacuated to a gauge pressure of 6.0 inches of water.

(2) Each gasoline truck tank that has been certified leak tight, according to Subparagraph (1) of this Paragraph shall display a sticker near the Department of Transportation certification plate required by 49 CFR 178.340-10b. This sticker shall show the identification number of the tank and the date that the tank last passed the pressure and vacuum test.

(3) There shall be no liquid leaks from any gasoline truck tank.

(4) Any truck tank with a leak equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section, shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the tank has been certified to be leak tight according to Subparagraph (1) of this Paragraph.

(d) Vapor Collection System

(1) The vapor collection system and vapor control system shall be designed and operated to prevent gauge pressure in the truck tank from exceeding 18 inches of water and to prevent a vacuum of greater than six inches of water.

(2) During loading and unloading operations there shall be:

(A) no vapor leakage from the vapor collection system such that a reading equal to or greater than 100 percent of the lower explosive limit at one inch around the perimeter of each potential leak source as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section; and

(B) no liquid leaks.

(3) If a leak is discovered that exceeds the limit in Part (2)(A) of this Paragraph, the vapor collection system or vapor control system (and therefore the source) shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the system has been retested and found to comply with Part (2)(A) of this Paragraph.

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

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

(1) the gasoline truck tank identification number;

(2) the initial test pressure and the time of the reading;

(3) the final test pressure and the time of the reading;

(4) the initial test vacuum and the time of reading;

(5) the final test vacuum and the time of the reading, and

(6) the date and location of the tests.

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1980;
Amended Eff. August 1, 2002; July 1, 1994; December 1, 1989; January 1, 1985.

15A NCAC 02D .1201 PURPOSE AND SCOPE

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

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

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

(1) afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;

(2) any boilers or industrial furnaces that burn waste as a fuel, except hazardous waste as defined in 40 CFR 260.10;

(3) air curtain burners, which shall comply with Section .1900 of this Subchapter; or

(4) incinerators used to dispose of dead animals or poultry, that meet the following requirements:

(A) the incinerator is located on a farm and is owned and operated by the farm owner or by the farm operator;

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

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

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

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

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

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(1), (3), (4), (5); Eff. October 1, 1991; Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; April 1, 1995; December 1, 1993; Temporary Amendment Eff. March 1, 2002; Amended Eff. August 1, 2002.

15A NCAC 02D .1202 DEFINITIONS

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

(1) "Class I municipal waste combustor" means a small municipal waste combustor located at a municipal waste combustion plant with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste.
(2) "Commercial and industrial solid waste incinerator" (CISWI) or "commercial and industrial solid waste incineration unit" means any combustion device, except air pollution control devices, that combusts commercial and industrial waste.
(3) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air).
(4) "Co-fired combustor (as defined in 40 CFR Part 60, Subpart Ec)" means a unit combusting hospital, medical, or infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital, medical, or infectious waste as measured on a calendar quarter basis. For the purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital, medical, or infectious waste combusted.
(5) "Crematory incinerator" means any incinerator located at a crematory regulated under 21 NCAC 34C that is used solely for the cremation of human remains.
(6) "Construction and demolition waste" means wood, paper, and other combustible waste, except for hazardous waste and asphaltic material, resulting from construction and demolition projects.
(7) "Dioxin and Furan" means tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.
(8) "Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0101 through .0119, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.
(9) "Hospital, medical and infectious waste incinerator (HMIWI)" means any device that combusts any amount of hospital, medical and infectious waste.
(10) "Large HMIWI" means:
  (A) a HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour;
  (B) a continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or
  (C) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.
(11) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.
(12) "Large municipal waste combustor" means each municipal waste combustor unit with a

combustion capacity greater than 250 tons per day of municipal solid waste.

(13) "Medical and Infectious Waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in Part (A)(i) through (A)(vii) of this Subparagraph.

(A) The definition of medical and infectious waste includes:

(i) cultures and stocks of infectious agents and associated biologicals, including:

(I) cultures from medical and pathological laboratories;

(II) cultures and stocks of infectious agents from research and industrial laboratories;

(III) wastes from the production of biologicals;

(IV) discarded live and attenuated vaccines; and

(V) culture dishes and devices used to transfer, inoculate, and mix cultures;

(ii) human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;

(iii) human blood and blood products including:

(I) liquid waste human blood;

(II) products of blood;

(III) items saturated or dripping with human blood; or

(IV) items that were saturated or dripping with human blood that are now caked with dried human blood including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category;

(iv) sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;

(v) animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals;

(vi) isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases; and

(vii) unused sharps including the following unused or discarded sharps;

(I) hypodermic needles;

(II) suture needles;

(III) syringes; and

(IV) scalpel blades.

(B) The definition of medical and infectious waste does not include:

(i) hazardous waste identified or listed under 40 CFR Part 261;
(ii) household waste, as defined in 40 CFR 261.4(b)(1);
(iii) ash from incineration of medical and infectious waste, once the incineration process has been completed;
(iv) human corpses, remains, and anatomical parts that are intended for interment or cremation; and
(v) domestic sewage materials identified in 40 CFR 261.4(a)(1).

(14) "Medium HMIWI" means:
(A) a HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour;
(B) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or
(C) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.

(15) "Municipal waste combustor (MWC) or municipal waste combustor unit" means a municipal waste combustor as defined in 40 CFR 60.51b.

(16) "Municipal waste combustor plant" means one or more designated units at the same location.

(17) "Municipal waste combustor unit capacity" means the maximum charging rate of a municipal waste combustor unit expressed in tons per day of municipal solid waste combusted, calculated according to the procedures under 40 CFR 60.58b(j). Section 60.58b(j) includes procedures for determining municipal waste combustor unit capacity for continuous and batch feed municipal waste combustors.

(18) "Municipal-type solid waste (MSW) or Municipal Solid Waste" means municipal-type solid waste defined in 40 CFR 60.51b.

(19) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.

(20) "Same Location" means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).

(21) "Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.

(22) "Sludge incinerator" means any incinerator regulated under Rule .1110 of this Subchapter but not under 40 CFR Part 503, Subpart E.

(23) "Small HMIWI" means:
(A) a HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour;
(B) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or
(C) a batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.

(24) "Small municipal waste combustor" means each municipal waste combustor unit with a combustion capacity that is greater than 11 tons per day but not more than 250 tons per day of municipal solid waste.

(25) "Small remote HMIWI" means any small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area (SMSA) and which burns less than 2,000 pounds per week of hospital, medical and infectious waste. The 2,000 pound per week limitation does not apply during performance tests.

(26) "Standard Metropolitan Statistical Area (SMSA)" means any area listed in Office of Management and Budget (OMB) Bulletin No. 93-17, entitled "Revised Statistical Definitions for Metropolitan Areas" dated July 30, 1993. The referenced document cited by this Item is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document may be obtained from the Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626-0580 at a cost of 10 cents ($0.10) per page or may be obtained through the internet at http://www.census.gov/population/estimates/metro-city/93mfips.txt.

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

History Note: Authority G.S. 143-213; 143-215.3(a)(1);
Eff. October 1, 1991;
Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998;
July 1, 1996; April 1, 1995; December 1, 1993;
Temporary Amendment Eff. March 1, 2002;
Amended Eff. August 1, 2002.

15A NCAC 02D .1203 HAZARDOUS WASTE

INCINERATORS

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

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

(c) Emission Standards.

(1) The emission standards in this Paragraph apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (8) or (9) of this Paragraph or Paragraph (h) of this Rule and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

(2) Particulate Matter. Any incinerator subject to this Rule shall meet the particulate matter emission requirements of 40 CFR 264.343(c).

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

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

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

(6) Hydrogen Chloride. Any incinerator subject to this Rule shall meet the hydrogen chloride emission requirements of 40 CFR 264.343(b). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.

(7) Mercury Emissions. The emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.

(8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 2Q .0700 for the control of toxic emissions.

(9) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

(i) arsenic and its compounds $2.3x10^{-7}$

(ii) beryllium and its compounds $4.1x10^{-6}$

(iii) cadmium and its compounds $5.5x10^{-6}$

(iv) chromium (VI) and its compounds $8.3x10^{-8}$

(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(d) Operational Standards.

(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.

(2) Hazardous waste incinerators shall comply with 15A NCAC 13A .0101 through .0119, which are administered and enforced by the Division of Waste Management.

(e) Test Methods and Procedures.

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

(2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

(1) The owner or operator of an incinerator subject to the requirements of this Rule shall

comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter, 40 CFR 270.31, and 40 CFR 264.347.

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

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. October 1, 1991;
Amended Eff. August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; April 1, 1995.

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

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

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

(c) Emission Standards.

(1) The emission standards in this Paragraph apply to any incinerator subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However when Subparagraphs (11) or (12) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

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

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

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

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

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

(5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this

Subchapter for the control of odorous emissions.

(6) Hydrogen Chloride. Any incinerator subject to this Rule shall control hydrogen chloride emissions such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.

(7) Mercury Emissions. Emissions of mercury from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.

(8) Beryllium Emissions. Emissions of beryllium from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.

(9) Lead Emissions. The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).

(10) Other Metal Emissions. The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).

(11) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.

(12) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

(i) arsenic and its compounds 2.3×10^{-7}

(ii) beryllium and its compounds 4.1×10^{-6}

(iii) cadmium and its compounds 5.5×10^{-6}

(iv) chromium (VI) and its compounds 8.3×10^{-8}

(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(d) Operational Standards.

(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.

(2) Sewage Sludge Incinerators.

(A) The maximum combustion temperature for a sewage sludge incinerator shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).

(B) The values for the operational parameters for the sewage sludge incinerator air pollution control device(s) shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).

(C) The monthly average concentration for total hydrocarbons, or carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitor required in Part (f)(3)(A) of this Rule.

(3) Sludge Incinerators. The combustion temperature in a sludge incinerator shall not be less than 1200^{o}F. The maximum oxygen content of the exit gas from a sludge incinerator stack shall be:

(A) 12 percent (dry basis) for a multiple hearth sludge incinerator;

(B) seven percent (dry basis) for a fluidized bed sludge incinerator;

(C) nine percent (dry basis) for an electric sludge incinerator; and

(D) 12 percent (dry basis) for a rotary kiln sludge incinerator.

(e) Test Methods and Procedures.

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

(2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.

(3) The owner or operator of a sewage sludge incinerator shall perform testing to determine pollutant control efficiencies of any pollution control equipment and obtain information on operational parameters, including combustion temperature, to be specified as a permit condition.

(f) Monitoring, Recordkeeping, and Reporting.

(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.

(2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.

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

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

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

(ii) oxygen content of the incinerator stack exit gas; and

(iii) moisture content of the incinerator stack exit gas;

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

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

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

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

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5);
Eff. October 1, 1991;
Amended Eff. August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993.

15A NCAC 02D .1205 MUNICIPAL WASTE COMBUSTORS

(a) Applicability. This Rule applies to:

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

(2) Large municipal waste combustors, as defined in Rule .1202 of this Section.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51b and 40 CFR 60.1940 (except administration means the Director of the Division of Air Quality) shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

(1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

(2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.

(3) Visible Emissions. The emission limit for opacity from any municipal waste combustor shall not exceed 10 percent (average of 30 6-minute averages).

(4) Sulfur Dioxide.

(A) Emissions of sulfur dioxide from each class I municipal waste combustor shall be reduced by at least 75 percent by weight or volume of potential sulfur dioxide emissions or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily block geometric average concentration percent reduction.

(B) Emissions of sulfur dioxide from each large municipal waste combustor shall be:

(i) reduced by at least 75 percent by weight or volume, or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit is based on a 24-hour daily geometric mean; and

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

(5) Nitrogen Oxide.

(A) Emissions of nitrogen oxide from each class I municipal waste combustor shall not exceed the emission limits in Table 3 40 CFR 60, Subpart BBBB.

(B) Emissions of nitrogen oxide from each large municipal waste combustor shall not exceed the emission limits in Table 1 of Paragraph (d) of 40 CFR 60.33b. Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v).

(C) In addition to the requirements of Part (B) of this Subparagraph, emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 180 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002. If nitrogen oxide emissions averaging is used as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(V), emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 165 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002.

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

(7) Hydrogen Chloride.

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

(B) Emissions of hydrogen chloride from each large municipal waste combustor shall be:

(i) reduced by at least 95 percent by weight or volume, or to no more than 31 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit shall be determined by averaging

emissions over a one-hour period; and

(ii) reduced by at least 95 percent by weight or volume, or to no more than 29 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit shall be determined by averaging emissions over a one-hour period.

(8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall be reduced by at least 85 percent by weight of potential mercury emissions or shall not exceed 0.08 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.

(9) Lead Emissions.

(A) Emissions of lead from each class I municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(B) Emissions of lead from each large municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2000 and shall not exceed 0.44 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2002.

(10) Cadmium Emissions. Emissions of cadmium from each municipal waste combustor shall not exceed 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(11) Dioxins and Furans. Emissions of dioxins and furans from each municipal waste combustor shall not exceed:

(A) 60 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that employ an electrostatic precipitator-based emission control system, or

(B) 30 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that do not employ an electrostatic precipitator-based emission control system.

(12) Fugitive Ash.

(A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per three-hour block period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k), except as provided in Part (B) of this Subparagraph.

(B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.

(13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.

(14) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

(i) arsenic and its compounds $2.3x10^{-7}$

(ii) beryllium and its compounds $4.1x10^{-6}$

(iii) cadmium and its compounds $5.5x10^{-6}$

(iv) chromium (VI) and its compounds $8.3x10^{-8}$

(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of

this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(15) The emission standards of Subparagraphs (1) through (12) of this Paragraph shall apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction that last no more than three hours.

(d) Operational Standards.

(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.

(2) Each municipal waste combustor shall meet the following operational standards:

(A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the concentration in:

(i) table 3 of 40 CFR 60.34b(a) for large municipal waste combustors. The municipal waste combustor technology named in this table is defined in 40 CFR 60.51b; and

(ii) table 5 of 40 CFR 60 Subpart BBBB. The municipal waste combustor technology named in this table is defined in 40 CFR 60.1940.

(B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor unit load (four-hour block average).

(C) The temperature at which the combustor operates measured at the particulate matter control device inlet shall not exceed 63 degrees F above the maximum demonstrated particulate matter control device temperature (four-hour block average).

(D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test and shall evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to the municipal waste combustor shall be at or above the required quarterly usage of carbon and shall be calculated as specified in equation four or five in 40 CFR 60.1935(f).

(E) The owner or operator of a municipal waste combustor shall be exempted from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during:

(i) the annual tests for dioxins and furans;

(ii) the annual mercury tests for carbon feed requirements only;

(iii) the two weeks preceding the annual tests for dioxins and furans;

(iv) the two weeks preceding the annual mercury tests for carbon feed rate requirements only; and

(v) any activities to improve the performance of the municipal waste combustor or its emission control including performance evaluations and diagnostic or new technology testing.

(3) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter and Subparagraph (4) of this Paragraph. Incinerators subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.

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

(A) three hours for Class I combustors; or

(B) three hours except as specified in 40 CFR 60.58b9(a)(1)(iii) for large municipal waste combustors.

(e) Test Methods and Procedures.

(1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method

29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.

(2) The owner or operator of a municipal waste combustor shall do compliance and performance testing according to 40 CFR 60.58b.

(3) For large municipal waste combustors that achieve a dioxin and furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen, the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.58b(g)(5)(iii). For class I municipal waste combustors the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.1785 to demonstrate compliance with the applicable emission standards in Paragraph (c) of this Rule.

(4) The Director may require the owner or operator of any incinerator subject to this Rule to test his incinerator to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.

(2) The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.

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

(A) install, calibrate,operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine the following:

(i) opacity according to 40 CFR 60.58b(c) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;

(ii) sulfur dioxide according to 40 CFR 60.58b(e) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;

(iii) nitrogen oxides according to 40 CFR 60.58b(h) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;

(iv) oxygen (or carbon dioxide) according to 40 CFR 60.58b(b) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors; and

(v) temperature level in the primary chamber and, where there is a secondary chamber, in the secondary chamber;

(B) monitor load level of each class I municipal waste combustor according to 40 CFR 60.1810;

(C) monitor temperature of the gases flue at the inlet of the particulate matter air pollution control device according to 40 CFR 60.1815;

(D) monitor carbon feed rate if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.1820;

(E) maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) for large municipal waste combustors and in 40 CFR 60.1840 through 1855 for class I municipal waste combustors for a period of at least five years;

(F) following the initial compliance tests as required under Paragraph (e) of this Rule, submit the information specified in 40 CFR 60.59b(f)(1) through (f)(6) for large municipal waste combustors and in 40 CFR 60.1875 for class I municipal waste combustors, in the initial performance test report;

(G) following the first year of municipal combustor operation, submit an annual report specified in 40 CFR 60.59b(g) for large municipal waste combustors and in 40 CFR 60.1885 for class I municipal waste combustors, as applicable, no later than February 1 of each year following the calendar year in which the data were collected. Once the unit is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually; and

(H) submit a semiannual report specified in 40 CFR 60.59b(h) for large municipal waste combustors and in 40 CFR 60.1900 for class I municipal waste combustors, for any recorded

pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR 60.59b(h)(6).

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

(h) Operator Training and Certification.

(1) By January 1, 2000, or six months after the date of start-up of a class I municipal waste combustor, whichever is later, and by July 1, 1999 or six months after the date of start-up of a large municipal waste combustor, whichever is later:

(A) Each facility operator and shift supervisor of a municipal waste combustor shall obtain and maintain a current provisional operator certification from the American Society of Mechanical Engineers (ASME QRO-1-1994).

(B) Each facility operator and shift supervisor of a municipal waste combustor shall have completed full certification or shall have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).

(C) The owner or operator of a municipal waste combustor plant shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:

(i) a fully certified chief facility operator;

(ii) a provisionally certified chief facility operator who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph;

(iii) a fully certified shift supervisor; or

(iv) a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph.

(D) If one of the persons listed in this Subparagraph leaves the large municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements of this Part.

(E) If one of the persons listed in this Subparagraph leaves the class I municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements specified in 40 CFR 60.1685.

(2) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address the elements of municipal waste combustor unit operation specified in 40 CFR 60.54b(e)(1) through (e)(11).

(3) By July 1, 1999, or six months after the date of start-up of a municipal waste combustor, whichever is later, the owner or operator of the municipal waste combustor plant shall comply with the following requirements:

(A) All chief facility operators, shift supervisors, and control room operators shall complete the EPA municipal waste combustor training course.

(i) The requirements specified in Part (A) of this Subparagraph shall not apply to chief facility operators, shift supervisors and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.

(ii) As provided under 40 CFR 60.39b(c)(4)(iii)(B), the owner or operator may request that the Administrator waive the requirement specified in Part (A) of this Subparagraph for the chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before July 1, 1998.

(B) The owner or operator of each municipal waste combustor shall establish a training program to review the operating manual, according to the schedule specified in Subparts (i) and (ii) of this Part, with each person who has responsibilities affecting the operation of an affected facility, including the chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane-load handlers.

(i) Each person specified in Part (B) of this Subparagraph shall undergo initial training no later than the date specified in Items (I) through (III) of this Subpart, whichever is later.

(I) The date six months after the date of start-up of the affected facility;

(II) July 1, 1999; or

(III) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.

(ii) Annually, following the initial training required by Subpart (i) of this Part.

(C) The operating manual required by Subparagraph (2) of this Paragraph shall be updated continually and be kept in a readily accessible location for all persons required to undergo training under Part (B) of this Subparagraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.

(D) The operating manual of class I municipal waste combustors shall contain requirements specified in 40 CFR 60.1665 in addition to requirements of Part (C) of this Subparagraph.

(4) The referenced ASME exam in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars ($49.00).

(i) Compliance Schedules.

(1) The owner or operator of a large municipal waste combustor shall choose one of the following three compliance schedule options:

(A) comply with all the requirements or close before August 1, 2000;

(B) comply with all the requirements before three years following the date of issuance of a revised construction and operation permit, if permit modification is required, or after August 1, 2000, but before August 1, 2002, if a permit modification is not required. If this option is chosen, then the owner or operator of the facility shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:

(i) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;

(ii) a date by which on site construction, installation, or modification of emission control equipment shall begin;

(iii) a date by which on site construction, installation, or modification of emission control equipment shall be completed;

(iv) a date for initial start-up of emissions control equipment;

(v) a date for initial performance test(s) of emission control equipment; and

(vi) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later than three years from the issuance of the permit; or

(C) close between August 1, 2000, and August 1, 2002. If this option is chosen then the owner or operator of the facility shall submit to the Director a closure agreement which includes the date of the plant closure.

(2) All large municipal waste combustors for which construction, modification, or reconstruction commenced after June 26, 1987, but before September 19, 1994, shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Subparagraph (c)(11) of this Rule within one year following issuance of a revised construction and operation permit, if a permit modification is required, or by August 1, 2000, whichever is later.

(3) The owner or operator of a class I municipal waste combustor shall choose one of the following four compliance schedule options:

(A) comply with all requirements of this Rule beginning July 1, 2002;

(B) comply with all requirements of this Rule by July 1, 2002 whether a permit modification is required or not. If this option is chosen, then the owner or operator shall submit to the Director along with the permit

application if a permit application is needed or by September 1, 2002 if a permit application is not needed a compliance schedule that contains the following increments of progress:

(i) a final control plan as specified in 40 CFR 60.1610;

(ii) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;

(iii) a date by which onsite construction, installation, or modernization of emission control system or equipment shall begin;

(iv) a date by which onsite construction, installation, or modernization of emission control system or equipment shall be completed; and

(v) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later no later than March 1, 2003;

(C) comply with all requirements of this Rule by closing the combustor by July 1, 2002 and then reopening it. If this option is chosen the owner or operator shall:

(i) meet increments of progress specified in 40 CFR 60.1585, if the class I combustor is closed and then reopened prior to the final compliance date; and

(ii) complete emissions control retrofit and meet the emission limits and good combustion practices on the date that the class I combustor reopens operation if the class I combustor is closed and then reopened after the final compliance date; or

(D) comply by permanently closing the combustor. If this option is chosen the owner or operator shall:

(i) submit a closure notification, including the date of closure, to the Director by July 1, 2002 if the class I combustor is to be closed on or before September 1, 2002; or

(ii) enter into a legally binding closure agreement with the Director by July 1, 2002 if the class I combustor is to be closed after September 1, 2002, and the combustor shall be closed no later than March 1, 2003;

(4) The owner or operator of a class I municipal waste combustor that began construction, reconstruction or modification after June 26, 1987 shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Part (c)(11)(B) of this Rule by July 1, 2002.

(5) The owner or operator of any municipal waste combustor shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515;
Eff. October 1, 1991;
Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995;
Temporary Amendment Eff. March 1, 2002;
Amended Eff. August 1, 2002.

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

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

(1) any HMIWI required to have a permit under Section 3005 of the Solid Waste Disposal Act;

(2) any pyrolysis unit;

(3) any cement kiln firing hospital waste or medical and infectious waste;

(4) any physical or operational change made to an existing HMIWI solely for the purpose of complying with the emission standards for HMIWIs in this Rule. These physical or operational changes are not considered a modification and do not result in an existing HMIWI becoming subject to the provisions of 40 CFR Part 60, Subpart Ec;

(5) any HMIWI during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided that the owner or operator of the HMIWI:

(A) notifies the Director of an exemption claim; and

(B) keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned; or

(6) any co-fired HMIWI, if the owner or operator of the co-fired HMIWI:

(A) notifies the Director of an exemption claim;

(B) provides an estimate of the relative weight of hospital, medical and infectious waste, and other fuels or wastes to be combusted; and

(C) keeps records on a calendar quarter basis of the weight of hospital, medical and infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired HMIWI.

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

(c) Emission Standards.

(1) The emission standards in this Paragraph apply to all incinerators subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

(2) Particulate Matter.

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

Incinerator Size	Allowable Emission Rate (mg/dscm) [corrected to seven percent oxygen]
Small	115
Medium	69
Large	34

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

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

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

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

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

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

(8) Hydrogen Chloride.

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

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

(9) Mercury Emissions.

(A) Emissions of mercury from any small, medium, or large HMIWI shall be reduced by at least 85 percent by weight or shall not exceed 0.55 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period.

(B) Emissions of mercury from any small remote HMIWI shall not exceed 7.5 milligrams per dry standard cubic meter, corrected to seven percent oxygen. Compliance with this Part shall be determined by averaging emissions over a one-hour period.

(10) Lead Emissions.

(A) Emissions of lead from any small, medium, or large HMIWI shall be reduced by at least 70 percent by weight or shall not exceed 1.2 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.

(B) Emissions of lead from any small remote HMIWI shall not exceed 10 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(11) Cadmium Emissions.

(A) Emissions of cadmium from any small, medium, or large HMIWI shall be reduced by at least 65 percent by weight or shall not exceed 0.16 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.

(B) Emissions of cadmium from any small remote HMIWI shall not exceed 4 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(12) Dioxins and Furans.

(A) Emissions of dioxins and furans from any small, medium, or large HMIWI shall not exceed 125 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 2.3 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen.

(B) Emissions of dioxins and furans from any small remote HMIWI shall not exceed 800 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 15 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen.

(13) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.

(14) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

(i) arsenic and its compounds $2.3x10^{-7}$

(ii) beryllium and its compounds $4.1x10^{-6}$

(iii) cadmium and its compounds $5.5x10^{-6}$

(iv) chromium (VI) and its compounds $8.3x10^{-8}$

(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(d) Operational Standards.

(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.

(2) Each small remote HMIWI shall have an initial equipment inspection by July 1, 2000, and an annual inspection each year thereafter.

(A) At a minimum, the inspection shall include all the elements listed in 40 CFR 60.36e(a)(1)(i) through (xvii).

(B) Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period. The Director shall grant the extension if:

(i) the owner or operator of the small remote HMIWI demonstrates that achieving compliance by the time allowed under this Part is not feasible; and

(ii) the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request.

(3) The owner or operator of any HMIWI, except small remote HMIWI, subject to this Rule shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding the fugitive emissions testing requirements under 40 CFR 60.56c(b)(12) and (c)(3).

(4) The owner or operator of any small remote HMIWI shall comply with the following compliance and performance testing requirements:

(A) conduct the performance testing requirements in 40 CFR 60.56c(a),

(b)(1) through (b)(9), (b)(11)(mercury only), and (c)(1). The 2,000 pound per week limitation does not apply during performance tests;

(B) establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits; and

(C) following the date on which the initial performance test is completed, ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three hour rolling averages, calculated each hour as the average of all previous three operating hours, at all times except during periods of start-up, shut-down and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters.

(5) Except as provided in Subparagraph (3) of this Paragraph, operation of the HMIWI above the maximum charge rate and below the minimum secondary temperature, each measured on a three hour rolling average, simultaneously shall constitute a violation of the particulate matter, carbon monoxide, and dioxin and furan emission limits.

(6) The owner or operator of a HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating parameters to demonstrate that the HMIWI is not in violation of the applicable emission limits. Repeat performance tests conducted pursuant to this Subparagraph shall be conducted using the identical operating parameters that indicated a violation under Subparagraph (4) of this Paragraph.

(e) Test Methods and Procedures.

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

(2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.

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

(3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a HMIWI shall comply with the reporting and recordkeeping requirements listed in 40 CFR 60.58c(b), (c), (d), (e), and (f), excluding 40 CFR 60.58c(b)(2)(ii) and (b)(7).

(4) In addition to the requirements of Subparagraphs (1), (2) and (3) of this Paragraph, the owner or operator of a small remote HMIWI shall:

(A) maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection;

(B) submit an annual report containing information recorded in Part (A) of this Subparagraph to the Director no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report. The report shall be signed by the HMIWI manager; and

(C) submit the reports required by Parts (A) and (B) of this Subparagraph to the Director semiannually once the HMIWI is subject to the permitting procedures of 15A NCAC 02Q .0500, Title V Procedures.

(5) Waste Management Guidelines. The owner or operator of a HMIWI shall comply with the requirements of 40 CFR 60.55c for the preparation and submittal of a waste management plan.

(6) Except as provided in Subparagraph (7) of this Paragraph, the owner or operator of any HMIWI shall comply with the monitoring requirements in 40 CFR 60.57c.

(7) The owner or operator of any small remote HMIWI shall:

(A) install, calibrate, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.

(B) install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI.

(C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the HMIWI is combusting hospital, medical, and infectious waste.

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

(h) Operator Training and Certification.

(1) The owner or operator of a HMIWI shall not allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators.

(2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.53c(c) through (g).

(3) The owner or operator of a HMIWI shall maintain, at the facility, all items required by 40 CFR 60.53c(h)(1) through (h)(10).

(4) The owner or operator of a HMIWI shall establish a program for reviewing the information required by Subparagraph (3) of this Paragraph annually with each HMIWI operator. The initial review of the information shall be conducted by January 1, 2000. Subsequent reviews of the information shall be conducted annually.

(5) The information required by Subparagraph (3) of this Paragraph shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by Division personnel upon request.

(6) All HMIWI operators shall be in compliance with this Paragraph by July 1, 2000.

(i) Compliance Schedules.

(1) Title V Application Date. Any HMIWI subject to this rule shall have submitted an application for a permit under the procedures of 15A NCAC 02Q .0500, Title V Procedures, by January 1, 2000.

(2) Final Compliance Date. Except for those HMIWIs described in Subparagraphs (3) and (4) of this Paragraph, any HMIWI subject to this Rule shall be in compliance with this Rule or close on or before July 1, 2000.

(3) Installation of Air Pollution Control Equipment. Any HMIWI planning to install the necessary air pollution control equipment to comply with the emission standards in Paragraph (c) of this Rule shall be in compliance with Paragraph (c) of this Rule by September 15, 2002. If this option is chosen, then the owner or operator of the HMIWI shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:

(A) the submission of a petition for site specific operating parameters under 40 CFR 63.56c(i);

(B) the obtaining of services of an architectural and engineering firm regarding the air pollution control device(s);

(C) the obtaining of design drawings of the air pollution control device(s);

(D) the ordering of air pollution control device(s);

(E) the obtaining of the major components of the air pollution control device(s);

(F) the initiation of site preparation for the installation of the air pollution control device(s);

(G) the initiation of installation of the air pollution control device(s);

(H) the initial startup of the air pollution control device(s); and

(I) the initial compliance test(s) of the air pollution control device(s).

(4) Petition for Extension of Final Compliance Date.

(A) The owner or operator of a HMIWI may petition the Director for an extension of the compliance deadline of Subparagraph (2) of this Paragraph provided that the following information is submitted by January 1, 2000, to allow the Director adequate time to grant or deny the extension by July 1, 2000:

(i) documentation of the analyses undertaken to support the need for an extension, including an explanation of why up to July 1, 2002 is sufficient time to comply with this Rule while July 1, 2000, is not sufficient. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

(ii) documentation of the measurable and enforceable incremental steps of progress listed in Subparagraph (3) of this Paragraph to be taken towards compliance with the emission standards in Paragraph (c) of this Rule.

(B) The Director may grant the extension if all the requirements in Part (A) of this Subparagraph are met.

(C) If the extension is granted, the HMIWI shall be in compliance with this Section by July 1, 2002.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 40 CFR 60.34e;
Eff. October 1, 1991;
Amended Eff. August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993.

15A NCAC 02D .1208 OTHER INCINERATORS

(a) Applicability.

(1) This Rule applies to any incinerator not covered under Rules .1203 through .1207 of this Section.

(2) If any incinerator subject to this Rule:

(A) is used solely to cremate pets; or

(B) if the emissions of all toxic air pollutants from an incinerator subject to this Rule and associated waste handling and storage are less than the levels listed in 15A NCAC 2Q .0711; the incinerator shall be exempt from Subparagraphs (b)(6) through (b)(9) and Paragraph (c) of this Rule.

(b) Emission Standards.

(1) The emission standards in this Rule apply to any incinerator subject to this Rule except where Rules .0525, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (8) or (9) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

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

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

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

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

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

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

(6) Hydrogen Chloride. Any incinerator subject to this Rule shall control emissions of hydrogen chloride such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.

(7) Mercury Emissions. Emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.

(8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.

(9) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

(i) arsenic and its compounds $2.3x10^{-7}$

(ii) beryllium and its compounds $4.1x10^{-6}$

(iii) cadmium and its compounds $5.5x10^{-6}$

(iv) chromium (VI) and its compounds $8.3x10^{-8}$

(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rule .0524, .1110 or .1111 of this Subchapter requires more restrictive rates.

(c) Operational Standards.

(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.

(2) Crematory Incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600 degrees F for a period of not less than one second.

(3) Other Incinerators. All incinerators not subject to any other rule in this Section shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800 degrees F for a period of not less than one second. The temperature of 1800 degrees F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600 degrees F.

(4) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter. Any incinerator subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.

(d) Test Methods and Procedures.

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

(2) The Director may require the owner or operator to test his incinerator to demonstrate

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

(e) Monitoring, Recordkeeping, and Reporting.

(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.

(2) The owner or operator of an incinerator, except an incinerator meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section, shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The Director may require a temperature monitoring device for incinerators meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. July 1, 1998;
Amended Eff. August 1, 2002; July 1, 2000; July 1, 1999.

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

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

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

(1) incineration units covered under Rules .1203 through .1206 of this Section;

(2) units, burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of auxiliary fuel and combustion air, of agricultural waste, pathological waste, low-level radioactive waste, or chemotherapeutic waste, if the owner or operator of the unit:

(A) notifies the Director that the unit qualifies for this exemption; and

(B) keeps records on a calendar-quarter basis of the weight of agricultural waste, pathological waste, low level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;

(3) small power production or cogeneration units if;

(A) the unit qualifies as a small power-production facility under Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) or as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));

(B) the unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity; and

(C) the owner or operator of the unit notifies the Director that the unit qualifies for this exemption;

(4) units that combust waste for the primary purpose of recovering metals;

(5) cyclonic barrel burners;

(6) rack, part, and drum reclamation units that burn the coatings off racks used to hold small items for application of a coating;

(7) cement kilns;

(8) chemical recovery units burning materials to recover chemical constituents or to produce chemical compounds as listed in 40 CFR 60.2555(n)(1) through (7);

(9) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;

(10) air curtain burners covered under Rule .1904 of this Subchapter;

(c) The owner or operator of a chemical recovery unit not listed under 40 CFR 60.2555(n) may petition the Director to be exempted. The petition shall include all the information specified under 40 CFR 60.2558(a). The Director shall approve the exemption if he finds that all the requirements of 40 CFR 60.2555(n) are satisfied and that the unit burns materials to recover chemical constituents or to produce chemical compounds where there is an existing market for such recovered chemical constituents or compounds.

(d) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.2875 shall apply in addition to the definitions in Rule .1202 of this Section.

(e) Emission Standards. The emission standards in this Rule apply to all incinerators subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. When Subparagraphs (12) or (13) and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding

provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

(1) Particulate Matter. Emissions of particulate matter from a CISWI unit shall not exceed 70 milligrams per dry standard cubic meter corrected to seven percent oxygen (dry basis).

(2) Opacity. Visible emissions from the stack of a CISWI unit shall not exceed 10 percent opacity (6-minute block average).

(3) Sulfur Dioxide. Emissions of sulfur dioxide from a CISWI unit shall not exceed 20 parts per million by volume corrected to seven percent oxygen (dry basis).

(4) Nitrogen Oxides. Emissions of nitrogen oxides from a CISWI unit shall not exceed 368 parts per million by volume corrected to seven percent oxygen (dry basis).

(5) Carbon Monoxide. Emissions of carbon monoxide from a CIWI unit shall not exceed 157 parts per million by volume, corrected to seven percent oxygen (dry basis).

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

(7) Hydrogen Chloride. Emissions of hydrogen chloride from a CISWI unit shall not exceed 62 parts per million by volume, corrected to seven percent oxygen (dry basis).

(8) Mercury Emissions. Emissions of mercury from a CISWI unit shall not exceed 0.47 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(9) Lead Emissions. Emissions of lead from a CISWI unit shall not exceed 0.04 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(10) Cadmium Emissions. Emissions of cadmium from a CISWI unit shall not exceed 0.004 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(11) Dioxins and Furans. Emissions of dioxins and furans from a CISWI unit shall not exceed 0.41 nanograms per dry standard cubic meter (toxic equivalency basis), corrected to seven percent oxygen. Toxic equivalency is given in Table 4 of 40 CFR part 60, Subpart DDDD.

(12) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.

(13) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

(i) arsenic and its compounds $2.3x10^{-7}$

(ii) beryllium and its compounds $4.1x10^{-6}$

(iii) cadmium and its compounds $5.5x10^{-6}$

(iv) chromium (VI) and its compounds $8.3x10^{-8}$

(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(f) Operational Standards.

(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.

(2) If a wet scrubber is used to comply with emission limitations:

(A) operating limits for the following operating parameters shall be established:

(i) maximum charge rate, which shall be measured continuously, recorded every hour, and calculated using one of the following procedures:

(I) for continuous and intermittent units, the maximum charge rate is 110 percent of the average charge rate measured during the most recent compliance test demonstrating compliance with all

applicable emission limitations; or

(II) for batch units, the maximum charge rate is 110 percent of the daily charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations;

(ii) minimum pressure drop across the wet scrubber, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of:

(I) the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations, or

(II) the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations;

(iii) minimum scrubber liquor flow rate, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; and

(iv) minimum scrubber liquor pH, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations.

(B) A three hour rolling average shall be used to determine if operating parameters in Subparts (A)(i) through (A)(iv) of this Subparagraph have been met.

(C) The owner or operator of the CISWI unit shall meet the operating limits established during the initial performance test on the date the initial performance test is required or completed.

(3) If a fabric filter is used to comply with the emission limitations, then it shall be operated as specified in 40 CFR 60.2675(c);

(4) If an air pollution control device other than a wet scrubber is used or if emissions are limited in some other manner to comply with the emission standards of Paragraph (e) of this Rule, the owner or operator shall petition the Director for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The initial performance test shall not be conducted until after the Director approves the petition. The petition shall include:

(A) identification of the specific parameters to be used as additional operating limits;

(B) explanation of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants;

(C) explanation of establishing the upper and lower limits for these parameters, which will establish the operating limits on these parameters;

(D) explanation of the methods and instruments used to measure and monitor these parameters, as well as the relative accuracy and precision of these methods and instruments;

(E) identification of the frequency and methods for recalibrating the instruments used for monitoring these parameters.

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

(g) Test Methods and Procedures.

(1) For the purposes of this Paragraph, "Administrator" in 40 CFR 60.8 means "Director".

(2) The test methods and procedures described in Rule .0501 of this Subchapter, in 40 CFR Part 60 Appendix A, 40 CFR Part 61 Appendix B, and 40 CFR 60.2690 shall be used to determine compliance with emission standards in Paragraph (e) this Rule. Method 29 of 40 CFR Part 60 shall be used to determine emission standards for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.

(3) All performance tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations. Compliance with emissions standards under Subparagraph (e)(1), (3) through (5), and (7) through (11) of this Rule shall be determined by averaging three one-hour emission tests. These tests shall be conducted within 12 months following the initial performance test and within every twelve month following the previous annual performance test after that.

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

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

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

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

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

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

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

(h) Monitoring.

(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.

(2) The owner or operator of an incinerator subject to the requirements of this Rule shall establish, install, calibrate to manufacturers specifications, maintain, and operate;

(A) devices or methods for continuous temperature monitoring and recording for the primary chamber and, where there is a secondary chamber, for the secondary chamber;

(B) devices or methods for monitoring the value of the operating parameters used to determine compliance with the operating parameters established under Paragraph (f)(2) of this Rule;

(C) a bag leak detection system that meets the requirements of 40 CFR 60.2730(b) if a fabric filter is used to comply with the requirements of the emission standards in Paragraph (e) of this Rule; and

(D) Equipment necessary to monitor compliance with the cite-specific operating parameters established under Paragraph (f)(4) of this Rule.

(3) The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the CISWI unit.

(4) The Director may require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or less to install, operate, and maintain continuous

monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the CISWI unit.

(5) The owner or operator of the CISWI unit shall conduct all monitoring at all times the CISWI unit is operating, except;

(A) malfunctions and associated repairs;

(B) required quality assurance or quality control activities including calibrations checks and required zero and span adjustments of the monitoring system.

(6) The data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities shall not be used in assessing compliance with the operating standards in Paragraph (f) of this Rule.

(i) Recordkeeping, and Reporting.

(1) The owner or operator of CISWI unit shall maintain records required by this Rule on site in either paper copy or electronic format that can be printed upon request for a period of at least five years.

(2) The owner or operator of CISWI unit shall maintain all records required under 40 CFR 60.2740.

(3) The owner or operator of CISWI unit shall submit as specified in Table 5 of 40 CFR 60, Subpart DDDD the following reports:

(A) Waste management Plan;

(B) initial test report, as specified in 40 CFR 60.2760;

(C) annual report as specified in 40 CFR 60.2770;

(D) emission limitation or operating limit deviation report as specified in 40 CFR 60.2780;

(E) qualified operator deviation notification as specified in 40 CFR 60.2785(a)(1);

(F) qualified operator deviation status report, as specified in 40 CFR 60.2785(a)(2);

(G) qualified operator deviation notification of resuming operation as specified in 40 CFR 60.2785(b).

(4) The owner or operator of the CISWI unit shall submit a deviation report if:

(A) any recorded three-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under Paragraph (f) of this Rule;

(B) the bag leak detection system alarm sounds for more than five percent of the operating time for the six-month reporting period; or

(C) a performance test was conducted that deviated from any emission standards in Paragraph (e) of this Rule.

The deviation report shall be submitted by August 1 of the year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).

(5) The owner or operator of the CISWI unit may request changing semiannual or annual reporting dates as specified in this Paragraph, and the Director may approve the request change using the procedures specified in 40 CFR 60.19(c).

(6) Reports required under this Rule shall be submitted electronically or in paper format, postmarked on or before the submittal due dates.

(7) If the CISWI unit has been shut down by the Director under the provisions of 40 CFR 60.2665(b)(2), due to failure to provide an accessible qualified operator, the owner or operator shall notify the Director that the operations are resumed once a qualified operator is accessible.

(j) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with 15A NCAC 2D .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(k) Operator Training and Certification.

(1) The owner or operator of the CISIWI unit shall not allow the CISWI unit to operate at any time unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more CISWI unit operators.

(2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.2635(c) by the later of:

(A) December 1, 2005;

(B) six month after CISWI unit startup; or

(C) six month after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

(3) Operator qualification shall be valid from the date on which the training course is completed and the operator successfully passes the examination required in 40 CFR 60.2635(c)(2).

(4) Operator qualification shall be maintained by completing an annual review or refresher course covering, at a minimum:

(A) update of regulations;

(B) incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;
(C) inspection and maintenance;
(D) responses to malfunctions or conditions that may lead to malfunction;
(E) discussion of operating problems encountered by attendees.

(5) Lapsed operator qualification shall be renewed by:
(A) completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, and
(B) repeating the initial qualification requirements as specified in Subparagraph (2) of this Paragraph for a lapse of three years or more.

(6) The owner or operator of the CISIWI unit shall:
(A) have documentation specified in 40 CFR 60.2660(a)(1) through (10) and (c)(1) through (c)(3) available at the facility and accessible for all CISWI unit operators and are suitable for inspection upon request;
(B) establish a program for reviewing the documentation specified in Part (A) of this Subparagraph with each CISWI unit operator:
(i) the initial review of the documentation specified in Part (A) of this Subparagraph shall be conducted by the later of the three dates:
(I) December 1, 2005;
(II) six month after CISWI unit startup; or
(III) six month after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit; and
(ii) subsequent annual reviews of the documentation specified in Part (A) of this Subparagraph shall be conducted no later than twelve month following the previous review

(7) The owner or operator of the CISIWI unit shall meet one of the two criteria specified in 40 CFR 60.2665(a) and (b), depending on the length of time, if all qualified operators are temporarily not at the facility and not able to be at the facility within one hour.

(l) Waste Management Plan.
(1) The owner or operator of the CISWI unit shall submit a waste management plan that identifies in writing the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. A waste management plan shall be submitted to the Director before December 1, 2003.
(2) The waste management plan shall include:
(A) consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;
(B) identification of any additional waste management measures; and
(C) implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures and the emissions reductions expected to be achieved and the environmental or energy impacts that the measures may have.

(m) Compliance Schedule.
(1) The owner or operator of the CISWI unit, which plans to achieve compliance after November 30, 2003, shall submit before December 1, 2003, along with the permit application, the final control plan for the CISWI unit. The final compliance shall be achieved no later than December 1, 2005.
(2) The final control plan shall contain the information specified in 40 CFR 60(a)(1) through (5), and a copy shall be maintained on site.
(3) The owner or operator of the CISWI unit shall notify the Director within five days after the CISWI unit is to be in final compliance whether the final compliance have been achieved. The final compliance is achieved by completing all process changes and retrofitting construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought on line, all necessary process changes and air pollution control devices would operate as designed. If the final compliance has not been achieved, the owner or operator of the CISWI unit shall submit a notification informing the Director that the final compliance has not been met and submit reports each subsequent calendar month until the final compliance is achieved.
(4) The owner or operator of the CISWI unit, that closes the CISWI unit and restarts it:

(A) before December 1, 2005, shall submit along with the permit application, the final control plan for the CISWI unit, and the final compliance shall be achieved by December 1, 2005.

(B) after December 1, 2005 shall complete emission control retrofits and meet the emission limitations and operating limits on the date the CISWI unit restarts operation.

(5) The owner or operator of the CISWI unit that plans to close it rather than comply with the requirements of this Rule shall submit a closure notification including the date of closure to the Director by December 1, 2003, and shall cease operation by December 1, 2005.

History Note: Authority 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4), (5); 40 CFR 60.215(a)(4); Eff. August 1, 2002.

15A NCAC 02H .0802 SCOPE

These Rules apply to laboratory facilities which perform and report analyses for persons subject to G.S. 143-215.1, 143-215.63, et seq.; the Environmental Management Commission Rules for Surface Water Monitoring and Reporting found in Subchapter 2B of this Chapter, Section .0500 (Only facilities classified in accordance with Classification of Water Pollution Control Systems Rules found in 15A NCAC 08G .0300 are subject to these Rules.); Groundwater Rules found in 15A NCAC 02L .0100, .0200, and .0300; Waste Not Discharged to Surface Waters Rules found in 15A NCAC 02H .0200; Point Source Discharges to the Surface Waters Rules found in 15A NCAC 02H .0100. These Rules also apply to all wastewater treatment plant laboratories for municipalities having Local Pretreatment Programs as regulated in 15A NCAC 02H .0900. Laboratory facilities performing and reporting analyses for field parameters only, shall be considered for certification as specified in Rule .0805(g) of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. November 2, 1992; July 1, 1988;
December 1, 1984;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

15A NCAC 02H .0803 DEFINITIONS

The following terms as used in this Section shall have the assigned meaning:

(1) "Analytical chemistry experience" means experience analyzing samples in a chemistry laboratory or supervising a chemistry laboratory that analyzes samples.

(2) "Certification" means a declaration by the state that the personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicant's proficiency has been considered and found to be acceptable pursuant to these Rules.

(3) "Certified Data" shall be defined as any analytical result, including the supporting documentation, obtained through the use of a method or procedure which has been deemed acceptable by the State of North Carolina for Laboratory Certification purposes pursuant to these Rules.

(4) "Commercial Laboratory" means any laboratory, including its agents or employees, which is seeking to analyze or is analyzing samples, including Field Parameters, for others for a fee.

(5) "Decertification" means loss of certification.

(6) "Falsified data or information" means data or information which has been made untrue by alteration, fabrication, omission, substitution, or mischaracterization. The agency need not prove intent to defraud to prove data is falsified.

(7) "Field Parameters", for the purpose of these Rules shall include Total Residual Chlorine, Conductivity, Dissolved Oxygen, pH, Settleable Residue, and Temperature.

(8) "Inaccurate data or other information" means data or information that is in any way incorrect, or mistaken.

(9) "Industrial Laboratory" means a laboratory, including its agents or employees, operated by an industry to analyze samples, including Field Parameters, from its wastewater or wastewater from its water treatment plant(s).

(10) "Municipal Laboratory" means a laboratory, including its agents or employees, operated by a municipality or other local government to analyze samples, including Field Parameters, from its wastewater or wastewater from its water treatment plant(s).

(11) "Other" laboratory means a facility that does not require laboratory certification as part of its routine operation and does not analyze samples for a fee, or is doing business as a non-profit facility.

(12) "Pretreatment Program" means a program of waste pretreatment requirements set up in accordance with 15A NCAC 02H .0900 and approved by the Division of Water Quality.

(13) "State" means the North Carolina Department of Environment and Natural Resources, or its successor.

(14) "State Laboratory" means the Laboratory Section of the North Carolina Division of Water Quality, or its successor.

(15) "Unacceptable results" means those results on performance evaluation samples that exceed the specified acceptable range as indicated by a US EPA accredited vendor.

(16) "Uncertified data" shall be defined as any analytical result, including the supporting

documentation, obtained using a method or procedure which is not acceptable to the State Laboratory pursuant to these Rules.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. November 2, 1992; December 1, 1984; November 1, 1978;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

15A NCAC 02H .0805 CERTIFICATION AND RENEWAL OF CERTIFICATION

(a) Prerequisites and requirements for Certification. The following requirements must be met prior to certification. Once certified, failure to comply with any of the following items will be a violation of certification requirements. All "Field Parameter" only facility requirements are located in Paragraph (g) of this Rule.

(1) Laboratory Procedures. Analytical methods, sample preservation, sample containers and sample holding times shall conform to those requirements found in 40 CFR-136.3; Standard Methods for the Examination of Water and Wastewater, 18th Edition; or Test Methods for Evaluating Solid Waste, SW 846, Third Edition. These and subsequent amendments and editions are incorporated by reference. This material is available for inspection at the State Laboratory, 4405 Reedy Creek Road, Raleigh, North Carolina, 27607. Copies of the Code of Federal Regulations, 40 CFR Part 136, may be obtained for a cost of forty-two dollars ($42.00), from the Superintendent of Documents, U.S. Government Printing Office (GPO), Superintendent of Public Documents, Washington, DC, 20402. The publication number is 869-042-00148-6. Standard Methods for the Examination of Water and Waste, is available for purchase from the American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, CO 80235. The costs are as follows: 18th Edition -one hundred sixty dollars ($160.00), 19th Edition - one hundred eighty dollars ($180.00), 20th Edition - two hundred dollars ($200.00). Copies of Test Methods for Evaluating Solid Waste, SW 846, Third Edition may be purchased for a cost of three hundred sixty seven dollars ($367.00) from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. Vector Attraction Reduction Options shall be Control of Pathogens and Vector Attraction in Sewage Sludge; EPA/625/R-92/013, Chapter 8. The document is available from US EPA; Office of Research and Development, Washington, NC 20460 at no cost. The method for Total Petroleum Hydrocarbons shall be the California Gas Chromatograph Method, Eisenberg, D.M., and others, 1985, Guidelines for Addressing Fuel Leaks: California Regional Quality Control Board San Francisco Bay Region. The method for Total Petroleum Hydrocarbons is available from the State Laboratory at no cost. The methods for Volatile Petroleum Hydrocarbons and Extractable Petroleum Hydrocarbons shall be Massachusetts Department of Environmental Protection, Method for the Determination of Volatile Petroleum Hydrocarbons (VPH) and Method for the Determination of Extractable Petroleum Hydrocarbons (EPH); January, 1998. The Director may approve other analytical procedures that have been demonstrated to produce verifiable and repeatable results and that have a widespread acceptance in the scientific community.

(2) Performance Evaluations. Annually, each certified laboratory must demonstrate acceptable performance on evaluation samples as required by these Rules.

(A) Municipal and Industrial laboratories must participate in the annual Environmental Protection Agency Discharge Monitoring Report Quality Assurance (EPA/DMR/QA) Study by analyzing performance evaluation samples obtained from an accredited vendor as unknowns, and reporting data produced to the State. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate.

(B) Commercial laboratories must participate annually in water pollution studies by analyzing performance evaluation samples obtained from an accredited vendor as unknowns, and reporting data produced to the State. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate. When two samples for the same parameter are submitted and analyzed at the same time, an unacceptable result on one or both samples will be considered the first unacceptable result for certification purposes and a rerun sample must be submitted.

(C) Laboratories requesting initial certification must submit an acceptable performance sample result for each parameter for which performance samples are available. Laboratories that submit two unacceptable results for a particular parameter must then submit two consecutive acceptable results for that parameter prior to initial certification.

(D) If performance samples are not available for a parameter, certification for that parameter will be based on the proper use of the approved procedure, the on-site inspection, and adherence to the other requirements in this Section. Analysis of split samples may also be required.

(3) Supervisory Requirements.

(A) The supervisor of a commercial laboratory must have a minimum of a B.S. or A.B. degree in chemistry or closely related science curriculum from an accredited college or university plus a minimum of two years laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely related science curriculum plus a minimum of four years experience in analytical chemistry.

(B) The supervisor of a municipal or industrial waste water treatment plant laboratory must have a minimum of a B.S. or A.B. degree in chemistry or closely related science curriculum from an accredited college or university plus a minimum of six months laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely related science curriculum plus a minimum of two years experience in analytical chemistry. Non-degree supervisors must have at least six years laboratory experience in analytical chemistry.

(C) All laboratory supervisors are subject to review by the State Laboratory. One person may serve as supervisor of no more than two laboratories. The supervisor shall provide personal and direct supervision of the technical personnel and be held responsible for the proper performance and reporting of all analyses made for these Rules. The supervisor must work in the laboratory or visit the laboratory once each day of normal operations. If the supervisor is to be absent, the supervisor shall arrange for a substitute capable of insuring the proper performance of all laboratory procedures, however, the substitute supervisor cannot be in charge for more than six consecutive weeks. Existing laboratory supervisors that do not meet the requirements of this Rule may be accepted after review by the State Laboratory and meeting all other certification requirements. Previous laboratory-related performance will be considered when reviewing the qualifications of a potential laboratory supervisor.

(4) Laboratory Manager. Each laboratory must designate a laboratory manager and include his name and title on the application for certification. The laboratory manager shall be administratively above the laboratory supervisor and will be in responsible charge in the event the laboratory supervisor ceases to be employed by the laboratory and will be responsible for filling the laboratory supervisor position with a replacement qualified pursuant to these Rules. At commercial laboratories, where the owner is the laboratory supervisor, the laboratory manager and laboratory supervisor may be the same person if there is no one administratively above the laboratory supervisor.

(5) Application. Each laboratory requesting initial state certification shall submit an application in duplicate, accompanied by the application fee and the laboratory's Quality Assurance Manual to the State Laboratory. Separate application and certification shall be required for all laboratories maintained on separate premises even though operated under the same management; however, separate certification is not required for separate buildings on the same or adjoining grounds. After receiving a completed application and prior to issuing certification, a representative of the State Laboratory may visit each laboratory to verify the information in the application and the adequacy of the laboratory.

(6) Facilities and equipment. Each laboratory requesting certification must contain or be equipped with the following:

(A) A minimum of 150 sq. ft. of laboratory space;

(B) A minimum of 12 linear feet of laboratory bench space;

(C) A sink with hot and cold water;

(D) An analytical balance capable of weighing 0.1 mg, mounted on a shock proof table;

(E) A refrigerator of adequate size to store all samples and maintain temperature of four degrees Celsius;

(F) A copy of each approved analytical procedure being used in the laboratory;

(G) A source of distilled or deionized water that will meet the minimum

criteria of the approved methodologies;

(H) Glassware, chemicals, supplies, and equipment required to perform all analytical procedures included in their certification.

(7) Analytical Quality Control Program. Each laboratory shall develop and maintain a document outlining the analytical quality control practices used for the parameters included in their certification. Supporting records shall be maintained as evidence that these practices are being effectively carried out. The quality control document shall be available for inspection by the State Laboratory. The following are requirements for certification and must be included in each certified laboratory's quality control program:

(A) All analytical data pertinent to each certified analysis must be filed in an orderly manner so as to be readily available for inspection upon request.

(B) Excluding Oil and Grease, all residue parameters, leachate extractions, residual chlorine, and coliform, analyze one known standard in addition to calibration standards each day samples are analyzed to document accuracy. Analyze one suspended residue, one dissolved residue, one residual chlorine and one oil and grease standard quarterly. For residual chlorine, all calibration standards required by the approved procedure in use and by EPA must be analyzed.

(C) Except for Oil and Grease (EPA Method 413.1), settleable solids or where otherwise specified in an analytical method, analyze five percent of all samples in duplicate to document precision. Laboratories analyzing less than 20 samples per month must analyze at least one duplicate each month samples are analyzed.

(D) Any quality control procedures required by a particular approved method shall be considered as required for certification for that analysis.

(E) All quality control requirements in these Rules as set forth by the State Laboratory.

(F) Any time quality control results indicate an analytical problem, the problem must be resolved and any samples involved must be rerun if the holding time has not expired.

(G) All analytical records must be available for a period of five years. Records, which are stored only on electronic media, must be maintained and supported in the laboratory by all hardware and software necessary for immediate data retrieval and review.

(H) All laboratories must use printed laboratory bench worksheets that include a space to enter the signature or initials of the analyst, date of analyses, sample identification, volume of sample analyzed, value from the measurement system, factor and final value to be reported and each item must be recorded each time samples are analyzed. The date and time BOD and coliform samples are removed from the incubator must be included on the laboratory worksheet.

(I) For analytical procedures requiring analysis of a series of standards, the concentrations of these standards must bracket the concentration of the samples analyzed. One of the standards must have a concentration equal to the laboratory's lower reporting concentration for the parameter involved. For metals by AA or ICP, a series of at least three standards must be analyzed along with each group of samples. For colorimetric analyses, a series of five standards for a curve prepared annually or three standards for curves established each day or standards as set forth in the analytical procedure must be analyzed to establish a standard curve. The curve must be updated as set forth in the standard procedures, each time the slope changes by more than 10 percent at mid-range, each time a new stock standard is prepared, or at least every twelve months. Each analyst performing the analytical procedure must produce a standard curve.

(J) Each day an incubator, oven, waterbath or refrigerator is used, the temperature must be checked, recorded, and initialed. During each use, the autoclave maximum temperature and pressure must be checked, recorded, and initialed.

(K) The analytical balance must be checked with one class S, or equivalent, standard weight each day used and at least three standard weights quarterly. The values obtained must be recorded in a log and initialed by the analyst.

(L) Chemicals must be dated when received and when opened. Reagents

must be dated and initialed when prepared.

(M) A record of date collected, time collected, sample collector, and use of proper preservatives must be maintained. Each sample must clearly indicate the State of North Carolina collection site on all record transcriptions.

(N) At any time a laboratory receives samples which do not meet sample collection, holding time, or preservation requirements, the laboratory must notify the sample collector or client and secure another sample if possible. If another sample cannot be secured, the original sample may be analyzed but the results reported must be qualified with the nature of the infraction(s) and the laboratory must notify the State Laboratory about the infraction(s). The notification must include a statement indicating corrective actions taken to prevent the problem for future samples.

(O) All thermometers must meet National Institute of Standards and Technology (NIST) specifications for accuracy or be checked, at a minimum annually, against a NIST traceable thermometer and proper corrections made.

(8) Decertification Requirements. Municipal and industrial laboratories that cannot meet initial certification requirements must comply with the Decertification Requirements as set forth in Rule .0807(e) of this Section.

(b) Issuance of Certification.

(1) Upon compliance with these Rules, certification shall be issued by the Director, Division of Water Quality, Department of Environment and Natural Resources or his delegate, for each of the applicable parameters requested within 30 days.

(2) Initial certifications shall be issued for prorated time periods to schedule all certification renewals on the first day of January and shall be valid for one year.

(c) Maintenance of Certification.

(1) To maintain certification for each parameter, a certified laboratory must analyze up to four performance evaluation samples per parameter per year submitted by an accredited vendor as an unknown. Laboratories submitting unacceptable results on a performance evaluation sample may be required to analyze more than four samples per year.

(2) In addition, the State Laboratory may request that samples be split into two equal representative portions, one part going to the State and the other to the certified laboratory for analysis.

(3) The State laboratory may submit or require clients to submit blind performance samples or split samples under direction of State Laboratory personnel.

(4) A certified laboratory shall be subject to periodic announced or unannounced inspections during the certification period and shall make time and records available for inspections and must supply copies of records for any investigation upon written request by the State Laboratory.

(5) A certified laboratory must provide the State Laboratory with written notice of laboratory supervisor or laboratory manager changes within 30 days of such changes.

(6) A certified laboratory must submit written notice of any changes of location, ownership, address, name or telephone number within 30 days of such changes.

(7) A certified laboratory must submit a written amendment to the certification application each time that changes occur in methodology, reporting limits, and major equipment. The amendment must be received within 30 days of such changes.

(d) Certification Renewals

(1) Certification renewals of laboratories shall be issued for one year.

(e) Data reporting.

(1) Certified commercial laboratories must make data reports to their clients that are signed by the laboratory supervisor. This duty may be delegated in writing; however, the responsibility shall remain with the supervisor.

(2) Whenever a certified commercial laboratory refers or subcontracts samples to another certified laboratory for analyses, the referring laboratory must supply the date and time samples were collected to insure holding times are met. Subcontracted samples must clearly indicate the State of North Carolina as the collection site on all record transcriptions. Laboratories may subcontract sample fractions, extracts, leachates and other sample preparation products provided that all Rules and requirements of 15A NCAC 02H .0800 are documented. The initial client requesting the analyses must receive the original or a copy of the report made by the laboratory that performs the analyses.

(3) All uncertified data must be clearly documented as such on the benchsheet and on the final report.

(f) Discontinuation of Certification.

(1) A laboratory may discontinue certification for any or all parameters by making a written request to the State Laboratory.

(2) After discontinuation of certification, a laboratory may be recertified by meeting the

requirements for initial certification; however, laboratories that discontinue certification during any investigation shall be subject to Rule .0808 of this Section.

(g) Prerequisites and requirements for Field Parameter Certification. Only the following requirements must be met prior to certification for Field Parameter Laboratories. Once certified, failure to comply with any of the following items will be a violation of certification requirements.

(1) Data pertinent to each analysis must be maintained for five years. Certified Data must consist of date collected, time collected, sample site, sample collector, and sample analysis time. The field benchsheets must provide a space for the signature or initials of the analyst, and proper units of measure for all analyses.

(2) A record of instrument calibration where applicable, must be filed in an orderly manner so as to be readily available for inspection upon request.

(3) A copy of each approved analytical procedure must be available to each analyst.

(4) Each facility must have glassware, chemicals, supplies, equipment, and a source of distilled or deionized water that will meet the minimum criteria of the approved methodologies.

(5) Supervisors of laboratories certified for Field Parameters only must meet the requirements of Subparagraph (a)(3)(A) or (a)(3)(B) of this Section, or possess a chemistry or related degree with two years of related environmental experience, or hold any Biological Water Pollution Control System Operator's Certification as defined by 15A NCAC 08G.

(6) Application: Each Field Parameter Laboratory shall submit an application in duplicate.

(7) Performance Evaluations. Each Field Parameter Laboratory must participate in an annual quality assurance study by analyzing performance evaluation samples obtained from an accredited vendor as unknowns. If performance evaluations are not available for a parameter, certification for that parameter may be based on the proper use of the approved procedure as determined by an announced or unannounced on-site inspection.

(8) Decertification and Civil Penalties. A laboratory facility can be decertified for infractions as outlined in Rule .0807 of this Section.

(9) Recertification. A laboratory facility can be recertified in accordance with Rule .0808 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. July 1, 1988; July 1, 1985;
December 1, 1984; November 1, 1978;
RRC Objection Eff. October 15, 1992 due to lack of statutory authority;
Amended Eff. December 21, 1992;
RRC Objection Removed Eff. December 16, 1993;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

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

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. August 1, 2002; July 1, 1997.

15A NCAC 02Q .0202 DEFINITIONS

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

(1) "Actual emissions" means the actual rate of emissions in tons per year of any air pollutant emitted from the facility over the preceding calendar year. Actual emissions shall be calculated using the sources' actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Actual emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. For fee applicability and calculation purposes under Rule .0201 or .0203 of this Section and emissions reporting purposes under Rule .0207 of this Section, actual emissions do not include emissions beyond the normal emissions during violations, malfunctions, start-ups, and shut-downs, do not include a facility's secondary emissions such as those from motor vehicles associated with the facility, and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Subchapter.

(2) "Title V facility" means a facility that is required to have a permit under Section .0500 of this Subchapter except perchloroethylene dry cleaners whose potential emissions are less than:

(a) 10 tons per year of each hazardous air pollutant;

(b) 25 tons per year of all hazardous air pollutants combined; and

(c) 100 tons per year of each regulated air pollutant.

(3) "Synthetic minor facility" means a facility that would be a Title V facility except that the potential emissions are reduced below the thresholds in Paragraph (2) of this Rule by one or more physical or operational limitations on the capacity of the facility to emit an air pollutant. Such limitations must be enforceable by EPA and may include air pollution control equipment and restrictions on hours of operation, the type or amount of material combusted, stored, or processed.

(4) "General facility" means a facility obtaining a permit under Rule .0310 or .0509 of this Subchapter.

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

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6;
Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. August 1, 2002; July 1, 1996.

15A NCAC 02Q .0702 EXEMPTIONS

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

(1) residential wood stoves, heaters, or fireplaces;

(2) hot water heaters that are used for domestic purposes only and are not used to heat process water;

(3) maintenance, structural changes, or repairs that do not change capacity of that process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant or toxic air pollutant;

(4) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or non-asbestos bearing insulation removal;

(5) use of office supplies, supplies to maintain copying equipment, or blueprint machines;

(6) paving parking lots;

(7) replacement of existing equipment with equipment of the same size, type, and function if the new equipment:

(A) does not result in an increase to the actual or potential emissions of any regulated air pollutant or toxic air pollutant;

(B) does not affect compliance status; and

(C) fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes to the permit;

(8) comfort air conditioning or comfort ventilation systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;

(9) equipment used for the preparation of food for direct on-site human consumption;

(10) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;

(11) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;

(12) use of fire fighting equipment;

(13) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 02D .1104 if such compounds are applied according to agronomic practices acceptable to the North Carolina Department of Agriculture;

(14) asbestos demolition and renovation projects that comply with 15A NCAC 02D .1110 and that are being done by persons accredited by the Department of Health and Human Services under the Asbestos Hazard Emergency Response Act;

(15) incinerators used only to dispose of dead animals or poultry as identified in 15A NCAC 02D .1201(c)(4) or incinerators used only to dispose of dead pets as identified in 15A NCAC 02D .1208(a)(2)(A);

(16) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or with air pollution control equipment;

(17) laboratory activities:

(A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;

(B) bench scale experimentation, chemical or physical analyses, training or instruction from nonprofit, non-production educational laboratories;

(C) bench scale experimentation, chemical or physical analyses, training or instruction from hospital

or health laboratories pursuant to the determination or diagnoses of illnesses; and

(D) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;

(18) combustion sources as defined in 15 NCAC 02Q .0703 until 18 months after promulgation of the MACT or GACT standards for combustion sources. (Within 18 months following promulgation of the MACT or GACT standards for combustion sources, the Commission shall decide whether to keep or remove the combustion source exemption. If the Commission decides to remove the exemption, it shall initiate rulemaking procedures to remove this exemption.)

(19) storage tanks used only to store:

(A) inorganic liquids with a true vapor pressure less than 1.5 pounds per square inch absolute;

(B) fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, liquefied petroleum gas, or petroleum products with a true vapor pressure less than 1.5 pounds per square inch absolute;

(20) dispensing equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;

(21) portable solvent distillation systems that are exempted under 15A NCAC 02Q .0102(b)(1)(I);

(22) processes:

(A) small electric motor burn-out ovens with secondary combustion chambers or afterburners;

(B) electric motor bake-on ovens;

(C) burn-off ovens for paint-line hangers with afterburners;

(D) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;

(E) blade wood planers planing only green wood;

(F) saw mills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;

(G) perchloroethylene drycleaning processes with 12-month rolling average consumption of:

(i) less than 1366 gallons of perchloroethylene per year for facilities with dry-to-dry machines only;

(ii) less than 1171 gallons of perchloroethylene per year for facilities with transfer machines only; or

(iii) less than 1171 gallons of perchloroethylene per year for facilities with both transfer and dry-to-dry machines;

(23) wood furniture manufacturing operations as defined in 40 CFR 63.801(a) that comply with the emission limitations and other requirements of 40 CFR Part 63 Subpart JJ, provided that the terms of this exclusion shall not affect the authority of the Director under 15A NCAC 02Q .0712;

(24) gasoline dispensing facilities or gasoline service station operations that comply with 15A NCAC 02D .0928 and .0932 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 02D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 02D .0932;

(25) the use of ethylene oxide as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale if the emissions from all new and existing sources at the facility described in 15A NCAC 02D .0538(d) are controlled at least to the degree described in 15A NCAC 02D .0538(d) and the facility complies with 15A NCAC 02D .0538(e) and (f);

(26) bulk gasoline plants, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0926, .0932, and .0933; unless the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline plant; or

(27) bulk gasoline terminals, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992; unless:

(A) the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline terminal, or

(B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 2D .0927(i).

(b) Emissions from the activities identified in Subparagraphs (a)(24) through (a)(27) of this Rule shall be included in

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

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;
Rule originally codified as part of 15A NCAC 02H .0610;
Eff. July 1, 1998;
Amended Eff. July 1, 2002; July 1, 2000.

15A NCAC 02S .0102 DEFINITIONS

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

(1) "Act" means the Dry-Cleaning Solvent Cleanup Act of 1997 and any amendments thereto.

(2) "Apparel and household fabrics" means apparel and fabrics that have been purchased at retail or have been purchased at wholesale for rental at retail.

(3) "Business" means "business" as defined in 15A NCAC 13A .0104, which is hereby incorporated by reference including subsequent amendments and editions. A copy may be inspected or obtained at no cost from the Division of Waste Management, Dry-Cleaning Solvent Cleanup Act Program, 401 Oberlin Road, Raleigh, NC.

(4) "Closed container solvent transfer system" means a device or system specifically designed to fill a dry-cleaning machine with dry-cleaning solvent through a mechanical valve or sealed coupling in order to prevent spills or other loss of solvent liquids or vapors to the environment.

(5) "Discovery Site" means the physical site or area where dry-cleaning solvent contamination has been discovered. A discovery site may or may not be the same property as the facility site.

(6) "Division" means the Division of Waste Management of the Department of Environment and Natural Resources.

(7) "Dry-Cleaning Business" means a business having engaged in dry-cleaning operations or the operation of a wholesale distribution facility at a facility site.

(8) "Environmental media" means soil, sediment, surface water, groundwater or other physical substance.

(9) "Facility site" means the physical location of a dry-cleaning facility, a wholesale distribution facility or an abandoned site.

(10) "Material impervious to drycleaning solvent" means a material that has been demonstrated by the manufacturer, an independent testing laboratory such as Underwriters Laboratory, or another organization determined by the Division to be comparable, to maintain its chemical and structural integrity in the presence of the applicable dry-cleaning solvent and prevent the movement of dry-cleaning solvent for a period of a least 72 hours.

(11) "Number of full time employees" means the number of full-time equivalent employees employed by a person who owns a dry-cleaning facility, as calculated pursuant to 15A NCAC 02S .0103.

(12) "Person" means "person" as defined in G.S. 130A-290, which is hereby incorporated by reference including subsequent amendments and additions. A copy may be inspected or obtained at no cost from the Division of Waste Management, Dry-Cleaning Solvent Cleanup Act Program, 401 Oberlin Road, Raleigh, NC.

(13) "Petitioner" means a potentially responsible party who submits a petition for certification of a facility site.

History Note: Authority G.S. 143-215.104D(b); 150B-21.2;
Eff. August 1, 2000;
Temporary Amendment Eff. June 1, 2001;
Amended Eff. August 1, 2002.

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

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

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

(1) The number of salaried employees employed by the facility owner in activities related to dry-cleaning operations;

(2) The total number of hours worked in the previous calendar year by non-salaried employees employed by the facility owner in activities related to dry-cleaning operations divided by 2080; and

(3) The lesser of:

(A) the number of persons who hold ownership interests in the dry-cleaning facility, but are not included in Subparagraphs (1) or (2) of this Rule, and who perform activities related to dry-cleaning operations at a dry-cleaning facility in which the persons have ownership interests; or

(B) the total number of hours worked by such persons divided by 2080.

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

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

(1) The provision of dry-cleaning or laundry services, including collecting, cleaning, pressing, altering, repairing, packaging, handling, or delivering of items of apparel or household fabrics for which dry-cleaning or laundry services are provided;

(2) The supervision of employees involved in the provision of dry-cleaning or laundry services as described in Subparagraph (d)(1) of this Rule;

(3) The maintenance or operation of physical facilities used to provide dry-cleaning or laundry services as described in Subparagraph (d)(1) of this Rule; or

(4) The management, including accounting, financial, human resource, or other support functions, of the business providing dry-cleaning or laundry services as described in Subparagraph (d)(1) of this Rule.

History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Temporary Adoption Eff. June 1, 2001; Eff. August 1, 2002.

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with both the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid, mitigate or reduce adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion, including, but not limited to, peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.

(2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be

developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible.

(3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:

(A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.

(B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.

(C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.

(4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts shall include but not be limited to development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.

(5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.

(6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" shall mean a project that is paid for in any part by public funds.

(7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Cultural Resources.

(8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(9) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.

(10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:

(A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;

(B) Pile-supported signs (in accordance with local regulations);

(C) Post- or pile-supported fences;

(D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;

(E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;

(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;

(G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;

(H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent

of the rules to the maximum extent feasible;

(I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:

(i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and

(ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and

(J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:

(i) The lot on which the proposed residential structure is to be located, is located between:

(I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or

(II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;

(ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;

(iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;

(iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and

(v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of

Environmental Health of the Department of Environment and Natural Resources.

(e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.

(f) Specific Use Standards for Outstanding Resource Waters (ORW) Coastal Shorelines.

(1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:

(A) have no stormwater collection system;

(B) provide a buffer zone of at least 30 feet from the normal high water line or normal water line;

(C) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.

(2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if:

(A) the development has a CAMA permit application in process, or

(B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement.

(3) Single-family residential lots that would not be buildable under the low-density standards defined in Paragraph (g)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.

(4) For an ORW nominated subsequent to June 1, 1989, the effective date in Paragraph (g)(2) of this Rule shall be the dates of nomination by the EMC.

(g) Urban Waterfronts.

(1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:

(A) The area lies wholly within the corporate limits of a municipality; and

(B) the area is in a central business district where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection, or an industrial zoned area adjacent to a central business district.

(2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.

(3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.

(4) Use Standards:

(A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule is not required for development within designated Urban Waterfronts that meets the following standards:

(i) The development must be consistent with the locally adopted land use plan;

(ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by

an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and

(iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission;

(B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within designated Urban Waterfronts as set out below.

(i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for non-water dependent purposes.

(ii) Existing enclosed structures may be expanded vertically provided that vertical expansion does not exceed the original footprint of the structure.

(iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and must meet the following criteria:

(I) The proposed development must be consistent with a locally adopted waterfront access plan that provides for enhanced public access to the shoreline;

(II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind and shall be limited to a single story;

(III) Structures must be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;

(IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;

(V) Structures must be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;

(VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;

(VII) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. 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 properties, 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. The minimum setback 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 structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;

(VIII) Structures must be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;

(IX) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts shall include but not be limited to the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;

(X) Structures shall not degrade waters classified as SA or High Quality Waters or Outstanding Resource Waters as defined by the NC Environmental Management Commission;

(XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and

(XII) Structures shall not pose a threat to navigation.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;
Eff. September 1, 1977;
Amended Eff. October 1, 1989; May 1, 1990; December 1, 1991; August 3, 1992; August 1, 2000; April 1, 2001;
Temporary Amendment Eff. February 15, 2002; October 15, 2001;
Amended Eff. August 1, 2002.

15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

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

(1) the growth of vegetation occurs, or

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

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

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

(d) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(e) General Identification. For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined in 15A NCAC 07I .0500, a readily identifiable land area within which the ocean

hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

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

(1) it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline; or

(2) it is a Hurricane Protection project constructed by the U.S. Army Corps of Engineers.

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

(1) A primary vegetation line shall be established prior to the onset of project construction as described in Paragraphs (f) of this Rule;

(2) An alternative vegetation line shall be determined based on a dry sand beach width template (measured from the wet/dry line or other appropriate shoreline indicator to the vegetation line) developed by DCM staff from analysis of historic aerial photographs, a ground reconnaissance survey of the site and adjacent areas, and where available, other historic data such as beach profiles and site specific studies. The template is intended to show the location of the vegetation line relative to the existing shoreline as if no storm had affected the location of the vegetation line. The template will be applied to the existing shoreline immediately prior to the commencement of project construction; and

(3) The storm effect mitigated vegetation line may be used to replace the primary pre-project vegetation line for setback determinations and other appropriate regulatory actions after a minimum time period of eight years from the award of contract date of the large scale project as defined in Subparagraph (f) of this Rule, and the Division of Coastal Management personnel have determined that natural vegetation is reestablished on the large scale project. To be considered as reestablished, natural vegetation shall meet all of the following criteria:

(A) the dune grasses appear the same in terms of species composition and stem density as adjacent non-project dune areas; and

(B) the majority of stems are from continuous rhizomes rather than planted individual rooted sets and, the vegetation is established and stable at least as far seaward as the storm effect mitigated pre-project vegetation line.

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

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

(1) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and

(2) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

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

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. January 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;

Temporary Amendment Eff. October 22, 1997;
Amended Eff. August 1, 2002; August 1, 1998.

15A NCAC 07H .1703 PERMIT FEE

The agency shall not charge a fee for permitting work necessary to respond to emergency situations except in the case when a temporary erosion control structure is used. In those cases, the applicant must pay a permit fee of two hundred and fifty dollars ($250.00) made payable to the Department.

History Note: Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1; 113A-119;
Eff. November 1, 1985;
Amended Eff. August 1, 2002; March 1, 1991; October 1, 1993.

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 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 shall be referred to a consulting forester or other natural resource professionals. The determination to refer shall 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 shall be recommended to the landowner that a consulting forester be employed. When any referral is made, a list of practicing consulting foresters shall be 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.

History Note: Authority G.S. 113-81.2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; October 1, 1984.

15A NCAC 09C .0402 TECHNICAL SERVICES

(a) Technical forestry services shall be 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:
  (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 shall be referred to consulting foresters. These are:

(1) timber cruises and estimation of timber volume 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.

History Note: Authority G.S. 113-81.1; 143B-10;
Eff. February 1, 1976;
Readopted Eff. November 6, 1990;
Amended Eff. August 1, 2002; October 1, 1984.

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 shall be determined on the basis of estimated costs of production and volume of sales. The secretary sets seedling prices annually. Prices shall be listed in printed price list.

History Note: Authority G.S. 113-35; 143B-10;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; December 1, 1985;
October 1, 1994.

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 shall result in forfeiture of total payment by the applicant.

History Note: Authority G.S. 113-8; 113-35; 143B-10(j);
Eff. February 1, 1976;

Amended Eff. October 5, 1977;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; August 1, 1998; October 1, 1984; January 15, 1981.

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

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

History Note: Authority G.S. 113-8; 113-35; 143B-10(j); Eff. February 1, 1976;
Amended Eff. March 21, 1980; October 5, 1977;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; August 1, 988; December 1, 1985; October 1, 984.

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; and
(2) those areas enrolled in game lands.

In those cases where hunting is authorized, firearms shall be restricted to shotguns and archery.

History Note: Authority G.S. 113-8; 113-35; 143B-10(j); Eff. August 1, 2002.

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

Custom services shall be sub-contracted to a third person when the director deems such action in the best interest of the state. Sub-contracting shall be 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.

History Note: Authority G.S. 113-81.1; 143B-10(j); Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002.

15A NCAC 11 .0117 INCORPORATION BY REFERENCE

(a) For the purpose of the rules in this Chapter, the following rules, standards and other requirements are hereby incorporated by reference including any subsequent amendments and editions:

(1) Appendix A, Appendix B, Appendix C, and Appendix G to 10 CFR Parts 20.1001 - 20.2401;
(2) 10 CFR Part 21, 10 CFR Part 30.1, 30.10, 10 CFR Part 31, 10 CFR Part 32, Subpart J of 10 CFR Part 35, 10 CFR Part 36, 10 CFR Part 40 and 10 CFR Part 50;
(3) 10 CFR Part 61, 10 CFR Part 70, 10 CFR Part 71, 10 CFR Part 73, 10 CFR Part 110, 10 CFR Part 140 and 10 CFR Part 150;
(4) 21 CFR Part 1010, 21 CFR Part 1020 and 21 CFR Part 1040;
(5) 39 CFR Part 14 and 39 CFR Part 15;
(6) Postal Service Manual (Domestic Mail Manual) Section 124.3 [incorporated by reference in 39 CFR Section 111.11];
(7) 40 CFR Part 261;
(8) 49 CFR Parts 100-189;
(9) "Agreement Between the United States Atomic Energy Commission and the State of North Carolina for Discontinuance of Certain Commission Regulatory Authority and Responsibility within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended", signed July 21, 1964;
(10) "Standards and Specifications for Geodetic Control Networks (September 1984);
(11) "Geometric Geodetic Survey Accuracy Standards and Specifications for Geodetic Surveys Using GPS Relative Positioning Techniques";
(12) "Reference Man: Anatomical, Physiological and Metabolic Characteristics" (ICRP Publication No. 23) of the International Commission on Radiological Protection;
(13) "10 CFR, Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 FR 7540"; and
(14) American National Standard N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography".

(b) The rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule are available for inspection at the Department of Environment and Natural Resources, Division of Radiation Protection at the address listed in Rule .0111 of this Section. Except as noted in the Subparagraphs of this Paragraph, copies of the rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at a cost as follows:

(1) Three dollars ($3.00) for the appendixes listed in Subparagraph (a)(1) of this Rule, available from the Division of Radiation Protection;
(2) Twenty-five dollars ($25.00) for the regulations listed in Subparagraph (a)(2) of this Rule in a volume containing 10 CFR Parts 0-50;
(3) Eighteen dollars ($18.00) for the regulations listed in Subparagraph (a)(3) of this Rule in a volume containing 10 CFR Parts 51-199;
(4) Eighteen dollars ($18.00) for the regulations listed in Subparagraph (a)(4) of this Rule in a volume containing 21 CFR Parts 800-1299;
(5) Sixteen dollars ($16.00) for the regulations listed in Subparagraph (a)(5) of this Rule in a volume containing 39 CFR;
(6) Thirty-six dollars ($36.00) for the manual listed in Subparagraph (a)(6) of this Rule;

(7) Thirty-one dollars ($31.00) for the regulations listed in Subparagraph (a)(7) of this Rule in a volume containing 40 CFR Parts 260-299;

(8) for the regulations listed in Subparagraph (a)(8) of this Rule:

(A) Twenty-three dollars ($23.00) for a volume containing 49 CFR Parts 100-177; and

(B) Seventeen dollars ($17.00) for a volume containing 49 CFR Parts 178-199;

(9) One dollar ($1.00) for the agreement in Subparagraph (a)(9) of this Rule, available from the Division of Radiation Protection;

(10) Two dollars and eighty-five cents ($2.85) for the standards and specifications in Subparagraph (a)(10) of this Rule, available from the National Geodetic Information Center, N/CG174, Rockwall Building, Room 24, National Geodetic Survey, NOAA, Rockville, MD 20852;

(11) Two dollars and eighty-five cents ($2.85) for the standards and specifications in Subparagraph (a)(11) of this Rule, available from the National Geodetic Information Center, NCG174, Rockwall Building, Room 24, National Geodetic Survey, NOAA, Rockville, MD 20852;

(12) One hundred and five dollars ($105.00) for the ICRP Publication No. 23 in Subparagraph (a)(12) of this Rule, available from Pergamon Press, Inc., Maxwell House, Fairview Park, Elmsford, NY 10523;

(13) Two dollars ($2.00) for the document in Subparagraph (a)(13) of this Rule, available from the Division of Radiation Protection; and

(14) Thirty-eight dollars plus five dollars shipping and handling ($43.00) for the American National Standard N432-1980 in Subparagraph (a)(14) of this Rule, available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, telephone number (212) 642-4900.

(c) Nothing in this incorporation by reference of 10 CFR Part 61 in Subparagraph (a)(3) of this Rule shall limit or affect the continued applicability of G.S. 104E-25(a) and (b).

History Note: Authority G.S. 104E-7; 104E-15(a); 150B-21.6;
Eff. June 1, 1993;
Temporary Amendment Eff. August 20, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. August 1, 2002; April 1, 1999; August 1, 1998; May 1, 1995.

15A NCAC 11 .0321 SPECIFIC LICENSES: GROUPS OF DIAGNOSTIC USES

(a) An application for a specific license pursuant to Rule .0318 of this Section for any diagnostic or therapeutic use of radioactive material specified in groups established in Paragraph (b) of this Rule shall be approved for all of the diagnostic or therapeutic uses within the group which include the use specified in the application if:

(1) the applicant satisfies the requirements in Rule .0319 or Rule .0320 of this Section;

(2) the applicant's proposed radiation detection instrumentation is adequate for conducting the diagnostic or therapeutic procedure specified in the appropriate group;

(3) the physicians designated in the application as individual users, have clinical experience in the types of uses included in the group or groups incorporated by reference in Rule .0117(a)(2) of this Chapter;

(4) the physicians and all other personnel who will be involved in the preparation and use of radioactive material have training and experience in the handling of radioactive material appropriate to their participation in the uses included in the group or groups incorporated by reference in Rule .0117(a)(2) of this Chapter;

(5) the applicant has detailed radiation safety operating procedures for handling and disposal of the radioactive material involved in the uses included in the group or groups that provide protection to the workers, the public and the environment from radiation exposure and radioactive contamination.

(b) The groups of diagnostic and therapeutic radiopharmaceutical uses are established as follows:

(1) Group I includes radiopharmaceuticals for which a New Drug application has been approved by the U.S. Food and Drug Administration for diagnostic studies involving measurement of uptake, dilution and excretion. This group does not include the use of any radiopharmaceutical disapproved by the North Carolina Radiation Protection Commission or involving imaging, tumor localization or therapy.

(2) Group II includes radiopharmaceuticals for which a New Drug application has been approved by the U.S. Food and Drug Administration for diagnostic studies involving imaging and tumor localizations. This group does not include the use of any radiopharmaceutical disapproved by the North Carolina Radiation Protection Commission.

(3) Group III includes the use of generators and reagent kits for which a New Drug application has been approved by the U.S. Food and Drug Administration for the preparation of radiopharmaceuticals for certain diagnostic uses. This group does not include any generator or reagent kit disapproved by the North Carolina Radiation Protection Commission.

(4) Group IV includes radiopharmaceuticals for which a New Drug application has been approved by the U.S. Food and Drug

Administration for therapeutic uses which do not normally require hospitalization for purposes of radiation safety. This group does not include any radiopharmaceutical disapproved by the North Carolina Radiation Protection Commission.

(c) Any licensee who is authorized to use radioactive material in one or more groups pursuant to Paragraph (a) of this Rule is subject to the following conditions:

(1) For Groups I, II and IV, no licensee shall receive, possess, or use radioactive materials except as a radiopharmaceutical manufactured in the form to be administered to the patient, labeled, packaged, and distributed in accordance with:

(A) a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to Section 32.72 of 10 CFR Part 32; or

(B) a specific license issued by the agency or an agreement state pursuant to equivalent regulations.

(2) For Group III, no licensee shall receive, possess, or use generators or reagent kits containing radioactive material or shall use reagent kits that do not contain radioactive material to prepare radiopharmaceuticals containing radioactive material, except:

(A) reagent kits, not containing radioactive material, that are approved by the U.S. Nuclear Regulatory Commission, the U.S. Atomic Energy Commission, or an agreement state for use by persons licensed for Group III pursuant to Paragraph (a) of this Rule or equivalent regulations of an agreement state or the U.S. Nuclear Regulatory Commission;

(B) generators or reagent kits containing radioactive material that are manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission or by the agency or an agreement state pursuant to equivalent regulations;

(C) any licensee who uses generators or reagent kits shall elute the generator or process radioactive material with the reagent kit in accordance with instructions which are approved by the U.S. Nuclear Regulatory Commission or an agreement state and are furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit.

(3) For Groups I, II and III, any licensee using radioactive material for clinical procedures other than those specified in the product labeling package insert shall comply with the product labeling regarding:

(A) chemical and physical form;

(B) route of administration; and

(C) dosage range.

(4) Any licensee who is licensed pursuant to Paragraph (a) of this Rule for one or more of the medical use groups also is authorized to use radioactive material under the general license in Rule .0314 of this Section for the specified IN VITRO uses without filing agency form as required by Rule .0314(b) of this Section, provided that the licensee is subject to the other provisions of Rule .0314 of this Section.

(5) Any licensee who is licensed pursuant to Paragraph (a) of this Rule for one or more of the medical use groups in Paragraph (a) of this Rule also is authorized, subject to the provisions of Parts (c)(5)(E) and (F) of this Rule, to receive, possess, and use for calibration and reference standards:

(A) Any radioactive material listed in Group I, Group II, or Group III of this Rule with a half-life not longer than 100 days, in amounts not to exceed 15 millicuries total;

(B) Any radioactive material listed in Group I, Group II, or Group III of this Rule with half-life greater than 100 days in individual amounts not to exceed 200 microcuries total;

(C) Technetium-99m in individual amounts not to exceed 50 millicuries;

(D) Any radioactive material in amounts not to exceed 15 millicuries per source contained in calibration or reference sources that have been manufactured, labeled, packaged, and distributed in accordance with:

(i) a specific license issued to the manufacturer by an agreement state pursuant to equivalent state regulations;

(ii) a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.74 of 10 CFR, Part 32; or

(iii) an application filed with the U.S. Atomic Energy Commission pursuant to Section 32.74 of 10 CFR, Part 32; or

(iv) an application filed with an agreement state pursuant to equivalent state regulations on or before October 15, 1974 for a license to manufacture a source that the applicant distributed

commercially on or before August 16, 1974, on which application the U.S. Atomic Energy Commission or the U.S. Nuclear Regulatory Commission or the agreement state has not acted;

(E) Any licensee who possesses sealed sources as calibration or reference sources pursuant to Subparagraph (c)(5) of this Rule shall cause each sealed source containing radioactive material other than hydrogen-3 with a half-life greater than 30 days in any form other than gas to be tested for leakage or contamination at intervals not to exceed six months. In the absence of a certificate from a transferor indicating that a test has been made within six months prior to the transfer, the sealed source shall not be used until tested. No leak tests are required when:

(i) The source contains 100 microcuries or less of beta or gamma emitting material or ten microcuries or less of alpha emitting material.

(ii) The sealed source is stored and is not being used. Such source shall be tested for leakage prior to any use or transfer unless they have been leak tested within six months prior to the date of use or transfer.

The leak test shall be capable of detecting the presence of 0.005 microcuries of radioactive material on the test sample. The test sample shall be taken from the sealed source or from the surfaces of the device in which the sealed source is permanently mounted or stored on which contamination might be expected to accumulate. Records of leak test results shall be kept in units of microcuries and maintained for inspection by the agency. If the leak test reveals the presence of 0.005 microcuries or more of removable contamination, the licensee shall immediately withdraw the sealed source from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with Commission rules. A report shall be filed within five days of the test with the agency address in Rule .0111 of this Chapter describing the equipment involved, the test results, and the corrective action taken;

(F) Any licensee who possesses and uses calibration and reference sources pursuant to Subparagraph (c)(5) of this Rule shall:

(i) follow the radiation safety and handling instructions that are required by the licensing agency to be furnished by the manufacturer on the label attached to the source or permanent container thereof or in the leaflet or brochure that accompanies the source;

(ii) maintain such instructions in a legible and conveniently available form;

(iii) conduct a quarterly physical inventory to account for all sources received and possessed; Records of the inventories shall be maintained for inspection by the agency and shall include the quantities and kinds of radioactive material, location of sources and the date of the inventory.

(d) Current lists of the radiopharmaceuticals, generators, reagent kits, and associated uses in Group I to IV are available from the agency at the address in Rule .0111 of this Chapter.

History Note: Authority G.S. 104E-7; 104E-10(b);
Eff. February 1, 1980;
Amended Eff. August 1, 2002; April 1, 1999; May 1, 1993.

15A NCAC 11 .1105 FEE AMOUNTS

(a) Annual fees for persons registered pursuant to provisions of Section .0200 of this Chapter are as listed in the following table:

Type of registered facility	Letters appearing in registration number	Facility plus first X-ray tube	Each additional X-ray Tube to a maximum of 40 additional X-ray tubes
Clinics	A	$ 90.00	$ 16.25

Chiropractors	C	$ 90.00	$ 16.25
Dentists	D	$ 90.00	$ 16.25
Educational	E	$ 65.00	$ 13.00
Government	G	$ 65.00	$ 13.00
Podiatrists	H	$ 90.00	$ 16.25
Industrial	I	$ 90.00	$ 16.25
Industrial Medical	IM	$130.00	$ 22.75
Health Departments	L	$130.00	$ 22.75
Hospitals	M	$195.00	$ 29.25
Physicians	P	$ 90.00	$ 16.25
Industrial Radiography	R	$195.00	$ 29.25
Services	S	$130.00	$ 0.00
Veterinarians	V	$ 65.00	$ 13.00
Other	Z	$ 90.00	$ 16.25

(b) Annual fees for persons licensed pursuant to provisions of Section .0300 of this Chapter are as listed in the following table:

Type of Radioactive Material License	Annual Fee
Specific license of broad scope	
-medical or academic	$1,200.00
-other	$ 425.00
Specific license	
-industrial radiography (with temporary subsites)	$1,525.00
-industrial radiography (in plant only)	$ 780.00
-manufacture or distribution	$ 425.00
-medical institution other than teletherapy	$ 360.00
-medical private practice	$ 260.00
-medical teletherapy with one teletherapy unit and	$ 300.00
-each additional teletherapy unit	$ 65.00
-industrial gauges	$ 225.00
-moisture-density gauges	$ 100.00
-gas chromatographs	$ 100.00
-educational institutions	$ 360.00
-services/consultants	$ 100.00
-other	$ 160.00
General licenses	
-industrial gauges	$ 100.00
-IN VITRO testing and others	$ 100.00

(c) Annual fees for persons licensed pursuant to provisions of Section .0900 of this Chapter are as listed in the following table:

Description of Fee	Annual Fee
-Facility with one accelerator	$ 300.00
-each additional accelerator	$ 65.00

(d) Annual fees for out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rules .0211 and .0345 of this Chapter are the same as that provided for in the applicable category specified in Paragraphs (a), (b), and (c) of this Rule. Only those out-of-state persons granted reciprocal recognition for the purpose of industrial radiography, portable gauge use and use that involves intentional exposures to individuals for medical purposes are subject to the payment of the prescribed fees contained in this Rule. Such fees are due when application for reciprocal recognition of out-of-state license or registration is made in the same manner as for a new license or registration as specified in Rule .1102.

History Note: *Authority G.S. 104E-9(a)(8); 104E-19(a);*
Eff. July 1, 1982;
Amended Eff. August 1, 2002; July 1, 1989.

15A NCAC 11 .1405 APPLICATION FOR REGISTRATION OF TANNING FACILITIES

(a) Each person having a tanning facility on the effective date of this Rule shall apply for registration of such facility no later than 60 days following the effective date of this Rule.

(b) Each person acquiring or establishing a tanning facility after the effective date of this Rule shall have a certificate of registration issued by the agency for such facility prior to beginning operation.
(c) The application required in Paragraphs (a) and (b) of this Rule shall be completed on forms provided by the agency.
(d) The agency shall require at least the following information on the forms provided for applying for registration of tanning facilities:

(1) name, physical address, mail address and telephone number of the tanning facility;
(2) name(s), mail address(es) and telephone number(s) of the owner(s) of the tanning facility;
(3) each facility shall submit a copy of the tanning operator training certificate for each of the tanning facility operator(s) with the initial application in accordance with the provisions of the rules of this Section;
(4) the manufacturer(s), model number(s) and type(s) of ultraviolet lamp(s) or tanning equipment located at the tanning facility;
(5) name(s) of the tanning equipment supplier(s), installer(s) and service agent(s);
(6) certification that the applicant has read and understands the requirements of the rules in this Section, such certification to be signed and dated by the manager and the owner of the tanning facility; and
(7) certification that each person operating a tanning facility shall not allow any individual under 18 years of age to be the operator of tanning equipment.

History Note: Authority G.S. 104E-7(a)(7);
Eff. June 1, 1989;
Amended Eff. August 1, 2002; June 1, 1993; May 1, 1992.

15A NCAC 11 .1414 WARNING SIGNS REQUIRED

(a) The registrant shall post the warning sign described in Paragraph (b) of this Rule within one meter of each tanning station and in such a manner that the sign is clearly visible, not obstructed by any barrier, equipment or other object, and can be easily viewed by the consumer before the tanning equipment is energized.
(b) The warning sign in Paragraph (a) of this Rule shall use upper and lower case letters which are at least seven millimeters and three and one-half millimeters in height, respectively, and shall have the following wording:

DANGER - ULTRAVIOLET RADIATION

-Follow instruction.

-Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. REPEATED EXPOSURE MAY CAUSE PREMATURE AGING OF THE SKIN AND SKIN CANCER.

-Wear protective eyewear. FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

-Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using sunlamp or tanning equipment if you are using medication or have a history of skin problems or believe yourself to be especially sensitive to sunlight.

-If you do not tan in the sun, you are unlikely to tan from the use of this product.

-Consumers should report to the agency any injury for which medical attention is sought or obtained resulting from the use of registered tanning equipment. This report should be made within five working days after the occurrence.

(c) Warning signs shall include the current address of the agency.

History Note: Authority G.S. 104E-7(a)(7);
Eff. June 1, 1989;
Amended Eff. August 1, 2002; June 1, 1993.

15A NCAC 11 .1415 EQUIPMENT AND CONSTRUCTION REQUIREMENTS

(a) The registrant shall use only tanning equipment manufactured in accordance with the specifications set forth in 21 Code of Federal Regulations (CFR) Part 1040, Section 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products". The standard of compliance shall be the standards in effect at the time of manufacture as shown on the equipment identification label required by 21 CFR Part 1010, Section 1010.3.
(b) Each assembly of tanning equipment shall be designed for use by only one consumer at a time.
(c) Each assembly of tanning equipment shall be equipped with a timer which complies with the requirements of 21 CFR Part 1040, Section 1040.20(c)(2). The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error exceeding plus or minus 10 percent of the maximum timer interval for the product.
(d) Tanning equipment shall include physical barriers to protect consumers from injury induced by touching or breaking the lamps.
(e) All tanning equipment labeling required in Paragraph (a) of this Rule shall be legible and accessible to view.
(f) The timer intervals shall be numerically indicated on the face of the timer.
(g) The timer shall not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle, when emission from the tanning device has been interrupted.
(h) Each assembly of tanning equipment shall be provided with a control on the equipment to enable the consumer to manually terminate radiation emission from the equipment at any time without disconnecting the electrical plug or removing any ultraviolet lamp.

(i) The timer for the tanning devices shall be remotely located outside the room where the tanning equipment is located. The remote timer shall be set by a certified tanning operator. Effective August 1, 2004, all tanning facilities shall be equipped with remote timers.
(j) The registrant shall ensure that tests are performed annually on each assembly of tanning equipment and documented in writing for agency review during inspections to ensure the timer is accurate to within 10 percent as specified in Paragraph (c) of Rule .1415 of this Section and the consumer is able to terminate the radiation manually in accordance with this Rule.
(k) Medical lamps shall not be used for commercial cosmetic tanning purposes.

History Note: Authority G.S. 104E-7(a)(7);
Eff. June 1, 1989;
Amended Eff. August 1, 2002; June 1, 1993.

15A NCAC 11 .1423 FEES AND PAYMENT
(a) This Rule establishes initial, annual and reinstatement fees for persons registered pursuant to the provisions of this Section to cover the anticipated costs of tanning equipment inspection and enforcement activities of the agency.
(b) Annual fees established in this Rule shall be due on the effective date of this Rule and on the first day of July of each subsequent year; reinstatement fees shall be paid prior to reinstatement.
(c) Notwithstanding Paragraph (b) of this Rule, when a new registration is issued by the agency after the first day of July of any year, the initial fee shall be due on the date of issuance of the registration.
(d) The initial fee in Paragraph (c) of this Rule shall be computed as follows:

(1) When any new registration is issued before the first day of January of any year, the initial fee shall be the full amount specified in this Rule; and
(2) When any new registration is issued on or after the first day of January of any year, the initial fee shall be one-half of the amount specified in this Rule.

(e) All fees received by the agency pursuant to provisions of this Rule shall be nonrefundable.
(f) Each registrant may pay all fees by cash, check or money order provided:

(1) Checks or money orders shall be made payable to "Division of Radiation Protection", and mailed to 1645 Mail Service Center, Raleigh, NC 27699-1645 or delivered to the agency office at 3825 Barrett Drive, Raleigh, NC 27609-7221; and
(2) Cash payments shall be made only by appointment by calling the agency at 919/571-4141 and delivered to the agency office at 3825 Barrett Drive, Raleigh, NC 27609-7221.

(g) Within five days after the due dates established in Paragraphs (b) and (c) of this Rule, the agency shall mail to each registrant, who has not already submitted payment, a notice which indicates the due date, the amount of fees due, the delinquent date and the amount of the reinstatement fee if not paid by the delinquent date.
(h) Payment of fees established in this Rule shall be delinquent, if not received by the agency within 60 days after the due date specified in Paragraphs (b) and (c) of this Rule.
(i) If a registrant remits a fee in the form of a check or other instrument which is uncollectible from the paying institution, the agency shall notify the registrant by certified mail and allow the registrant 15 days to correct the matter.
(j) If payment of fees is uncollectible from the paying institution or not submitted to the agency by the delinquent date, the agency may institute legal action to collect.
(k) Annual fees for persons registered pursuant to provisions of this Section are as listed in the following table:

Type of registered facility	Letters appearing in registration number	Facility plus first Piece of Tanning Equipment	Each additional Piece of Tanning Equipment
Tanning Facility	B	$100.00	$16.00
Tanning Equipment Services	F	$100.00	NA

(l) When fees become delinquent as specified in this Rule, in addition to any delinquent fee owed to the agency, the registrant shall pay to the agency a reinstatement fee of one hundred fifty dollars ($150.00).

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a);
Eff. July 1, 1994;
Amended Eff. August 1, 2002.

15A NCAC 11 .1614 MONITORING OF EXTERNAL AND INTERNAL OCCUPATIONAL DOSE
Each licensee or registrant shall monitor exposures to radiation and radioactive material at levels sufficient to demonstrate compliance with the occupational dose limits of this Section. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:
  (a) adults likely to receive, in one year from sources external to the body, a dose in excess of 10 percent of the limits in Rule .1604(a) of this Section;
  (b) minors likely to receive, in one year, from sources of radiation, a deep dose equivalent in excess of 0.1 rem (1 mSv), a lens dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent in excess of 0.5 rem (5 mSv);
  (c) declared pregnant women likely to receive, during the entire pregnancy, from sources of radiation external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv); and

(d) individuals entering a high or very high radiation area.

(2) Each licensee shall monitor the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) adults likely to receive, in one year, an intake in excess of 10 percent of the applicable ALI(s) in Table 1, Columns 1 and 2, of Appendix B to 10 CFR 20.1001 - 20.2402; and

(b) minors and declared pregnant women likely to receive, in one year, a committed effective dose equivalent in excess of 0.1 rem (1mSv).

History Note: Authority G.S. 104E-7(a)(2);
Eff. January 1, 1994;
Amended Eff. August 1, 2002.

15A NCAC 11 .1627 PROCEDURES FOR RECEIVING AND OPENING PACKAGES

(a) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in Rule .0104 of this Chapter, shall make arrangements to receive:

(1) the package when the carrier offers it for delivery; or

(2) notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(b) Each licensee, upon receipt of a package containing radioactive material, shall monitor:

(1) external surfaces of a package labeled as containing radioactive material for radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 10 C.F.R 71.4;

(2) external surfaces of a package labeled as containing radioactive material for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in 10 C.F.R 71.4 and Appendix A to Part 71; and

(3) all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(c) The licensee shall perform the monitoring required by Paragraph (b) of this Rule as soon as practicable after receipt of the package, but not later than three hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours, or not later than three hours from the beginning of the next working day if it is received after working hours.

(d) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the agency when:

(1) removable radioactive surface contamination exceeds the limits of 10 CFR 71.87(i); or

(2) external radiation levels exceed the limits of 10 CFR 71.47.

(e) Each licensee shall:

(1) establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(2) ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(f) Licensees transferring special form sources in licensee-owned or licensee-operated vehicles to and from a work site are exempt from the contamination monitoring requirements of Paragraph (b) of this Rule, but are not exempt from the survey requirement in Paragraph (b) of this Rule for measuring radiation levels that is required to ensure that the source is still properly lodged in its shield.

History Note: Authority G.S. 104E-7(a)(2); 104E-12(a);
Eff. January 1, 1994;
Amended Eff. August 1, 2002.

15A NCAC 11 .1640 RECORDS OF INDIVIDUAL MONITORING RESULTS

(a) Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Rule .1614 of this Section, and records of doses received during planned special exposures, accidents, and emergency conditions. These records shall include, when applicable:

(1) the deep-dose equivalent to the whole body, eye dose equivalent, shallow-dose equivalent to the skin, and shallow-dose equivalent to the extremities;

(2) the estimated intake of radionuclides (see Rule .1605 of this Section);

(3) the committed effective dose equivalent assigned to the intake or body burden of radionuclides;

(4) the specific information used to calculate the committed effective dose equivalent pursuant to Rule .1607(c) of this Section and when required by Rule .1614 of this Section;

(5) the total effective dose equivalent when required by Rule .1605 of this Section; and

(6) the total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose.

(b) The licensee or registrant shall make entries of the records specified in Paragraph (a) of this Rule at least annually.

(c) The licensee or registrant shall maintain the records specified in Paragraph (a) of this Rule on the agency form for recording occupational radiation doses, in accordance with the instructions provided with the form, or in clear and legible records containing all the information required by the agency form for recording occupational radiation doses.

(d) Assessments of dose equivalent and records made using units in effect before the licensee's or registrant's implementation of the rules in this Section need not be changed.

(e) The records required under this Rule may be protected from public disclosure because of their personal privacy nature;

however, the limitations in this Paragraph are subject to, and do not limit federal and state laws that may require disclosure.
(f) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy shall also be kept on file, but may be maintained separately from the dose records.
(g) The licensee or registrant shall retain each required form or record until the agency terminates each pertinent license or registration requiring the record.

History Note: Authority G.S. 104E-7(a)(2); 104E-12(a);
Eff. January 1, 1994;
Amended Eff. August 1, 2002.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

SUBCHAPTER 6D - INSTRUCTION

SECTION .0100 - CURRICULUM

16 NCAC 06D .0101 DEFINITIONS

As used in this Subchapter:

(1) "Competency goals" means broad statements of general direction or purpose.
(2) "Course unit" means at least 150 clock hours of instruction for courses taught on a traditional schedule and at least 135 clock hours of instruction for courses taught on a block schedule. LEAs may award credit for short courses in an amount corresponding to the fractional part of a total unit.
(3) "Curriculum guide" means a document prepared by the department for each subject or area of study listed in the standard course of study and many commonly offered electives, including competency goals, objectives and suggested measures.
(4) "Diploma" means that document by which the LEA certifies that a student has satisfactorily completed all state and local course requirements and has passed the North Carolina Competency Test.
(5) "Graduation" means satisfactory completion of all state and local course requirements and achievement of a passing score on the North Carolina Competency Test.
(6) "Measures" means a variety of suggestions for ways in which the student may demonstrate ability to meet an objective.
(7) "Objective" means a specific statement of what the student will know or be able to do.
(8) "Proper test administration" means administration of tests adopted by the SBE for students, in accordance with Section .0300 of this Subchapter.
(9) "Special education student" means a student enrolled in or eligible for participation in a special educational program.
(10) "Standard course of study" means the program of course work which must be available to all public school students in the state.
(11) "Transcript" means that document which provides a record of:
  (a) all courses completed and grades earned;
  (b) scores achieved on standardized tests; and
  (c) participation in special programs or any other matter determined by the LEA.

History Note: Authority G.S. 115C-81;
Eff. July 1, 1986;
Amended Eff. April 1, 2002.

16 NCAC 06D .0305 END-OF-COURSE TESTS

(a) The LEA shall include each student's end-of-course test results in the student's permanent records and high school transcript.
(b) The LEA shall give each end-of-course test within the final 10 days of the course.
(c) Starting with the 2001-2002 school year LEAs shall use results from all multiple-choice EOC tests (English 1, Algebra I, Biology, US History, Economic Legal and Political Systems, Algebra II, Chemistry, Geometry, Physics, and Physical Science) as at least 25% of the student's final grade for each respective course. LEAs shall adopt policies regarding the use of EOC test results in assigning final grades.
(d) Students who are enrolled for credit in courses in which end-of-course tests are required shall take the appropriate end-of-course test.
(e) Students who are exempt from final exams by local board of education policy shall not be exempt from end-of-course tests.
(f) Each student shall take the appropriate end-of-course test the first time the student takes the course even if the course is an honors or advanced placement course.
(g) Students shall take the appropriate end-of-course test at the end of the course regardless of the grade level in which the course is offered.
(h) Students who are identified as failing a course for which an end-of-course test is required shall take the appropriate end-of-course test.
(i) Effective with the 1999-2000 school year students may drop a course with an end-of-course test within the first 10 days of a block schedule or within the first 20 days of a traditional schedule.

History Note: Authority G.S. 115C-12(9)c.; 115C-81(b)(4);
Eff. November 1, 1997;
Amended Eff. April 1, 2002; September 1, 2001;
August 1, 2000; August 1, 1999.

16 NCAC 06G .0305 ANNUAL PERFORMANCE STANDARDS, GRADES K-12

(a) For purposes of this Section, the following definitions shall apply to kindergarten through twelfth grade:

(1) "Accountability measures" are SBE-adopted tests designed to gauge student performance and achievement.

(2) "b_0" means the state average rate of growth used in the regression formula for the respective grades and content areas (reading and mathematics) in grades 3 through 8 and grade 10; or the state average performance used in the prediction formula for respective high school end-of-course tests. The constant values for b_0 shall be as follows:

(A) for reading:
- (i) 6.2 for grade 3;
- (ii) 5.2 for grade 4;
- (iii) 4.6 for grade 5;
- (iv) 3.0 for grade 6;
- (v) 3.3 for grade 7;
- (vi) 2.7 for grade 8; and
- (vii) 2.3 for grade 10.

(B) for mathematics:
- (i) 12.8 for grade 3;
- (ii) 7.3 for grade 4;
- (iii) 7.4 for grade 5;
- (iv) 7.1 for grade 6;
- (v) 6.5 for grade 7;
- (vi) 4.9 for grade 8; and
- (vii) 2.3 for grade 10.

(C) for EOC courses:
- (i) 60.4 for Algebra I;
- (ii) 55.2 for Biology;
- (iii) 54.0 for ELPS (Economic, Legal, and Political Systems);
- (iv) 53.3 for English I;
- (v) 56.0 for U.S. History;
- (vi) 59.3 for Algebra II;
- (vii) 56.9 for Chemistry;
- (viii) 58.5 for Geometry;
- (ix) 53.8 for Physical Science; and
- (x) 56.1 for Physics.

(3) "b_1" means the value used to estimate true proficiency in the regression formulas for grades 3 through 8 and grade 10. The values for b_1 shall be as follows:

(A) for reading:
- (i) 0.46 for grade 3;
- (ii) 0.22 for grades 4 through 8; and
- (iii) 0.24 for grade 8 to 10.

(B) for mathematics:
- (i) 0.30 for grade 3;
- (ii) 0.26 for grades 4 through 8; and
- (iii) 0.28 for grade 8 to 10.

(4) "b_2" means the value used to estimate regression to the mean in the regression formula for grades 3 through 8. The values for b_2 shall as follows:

(A) for reading:
- (i) -0.91 for grade 3;
- (ii) -0.60 for grades 4 through 8.

(B) for mathematics:
- (i) -0.47 for grade 3;
- (ii) -0.58 for grades 4 through 8.

(5) "b_{IRP}" means the value used to estimate the effect of the school's average reading proficiency on the predicted average EOC test score. The values for b_{IRP} shall be as follows:
- (A) 0.71 for Biology;
- (B) 0.88 for ELPS;
- (C) 1.01 for English I;
- (D) 0.68 for U.S. History;
- (E) 0.43 for Algebra II;
- (F) 0.42 for Geometry; and
- (G) 0.58 for Physical Science.

(6) "b_{IMP}" means the value used to estimate the effect, as determined by analysis of empirical data, of the school's average math proficiency on the predicted average EOC test score. The values for b_{IMP} shall be as follows:
- (A) 0.88 for Algebra I;
- (B) 0.318 for Biology;
- (C) 0.88 for ELPS;
- (D) 0.15 for U.S. History;
- (E) 0.39 for Geometry;
- (F) 0.34 for Physical Science; and
- (G) 0.58 for Physics.

(7) "b_{IAP}" means the value used to estimate the effect of the school's average Algebra I proficiency on the predicted average EOC test score. The values for b_{IAP} shall be as follows:
- (A) 0.89 for Algebra II;
- (B) 0.18 for Chemistry; and
- (C) 0.43 for Geometry.

(8) "b_{IBP}" means the value used to estimate the effect of the school's average Biology proficiency on the predicted average EOC test score. The values for b_{IBP} shall be 0.51 for Chemistry and 0.66 for Physics.

(9) "b_{IEP}" means the value used to estimate the effect of the school's average English I proficiency on the predicted average EOC test score. The values for b_{IEP} shall be 0.27 for Chemistry and 0.32 for Physics.

(10) "Compliance commission" means that group of persons selected by the SBE to advise the SBE on testing and other issues related to school accountability and improvement. The commission shall be composed of two members from each of the eight educational districts: five teachers, five principals, four central office staff representatives, two local school board representatives; and five at-large members who represent parents, business (two members), and the community.

(11) "Composite score" means a summary of student performance in a school. A composite score shall include reading, writing, and mathematics in grades 3 through 8 and in Algebra I & II, Biology, ELPS, English I, Geometry, Chemistry, Physics, Physical Science, and U.S. History in a school where one or more of these EOC tests are

administered, as well as student performance on the NC Computer Skills Test, competency passing rate, dropout rates, and percent diploma recipients who satisfy the requirements for College Prep/College Tech Prep courses of study in grades 9 through 12 to the extent that any apply in a given school.

(12) "Eligible students" means the total number of students in membership minus the number of students excluded from participation in a statewide assessment.

(13) "Expected growth" means the amount of growth in student performance that is projected through use of the regression formula in grades 3 through 8 and grade 10 in reading and mathematics.

(14) "Exemplary growth" means the amount of growth in student performance in grades 3 through 8 and grade 10 in reading and mathematics that is projected through use of the regression formula that includes the state average rate of growth adjusted by an additional ten percent (10%).

(15) "Growth standards" means and includes collectively all the factors defined in this paragraph that are used in the calculations described in paragraph (j) of this Rule to determine a school's growth/gain composite.

(16) "IRM" is the index for regression to the mean used in the regression formula. The SBE shall compute the IRM for reading by subtracting the North Carolina average reading scale score from the local school average reading scale score. The SBE shall compute the IRM for mathematics by subtracting the North Carolina average mathematics scale score from the local school average mathematics scale score. The SBE shall base the state average (the baseline) on data from the 1994-95 school year.

(17) "ITP" is the index for true proficiency used in the regression formula. The SBE shall compute the ITP by adding the North Carolina average scale scores in reading and mathematics and subtracting that sum from the addition of the local school average scale scores in reading and mathematics. The SBE shall base the state average (the baseline) on data from the 1994-95 school year.

(18) “IRP” is the index of reading proficiency used in the prediction formula. The SBE shall compute the “IRP” by calculating the average reading scale score for students in the school and subtracting the average reading scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.

(19) "IMP" is the index of mathematics proficiency used in the prediction formula. The SBE shall compute the “IMP” by calculating the average mathematics scale score for students in the school and subtracting the average mathematics scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.

(20) "IAP" is the index of Algebra I proficiency used in the prediction formula. The SBE shall compute the "IAP" by calculating the average Algebra I scale score for students in the school and subtracting the average Algebra I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.

(21) "IBP" is the index of Biology proficiency used in the prediction formula. The SBE shall compute the “IBP” by calculating the average Biology scale score for students in the school and subtracting the average Biology scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.

(22) "IEP" is the index of English I proficiency used in the prediction formula. The SBE shall compute the "IEP" by calculating the average English I scale score for students in the school and subtracting the average English I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.

(23) "Performance Composite" is the percent of scores of students in a school that are at or above Level III, are at a passing level on the Computer Skills Test (students in eighth grade only) as specified by 16 NCAC 06D .0503(c), and at proficiency level or above on the Alternate Assessment Portfolio to the extent that any apply in a given school. The SBE shall:

(A) determine the number of scores that are at Level III or IV in reading, mathematics, or writing across grades 3 through 8, or on all EOC tests administered as a part of the statewide testing program; add the number of scores that are at a passing level on the NC Computer Skills Test (students in eighth grade only); add the number of scores that are proficient or above on the Alternative Assessment Portfolio; and use the total of these numbers as the numerator;

(B) determine the number of student scores in reading, mathematics, or writing, across grades 3 through 8, or on all EOC tests administered as part of the statewide testing program; add the number of student scores on the

N.C. Computer Skills Test (students in eighth grade only); add the number of student scores on the Alternate Assessment Portfolio; and use the total of these numbers as the denominator; and

(C) total the numerators for each content area and subject, total the denominators for each content area and subject, and divide the denominator into the numerator to compute the performance composite.

(24) "Predicted EOC mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula.

(25) "Predicted EOC exemplary mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula that includes the state average adjusted by an additional five percent

(26) "Prediction formula" means a regression formula used in predicting a school's EOC test mean for one school year.

(27) "Regression formula" means a formula that defines one variable in terms of one or more other variables for the purpose of making a prediction or constructing a model.

(28) "Standard deviation" is a statistic that indicates how much a set of scores vary. Standard deviation baseline values used for the growth standards are as follow:

(A) for reading in grades K-8:
- (i) 1.7 for grade 3;
- (ii) 1.3 for grade 4;
- (iii) 1.2 for grade 5;
- (iv) 1.3 for grade 6;
- (v) 1.1 for grade 7;
- (vi) 1.2 for grade 8; and
- (vii) 1.6 for grade 10.

(B) for mathematics in grades K-8:
- (i) 2.6 for grade 3;
- (ii) 2.1 for grade 4;
- (iii) 2.0 for grade 5;
- (iv) 2.1 for grade 6;
- (v) 2.0 for grade 7;
- (vi) 1.7 for grade 8; and
- (vii) 2.0 for grade 10.

(C) for courses with an EOC test:
- (i) 3.3 for Algebra I;
- (ii) 2.6 for Biology;
- (iii) 3.1 for ELPS;
- (iv) 1.8 for English I;
- (v) 2.2 for U.S. History;
- (vi) 2.9 for Algebra II;
- (vii) 2.5 for Chemistry;
- (viii) 2.5 for Geometry;
- (ix) 2.5 for Physical Science;
- (x) 3.3 for Physics;
- (xi) 10.0 for College Prep/College Tech Prep (CP/CTP);
- (xii) 12.8 for Competency Passing Rate; and
- (xiii) Dropout Rate will be determined based upon data from the 2000-01 school year.

(29) "Weight" means the number of students used in the calculation of the amount of growth/gain for a subject or content area.

(b) In carrying out its duty under G.S. 115C-105.35 to establish annual performance goals for each school, the SBE shall use both growth standards and performance standards.

(1) The SBE shall calculate the expected growth rate for grades 3 through 8 and grade 10 in an individual school by using the regression formula "Expected Growth = b0 + (b1 x ITP) + (b2 x IRM)."

(2) The SBE shall calculate the predicted EOC expected mean for courses in which end-of-course tests are administered by using the prediction formulas that follow.

(A) "Predicted Algebra I Mean Score = b_0 + (b_{IMP} x IMP)," where (b_{IMP} x IMP) is the impact of Mathematics Proficiency.

(B) "Predicted Biology Mean Score = b_0 + (b_{IRP} x IRP) + (b_{IMP} x IMP) + (b_{IMP}^2 x IMP^2) + (b_{IMP}^3 x IMP^3)," where (b_{IRP} x IRP) is the impact of Reading Proficiency and (b_{IMP} x IMP) is the impact of Mathematics Proficiency.

(C) "Predicted ELPS Mean Score = b_0 + (b_{IRP} x IRP)," where (b_{IRP} x IRP) is the impact of Reading Proficiency.

(D) "Predicted English I Mean Score = b_0 + (b_{IRP} x IRP)," where (b_{IRP} x IRP) is the impact of Reading Proficiency.

(E) "Predicted U.S. History Mean Score = b_0 + (b_{IRP} x IRP) + (b_{IMP} x IMP) + (b_{IMP}^2 x IMP^2),"where (b_{IRP} x IRP) is the impact of Reading Proficiency and (b_{IMP} x IMP) is the impact of Mathematics Proficiency.

(F) "Predicted Algebra II Mean Score = b_0 + (b_{IRP} x IRP) + (b_{IAP} x IAP)," where (b_{IRP} x IRP) is the impact of Reading Proficiency and (b_{IAP} x IAP) is the impact of Algebra Proficiency.

(G) "Predicted Chemistry Mean Score = b_0 + (b_{IAP} x IAP) + (b_{IBP} x IBP) + (b_{IEP} x IEP)," where (b_{IAP} x IAP) is the impact of Algebra Proficiency, (b_{IBP} x IBP) is the impact of Biology Proficiency, and (b_{IEP} x IEP) is the impact of English I Proficiency.

(H) "Predicted Geometry Mean Score = b_0 + (b_{IRP} x IRP) + (b_{IMP} x IMP) + (b_{IAP} x IAP)," where (b_{IRP} x IRP) is

the impact of Reading Proficiency, (b_{IMP} x IMP) is the impact of Mathematics Proficiency, and (b_{IAP} x IAP) is the impact of Algebra I Proficiency.

(I) "Predicted Physical Science Mean Score = b_0 + (b_{IRP} x IRP) + (b_{IMP} x IMP)," where (b_{IRP} x IRP) is the impact of Reading Proficiency and (b_{IMP} x IMP) is the impact of Mathematics Proficiency.

(J) "Predicted Physics Mean Score = b_0 + (b_{IMP} x IMP) + (b_{IBP} x IBP) + (b_{IEP} x IEP)," where (b_{IMP} x IMP) is the impact of Mathematics Proficiency, (b_{IBP} x IBP) is the impact of Biology Proficiency, and (b_{IEP} x IEP) is the impact of English I Proficiency.

(c) Schools shall be accountable for student performance and achievement. This paragraph describes the conditions under which an eligible student's scores shall be included in the accountability measures for the school that the student attended at the time of testing.

(1) To be included in accountability measures for the growth standard, a student in grade three through grade eight must:

(A) have a pre-test score and a post-test score in reading and mathematics. For students in grade three the pre-test score refers to the score from the third-grade end-of-grade test administered in the Fall of the third grade and the post-test score refers to the score from the end-of-grade test administered in the Spring of the third grade. For students in grades four through eight, the pre-test score refers to the score from the previous year's end-of-grade test and the post-test score refers to the score from the current year's end-of-grade test; and

(B) have been in membership more than one-half of the instructional period (91 of 180 days).

(2) To be included in accountability measures for Algebra I, Algebra II, Biology, Chemistry, Economic Legal and Political Systems, English I, Geometry, Physical Science, Physics, or U.S. History, a student must have scores for all tests used in the prediction formula.

(3) Students shall be included in the performance composite without reference to pretest scores or length of membership.

(d) The SBE shall include in the accountability system on the same basis as all other public schools each alternative school with an identification number assigned by the Department. Test scores for students who attend programs or classes in a facility that does not have a separate school number shall be reported to and included in the students' home schools.

(e) Each K-8 school shall test at least 98 percent of its eligible students. If a school fails to test at least 98 percent of its eligible students for two consecutive school years, the SBE may designate the school as low-performing and may target the school for assistance and intervention. Each school shall make public the percent of eligible students that the school tests.

(f) High schools shall test at least 95 percent of enrolled students who are subject to EOC tests, regardless of exclusions. High schools that test fewer than 95 percent of enrolled students for two consecutive years may be designated as low-performing by the SBE.

(g) All students who are following the standard course of study and who are not eligible for exclusion as set out in paragraph (h) of this Rule shall take the SBE-adopted tests. Every student, including those students who are excluded from testing, shall complete or have completed by a school employee designated by the principal an answer document (except in writing). The answer sheet for an excluded student shall contain only student identification information and the reason the student was excluded. Both the school and the LEA shall maintain records on the exclusions of students from testing. The Department may audit these records.

(h) Individual students may be excluded from SBE-adopted tests as follows:

(1) Limited English proficient students may be excluded for one year beginning with the time of enrollment in the LEA if the student's English language proficiency has been assessed as novice/low to intermediate/low in listening, reading, and writing. A student whose English language proficiency has been assessed as intermediate/high or advanced may be excluded from tests in which the student writes responses for up to two years. Twelve months after a limited English proficient student has enrolled in the LEA, the student must be reassessed on the same language proficiency test that was used as a part of the identification of the student for inclusion in the limited English proficiency program in that LEA. A student assessed as novice/low to intermediate/low after 12 months may be excluded for an additional 12 months. A student assessed as intermediate/high or above must participate in the state testing program. After two years from the time of initial enrollment in the LEA, all limited English proficiency students must participate in the state testing program. LEAs shall report results of the initial language proficiency test and the results on the same test 12 months after enrollment in the LEA to the Department. LEAs shall use other assessment methods for excluded students to demonstrate that these students are progressing in other subject areas.

(2) All students with disabilities including those identified under Section 504 shall be included in the statewide testing program through the use of state tests with appropriate accommodations or through the use of other state assessments designed for these students.

The student's IEP team shall determine whether a testing accommodation is appropriate for that student's disability or whether the student should be assessed using another state assessment designed for that student's disability.

(i) Students in grades 3-8 with IEPs and serious cognitive deficits and whose program of study focuses on functional/life skills shall participate in the North Carolina Alternate Assessment Portfolio as an alternative.

(j) The SBE shall calculate a school's expected growth/gain composite in student performance using the following process:

(1) Review expected and exemplary growth standards for all grades and subjects, and review the predicted EOC mean for expected standard gain and the exemplary standard gain for EOC courses.

(2) Determine the actual growth in reading and mathematics at each grade level included in the state testing program, using data on groups of students identified by paragraph (c)(1) of this Rule and determine the actual EOC mean for EOC tests using data on the groups of students identified by paragraph (c)(2) of this Rule from one point in time to another point in time.

(3) Subtract the expected growth from the actual growth in reading and mathematics at grades 3 through 8 and grade 10; then subtract the predicted EOC mean from the actual EOC mean for EOC tests.

(4) Divide the differences for reading and mathematics by the standard deviations of the respective differences in growth/gain at each grade level and for each EOC to determine the standard growth score.

(5) The SBE shall calculate a school's gain composite in college prep/college tech prep using the following process:

(A) Compute the percent of graduates who receive diplomas who completed either course of study in the current accountability year. Students shall be counted only once if they complete more than one course of study.

(B) Find the baseline, which is the average of the two prior school years' percent of graduates who received diplomas and who completed a course of study.

(C) Subtract the baseline from the current year's percentage.

(D) Subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero.

(E) Divide by the associated standard deviation. The result is the standard gain for college prep/college tech prep.

(6) The SBE shall calculate a school's expected gain composite in the competency passing rate by comparing the grade 10 competency passing rate to the grade 8 passing rate for the group of students in grade 10 who also took the 8th-grade end-of-grade test.

(A) Subtract the grade 8 rate from the grade 10 rate.

(B) Subtract 0.1.

(C) Divide by the standard deviation. The result is the standard gain in competency passing rate.

(7) Multiply the expected standard growth scores for reading and mathematics at each grade level from grade 3 to 8, EOC prediction, gain in competency passing rate, gain in college prep/college tech prep, and change in dropout rate by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has made the expected growth standard.

(8) The SBE shall compute exemplary growth using the exemplary growth standard (b_o x 1.10) in the accountability formula for grades 3 through 8 in reading and mathematics, and (b_o x 1.03) for predicted EOC means. There is no exemplary standard for competency passing rate or college prep/college tech prep gain.

(9) To determine the composite score for exemplary standards:

(A) Subtract the exemplary growth/gain from the actual growth/gain standard in reading and mathematics at grades 3 through 8; subtract the predicted exemplary EOC mean from the actual EOC mean for each EOC test.

(B) Divide the difference in growth/gain by the standard deviations of the respective differences in growth/gain to determine the standard growth/gain score.

(C) Multiply the exemplary standard growth/gain scores for reading and mathematics at each grade level from grade 3 to 8, EOC gain, expected standard gain in Competency Passing Rate, Dropout Rate, and for College Prep/College Tech Prep by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has met the exemplary growth standard.

(k) If school officials believe that the school's growth standards were unreasonable due to specific, compelling reasons, the school may appeal its growth standards to the SBE. The SBE shall appoint an appeals committee composed of a panel selected from the compliance commission to review written appeals from schools. The school officials must clearly document the

circumstances that made the goals unrealistic and must submit its appeal to the SBE within 30 days of receipt of notice from the Department of the school's performance. The appeals committee shall review all appeals and shall make recommendations to the SBE. The SBE shall make the final decision on the reasonableness of the growth goals.

History Note: Authority G.S. 115C-12(9)c4.;
Eff. January 1, 1998;
Amended Eff. December 1, 2000;
Temporary Amendment Eff. March 5, 2001;
Amended Eff. April 1, 2002; September 1, 2001.

TITLE 18 – DEPARTMENT OF THE SECRETARY OF STATE

18 NCAC 05B .0104 CONTENTS OF RECORDS SUBMITTED FOR FILING

The filing office shall not be responsible for the sufficiency of the contents of any record submitted for filing. The filing party shall be responsible for seeing that the record meets all of the statutory requirements for a sufficient financing statement. The fact that a record has been accepted for filing shall not indicate that the record is sufficient as a financing statement.

History Note: Authority G.S. 25-9-516;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0201 ROLE OF FILING OFFICER

The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to the rules in this Subchapter, the filing officer shall do none of the following:

(1) Determine the legal sufficiency or insufficiency of a record;
(2) Determine that a security interest in collateral exists or does not exist;
(3) Determine that information in the record is correct or incorrect, in whole or in part; and
(4) Create a presumption that information in the record is correct or incorrect, in whole or in part.

History Note: Authority G.S. 25-9-516;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0202 GROUNDS FOR REFUSAL OF UCC DOCUMENT

(a) As used in this Rule, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.
(b) Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and address for a debtor, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such an amendment. If the document contains more than one debtor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were not indexed.
(c) Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual (personal name) or an organization (commercial name), if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization, the document does not include in legible form the organization's type, state of organization and organization number, or the SOS ID number in North Carolina, or a statement that it does not have one.
(d) Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, shall be refused if the document fails to include a legible secured party (or assignee in the case of an assignment) name and address. If the document contains more than one secured party (or assignee) name or address and some names or addresses are missing or illegible, the filing officer shall refuse the UCC document.
(e) Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.
(f) Identifying information. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by G.S. 25-9-512(1), 25-9-514(b), or 25-9-518(b)(1), is an initial financing statement.
(g) Timeliness of continuation. A continuation shall be refused if it is not received during the six-month period concluding on the day upon which the related financing statement would lapse.

(1) First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse, although filing by certain means may not be possible on such date if the filing office is not open on such date.
(2) Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

History Note: Authority G.S. 25-9-516; 25-9-520(a);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0203 PROCEDURE UPON REFUSAL

If the filing officer finds grounds to refuse acceptance of a UCC record, the filing officer shall comply with G.S. 25-9-520. All filing and indexing fees are nonrefundable.

History Note: Authority G.S. 25-9-520;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0204 NOTIFICATION OF DEFECTS

A filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

History Note: Authority G.S. 25-9-520; 25-9-526(b);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0205 REFUSAL ERRORS

If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been, the filing officer shall file the UCC record as provided in the rules in this Subchapter with a filing date and time assigned when such filing occurs. The filing officer shall also file a filing officer statement that states the effective date and time of filing which shall be the date and time the UCC record was originally tendered for filing.

History Note: Authority G.S. 25-9-516; 25-9-518;
25-9-526(b);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0301 POLICY STATEMENT

The filing officer shall use an information management system to store, index, and retrieve information relating to financing statements. The information management system shall include an index of the names of debtors named on financing statements that have not lapsed. The rules in this Section describe the UCC information management system.

History Note: Authority G.S. 25-9-526(b)(3);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0302 PRIMARY DATA ELEMENTS

The primary data elements used in the UCC information management system are the following:

(1) Identification numbers.

(a) Each initial financing statement shall be identified by its file number as described in G.S. 25-9-519(b). Identification of the initial financing statement shall be stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC information management system. A record shall be created in the information management system for each initial financing statement and all information comprising such record shall be maintained in such system. Such record shall be identified by the same information assigned to the initial financing statement.

(b) A UCC record other than an initial financing statement shall be identified by a unique filing number assigned by the filing officer. In the information management system, records of all UCC records other than initial financing statements shall be linked to the record of their related initial financing statement.

(2) Type of record. The type of UCC record from which data is transferred shall be identified in the information management system from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC records shall be stored in the information management system. Calculation of the lapse date of an initial financing statement shall be based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties shall be transferred from UCC records to the UCC information management system using one or more data entry or transmittal techniques.

(5) Status of financing statement. In the information management system, each financing statement shall have a status of active or inactive.

(6) Page count. The total number of pages in a UCC record shall be maintained in the information management system.

(7) Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement shall lapse and, if it does, when it lapses. The lapse date determined as provided in Rule .0405(c) of this Subchapter.

History Note: Authority G.S. 25-9-519(b); 25-9-526(b)(3);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0303 INITIAL FINANCING STATEMENT

Upon the filing of an initial financing statement the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of

record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. The status of a debtor named on the record shall be active and shall continue as active until one year after the financing statement lapses.

(3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless the initial financing statement indicates that it is filed with respect to a public-financing transaction or a manufactured - home transaction, in which case the lapse date shall be 30 years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement shall remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

History Note: Authority G. S. 25-9-511(a); 25-9-514; 25-9-515; 25-9-519(g);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0304 AMENDMENT

The filing office shall act on any UCC record filed with the filing office by adding information obtained from the UCC record to the information system. The filing office shall not act on any UCC record by deleting any information from the information system. An amendment shall have no effect upon the status of the financing statement or parties, except that a continuation may extend the period of effectiveness of a financing statement. The filing office may remove the UCC record and delete the names under which it was indexed one year after lapse. A financing statement filed against a transmitting utility shall lapse when terminated by the last secured party of record.

Upon the filing of an amendment the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party and debtor. An amendment shall affect the status of its debtor(s) and secured party(ies) as follows:

(a) Collateral amendment or address change. An amendment that amends only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by less than all of the secured parties (or, in the case of an amendment that adds collateral, less than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor).

(b) Debtor name change. An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the related initial financing statement and all UCC records that include an identification of such initial financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name shall reveal such initial financing statement and such related UCC records. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

(c) Secured party name change. An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name is added to the index as if it were a new secured party of record.

(d) Addition of a debtor. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except the new debtor name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.

(e) Addition of a secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.

(f) Deletion of a debtor. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.

(g) Deletion of a secured party. An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.

(2) Status of financing statement. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

History Note: Authority G.S. 25-9-512;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0306 CONTINUATION

(a) Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five years.
(b) The filing of a continuation shall have no effect upon the status of any party to the financing statement.
(c) Upon the filing of a continuation statement, the status of the financing statement shall remains active.

History Note: Authority G.S. 25-9-515(e);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0307 TERMINATION
(a) The filing of a termination shall have no effect upon the status of any party to the financing statement.
(b) A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active in the information management system until one year after it lapses, unless the termination relates to a financing statement that indicates it is filed against a transmitting utility, in which case the financing statement shall become inactive one year after it is terminated with respect to all secured parties of record.

History Note: Authority G.S. 25-9-513;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0309 PROCEDURE UPON LAPSE
If there is no timely filing of a continuation with respect to a financing statement, the financing statement shall lapse on its lapse date but no action shall be taken by the filing office. On the first anniversary of such lapse date, the information management systems shall render or shall cause to render the financing statement inactive and the financing statement shall no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.

History Note: Authority G.S. 25-9-515(c);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0311 IMPLEMENTATION GUIDE
The filing office shall publish an implementation guide that prescribes the use of the XML Format. The guide shall be available on the Department's web site and to the public upon request.

History Note: Authority G. S. 25-9-526(b);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0312 DIRECT ON-LINE DATA ENTRY PROCEDURES
Upon application and approval of an E-filing account, the remitter shall receive direct on-line data entry procedures to file UCC records on-line. Persons interested in filing records in this manner shall contact the Department at the addresses listed in Rule .0102 of this Subchapter.

History Note: Authority G.S. 25-9-526;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0401 POLICY STATEMENT
This Section contains rules describing the indexing and filing procedures of the filing officer upon and after receipt of a UCC document. The filing officer shall promptly file a document that conforms to the rules in this Section. Except as provided in this Section, data shall be transferred from a UCC document to the information management system exactly as the data are set forth in the document. Personnel who create reports in response to search requests shall enter search criteria exactly as set forth on the search request. No effort shall be made to detect or correct errors of any kind that are made by the filer.

History Note: Authority G.S. 25-9-519; 25-9-526;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0403 DOCUMENT FILING, REVIEW, AND ACKNOWLEDGMENT
(a) Date and time stamp. The date and time of receipt shall be noted on the document or otherwise permanently associated with the record maintained for a UCC document in the UCC information management system at the earliest possible time.
(b) Document review. The filing office shall determine whether a ground exists to refuse the document under Section .0200 of this Subchapter.

(1) File stamp. If there is no ground for refusal of the document, the document shall be stamped or deemed filed and a unique identification number and the filing date shall be stamped on the document or permanently associated with the record of the document maintained in the UCC information management system. The sequence of the identification number shall not be an indication of the order in which the document was received.

(2) Correspondence. If there is a ground for refusal of the document, notification of refusal to accept the document shall be prepared as provided in Section .0200 of this Subchapter. If there is no ground for refusal of the document, an acknowledgment of filing shall be prepared to send to the person who has requested the acknowledgment. If the person who requests the acknowledgment desires an electronic acknowledgment, he shall provide an email address to the filing officer. If the UCC document was tendered in person, notice of the refusal or acknowledgment of the filing shall be given to the remitter by personal delivery if possible. If the UCC document was tendered by E-filing, the acknowledgment shall be in the form of an XML document attached to an email and shall be electronically transmitted to the remitter.

History Note: Authority G.S. 25-9-519; 25-9-526;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0404 ENTRY OF INDIVIDUAL AND ORGANIZATIONAL NAMES

(a) This Rule sets forth basic indexing procedures for UCC documents and subsequently provides index retrieval information to persons who search the indexes for UCC data in the information management system.

(b) The names of debtors and secured parties who are "individuals" (human beings, or decedents in the case of a debtor that is such decedent's estate) shall be stored in files that include only the names of individuals, and not the names of organizations. Separate data entry fields shall be established for first (given), middle (given), and last names (surnames) of individuals. A filer shall place the name of a debtor with a single name (e.g., "Cher") in the last name field on the UCC form. The filing officer shall not be responsible for the accurate designation of the components of a name but shall accurately enter the data in accordance with the filer's designations.

(c) The names of debtors and secured parties that are organizations shall be stored in files that include only the names of organization and not the names of individuals. A single field shall be used to store an organization name.

(d) If a trust is named in its organic document(s), its full legal name, as set forth in such document(s), shall be used. Such trusts shall be treated as organizations. If the trust is not so named, the name of the settlor shall be used. If a settlor is indicated to be an organization, the name shall be treated as an organization name. If the settlor is an individual, the name shall be treated as an individual name. A UCC document that uses a settlor's name shall include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor and all financing statements filed against trusts or trustees acting with respect to property held in trust shall indicate the nature of the debtor. If this is done in, or as part of, the name of the debtor, it shall be entered as if it were part of the name under Rule .0407 of this Section.

History Note: Authority G.S. 25-9-519; 25-9-526;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0405 FILING DATES AND LAPSE CALCULATIONS

(a) The filing date of a UCC document shall be the date the UCC document is received with the proper processing fee if the filing office is open to the public on that date or, if the filing office not so open on the date, the filing date is the next date the filing office is so open, except that, in each case, UCC documents received after 5:00 p.m. shall be deemed received on the following day. The filing officer shall perform any duty relating to the document on the filing date or on a date after filing date.

(b) The filing time of a UCC document shall be determined as provided in Rule .0103 of this Subchapter.

(c) A lapse date shall be calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility as provided in Rule .0303 of this Subchapter). The lapse date shall be the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if a timely continuation statement is filed, but if the initial financing statement indicates that it is filed with respect to a public-finance transaction or a manufactured-home transaction, the lapse date shall be the same date of the same month as the filing date in the thirtieth year after the filing date. The lapse shall take effect at midnight at the end of the lapse date. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth year following the year of the filing date.

History Note: Authority G.S. 25-9-515; 25-9-519; 25-9-526;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0406 FILING ERRORS

(a) The filing office may correct the errors of the filing officer personnel in the UCC information management system at any time. If the correction occurs after the filing officer has issued a certification date, the filing officer shall file an administrative action statement in the UCC information management system identifying the record to which it relates, the date of the correction and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

(b) An error by a filer is the responsibility of such filer. It may be corrected by filing an amendment or a correction statement may disclose it.

History Note: Authority G.S. 25-9-517; 25-9-518;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0407 DESIGNATED NAME FIELDS

A filing shall designate whether a name is a name of an individual or an organization and, if an individual also designates the first, middle and last names and any suffix. When this is done, the following rules shall apply:

(1) Organization names. Organization names shall be entered into the UCC information system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an organization name.

(2) Individual names. On a form that designates separate fields for first, middle, and last name and suffix, the filing office shall enter the names into the first, middle, and last name and suffix fields in the UCC information management system exactly as set forth on the form.

(3) The filing office shall use only those forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and suffix. Such forms shall reduce the possibility of filing office error and help assure that filers' expectations are met.

History Note: Authority G.S. 25-9-519; 25-9-526;
Temporary Adoption Eff. July 2, 2001;

Eff. August 1, 2002.

18 NCAC 05B .0408 VERIFICATION OF DATA ENTRY

The filing officer shall use visual verification to verify the accuracy of data entry tasks.

History Note: Authority G.S. 25-9-519; 25-9-526; Temporary Adoption Eff. July 2, 2001; Eff. August 1, 2002.

18 NCAC 05B .0409 CREATION OF NEW RECORDS

(a) Initial financing statement. A new record shall be opened in the UCC information management system for each initial financing statement that bears the file number of the financing statement and the date and time filing.

(1) The name and address of each debtor that are legibly set forth in the financing statement shall be entered into the record of the financing statement. Each such debtor name shall be included in the searchable index and shall not be removed until one year after the financing statement lapses. Debtor addresses shall be included in the searchable index.

(2) The name and address of each secured party that are legibly set forth in the financing statement shall be entered into the record of the financing statement.

(3) The record shall be indexed according to the name of the debtor(s) and shall be maintained for public inspection.

(4) A lapse date shall be established for the financing statement, unless the initial financing statement indicates it is filed against a transmitting utility, and the lapse date shall be maintained as part of the record.

(b) Amendment. A record shall be created for the amendment that bears the file number for the amendment and the date and time of filing.

(1) The record of the amendment shall be associated with the record of the related initial financing statement in a manner that shall cause the amendment to be retrievable each time a record of the financing statement is retrieved.

(2) The name and address of each additional debtor and secured party shall be entered into the UCC information management system in the record of the financing statement. Each such additional debtor name shall be added to the searchable index and shall not be removed until one year after the financing statement lapses. Debtor addresses shall be included in the searchable index.

(3) If the amendment is a continuation, a new lapse date shall be established for the financing statement and maintained as part of its record.

(c) Correction statement. A record shall be created for the correction statement that bears the file number for the correction statement and the date and time filing. The record of the correction statement shall be associated with the record of the related initial financing statement in a manner that shall cause the correction statement to be retrievable each time a record of the financing statement is retrieved.

History Note: Authority G.S. 25-9-519; 25-9-526; Temporary Adoption Eff. July 2, 2001; Eff. August 1, 2002.

18 NCAC 05B .0501 GENERAL REQUIREMENTS

The filing officer shall maintain for public inspection a searchable index for all records of UCC records. The index shall provide for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement and each filed UCC record relating to the initial financing statement.

History Note: Authority G.S.25-9-523; Temporary Adoption Eff. July 2, 2001; Eff. August 1, 2002.

18 NCAC 05B .0502 SEARCH REQUESTS AND REPORTS

Search requests shall contain the following information:

(1) Name searched. A search request shall set forth the correct name of the debtor to be searched and must specify whether the debtor is an individual or an organization. A search request shall be processed using the name in the exact form it is submitted.

(2) Requesting party. A search request shall include the name and address of the person to whom the search report is to be sent.

(3) Fee. The appropriate fee shall be enclosed, payable by a method described in Rule .0105 of this Subchapter.

(4) Search request with filing. If a filer requests a search at the time a UCC record is filed, the name searched shall be the debtor name as set forth on the form. The requesting party shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC record is filed.

History Note: Authority G.S. 25-9-523; Temporary Adoption Eff. July 2, 2001; Eff. August 1, 2002.

18 NCAC 05B .0503 RULES APPLIED TO SEARCH REQUESTS

Search results shall be produced by the application of standardized search logic to the name presented to the filing officer. Human judgment shall not play a role in determining the results of the search. The following rules shall apply to searches:

(1) There shall be no limit to the number of matches that may be returned in response to the search criteria.

(2) No distinction shall be made between upper and lower case letters.

(3) Punctuation marks and accents shall be disregarded.

(4) Words and abbreviations at the end of a name that indicate the existence or nature of an organization as set forth in the "Ending Noise Words" list as promulgated and adopted by IACA shall be disregarded. This list may be viewed or obtained by contacting the UCC Section.

(5) The word "the" at the beginning of the search criteria shall be disregarded.

(6) For first and middle names of individuals, initials shall be treated as the logical equivalent of all names that begin with such initials, and first name and no middle name or initial shall be equated with all middle names and initials. For example, a search request for "John A. Smith" shall cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name, and with the initial "A" or any name beginning with "A" in the middle name field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search shall retrieve all filings against individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name and with any name or initial or no name or initial in the middle name field.

(7) After using the preceding paragraphs of this Rule to modify the name to be searched, the search shall reveal only names of debtors that are contained in unlapsed financing statements and, exactly match the name requested, as modified.

History Note: Authority G.S. 25-9-519; 25-9-523; 25-9-526;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0504 OPTIONAL INFORMATION

A UCC search request may contain any of the following information:

(1) The request may limit the records requested by limiting them by the city and state of the debtor, and the date of filing or a range of filing dates. A report created by the filing officer in response to such a request shall contain the statement: "A limited search may not reveal all filings against the debtor searched and the searcher bears the risk of relying on such a search".

(2) The request may ask for copies of UCC records identified on the primary search response.

(3) Instructions on the mode of delivery desired may be requested, if other than by ordinary mail, and shall be honored if the requested mode is available to the filing office.

History Note: Authority G.S. 25-9-523;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0601 POLICY STATEMENT

The purpose of the rules in this Section is to describe records of liens maintained by the filing office created pursuant to statutes other than the UCC that are treated by the filing officer in a manner substantially similar to UCC records and are included on request with the reports described in Rule .0502 of this Subchapter.

History Note: Authority G.S. 44-68.14(a)(1); 44-68.14(b);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0602 FILING

(a) The UCC Section of the Department shall file Federal Tax Liens on corporations and partnerships whose executive office is located in North Carolina. These liens shall be indexed by the taxpayer's name and shall be available for public inspection. The Internal Revenue Service files Federal tax liens with the Department.

(b) The fee schedule for filing tax liens shall be available upon request.

(c) A notice of a tax lien filed by the Internal Revenue Service shall be filed and indexed in the filing office in the same manner as a UCC initial financing statements as provided in G.S. 25-9-519.

(d) A certificate of release or nonattachment shall be filed and indexed in the same manner as a UCC termination as provided in G.S. 25-9-519, except that the original notice of the tax lien shall not be removed or purged from the information management system in the filing office.

(f) A certificate of discharge or subordination shall be filed and indexed in the same manner as a UCC release of collateral as provided in G.S. 25-9-519.

History Note: Authority G.S. 44-68.14; 44-68.15;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 1 -NORTH CAROLINA ACUPUNCTURE LICENSING BOARD

21 NCAC 01 .0301 STANDARDS FOR CONTINUING EDUCATION

(a) Applicants for license renewal shall complete 40 Continuing Education Units (CEU) every two years. One CEU is defined as one contact hour or 50 minutes.

(b) All CEUs shall be completed during the two calendar years immediately preceding the:

(1) license renewal date, or

(2) date on which the license renewal is approved by the Board.

(c) The following requirements shall apply to the total number of CEUs submitted by a licensee for license renewal:

(1) A minimum of 25 CEUs must be obtained from formally organized courses which have content relating to the scope of "practice of acupuncture" as defined by G.S. 90-451(3). Each course shall be:

(A) Pre-approved by the NCALB; or

(B) Sponsored or accredited by one or more of the following organizations or their member organizations:

(i) National Acupuncture and Oriental Medicine Alliance (NAOMA);

(ii) American Association of Acupuncture and Oriental Medicine (AAAOM);

(iii) Council of Colleges of Acupuncture and Oriental Medicine (CCAOM);

(iv) Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM);

(v) National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM);

(vi) National Academy of Acupuncture and Oriental Medicine (NAAOM);

(vii) Society for Acupuncture Research;

(viii) Center for Oriental Medical Research and Education (COMRE);

(ix) National Acupuncture Detoxification Association;

(x) National Acupuncture Teachers Association;

(xi) American Academy of Medical Acupuncturists (AAMA);

(xii) The acupuncture licensing board of another U.S. State; or

(xiii) North Carolina Association of Acupuncture and Oriental Medicine (NCAAOM);

(2) A maximum of 15 CEUs may be obtained from:

(A) Formally organized courses which have content relating to any health service and are relevant to the practice of acupuncture. Such topics include courses in acupuncture adjunctive therapies as defined in G.S. 90-451(3), Western sciences and medical practices, medical ethics, and cardiopulmonary resuscitation. Each course shall be:

(i) Pre-approved by the NCALB; or

(ii) Meet the requirements of 21 NCAC 01 .0301(c)(1)(B); or

(iii) Sponsored or accredited by one or more of the following organizations:

(I) World Health Organization (WHO);

(II) National Institutes of Health (NIH);

(III) National Institutes of Health Office of Alternative Medicine (NIHOAM);

(IV) American Medical Association (AMA);

(V) American Nurses Association (ANA);

(VI) American Holistic Medical Association;

(VII) American Psychiatric Association (APA);

(VIII) American Hospital Association (AHA);

(IX) American Lung Association (ALA);

(X) Red Cross;

(XI) Colleges or universities, accredited by the ACAOM;

(XII) Hospitals, accredited by the Joint Commission Accreditation of Hospitals and Organizations (JCAHO);

(XIII) American Heart Association; or

(XIV) Accreditation Council for Continuing Medical Education;

(B) Personal training in non-accredited programs which assist a licensee to carry out their professional responsibilities, including, but not limited to: Qi Gong and Tai Qi;

(C) Training in accredited programs which will assist a licensee to carry out their professional responsibilities, including, but not limited to: Foreign language training for translation of relevant texts. All courses must be pre-approved by the NCALB;

(D) Teaching acupuncture diagnosis and treatment. All CEUs for teaching must be approved by the NCALB prior to the date of the class; or

(E) No CEUs shall be obtained from courses devoted to administrative or business management.

(d) All programs submitted as CEUs must meet these requirements:

(1) A complete record of attendance shall be maintained on file by the sponsor of the course, program, or activity. These records shall be made available to the NCALB upon request; and

(2) All instructors must be competent to teach their designated courses by virtue of their education, training, and experience.

(e) CEUs from any given course, program, or activity may only be used to satisfy the requirements of one biennium.

(f) At the time of license renewal, each licensee shall sign a statement under penalty of perjury indicating whether he/she has or has not complied with the continuing education requirements.

(g) Each licensee shall retain for a minimum of four years records of all continuing education programs attended, indicating:

(1) title of the course or program;

(2) sponsoring organization or individual;

(3) accrediting organization (if any); and

(4) course hours in attendance.

(h) The Board may choose to audit the records of any licensee who has reported and sworn compliance with the continuing education requirement. No licensee shall be subject to audit more than once every two years. Those licensees selected for audit shall be required to document their compliance with the continuing education requirements of this article.

(i) Failure to comply with the continuing education requirements shall prohibit license renewal and result in the license reverting to inactive status at the end of the renewal period.

(j) Continuing education is not required to maintain licensure in inactive status. An inactive licensee is exempt from the continuing education requirements set forth in this article.

(k) When an inactive licensee has requested, in writing to the Board, return to active status, the licensee must document completion of 40 CEUs which were completed in the two years immediately preceding reactivation.

(l) It shall constitute unprofessional conduct for a licensee to misrepresent completion of required CEUs. In the event of misrepresentation, disciplinary proceedings may be initiated by the Board.

(m) A licensee may apply to the Board for an extension of time to complete the portion of his/her continuing education requirements that he/she is unable to meet due to such causes as a prolonged illness or family emergency. The Board may, at its discretion, grant such an extension for a maximum of one licensing period. This request shall be received by the Board no later than 30 days prior to the license renewal date, be signed under the penalties of perjury, and contain the following:

(1) An explanation of the licensee's failure to complete his/her continuing education requirements;

(2) A list of continuing education courses and hours that the licensee has completed; and

(3) The licensees plan for satisfying his/her continuing education requirements.

History Note: Authority G.S. 90-454;
Eff. July 1, 1995;
Temporary Amendment Eff. January 26, 1996;
Temporary Amendment Expired November 11, 1996;
Amended Eff. August 1, 2002.

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0204 ELIGIBILITY

(a) Limited License. The applicant for such a license must:

(1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;

(2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventeen thousand dollars ($17,000.00); and

(3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(b) Intermediate License. The applicant for such a license must:

(1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;

(2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars ($75,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and

(3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(c) Unlimited License. The applicant for such a license must:

(1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;

(2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars ($150,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;

(3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(d) In lieu of demonstrating the required level of working capital, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of two hundred fifty thousand dollars ($250,000) for a limited license, seven hundred fifty thousand dollars ($750,000) for an intermediate license, and one million five hundred thousand dollars ($1,500,000) for an unlimited license. The bond shall list State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule will subject the applicant to additional disciplinary action by the Board.

(e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S.87-15.1. However, the applicant must comply with all other requirements of these rules to be eligible to be licensed in North Carolina as a general contractor.

(f) Accounting and reporting standards. Working capital, balance sheet with current and fixed assets, current and long term liabilities, and other financial terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted accounting principles" as promulgated by the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, and, if applicable, through pronouncements of the Governmental Accounting Standards Board, or their predecessor organizations. An audited financial statement, an unqualified opinion, and other financial reporting terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" as promulgated by the American Institute of Certified Public Accountants through pronouncements of the Auditing Standards Board.

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. January 1, 1983;
ARRC Objection March 19, 1987;
Amended Eff. May 1, 1989; August 1, 1987;
Temporary Amendment Eff. June 28, 1989 for a Period of 155 Days to Expire on December 1, 1989;
Amended Eff. December 1, 1989;
Temporary Amendment Eff. May 31, 1996;
RRC Removed Objection Eff. October 17, 1996;
Amended Eff. August 1, 1998; April 1, 1997;
Temporary Amendment Eff. August 24, 1998;
Amended Eff. August 1, 2002; April 1, 2001; August 1, 2000.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

21 NCAC 16B .0305 TIME FOR FILING

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

History Note: Authority G.S. 90-28; 90-30; 90-48;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2002; May 1, 1989; March 1, 1988.

21 NCAC 16C .0305 TIME FOR FILING

The completed application, fee, photographs, and high school and college transcripts, must be received in the Board's office at least 90 days prior to the date of the examination. Dental hygiene school transcripts for those still in dental hygiene school must be sent in before the examination date. All data received by the Board concerning the applicant shall become a part of the required application and shall be retained as part of the record.

History Note: Authority G.S. 90-223; 90-224;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2002; May 1, 1989; March 1, 1988.

21 NCAC 16D .0105 EXAMINATION

As a condition precedent to issuing a provisional license, the Board may require an applicant to appear before the Board for oral examination, written examination(s), clinical evaluation or any combination thereof and satisfy the Board as to the applicant's professional competency.

History Note: Authority G.S. 90-29.3;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2002.

21 NCAC 16E .0104 EXAMINATION

As a condition precedent to issuing a provisional license, the Board may require an applicant to appear before the Board for oral examination, written examination(s), clinical evaluation or any combination thereof and satisfy the Board as to the applicant's professional competency.

History Note: Authority G.S. 90-226;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2002; May 1, 1989.

21 NCAC 16I .0104 REPORTING CONTINUING EDUCATION

(a) The number of hours completed to satisfy the continuing education requirement shall be indicated on the renewal application form submitted to the Board and certified by the hygienist. Upon request by the Board or its authorized agent, the hygienist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

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

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

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

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

Verification of credit hours shall be maintained in the manner specified in this Rule.

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

History Note: Authority G.S. 90-225.1;
Eff. May 1, 1994;
Amended Eff. August 1, 2002; April 1, 2001.

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

If an application for a renewal certificate accompanied by the renewal fee, plus the additional late filing fee, is not received by the Board before March 31 of each year, the license shall become void. Should the license become void due to failure to timely renew, the applicant must reapply for reinstatement.

History Note: Authority G.S. 90-227;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Transferred and Recodified from21 NCAC 16I .0003 Eff. May 1, 1994;
Amended Eff. August 1, 2002.

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

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

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

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

History Note: Authority G.S. 90-28; 90-30.1;
Eff. February 1, 1990;
Amended Eff. August 1, 2002.

21 NCAC 16Q .0204 PROCEDURE FOR EVALUATION OR INSPECTION

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

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

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

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

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

History Note: Authority G.S. 90-28; 90-30.1;
Eff. February 1, 1990;
Amended Eff. August 1, 2002; January 1, 1994.

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

(a) An applicant who fails an inspection or evaluation shall not receive a permit to administer general anesthesia, or if the holder of a permit, shall not have it renewed. An applicant who has obtained temporary approval from the Board and fails an inspection or evaluation shall no longer be approved.
(b) An applicant who receives notification of failure of an inspection may, within 15 days after receiving the notice, request a reevaluation. Such request must state specific grounds supporting it. The Board shall require the applicant to receive additional training prior to the reevaluation. The additional training shall consist of, but not be limited to, areas of deficiency as determined by the evaluation.
(c) If the reevaluation is granted, it shall be conducted by different persons, qualified as evaluators, in the manner prescribed in Rule .0204 of this Section.
(d) No applicant who has received a failing notice from the Board may request more than one reevaluation within any 12 month period.

History Note: Authority G.S. 90-28; 90-30.1;
Eff. February 1, 1990;
Amended Eff. August 1, 2002.

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

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

History Note: Authority G.S. 90-28; 90-30.1;
Eff. February 1, 1990;
Amended Eff. August 1, 2002; January 1, 1994.

21 NCAC 16Q .0401 ANNUAL RENEWAL REQUIRED

(a) Both general anesthesia and parenteral sedation permits shall be renewed by the Board on an annual basis. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses.
(b) Anesthesia and parenteral sedation permits shall be subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of anesthesia or parenteral sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0600 of this Subchapter.
(c) As a condition for renewal of the general anesthesia permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0202 are met and document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.
(d) As a condition for renewal of the parenteral sedation permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0302 are met and also meet one of the following criteria:

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

History Note: Authority G.S. 90-28; 90-30.1; 90-48;
Eff. February 1, 1990;
Amended Eff. August 1, 2002.

21 NCAC 16R .0103 REPORTING OF CONTINUING EDUCATION

(a) The number of hours completed shall be indicated on the renewal application form submitted to the Board and certified by the dentist. Upon request by the Board or its authorized agent, the dentist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

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

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

History Note: Authority G.S. 90-31.1;
Eff. May 1, 1994;
Amended Eff. August 1, 2002; April 1, 2001.

21 NCAC 16Y .0105 COMPLIANCE

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

History Note: Authority G.S. 90-28; 90-29.4;
Eff. August 1, 2002.

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0221 LICENSE REQUIRED

(a) No cap, pin, uniform, insignia or title shall be used to represent to the public that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.

(b) The repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to the Nurse Aide I and Nurse Aide II shall be established by the Board of Nursing as defined in 21 NCAC 36 .0401 and .0405. Tasks may be delegated to an unlicensed person which:

(1) frequently recur in the daily care of a client or group of clients;
(2) are performed according to an established sequence of steps;
(3) involve little or no modification from one client-care situation to another;
(4) may be performed with a predictable outcome; and
(5) do not inherently involve ongoing assessment, interpretation, or decision-making which cannot be logically separated from the procedure(s) itself.

Client-care services which do not meet all of these criteria shall be performed by a duly licensed nurse. The restrictions, however, do not apply to care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.

(c) It shall be considered the practice of nursing for which a license is required to implement any treatment and pharmaceutical regimen which is likely to produce side or toxic effects, allergic reactions, or other unusual effects or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen.

(1) The nurse who assumes responsibility for implementing a treatment and pharmaceutical regimen shall be accountable for:
  (A) recognizing side effects;
  (B) recognizing toxic effects;
  (C) recognizing allergic reactions;
  (D) recognizing immediate desired effects;
  (E) recognizing unusual and unexpected effects;
  (F) recognizing changes in client's condition that contraindicates continued administration of the medication;
  (G) anticipating those effects which may rapidly endanger a client's life or well-being; and
  (H) making judgments and decisions concerning actions to take in the event such untoward effects occur.
(2) Exceptions to .0221(c)(1) are:
  (A) persons who hold statutory authority to administer medications;
  (B) clients themselves, their families or significant others, or caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required;
  (C) administration of oral nutritional supplements;
  (D) applications of non-systemic, topical skin preparations which have local effects only provided that ongoing, periodic assessment of any skin lesion present shall be carried out by a person licensed to make such assessments; and
  (E) administration of commonly used cleansing enema solutions or suppositories with local effects only.

(d) Unlicensed nursing students enrolled in out-of-state nursing education programs who are requesting utilization of North Carolina clinical facilities, shall be allowed such experiences following approval by the Board of Nursing or its designee. Upon receiving such a request, the chief nurse administrator of a North Carolina clinical facility contacted by an out-of-state nursing education program seeking nursing student clinical education experiences in North Carolina shall provide the Board with the following at least 60 days prior to the start of the requested experience prior to receiving approval for accepting the students:

(1) letter of request for approval to provide the clinical offering;
(2) course description, which includes course objectives, content outline, grading criteria for the course, and curriculum pattern which lists all courses required and placement of this course in the curriculum;
(3) names of faculty members responsible for coordinating the student's experiences;
(4) documentation that the nursing program is currently approved by the Board of Nursing or other appropriate approval bodies in the state in which the parent institution is located;
(5) proposed starting and completion dates for the requested clinical experiences;
(6) criteria used for selection of the students for the clinical experience in North Carolina;

(7) number of students to be placed in the facility;
(8) units for placement and number of students on each unit;
(9) RN faculty or preceptor qualifications criteria with vitae, including the license number of each faculty or preceptor issued by the North Carolina Board of Nursing or by the nurse licensing Board of a state party to the Nurse Licensure Compact;
(10) signed contract between nursing program and clinical facility indicating ratio will not be greater than 1:10 faculty to student ratio for groups of students or 1:2 preceptor to students if preceptor arrangement is proposed;
(11) written statement from chief nursing administrator indicating the proposed clinical experience does not conflict with clinical unit commitment to approved North Carolina nursing programs who have contracts with the facility;
(12) evidence that all students involved in the proposed clinical experience are in good academic standing; and
(13) plans that ensure timely communications between the coordinating faculty from out-of-state program, the participating NC nurses, the chief nursing administrator of the NC clinical facility and the students.

(e) If the approved experience is to continue on an annual basis, written notification shall be submitted annually, by the chief nurse administrator of the NC facility at least 30 days prior to the resumption of the experiences. This notice shall include notification of any changes in the information submitted in material required in Paragraph (d) of this Rule. Upon review by the Board or its designee, written approval shall be sent to the Chief Nurse Administrator of the NC facility and the out-of-state nursing program, within 30 business days of receipt of the materials in the Board office. Copies of the following shall be distributed by the chief nursing administrator of the clinical facility to all students and faculty involved in the clinical experiences:

(1) North Carolina Nursing Practice Act;
(2) North Carolina administrative rules and related interpretations regarding the role of the RN, LPN, and unlicensed nursing personnel;
(3) North Carolina Board developed Guidelines for Utilization of Preceptors; and
(4) North Carolina Board of Nursing developed Advisory Statements.

(f) Failure to comply with the requirements in Paragraph (d) of this Rule as established by the North Carolina Board of Nursing shall result in the immediate withdrawal of the Board's approval of the clinical offerings.

History Note: Authority G.S. 90-171.23(b); 90-171.39; 90-171.43; 90-171.83;
Eff. May 1, 1982;
Amended Eff. April 1, 2002; December 1, 2000; July 1, 2000; January 1, 1996; February 1, 1994; April 1, 1989; January 1, 1984.

21 NCAC 36 .0322 FACILITIES

(a) Campus facilities shall be appropriate in type, number, and accessibility for the total needs of the program.

(1) Classrooms, practice laboratories, audio and video tutorial laboratories, and conference rooms shall be sufficient in size, number, and types for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and equipment must be suitable for the number of students and purposes for which the rooms are to be used.
(2) Office and conference space for nursing program faculty members shall be appropriate and available for uninterrupted work and privacy including conferences with students.
(3) The library facilities shall be readily accessible to students and faculty, and must offer adequate resources and services.
(A) Adequate library services shall include a librarian and a system of cataloging.
(B) A system of acquisition and deletion shall exist that ensures currency and appropriateness of holdings including audio and video tutorial resources that support implementation of the nursing curriculum.
(C) Library space for use by students and faculty shall be adequate to accommodate the program.
(D) Library hours shall meet the needs of the students in the program.

(b) Clinical facilities shall support the program curriculum as outlined in 21 NCAC 36 .0321.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38;
Eff. February 1, 1976;
Amended Eff. January 1, 1996; June 1, 1992; January 1, 1989; May 1, 1988;
Temporary Amendment Eff. October 11, 2001;
Amended Eff. August 1, 2002.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .1814 AUTOMATED DISPENSING OR DRUG SUPPLY DEVICES

(a) Automated dispensing or drug supply devices may be used in health care facility pharmacies and where a pharmacy permit exists, for maintaining patient care unit medication inventories or for a patient profile dispensing system, provided the utilization of such devices is under the supervision of a pharmacist. The pharmacist-manager shall develop and implement procedures to assure safe and effective use of medications, and, at a minimum, shall assure that:

(1) only authorized personnel, as indicated by written policies and procedures, may obtain access to the drug inventories;
(2) all drugs therein are reviewed no less than monthly;

(3) a system of accountability must exist for all drugs contained therein; the purity, potency, and integrity of the drugs shall be preserved;

(4) the device provides records required by this Section and other applicable laws and rules;

(5) requirements for controlled substances security are met; and

(6) prior to the drug being released for access by the nurse, the pharmacist enters the medication order into a computerized pharmacy profile that is interfaced to the automated dispensing unit, so that drug allergy screening, therapeutic duplication, and appropriate dose verification is done prior to the drug being administered.

(b) Notwithstanding the provisions of Rule 21 NCAC 46 .2501, a pharmacist is required to supervise only the following activities pursuant to this Rule:

(1) The packaging and labeling of drugs to be placed in the dispensing devices. Such packaging and labeling shall conform to all requirements pertaining to containers and label contents;

(2) The placing of previously packaged and labeled drug units into the dispensing device; and

(3) The restocking of automated dispensing devices.

(c) Only persons authorized by the pharmacist-manager may remove drugs from the dispensing devices and only in the quantity of doses needed to satisfy immediate patient needs. Should a violation of the foregoing occur, the pharmacist-manager shall conduct an investigation and report any violations to the entity having jurisdiction over these issues.

(d) Bar code scanning of drug packaging and storage units may be utilized as a quality control mechanism if this technology is available in the automated dispensing system.

History Note: Authority G.S. 90-85.6; 90-85.32; 90-85.33;
Eff. April 1, 1999;
Amended Eff. August 1, 2002.

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

21 NCAC 50 .0301 QUALIFICATIONS DETERMINED BY EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide an examination in writing or by computer in the following categories:

Plumbing Contracting, Class I
Plumbing Contracting, Class II
Heating, Group No. l - Contracting, Class I
Heating, Group No. 1 - Contracting, Class II
Heating, Group No. 2 - Contracting, Class I
Heating, Group No. 3 - Contracting, Class I
Heating, Group No. 3 - Contracting, Class II
Fuel Piping

(b) Each applicant shall be required to read, interpret and provide answers to all parts of the examinations required by G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for licensure. Current certification by NICET is in lieu of separate examination conducted by the Board.

History Note: Authority G.S. 87-18; 87-21(a); 87-21(b);
Eff. February 1, 1996;
Readopted Eff. September 29, 1977;
Amended Eff. July 1, 1998; July 1, 1991; May 1, 1989;
August 1, 1982;
Amended Eff. August 1, 2002.

21 NCAC 50 .0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for examinations shall file an application in the Board office on a form provided by the Board.

(b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish two years on-site full-time experience in the design and installation of plumbing or heating systems related to the category for which license is sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience shall directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Service, maintenance or repair activity work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board, work as a field representative of this Board or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may be used as evidence of one-half the practical experience required; provided that Board members and employees may not sit for examination during their tenure with the Board. After review, the Board may request additional evidence. Up to one-half the experience may be in academic or technical training directly related to the field of endeavor for which examination is requested. The Board shall pro rate part-time work of less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours or work which involves the kinds of work set out hereafter only part of the time.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors shall meet experience requirements in accordance with NICET examination criteria.

History Note: Authority G.S. 87-18; 87-21(b);
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 2002; July 1, 1998; September 1, 1994;
November 1, 1993; April 1, 1991; May 1, 1990.

21 NCAC 50 .0409 REINSTATEMENT OF EXPIRED LICENSE

A license which expires may be reinstated within three years of the date of expiration upon written request and upon payment of the current license fee, the license fee for the unpaid prior years together with the processing fee imposed by G.S. 87-22.

History Note: Authority G.S. 87-18; 87-22;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. April 1, 1991; May 1, 1989; August 1, 1984;
August 1, 1982;
Temporary Amendment Eff. August 31, 2001;
Amended Eff. August 1, 2002.

21 NCAC 50 .0501 AIR CONDITIONING FURTHER DEFINED

(a) Heating Group 2 systems are defined in G.S. 87-21(a)(3). Multiple units serving interconnected space and aggregating more than 15 tons are included in the foregoing whether or not separately ducted or controlled.
(b) All heating or cooling systems utilizing ductwork and located in single family residences, and not requiring a Heating Group 1 license require a Heating Group 3 license.

History Note: Authority G.S. 87-18; 87-21(a)(3);
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 2000; May 1, 1989;
Temporary Amendment Eff. August 31, 2001;
Amended Eff. August 1, 2002.

21 NCAC 50 .1101 EXAMINATION FEES

(a) An application to reissue or transfer license to a different corporation, partnership or individual name requires a fee of twenty-five dollars ($25.00), consistent with G.S. 87-26.
(b) An application to issue or transfer license to the license of an existing licensee requires a fee of twenty-five dollars ($25.00), consistent with G.S. 87-26.
(c) License by examination requires an application fee of twenty dollars ($20.00) and an examination fee of sixty dollars ($60.00), which are nonrefundable. Upon passage of the examination, the license fee set forth in 21 NCAC 50 .1102 or this Rule must be paid to obtain the license within 45 days of notification of the result of the examination, except that anyone passing the examination after November 1 of any year may elect to obtain license for the following year rather than the year in which the exam was passed.

History Note: Authority G.S. 87-18; 87-22.1; 87-22; 87-26;
Eff. May 1, 1989;
Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990;
Amended Eff. August 1, 2000; November 1, 1993;
March 1, 1990;
Temporary Amendment Eff. August 31, 2001;
Amended Eff. August 1, 2002.

21 NCAC 50 .1102 LICENSE FEES

(a) Except as set out in this Rule, the annual license fee for statewide licenses by this Board is one hundred dollars ($100.00).
(b) The annual license fee for a licensed individual who is not actively engaged in business requiring license by reason of full-time employment as a local government plumbing, heating or mechanical inspector and who holds qualifications from the Code Officials Qualification Board is fifteen dollars ($15.00).
(c) The initial application fee for license as a fire sprinkler contractor is twenty dollars ($20.00). The annual license fee for statewide licenses issued to a fire sprinkler contractor in the name of an individual, corporation, partnership or business with a trade name is one hundred dollars ($100.00).
(d) The annual license fee for an individual whose qualifications are listed as the second or subsequent individual on a corporation, partnership, or business with a trade name under Paragraphs (a), (b) or (d) of this Rule is ten dollars ($10.00).

History Note: Authority G.S. 87-18; 87-21; 87-22;
Eff. May 1, 1989;
Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990;
Amended Eff. November 1, 1994; July 1, 1991; March 1, 1990;
Temporary Amendment Eff. August 31, 2001;
September 15, 1997;
Amended Eff. August 1, 2002.

CHAPTER 58 - REAL ESTATE COMMISSION

21 NCAC 58E .0302 ELECTIVE COURSE COMPONENT

(a) To renew a license on active status, a real estate broker or salesperson must complete, within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .0102 of this Subchapter, four classroom hours of instruction in one or more Commission-approved elective courses.
(b) Approval of an elective course includes approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Commission to satisfy the instructor requirements set forth in Rule .0306 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period, provided, however, the sponsor may not conduct any session of an approved course for real estate continuing education purposes between June 11 and June 30, inclusive, of any approval period.
(c) The sponsor of an approved "distance education" elective course, as defined in Rule .0310 of this Subchapter, shall not permit students to register for any such course between June 11 and June 30, inclusive, of any approval period. The sponsor of any such distance education course shall require students registering for any such course to complete the course within 30 days of the date of registration for the course or the date the student is provided the course materials and permitted to begin work, whichever is the later date, provided that the deadline for course completion in any approval period shall not be later than June 15 of that approval period. The sponsor shall advise all students registering for a distance education course, prior to accepting payment of any course fees, of the deadlines for course completion.

History Note: Authority G.S. 93A-3(c); 93A-4A;
Eff. July 1, 1994;

Amended Eff. September 1, 2002; October 1, 2000; September 1, 1996.

CHAPTER 61 - THE NORTH CAROLINA RESPIRATORY CARE BOARD

21 NCAC 61 .0201 APPLICATION PROCESS

Each applicant for a respiratory care practitioner license shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

(1) one recent head and shoulders passport type photograph of the applicant of acceptable quality for identification, two inches by two inches in size;
(2) the proper fees, as required by G.S. 90-653;
(3) evidence, verified by oath, that the applicant has successfully completed the minimum requirements of a respiratory care education program approved by the Commission for Accreditation of Allied Health Educational Programs;
(4) evidence, verified by oath, that the applicant has successfully completed the requirements for certification by the American Heart Association for Basic Cardiac Life Support; and
(5) satisfactory evidence from the NBRC of successful completion of the certification examination administered by it.

History Note: Authority G.S. 90-652(1) and (2); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002.

21 NCAC 61 .0202 EXEMPTIONS

The Board shall exempt the following persons from the requirement of obtaining a license:

(1) A respiratory care practitioner who is on active duty in the Armed Forces of the United States or serving in the United States Public Health Service, or employed by the Veterans Administration; but this exemption shall only apply to activities and services provided in the course of such service or employment.
(2) A student or trainee who is working under the direct supervision of a respiratory care practitioner to fulfill an experience requirement or to pursue a course of study to meet licensure requirements. For purposes of this subpart, direct supervision shall mean that a respiratory care practitioner licensed by the Board is present in the same facility to supervise a respiratory care student at any time while the student is engaged in the practice of respiratory care. The supervising respiratory care practitioner must be specifically assigned to the particular student, but more than one practitioner may be assigned to a particular student. A respiratory care student shall not engage in the performance of respiratory care activities without direct supervision by a respiratory care practitioner licensed by the Board.
(3) A person who provides only support activities as defined in G. S. 90-648(13). Unlicensed individuals who deliver, set up, and calibrate prescribed respiratory care equipment may give instructions on the use, fitting and application of apparatus, including demonstrating its mechanical operation for the patient, or caregiver; but may not engage in the teaching, administration, or performance of respiratory care. Instructions to the patient or caregiver regarding the clinical use of the equipment, and any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment, must be performed by a respiratory care practitioner licensed by the Board or other licensed practitioner operating within their scope of practice.
(4) A person who is licensed by another North Carolina licensing board to carry on an occupation, who is acting within the recognized scope of practice for the license issued by that other board, or who otherwise is carrying out functions recognized as appropriate for the licensed person by that board; and any other person who is working under the supervision of such a licensed person, provided that the supervision of the other person also is recognized as being within the appropriate scope of practice or functions of the licensed person. With regard to other persons who are not licensed by a North Carolina licensing board, the Board shall consider whether there is evidence establishing that such persons meet the requirements of G. S. 90-664 (1).

History Note: Authority G.S. 90-652(2); 90-664; 90-648(13); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002.

21 NCAC 61 .0304 LICENSE WITH TEMPORARY ENDORSEMENT

The Board may grant a temporary license pursuant to G.S. 90-654(b).

History Note: Authority G.S 90-652(1),(2),(4); 90-654(b); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002.

21 NCAC 61 .0305 INACTIVE STATUS

(a) A licensee who wishes to retain a license but who will not be practicing respiratory care may obtain inactive status by indicating this intention on the annual renewal and payment of a fee of twenty dollars ($20.00). An individual licensed on

inactive status may not practice respiratory care during the period in which he or she remains on inactive status.

(b) An individual licensed on inactive status may convert his or her license to active status by submission of an application and payment of the renewal fee and late fee. The application must contain evidence of the following:

(1) Regular practice of respiratory care in another State or Territory of the United States of America or that the applicant is not affected by Article 38 of the General Statutes of North Carolina pursuant to G.S. 90-664(3); or

(2) Completion of a minimum of 10 hours of approved continuing education during the prior 12 months of the application for reinstatement, or passage of an NBRC examination during the prior 12 months as required in 21 NCAC 61 0401.

(c) In no case may an individual remain on inactive status for more than 24 months.

History Note: Authority G.S 90-652(1),(2),(4); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002.

21 NCAC 61 .0307 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE

In addition to the conduct set forth in G.S. 90-659, the Board may deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, upon any of the following grounds:

(1) Failure to meet minimum licensure requirements set by statute or rule.

(2) Procuring, attempting to procure, or renewing a license as provided by this part by bribery, by fraudulent misrepresentation, or by knowingly perpetuating an error of the Board.

(3) Violation of any rule adopted by the Board or of a lawful order of the Board.

(4) Engaging in the delivery of respiratory care with a revoked, suspended, or inactive license.

(5) Failing to perform any statutory or legal obligation placed upon a respiratory care practitioner licensed pursuant to this part.

(6) Failing to properly make the disclosures required by 21 NCAC 61 .0308.

(7) Permitting, aiding, assisting, procuring, or advising any person to violate any rule of the Board or provision of the Respiratory Care Practice Act, including engaging in the practice of respiratory care without a license.

(8) Having licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care revoked, suspended, or otherwise acted against, including the denial of licensure, certification, registration, or other authority to deliver respiratory care by the licensing authority of another state, territory, or country.

(9) Willfully failing to report any violation of these rules.

(10) Unprofessional conduct related to the delivery of respiratory care, which includes, but is not limited to, engaging in any act or practice that is hazardous to public health, safety or welfare.

(11) Performing professional services which have not been duly ordered by a physician licensed pursuant to G.S. 90, Article 1 and which are not in accordance with protocols established by the hospital, other health care provider, or the Board.

(12) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, he is not competent to perform.

(13) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform.

(14) Being unable to deliver respiratory care services with reasonable skill and safety to patients by reason of incapacitating illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material. In enforcing this Paragraph, the Board shall, upon probable cause, have authority to compel a respiratory care practitioner to submit to a mental or physical examination by physicians designated by the Board. The cost of examination shall be borne by the licensee being examined. The failure of a respiratory care practitioner to submit to such an examination when so directed constitutes an admission that the licensee is unable to deliver respiratory care services with reasonable skill and safety, upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond his control. A respiratory care practitioner affected under this Paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent delivery of respiratory care with reasonable skill and safety to his patients. Neither the record of the proceedings nor any order of the Board based solely on a licensee's failure to submit to an examination shall be deemed by the Board to constitute a conclusive determination that that licensee engaged in any particular conduct.

(15) Failing to create and maintain respiratory care records documenting the assessment and treatment provided to each patient.

(16) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services.

(17) Exercising influence within a respiratory care relationship for the purpose of engaging a patient in sexual activity. A patient is

presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.

(18) Exercising influence on the patient for the financial gain of the licensee or a third party by promoting or selling services, goods, appliances, or drugs that are not medically indicated or necessary.

(19) Making deceptive, untrue, or fraudulent representations in the delivery of respiratory care or employing a trick or scheme in the delivery of respiratory care.

(20) Circulating false, misleading, or deceptive advertising.

(21) Paying or receiving any commission, bonus, kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent the licensee from receiving a fee for professional consultation services.

(22) Soliciting patients, either personally or through an agent, through the use of fraud, deception, or otherwise misleading statements or through the exercise of intimidation or undue influence.

(23) Willfully making or filing a false report or record, or willfully failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which require the signature of a respiratory care practitioner or a respiratory therapist licensed pursuant to this part.

(24) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to a licensee's competence or ability to provide respiratory care.

(25) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances, as set forth by law, for any purpose other than a lawful purpose.

(26) Failing to comply with a court order for child support or failing to comply with a subpoena issued pursuant to child support or paternity establishment proceedings as defined in G.S. 110-142.1. In revoking or reinstating a license under this provision, the Board shall follow the procedures outlined in G.S. 93B-13.

History Note: Authority G.S. 90-652(2),(4); 90-659; Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002.

21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Each year on or before the expiration date of the respiratory care practitioners license, each respiratory care practitioner who is in active practice in the State of North Carolina shall complete continuing education as outlined in either Subparagraph (1) or (2) of this Paragraph:

(1) Provide proof of completion of a minimum of 10 hours each year of Category I Continuing Education (CE) acceptable to the Board. "Category I" Continuing Education is defined as participation in an educational activity directly related to respiratory care, which includes any one of the following:

(A) Lecture – a discourse given for instruction before an audience or through teleconference.

(B) Panel – a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution.

(C) Workshop – a series of meetings for intensive, hands- on study, or discussion in a specific area of interest.

(D) Seminar – a directed advanced study or discussion in a specific field of interest.

(E) Symposium – a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters.

(F) Distance Education – includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package.

(2) Retake the certified respiratory therapist (CRT) examination with a passing score, or take and pass the Registry Examination for Advanced Respiratory Therapists (RRT), the Perinatal/Pediatric Respiratory Care Specialty Examination, the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), or the Registry Examination for Advanced Pulmonary Function Technologist (RPFT). Licensees may take the examination anytime during the year prior to the expiration of their respiratory care practitioner license.

(b) Licensees will be required to list on a form provided by the Board, the Category I CE courses completed that meet the 10-hour requirement, as well as specified subject matter of the courses completed. Space will be provided on the form for listing the number of hours, course names, dates and providers, as well as the general subject matter of the courses. If the practitioner takes an examination in lieu of the CE requirements, a notation of the examination taken with the date taken is to be placed on the form.

(c) CE course work must be completed through one or more of the providers of CE as identified on a list of providers to be maintained by the Board.

(d) Verification of Compliance with Continuing Education Requirements. The Board may randomly audit the continuing education documentation forms submitted and confirm the validity of all information on the form with the appropriate parties.

(e) The Board may consider requests for extensions of the continuing education requirements due to personal emergencies and other extenuating circumstances on a case by case basis.

History Note: Authority G.S. 90-652(2)(13);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

CHAPTER 68 - CERTIFICATION BOARD FOR SUBSTANCE ABUSE PROFESSIONALS

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 either directly or indirectly related to alcohol or drug use, in the course of treatment that threatens 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 problem.

(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 in utilizing the support systems and community resources available.

(18) "Rehabilitation" means re-establishing the functioning needed for professional competency.

(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.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.40; 90-113.41; 90-113.41A;
Eff. August 1, 1996;
Temporary Amendment Eff. November 15, 1997;
Amended Eff. August 1, 2002; April 1, 2001; August 1, 2000; August 1, 1998.

21 NCAC 68 .0204 SUPERVISED PRACTICE 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 ten hours of supervised practice must be made in each of the core functions of this Rule. 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 for the purpose of the development of a treatment plan an individual's strengths, weaknesses, problems and needs;

(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 solutions, and making decisions;

(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) Providing 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 regionally accredited college or university or it may be developed in the work setting as long as it is supervised by an approved supervisor. The Supervised Practice shall take place within a setting whose primary focus is the treatment of alcohol and drug abuse.

History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.39; 90-113.40;
Eff. August 1, 1996;
Amended Eff. August 1, 2002.

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 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 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) An application packet fee of twenty-five dollars ($25.00), a registration fee of one hundred twenty-five dollars ($125.00), and an examination fee of one hundred twenty-five dollars ($125.00).

History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.40; 90-113.41;
Eff. August 1, 1996;
Amended Eff. August 1, 2002; April 1, 2001; August 1, 2000.

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 reapply as a new applicant.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.35; 90-113.38; 90-113.39; 90-113.40;
Eff. August 1, 1996;
Amended Eff. August 1, 2002; August 1, 2000.

21 NCAC 68 .0611 PROOF OF REHABILITATION

(a) As used in G.S. 90-113.44 and elsewhere, rehabilitation must be sustained and continuous 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

(5) History of relapse.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40;
Eff. August 1, 2002.

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.

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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

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STATE OF NORTH CAROLINA	**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**
COUNTY OF LINCOLN	**98 OSP 1348**

PAT HOVIS **Petitioner,**	)	
v.	)	**DECISION ON DAMAGES**
LINCOLN COUNTY DEPARTMENT OF SOCIAL SERVICES **Respondent.**	)	

This court has previously Ordered that Petitioner be reimbursed for back pay, front pay, and attorneys' fees (Reformatted Final Decision dated November 15, 2000). Respondent appealed that decision to Superior Court. The Superior Court, Judge James Lanning presiding, affirmed the Decision of this court, denied the relief requested by Respondent, and remanded the matter to this court "for a determination of damages in accordance with the original judgment of Judge Phipps." (Amended Order filed March 12, 2001).

In response to the Remand Order, the undersigned held an evidentiary hearing on damages on April 18, 2001 in Lincolnton, North Carolina, at which Respondent was represented by Jeffrey Taylor, Attorney at Law, and Petitioner was represented by Thomas Kakassy, Attorney at Law. Both parties had an opportunity to put on evidence. Petitioner put on four witnesses, who were each cross-examined by Respondent: Pat Hovis, Dr. Peter Fortkort, Mary Cook, and Emily Robinson. Respondent elected to put on no evidence. Petitioner offered nine exhibits, each of which the undersigned admitted into evidence.

Based upon the evidenced adduced at hearing, the undersigned makes the following:

FINDINGS OF FACTS

1. The Findings of fact set out in the November 15, 2000 Reformatted Final Decision are included herein by reference.

2. Petitioner was wrongfully terminated by Respondent effective September 9, 1998.

3. At the time of her termination, Petitioner was earning an annual salary of $38,894.34 from Respondent. Petitioner had been employed with Respondent for 24 years – since September 1974. Her thirty year anniversary – and date of vesting in the local government retirement plan – would be September 2004.

4. At the time of her termination, Petitioner was being provided 24 days per year annual leave. This was the maximum available.

BACK PAY

5. From the date of her termination through the date of the damages hearing in this case (April 18, 2001), Petitioner would have earned $101,652.81.

6. Petitioner was unemployed for seven weeks following her termination by Respondent. She did not receive unemployment benefits during that time.

7. Petitioner then obtained employment with Gaston County Department of Social Services in a position similar to her position with Respondent, at a starting salary of $34,152 per year.

8. In her new job, Petitioner was granted the following pay increases:

Effective Date	Amount	Resulting Annual Pay Rate

May 1, 1999	$31 bi-weekly	$34,958.00
July 1, 1999	1.5% COLA	$35,482.37
October 1, 1999	$32 bi-weekly	$36,314.37
April 1, 2000	$32 bi-weekly	$37,146.37
July 1, 2000	1.5% COLA	$37,703.57
October 1, 2000	$33 b-weekly	$38,561.57

9. The attached chart, marked as Chart 1, calculates the "reduced gross back pay", cf. 25 NCAC 1B. 0421(c) & (d), due to Petitioner based upon the pay amounts found in the preceding paragraphs.

10. Because of her discharge, Petitioner lost accumulated annual leave worth $1,448.47. Though Petitioner was compensated for some accumulated annual leave, the amount of leave she had accumulated exceeded the maximum for which she could be reimbursed at that time, and she left $1,448.47 worth of leave at Lincoln County.

11. Petitioner's annual leave accrual rate is markedly lower at her new position in Gaston County than it had been at Lincoln County. Petitioner spent her first two years at Gaston County earning only ten (10) days of annual leave per year. Her lost annual leave from discharge to the date of hearing (April 2001) has a value of $5,206.88.

ATTORNEY'S FEES

12. Based upon the Affidavit of Counsel and the detailed slip listings submitted by counsel, it is determined that an attorney's fee of $7,342.50 has been incurred and is reasonable.

FRONT PAY

13. Petitioner continued, through the date of the damages hearing in this matter (April 18, 2001) to receive a lower rate of pay on her new job than she would have received at her job with Respondent.

14. It is impossible to predict with absolute accuracy what difference in pay Petitioner will suffer over the coming years. Petitioner has provided calculations labeled "Projected Future Salary Losses Lincoln DSS v. Gaston DSS." This projection uses the reasonable but pessimistic assumption that salary increases at both agencies will proceed in the future as they have in the past. Since these increases are typically percentage-based, and the base on which the percentages are calculated is smaller at Gaston than at Lincoln, the gap between the salaries widens each year. Though this projection may be reasonable, it fails to take into account the probability that Gaston DSS would act to narrow the widening gap between its salaries and those at Lincoln DSS and the possibilities that Petitioner will be promoted, move to another agency, or take some other action to improve her lot.

15. Therefore, it is the finding of this court that the front pay calculation that will provide the best balance of fairness to Petitioner, fairness to Respondent, positive incentives to Petitioner, and easy predictability and calculation, is to simply calculate front pay based upon the current (April 18, 2001) difference in pay. This difference is calculated in attached Chart 1, and amounts to $3,313.64 per year, $276.14 per month, and $12.74 per work day (260 per year).

16. The front pay due and payable as of February 28, 2002 is $2,853.41.

17. The local government retirement system will honor the years Petitioner worked at Lincoln County DSS. Therefore, Petitioner's contributions toward her retirement have not been lost.

18. Lincoln County DSS has a policy of paying health insurance premiums for life of employees who retire from the agency with at least 20 years of service. Though Gaston County has a similar policy, it is available only to those who retire with at least 25 years service to Gaston County. At Petitioner's current age, this is not a reasonably available benefit to her at Gaston County.

Based upon the above Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties are properly before this court and all parties had proper notice of the hearing.

2. Petitioner is entitled to back pay, front pay, and attorney's fees pursuant to previous decisions of this court and the Superior Court and pursuant to applicable law, including N.C. Gen. Stat. Chapter 126 and 25 NCAC Part 1B.

3. Specifically, Petitioner is entitled to attorney's fees pursuant to 25 NCAC 1B.0414.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** as follows.

1. Within 30 days of the date of this Decision, Respondent shall:

   A. Pay Petitioner $14,782.85 in back pay;
   B. Pay Petitioner $1,448.47 in compensation for lost accumulated annual leave;
   C. Pay Petitioner $5,206.88 in compensation for lost annual leave from the date of her discharge to April 2001.
   D. Pay Petitioner $7,324.50 in compensation for attorney's fees reasonably incurred.
   E. Pay Petitioner $2,853.41 in front pay for the period April 18, 2001 to February 28, 2002.

2. Respondent shall, upon Petitioner's retirement from Gaston County Department of Social Services or beginning October 1, 2004, whichever shall later occur, pay Petitioner's health insurance premium or provide Petitioner's health insurance on the same terms as it provides the same to employees who retire fully vested.

3. Respondent shall pay petitioner front pay in the amount of $3,316.64 per year or $276.14 per month, or $12.74 per work day, with accrual to begin March 1, 2002 and payments to be made on a periodic basis of Respondent's choosing, but not less than annually.

4. Respondent may choose to offer to reinstate Petitioner to her former employment with Respondent. If Respondent should, at any time within the next 12 months, make such an offer, and the offer includes the pay and benefits Petitioner would have been receiving at that point in time had she remained employed with Respondent, the relief set forth in Paragraphs 2 and 3 above shall terminate as of 30 days after the date of the offer, or the first day of Petitioner's re-employment, whichever first occurs.

IT IS SO **ORDERED**.

ORDER

It is hereby ordered that the agency serve a copy of the FINAL DECISION on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

This the 4th day of March, 2002.

_____
James L. Conner, II
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
01 DHR 2346

ASSOCIATION FOR HOME AND HOSPICE CARE OF NORTH CAROLINA, INC.,
Petitioner,

v.

DIVISION OF MEDICAL ASSISTANCE, NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Respondents.

DECISION GRANTING SUMMARY JUDGMENT IN FAVOR OF ASSOCIATION FOR HOME AND HOSPICE CARE OF NORTH CAROLINA, INC.

This matter came on for hearing before the undersigned Administrative Law Judge on April 8, 2002 in 01-DHR-2346 upon motion by Petitioner Association for Home and Hospice Care of North Carolina, Inc. ("AHHC") for Summary Judgment against the Respondent, Division of Medical Assistance, North Carolina Department of Health and Human Services ("DMA").

On January 19, 2002, the undersigned issued a Preliminary Injunction enjoining DMA from acting upon its decisions regarding verbal order countersignatures and dually eligible patients receiving Medicare Home Health Services. By its terms, that injunctive relief continues until further order of this court.

APPEARANCES

Renée J. Montgomery Jack L. Cozort Amy Flanary-Smith	Association for Home and Hospice Care of North Carolina, Inc., Attorneys
Grady L. Balentine, Jr.	North Carolina Department of Health and Human Services, Division of Medical Assistance Assistant Attorney General

ISSUES

(1) Whether DMA's decision that it will not pay for home care services if a physician's verbal order is not countersigned within 30 days violates the standards of N.C. Gen. Stat. § 150B-23(a) (the "verbal order" issue).

(2) Whether DMA's decision that it will not pay for Personal Care Services when an individual has an acute episode requiring Medicare Home Health Services violates the standards of N.C. Gen. Stat. § 150B-23(a) (the "dual eligibility" issue).

UNDISPUTED FACTS

There are no genuine issues of material fact regarding the issues raised by Petitioner in its Motion for Summary Judgment. The following undisputed facts support this decision:

1. AHHC is an association of over 430 home care and hospice agencies in North Carolina ("AHHC Agencies"), representing 90% of the licensed home health agencies in North Carolina. AHHC Agencies provide the majority of Personal Care Services under the Medicaid program.

2. DMA is the Agency responsible for the administration of North Carolina's program of medical assistance (the "Medicaid Program"). N.C. Gen. Stat. Chapter 108A, Article 2, Part 6. The Medicaid Program serves low income persons who meet certain eligibility requirements. More than 80,000 persons receive Medicaid home health services and approximately 20,000 persons receive Medicaid Personal Care Services in North Carolina each year.

3. Under the Medicaid Program, DMA is responsible for reimbursing home care agencies for certain services provided to persons enrolled in the Medicaid Program. N.C. Gen. Stat. § 108A-55. "Home care agencies" are organizations that provide home care services to individuals in their homes or in a place of temporary residence such as an adult care home. N.C. Gen. Stat. § 131E-136(2). "Home health agencies" are home care agencies that are certified to receive Medicare and Medicaid reimbursement. N.C. Gen. Stat. § 131E-136(4).

4. Home care agencies that are not certified as home health agencies also can receive Medicaid reimbursement for providing Personal Care Services. 10 N.C.A.C. 26B.0120. Personal Care Services covered by the Medicaid Program include assisting persons with personal care and home management tasks. Home health agency services include nursing services, home health aide services, speech therapy, physical therapy, occupational therapy, medical supplies, equipment and appliances (hereinafter "Home Health Services"). N.C. Gen. Stat. § 131E-136(3); 10 N.C.A.C. 26D.0006(a).

5. Home care agencies sign provider agreements with DMA. The provider agreement does not state that DMA may recoup monies from a provider or refuse to pay a provider based upon a licensure deficiency and states that payment will be made in accordance with the approved State Medicaid Plan.

6. North Carolina has a State Medicaid Plan which is required for the receipt of federal funds for the Medicaid program. See 42 U.S.C. § 1396a(a). DMA has represented to the federal government through statements in the State Medicaid Plan that it will comply with federal requirements, including the requirement to provide equivalent access to services for all Medicaid recipients. Such compliance is necessary to ensure continued receipt of federal funds.

Verbal Orders

7. In the vast majority of cases, Home Health Services are ordered on the basis of a physician's verbal order because physicians almost never visit the offices of a home care agency. After receiving a verbal order for services over the telephone, the agency develops a plan of care for the new patient. Because of new requirements for the timing and use of federally mandated assessment tools applicable to Home Health Services ("OASIS"), the development of a comprehensive plan of care may not be complete until two or three weeks after the patient has been referred for Home Health Services. Once the plan of care is complete, the home health agency seeks the physician's signature on the plan of care and countersignature on the verbal order for services.

8. In the majority of cases AHHC Agencies are able to obtain countersignatures on verbal orders within 30 days. It is not always possible, however, because of a number of intervening factors beyond the control of home care agencies, including the rotation to another hospital of the physician who ordered the services, the physician being on vacation or otherwise unavailable at the end of the 30 day time period, and sometimes the unwillingness or inability of the physician to deal with paperwork matters ahead of patient care issues.

9. By letter of December 5, 2001 from the Director of DMA to AHHC's Executive Director, DMA announced its decision that if a physician's order for Home Health Services or Personal Care Services is not signed within 30 days, the starting date of services for billing purposes would be the date on which the physician signed the order. Furthermore, DMA may recoup funds paid for services provided pursuant to a verbal order not countersigned in 30 days. The effect of this announcement is that DMA will not pay for Home Health Services and Personal Care Services if a physician's verbal order is not countersigned within 30 days and will seek to recoup funds already paid for these services.

10. DMA's decision regarding verbal orders appeared in the January 2002 Medicaid Bulletin as follows:

> Providers of Home Health Services, Personal Care Services (in private residences), and Private Duty Nursing may bill Medicaid for services provided under a physician's verbal order that is confirmed in writing and signed by the physician within 30 days. If the order is not signed within 30 days, the date of the physician's signature is considered to be the start date for billable services. Medicaid payments made for services prior to the start date are subject to recoupment.

DMA's decision on verbal orders has not been promulgated as a rule under N.C. Gen. Stat. Chapter 150B.

11. Prior to DMA's decision on verbal orders, DMA paid for the first 30 days of services even if the verbal order was not countersigned in 30 days. DMA assumed a 30 day period of coverage for home care services regardless of when a verbal order was countersigned.

12. DMA first indicated that it was changing its position in the May Medicaid Bulletin addressing "new Medicaid guidelines for providing services in the patient's home." The Bulletin implied that verbal orders not countersigned in 30 days were "invalid."

13. There is nothing in DMA's regulations indicating that if a physician's order is not countersigned in 30 days, the home care agency cannot receive payment for the services.

14. DMA relies upon a licensure regulation, 10 N.C.A.C. 3L.1302(c), which specifies that verbal orders from a physician should be countersigned within 30 days. This licensure regulation does not indicate that verbal orders become invalid if not countersigned in 30 days and it is not a DMA regulation addressing Medicaid payments or coverage.

15. Prior to issuing its decision on verbal orders, DMA received copies of letters from the North Carolina Board of Nursing and the Division of Facility Services which licenses home care agencies confirming that verbal orders do not become invalid when they are not countersigned by the physician in 30 days.

16. The Director of DMA, Nina Yeager, made the following admissions regarding the verbal order issue in her deposition testimony:

> In DMA's regulations on coverage of Home Health Services and Personal Care Services, there is no indication that the services will not be covered if a physician's verbal order is not countersigned in 30 days. (Dep., pp. 17-19).
>
> There is no indication in the licensure regulation upon which DMA relies that a verbal order becomes invalid if not countersigned within 30 days. (Dep., pp. 28-29).
>
> She is not aware of any other circumstance in the Medicaid program where DMA has made a distinction between something being valid for clinical purposes versus reimbursement purposes. (Dep., pp. 25).
>
> She has no reason to disagree that the dependency of home care agencies on the mail to transmit physician orders increases the likelihood that verbal orders may not be signed within a set period of time. (Dep., pp. 54).
>
> She has no reason to disagree that recent state and federal requirements for patient assessments in developing the required Plan of Care ("OASIS") have made it even more cumbersome to have verbal orders countersigned within 30 days. (Dep., pp. 53-54).
>
> She has no reason to disagree that because of the new OASIS requirement and dependence on the mail, physicians often have only seven or fewer days for countersigning the initial order for services which is impossible if the physician is unavailable during this time. (Dep., pp. 52-54).
>
> She agrees that home care agencies have much less access to physicians in comparison with nursing homes and hospitals. (Dep., pp. 55-56).
>
> She agrees that it would be reasonable not to recoup for monies paid for the first 30 days of services (contrary to her decision). (Dep., p. 67).
>
> She is not sure if DMA's new verbal order policy creates an access problem, but agrees that if it does, it would be a violation of the federal requirement to provide comparable services. (Dep., pp. 47-48).
>
> She never talked with anyone on DMA's Medical Advisory Committee concerning the verbal order issue even though she was confused about what DMA's policy should be. (Dep., pp. 31 and 36).
>
> No studies were done on the effect of the verbal order issue on access to care of Medicaid recipients. (Dep., pp. 93).

17. DMA did not consider the time required to conduct the new federally mandated requirement for a patient assessment ("OASIS") in developing its new recoupment policy and a DMA representative involved with the verbal order decision erroneously believed that the OASIS requirement, which reduces the time for getting a verbal order countersigned, is not applicable to Medicaid. (Steel Dep., p. 94; Reasor Dep., pp. 81-82).

18. DMA's verbal order decision applies only to Medicaid recipients residing in their homes, not Medicaid recipients residing in adult care homes.

19. DMA has not recouped funds from hospitals or nursing homes for failure to have a verbal order countersigned within a particular time period.

20. If implemented, DMA's decision would result in home care providers losing all reimbursement for services rendered before a verbal order is countersigned if the order is not countersigned in 30 days and would cause delay of needed home care services to Medicaid recipients because some home care providers would require a written physician's order before initiating services.

21. If DMA's verbal order decision were implemented, it also would create tremendous confusion for home care providers. Since the start date for billable services is changed by DMA's new policy, home health agencies may have to start the admission process, patient assessment process, and physician order process all over again if a physician fails to countersign a verbal order in 30 days.

Dual Eligibility for Personal Care Services and Home Health Services

22. DMA first indicated to all home care providers that it no longer would pay for Personal Care Services for persons residing in their homes who receive skilled services covered by Medicare in the May Medicaid Bulletin in a section addressing "new Medicaid guidelines." DMA's Director testified that DMA expects patients to be discharged from Personal Care Services when the patient is receiving Home Health Services covered by Medicare and that DMA will not pay for Personal Care Services when an individual has an acute episode requiring such Medicare services. (Yeager Dep., pp. 97, 102-103).

23. DMA's decision to deny payment for Personal Care Services for persons having an acute episode requiring Medicare Home Health Services has not been promulgated as a rule under N.C. Gen. Stat. Chapter 150B.

24. DMA has a regulation which specifically addresses when a Medicaid recipient can receive Personal Care Services and "substantially equivalent services." The regulation, 10 N.C.A.C. 26D.0017(b), had been applied by DMA prior to its dual eligibility decision to prohibit a Medicaid recipient who resides at home from receiving Personal Care Services and Home Health aide services on the same day. Medicaid recipients receiving Home Health aide services were not prohibited from receiving Personal Care Services on different days. Although this regulation has not been amended, DMA is nevertheless denying all Personal Care Services for patients at home receiving Medicare Home Health aide services, even if services are provided on different days. There is no DMA regulation which prohibits the receipt of Personal Care Services and Home Health aide services on different days.

25. Beginning in October of 2000, Medicare changed its payment methodology for home health providers. This new payment methodology is referred to as the Prospective Payment System ("PPS"). Under PPS, Medicare now pays home health agencies in advance for services needed by the patient that are covered by Medicare. DMA contends that PPS is the reason for its decision to deny all Personal Care Services when dually eligible persons are receiving Medicare Home Health Services. However, Medicare is not covering any more services than it covered prior to this change in payment methodology.

26. There are services available under the Medicaid Personal Care Services Program, including home management tasks, that are not covered by Medicare Home Health Services. These services were not covered by Medicare before PPS and still are not covered by Medicare. Home management services provided under Medicaid Personal Care Services are not included in the duties of a home health aide under Medicare and Medicare does not compensate home health agencies for providing home management services. DMA admits that home health agencies do not get paid to provide these services and are not set up to provide these services.

27. DMA's Director is unable to speculate why a change in Medicare payment methods would cause a change in Medicaid coverage.

28. DMA has told providers that they will be subject to recoupment of funds already paid for Personal Care Services if the person also was receiving Medicare Home Health Services. DMA also has told providers that it has no mechanism by which Personal Care Services providers can verify whether or not a patient is receiving Medicare Home Health Services, nor does it intend to develop one.

29. DMA's decision denying coverage of Personal Care Services is applicable only to persons residing in their homes receiving Medicare skilled services. If the patient is receiving Medicaid skilled services, the restriction does not apply. Additionally, persons residing in adult care homes can receive both Personal Care Services and Medicare skilled services.

30. Regarding the dual eligibility issue, the Director and Deputy Director of DMA have admitted the following:

The unavailability of Personal Care Services during a Medicare Home Health episode is not contained in DMA's regulations addressing scope and coverage of Medicaid. (Yeager Dep., pp. 97-99).

The decision by DMA is based upon Medicare's reimbursement system, the Prospective Payment System ("PPS"), which became effective in 2000; even though Medicare is not covering any more services than it covered prior to PPS. (Yeager Dep., p. 107; Steel Dep., pp. 15-16).

Nina Yeager, the Director of DMA, will not speculate why a change in payment under Medicare, which does not add coverage of any additional services, should cause a change in coverage under Medicaid. (Yeager Dep., p. 108).

The denial of Personal Care Services applies only to patients receiving Medicare Home Health Services in their homes, not patients receiving such services in adult care homes, and not patients receiving Medicaid Home Health Services. (Lyon Dep., pp. 40-42).

Federal requirements for comparability require that access to, and availability of, services and coverage of services, need to be the same for all groups of Medicaid-eligible persons. (Lyon Dep., p. 54).

DMA's decision on dual eligibility was not preceded by any studies on the effect of the decision on access to care, economy of care, or efficiency, and DMA's Director admits that she has no idea about the impact of this decision on patients. (Yeager Dep., pp. 109-110, 117).

DMA realizes that Medicare home health agencies are not set up to provide all the services being provided through Personal Care Services and that the Medicare reimbursement rate does not cover all of these services. (Yeager Dep., pp. 111-112; Kingsberry Dep., pp. 38 and 57).

31. DMA's decision that it will not cover Personal Care Services for persons receiving Medicare Home Health Services in their homes has caused home care agencies to discharge persons receiving Personal Care Services who are dually eligible for Medicare Home Health Services. DMA's new position forces elderly Medicaid recipients to chose between having Medicaid cover their home management needs or Medicare cover their skilled nursing needs. This new position causes many elderly persons to go without needed services. Home care agencies may delay the initiation of Medicaid Personal Care Services pending investigation into the patient's receipt of Medicare skilled services. In some cases, home care agencies cannot bill for Personal Care Services already provided because they discover after the services were provided that Medicare skilled services were being provided to their patients on different days.

Action Prior to New Position Announcement

32. DMA performed no studies considering the impact of its decisions on verbal orders and dual eligibility on the provision of care to Medicaid recipients. DMA is unaware of what impact its decisions will have on the provision of care to Medicaid recipients.

33. The current State Medicaid Plan contains no amendments regarding DMA's decisions that DMA will not pay for home care services if a verbal order is not countersigned in 30 days and will not pay for Personal Care Services for persons having an episodic need for Medicare Home Health Services. The State Medicaid Plan includes an attachment addressing limitations on Personal Care Services. There is no Plan provision stating that payment for services or coverage for services will be limited as expressed in DMA's decision on verbal orders and dual eligibility.

34. DMA did not consult with its Medical Advisory Committee in developing its new positions on verbal orders and dually eligible individuals receiving Medicare Home Health Services.

35. DMA did not submit a State Medicaid Plan amendment to the Centers for Medicare and Medicaid Services ("CMS") regarding its decisions on verbal orders and dually eligible individuals receiving Medicare Home Health Services.

36. DMA did not publish its intent to change its positions regarding verbal orders or dually eligible individuals receiving Medicare Home Health Services in the North Carolina Register or in any newspapers.

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37. If allowed to be implemented, DMA's new decisions on verbal orders and dual eligibility would result in AHHC Agencies losing millions of dollars of Medicaid reimbursement. AHHC Agencies will be providing services for which they will not get paid. These decisions also result in a delay in services for some Medicaid recipients and a denial of covered services to Medicaid patients residing in their home who also require Medicare skilled services.

CONCLUSIONS OF LAW

Standing

1. AHHC is a person aggrieved as defined in N.C. Gen. Stat. § 150B-2(6) because it is a group of home care and home health agencies directly affected substantially in its property and employment by DMA's recent decisions.

2. AHHC's members would have standing to seek relief in this forum in their own right; the interests AHHC seeks to protect are germane to AHHC's purpose; and no individual participation by members of AHHC is necessary in this lawsuit. Therefore, AHHC has standing to pursue this action. See Creek Pointe Homeowner's Ass'n, Inc. v. Happ, 146 N.C. App. 159, 164, 552 S.E.2d

220, 225 (2001). AHHC may assert the violation of federal Medicaid statutes and regulations that affect its members' reimbursement or interests in participating in the Medicaid program. See Rehabilitation Ass'n of Virginia, Inc. v. Kozlowski, 42 F.3d 1444, 1450 (4th Cir. 1994), cert. denied, 516 U.S. 811, 116 S.Ct. 60, 133 L.Ed.2d 23 (1995) ("where the state refuses to pay what the providers insist is the proper amount of the copayment for [certain patients] required under the Medicaid Act, the providers have standing to challenge the state's interpretation of the relevant provisions"); Arkansas Med. Soc. Inc. v. Reynolds, 6 F.3d 519, 526 (8th Cir. 1993) (plaintiff providers "are intended beneficiaries of the equal access provision" and should be allowed to enforce the provision in a Section 1983 action); Oklahoma Nursing Home Ass'n v. Demps, 792 F.Supp. 721, 727 (W.D. Okla. 1992) (providers may bring Section 1983 cause of action to enforce public notice regulation and medical advisory committee regulation).

Verbal Orders

3. DMA's new position regarding verbal orders is not supported by existing regulations. DMA regulations specifically addressing the amount, duration, and scope of services covered by the Medicaid Program contain no limitation on payment for home care services for failure to have a verbal order countersigned in 30 days. See 10 N.C.A.C. 26C and 26D. Specifically, 10 N.C.A.C. 26D.0006 and .0017 address limitations on coverage for Home Health Services and Personal Care Services which are the services for which DMA is attempting to recoup monies, but neither regulation provides that these services will not be covered for failure to have a verbal order countersigned within a certain time period. The only DMA regulation addressing time requirements in connection with submitting claims for payment by Medicaid requires that claims for reimbursement for Home Health Services and Personal Care Services be filed within 365 days to receive payment. See 10 N.C.A.C. 26D.0012.

4. The North Carolina Court of Appeals has recognized that statements appearing in a Medicaid Manual can meet the definition of a "rule" requiring procedures consistent with North Carolina's Administrative Procedure Act, N.C. Gen. Stat. Chpt. 150B, Article 2A. See Surgeon v. Division of Social Services, 86 N.C. App. 252, 357 S.E.2d 388, disc. review denied, 320 N.C. 797, 361 S.E.2d 88 (1987). DMA's new position that it will not pay for home care services if a physician's verbal order is not countersigned within 30 days is a rule as defined by N.C. Gen. Stat. § 150B-2(8a) because it is a standard or statement of general applicability that describes the procedure or practice requirements of DMA and is not one of the statute's listed exceptions. See Dillingham v. N.C. Dep't of Human Res., 132 N.C. App. 704, 513 S.E.2d 823 (1999); Duke Univ. Med. Ctr. v. Bruton, 134 N.C. App. 39, 51-52, 516 S.E.2d 633, 640-41 (1999). N.C. Gen. Stat. § 108-55(c). Because DMA's verbal order decision is a rule, it should have been promulgated pursuant to the rule-making requirements of N.C. Gen. Stat. Chpt. 150B, Article 2A. Furthermore, DMA was required by North Carolina's Medicaid statutes, N.C. Gen. Stat. § 108A-55(c), to promulgate this change in reimbursement for home care services in accordance with the rule-making requirements of N.C. Gen. Stat. Chpt. 150B, Article 2A.

5. A licensure regulation, 10 N.C.A.C. 3L.1302(c), specifies that verbal orders from a physician should be countersigned within 30 days. This regulation does not authorize the Medicaid Program to recoup funds, nor does it indicate that verbal orders become invalid if not countersigned in 30 days. Indeed, Medicaid's coverage regulations do not cross-reference the licensure regulation. See 10 N.C.A.C. 26C and 26D. This licensure regulation does not authorize DMA to recoup payments for services provided and covered under the Medicaid Program.

6. The form provider agreements signed by home care agencies do not authorize DMA to refuse to pay for covered home care services based upon a licensure deficiency or new DMA requirements that have not been properly promulgated. DMA is required by the provider agreement to pay home care providers in accordance with the approved State Medicaid Plan, and the Plan does not include any provision stating that DMA will not reimburse providers for home care services because a verbal order has not been countersigned in 30 days.

7. DMA's contention that the licensure regulation is mentioned in its provider manuals is inapposite. The provider manuals do not state that the provider will not get paid for services if the verbal order is not countersigned within 30 days. Additionally, provider manual provisions do not have the force and effect of a regulation, unless promulgated in accordance with APA ruling making. See Surgeon v. Division of Social Services, 86 N.C. App. 252, 357 S.E.2d 388, disc. review denied, 320 N.C. 797, 361 S.E.2d 88 (1987).

8. DMA's contention that it must be authorized to recoup monies from the first day of services when a verbal order is not countersigned within 30 days because of its past practice of recouping monies from the 31st day of services if a verbal order is not countersigned is a *non sequitur*. The absence of regulatory authority for recouping monies from the first day of services, as addressed in these conclusions of law, also applies to recoupments from the 31st day of services based upon countersignatures not being obtained within 30 days.

9. In failing to promulgate its decision on verbal orders under the rule-making provisions of North Carolina's Administrative Procedure Act, N.C. Gen. Stat. § 150B, Article 2A, DMA has exceeded its statutory authority, failed to use proper procedure, and has failed to act as required by law, in violation of the standards of N.C. Gen. Stat. § 150B-23(a), (1), (3) and (5).

10. Because DMA's new "rule" regarding verbal orders was not the product of any rule-making process, it cannot be given effect. See Duke Univ. Med. Ctr. v. Bruton, 134 N.C. App. 39, 51-52, 516 S.E.2d 633, 640-41 (1999). In attempting to act upon this

unpromulgated "rule," DMA has acted erroneously and upon unlawful procedure, in violation of the standards of N.C. Gen. Stat. § 150B-23(a)(2) and (5).

11. DMA has acted arbitrarily or capriciously, as defined in N.C. Gen. Stat. § 150B-23(a)(4), in making its decision regarding verbal orders. Agency decisions are arbitrary and capricious when such decisions are "whimsical" because they indicate a lack of fair and careful consideration. See State ex rel. Commissioner of Insurance v. Rate Bureau, 300 N.C. 381, 420, 269 S.E.2d 547, 573, reh'g. den., 301 N.C. 107, 273 S.E.2d 300 (1980). The admissions by DMA's decision makers concerning the verbal order issue, including those enumerated in paragraphs 16 and 17, constitute uncontraverted evidence that DMA's verbal order decision was not based upon fair and careful consideration. Therefore, I conclude that DMA's verbal order decision violates N.C. Gen. Stat. § 150B-23(a)(4) as a matter of law.

Dual Eligibility for Personal Care Services and Medicare Home Health Services

12. DMA's decision regarding dually eligible individuals receiving Medicare Home Health Services is not supported by existing regulations. 10 N.C.A.C. 26D.0017(b) addresses when a Medicaid recipient can receive Personal Care Services and "substantially equivalent services." This regulation has been applied by DMA to prevent a Medicaid recipient from receiving Personal Care Services and Home Health aide services on the same day. DMA has no regulation prohibiting the receipt of Personal Care Services and home health aide services on different days.

13. DMA's decision that it will not pay for Personal Care Services when an individual has an acute episode requiring Medicare Home Health Services is a rule as defined by N.C. Gen. Stat. § 150B-2(8a) because it is a standard and statement of general applicability that describes the procedure or practice of DMA and is not one of the statute's listed exceptions. See Dillingham v. N.C. Dep't of Human Res., 132 N.C. App. 704, 513 S.E.2d 823 (1999); Duke Univ. Med. Ctr. v. Bruton, 134 N.C. App. 39, 51-52, 516 S.E.2d 633, 640-41 (1999). As a rule, DMA's new position on dual eligibility was required to be promulgated according to the provisions of N.C. Gen. Stat. Chpt. 150B, Article 2A. Furthermore, DMA was required by North Carolina's Medicaid statutes, N.C. Gen. Stat. § 108A-55(c), to promulgate this change in reimbursement for home care services in accordance with the rule-making requirements of N.C. Gen. Stat. Chpt. 150B, Article 2A.

14. Medicare's change in reimbursement methodology ("PPS") does not justify or support DMA's new "rule" prohibiting dually eligible individuals in their homes from receiving any Personal Care Services under Medicaid. The duties of the Home Health aide under Medicare do not include home management tasks which are covered under Medicaid Personal Care Services. Medicare's PPS reimbursement methodology, which did not change the services covered by Medicare, does not justify DMA denying coverage of Personal Care Services without amending its regulations, contrary to existing coverage provisions in DMA's regulations and the State Medicaid Plan, and in violation of federal requirements which are binding upon North Carolina.

15. Because DMA failed to promulgate its decision on dual eligibility under the rule-making provisions of the Administrative Procedure Act, N.C. Gen. Stat. Chpt. 150B, Article 2A, DMA has exceeded its statutory authority, failed to use proper procedure, and has failed to act as required by law in violation of the standards of N.C. Gen. Stat. § 150B-23(a), (1), (3) and (5).

16. Because DMA's new "rule" regarding dually eligible individuals receiving Medicare Home Health Services was not the product of any rule-making process, it cannot be given effect. See Duke Univ. Med. Ctr. v. Bruton, 134 N.C. App. 39, 51-52, 516 S.E.2d 633, 640-41 (1999). In attempting to act upon this unpromulgated "rule," DMA has acted erroneously and upon unlawful procedure in violation of N.C. Gen. Stat. § 150B-23(a)(2) and (5).

17. DMA has acted arbitrarily or capriciously, as defined in N.C. Gen. Stat. § 150B-23(a)(4), in making its decision regarding dually eligible recipients. Agency decisions are arbitrary and capricious when such decisions are "whimsical" because they indicate a lack of fair and careful consideration. See State ex rel. Commissioner of Insurance v. North Carolina Rate Bureau, 300 N.C. 381, 420, 269 S.E.2d 547, 573, reh'g. den., 301 N.C. 107, 273 S.E.2d 300 (1980). The admissions by DMA's decision makers concerning the dual eligibility issue, including those enumerated in paragraph 30, constitute uncontraverted evidence that DMA's decision regarding dually eligible individuals receiving Medicare Home Health Services was not based upon fair and careful consideration. Therefore, I conclude that DMA violated N.C. Gen. Stat. § 150B-23(a)(4) as a matter of law.

Federal Requirements

18. Under federal Medicaid statutes, any state receiving federal funding for a Medicaid Program must develop a State Medicaid Plan which meets the requirements of federal law. See 42 U.S.C. § 1396a(a). The State Medicaid Plan must contain certain assurances that services will be provided equally to recipients and that major changes will be reviewed by a Medical Committee and the public. North Carolina law specifically incorporates all federal requirements in North Carolina's Medicaid program. See N.C. Gen. Stat. § 108A-56.

19. If a state determines that it will participate in Medicaid, the United States Department of Health and Human Services Centers for Medicare and Medicaid Services ("CMS," formerly known as "HCFA"), must approve a State Plan for Medical Assistance. See 42 C.F.R. § 430.10, et seq.; North Carolina Dep't of Human Resources, Division of Medical Assistance v. United States Dep't of Health and Human Svcs., 999 F.2d 767, 768 (4th Cir. 1993). The State Medicaid Plan "must specify, *inter alia*, the type and scope of Medicaid services that are available, and the payment levels for those services." North Carolina, 999 F.2d at 768. As federal and state laws and regulations change, DMA must amend the Plan when required to do so. Amendments are necessary to reflect, *inter alia*, "[m]aterial changes in State law, organization, or policy, or in the State's operation of the Medicaid program," 42 C.F.R. § 430.12 (c), and such subsequent amendments to a State Medicaid Plan "must be submitted to the HCFA for approval." North Carolina, 999 F.2d at 768.

20. DMA has not complied with federal law, as it has materially changed the operation of the Medicaid program for home health recipients and providers, but it has not submitted any Plan Amendment to CMS for approval. Unless and until Amendments are submitted to CMS for review, the State Medicaid Plan fails to specify services and payment levels as required by federal regulations.

21. DMA has not complied with federal law, as the Medical Care Advisory Committee was not consulted regarding DMA's decisions on verbal orders and dual eligibility. See 42 C.F.R. § 431.12. The federal language requiring this physician participation is mandatory, not permissive. See 42 C.F.R. § 431.12(e).

22. Federal regulations require the State to provide public notice "of any significant proposed change in its methods and standards for setting payment rates for services." 42 C.F.R. § 447.205(a). DMA's proposed changes, from paying for a service to not paying for a service, as with the dual eligibility issue, and from paying for 30 days of service to not paying for 30 days of service, as with the verbal order issue, are significant changes to the state's methods and standards for setting payment rates that thus require public notice prior to enactment. See North Carolina, 999 F.2d, at 769, 771 (the proposed reimbursement change was significant such that notice was required, even though the amendment involved only four nursing homes and only one percent of the State's total Medicaid expenditures, and the notice requirements "are not burdensome and provide important procedural protections to providers and beneficiaries under the Medicaid program").

23. Pursuant to 42 C.F.R. § 440.240, services available to each categorically needy person must be the same as those available to a medically needy person. Additionally, services within each group - among the categorically needy and among the medically needy - must be of equal "amount, duration, and scope." See 42 C.F.R. § 440.240; 42 U.S.C. § 1396(a)(10)(B).

24. Because DMA's recoupment sanction and change in the start date for billable services for failing to have a verbal order counter-signed in 30 days will only apply to Personal Care Services in a personal residence, not in an adult care home, DMA's decision on verbal orders violates 42 C.F.R. § 440.240 and 42 U.S.C. § 1396(a)(10)(B).

25. Because DMA's prohibition of Personal Care Services to persons receiving Medicare home health will apply only to those patients receiving Personal Care Services in their homes, and will not apply to patients receiving Personal Care Services in adult care homes, DMA's decision on dual eligibility violates 42 C.F.R. § 440.240 and 42 U.S.C. § 1396(a)(10)(B).

26. Because DMA's prohibition of Personal Care Services will only apply to Medicare home health recipients, most of whom are elderly, and will not apply to Medicaid home health recipients, who are low income, DMA's decision on dual eligibility violates 42 C.F.R. § 440.240 and 42 U.S.C. § 1396(a)(10)(B).

27. DMA's decision regarding dual eligibility is incongruous with the legislative history of the Medicare and Medicaid statutes, which "reflect[] a pervasive Congressional concern with protecting the health of older Americans . . . ." Rehabilitation Ass'n, 42 F.3d at 1459.

28. The Medicaid statute requires that medical assistance provided under a State Plan must be "furnished with reasonable promptness to all eligible individuals." 42 U.S.C. § 1396a(a)(8). Even waiting lists for services have been held to violate 42 U.S.C. § 1396a(a)(8). See Sobky v. Smoley, 855 F. Supp. 1123, 1148 (E.D. Cal. 1994). DMA's decisions regarding verbal orders and dually eligible individuals violate 42 U.S.C. § 1396a(a)(8).

29. DMA's decisions regarding verbal orders and dual eligibility force conscientious providers to delay provision of services pending either receipt of a signed order from the physician or pending an uncertain investigation into the eligibility status of a patient. DMA does not intend to provide any mechanism to assist PCS providers to determine whether Medicare home health is being provided. DMA's decisions place providers at risk of noncompliance with other applicable regulations if services are delayed. See Tallahassee Mem. Reg. Medical Ctr. v. Cook, 109 F.3d 693, 704 (11th Cir. 1997) (a state violates 42 U.S.C. § 1396 a(a)(13)(A) when it places providers in "Hobson's Choice" of accepting a patient and risking recoupment or denying admission and violating treatment guidelines).

30. Pursuant to 42 U.S.C. § 1396a(a)(30A), the State Plan must "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan . . . to assure that payments are consistent with efficiency, economy, and quality of care . . . ." In making decisions regarding payments to providers such as the members of AHHC, the state must consider the relevant factors - efficiency, economy, and quality of care. See Arkansas Medical Society, Inc. v. Reynolds, 6 F.3d 519, 530 (8th Cir. 1993). To satisfy 42 U.S.C. § 1396a(a)(30A), the state must make some investigation into the impact of the proposed change on access to care. See Orthopaedic Hosp. v. Belshe, 103 F.3d 1491, 1500 (9th Cir. 1997), cert. denied, 522 U.S. 1044, 118 S.Ct. 684, 139 L.Ed.2d 632 (1998); Arkansas Med. Soc., 6 F.3d at 530. DMA has made no inquiry and cannot affirm that access to care will not be impermissibly impacted. DMA admits it has no idea of the impact of its decisions on access, efficiency, or quality of care. As a matter of law, DMA therefore violates 42 U.S.C. § 1396a(a)(30A).

31. DMA has acted erroneously in making decisions on verbal orders and dual eligibility that violate substantive federal requirements applicable to North Carolina's Medicaid program and has failed to act as required by law and rule and has acted upon unlawful procedure in failing to follow the procedural requirements mandated by federal law.

Public Policy

32. North Carolina's General Assembly has mandated that elderly citizens have the best possible resources for a better quality of life. See N.C.Gen. Stat. Chapter 143B, Article 3, Parts 14A and 14B. A delay in services to North Carolina's Medicaid population caused by the necessity for home care agencies to get signed physician orders before beginning services and DMA's refusal to provide Personal Care Services for Medicaid recipients having an episodic need for nursing care would be directly contrary to North Carolina's public policy.

33. Section 143B-181.6 provides that "[h]ome and community based services should be developed, expanded, or maintained in order to meet the needs of consumers in the least confusing manner . . ." and that "[a]ll services shall be responsible and appropriate to individual need and shall be delivered through a seamless system that is flexible and responsive regardless of funding source." The Director of DMA has admitted that North Carolina's Policy Act for the Aging should be an important consideration in DMA's decision making and that senior citizens not receiving Personal Care Services is a concern under this Act.

34. DMA's decisions to deny payment for Personal Care Services and recoup funds paid for services already rendered deprives North Carolina's needy elderly citizens of critical services in contravention of North Carolina's public policy. DMA's failure to act in accordance with North Carolina public policy violates the standards of N.C.G.S. § 150B-23(a).

* * * *

35. There are no genuine issues of material fact regarding the issues raised by Petitioner in its Petition and Motion for Summary Judgment and Petitioner is entitled to judgment in its favor as a matter of law. DMA has exceeded its statutory authority, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, and failed to act as required by law and rule.

Based upon the foregoing conclusions of law, the undersigned makes the following:

DECISION

AHHC's Motion for Summary Judgment against DMA is GRANTED. This Court's Order of January 19, 2002 enjoining DMA from acting upon its new positions regarding verbal order countersignatures and dually eligible patients receiving Medicare Home Health Services shall remain in effect.

NOTICE

After this Decision is issued, the Agency making the final decision in this contested case will be required to give each party an opportunity to file exceptions to this Decision and to present written arguments to those in the Agency who will make the final decision. See N.C. Gen. Stat. § 150B-36(a).

The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final agency decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services.

This the 6th day of May, 2002.

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Beecher R. Gray
Administrative Law Judge