

NORTH CAROLINA



REGISTER

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Pages 2707 - 2924

June 17, 2002

This issue contains documents officially filed through May 24, 2002.

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
*21	Occupational Licensing Boards	Marital and Family Therapy	31
22	Administrative Procedures (Repealed)	Medical Examiners	32
23	Community Colleges	Midwifery Joint Committee	33
24	Independent Agencies	Mortuary Science	34
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		Pharmacy	46
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		Psychology Board	54
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		Real Estate Commission	58
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		Sanitarian Examiners	62
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
Publication Schedule for January 2002 – December 2002

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/28/02	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
17:06	09/16/02	08/30/02	11/15/02	10/01/02	10/16/02	10/21/02	01/29/03	11/15/02	11/20/02	01/29/03	06/13/03
17:07	10/01/02	09/10/02	12/02/02	10/16/02	10/31/02	11/20/02	01/29/03	12/02/02	12/20/02	05/00/04	06/28/03
17:08	10/15/02	09/24/02	12/16/02	10/30/02	11/14/02	11/20/02	01/29/03	12/16/02	12/20/02	05/00/04	07/12/03
17:09	11/01/02	10/11/02	01/02/03	11/16/02	12/02/02	12/20/02	05/00/04	12/31/02	01/21/03	05/00/04	07/29/03
17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF RULE-MAKING PROCEEDINGS

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

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

NOTICE OF TEXT

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

END OF REQUIRED COMMENT PERIOD

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

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

DEADLINE TO SUBMIT TO THE RULES

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

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:

This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

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

U.S. Department of Justice

Civil Rights Division

JDR:RPL:TAR:nj
DJ 166-012-3
2001-1474
2001-4032

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

February 15, 2002

Michael Crowell, Esq.
Tharrington Smith
PO Box 1151
Raleigh, NC 27602

Dear Mr. Crowell:

This refers to the May 14, 2001, redistricting plan and the November 26, 2001 redistricting plan for the Town of Tarboro in Edgecombe 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 response to our July 18, 2001 request for additional information regarding the May 14, 2001 redistricting plan on December 19, 2001. We also received your submission of the November 26, 2001, redistricting plan on December 19, 2001.

Your December 19, 2001, submission letter withdraws the May 14, 2001 redistricting plan from Section 5 review. Accordingly, no determination by the Attorney General is required concerning this matter. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25(a)).

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

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:MJP:CEI:cp
DJ 166-012-3
2002-0451

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

March 28, 2002

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

Dear Mr. Bartlett:

This refers to Session Law 2001-507, which changes absentee ballot procedures for ill and disabled voters in the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on January 30, 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

U.S. Department of Justice

Civil Rights Division

JDR:GS:KEI:baw
DJ 166-012-3
2002-1169

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

April 17, 2002

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

Dear Mr. Bartlett:

This refers to Session Law 2001-512, which requires state and county election boards to notify candidates for elective office of laws and rules prohibiting display of nonofficial signage on any state traffic device or highway signage or electric power company structures for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on February 25, 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

U.S. Department of Justice

Civil Rights Division

JDR:CKD:NT:cp
DJ 166-012-3
2002-1851

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

April 29, 2002

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

Dear Mr. Bartlett:

This refers to Sections 97. (a) and 97. (b) of Session Law 2001-487 which pertain to campaign finance disclosure and reporting requirements for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on March 5, 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

U.S. Department of Justice

Civil Rights Division

JDR:CKD:SMC:cp
DJ 166-012-3
2002-1460

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

May 2, 2002

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

Dear Mr. Bartlett:

This refers to Chapter 119 (2001), which provides procedures for filing economic statements of interest by legislative candidates and supersedes all prior changes concerning such statements of interest, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on March 4, 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).

With regard to prior unprecleared changes relating to statements of interest, because they are superseded by Chapter 119, the Attorney General will make no determination concerning these matters. See 28 C.F.R. 51.35.

Sincerely,

Joseph D. Rich
Chief, Voting Section

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES**CHAPTER 3 – FACILITY SERVICES****◆ PUBLIC NOTICE ◆**

Citizens are invited to attend public hearings on the Draft 2003 State Medical Facilities Plan to be conducted by the North Carolina State Health Coordinating Council (SHCC) at the following times and locations:

Wilmington	July 19, 2002 (Friday)	1:30-2:30 p.m. Coastal Area Health Education Center New Hanover Regional Medical Center Auditorium -- First Floor 2131 S. 17th Street Wilmington, NC
Greenville	July 22, 2002 (Monday)	1:30-2:30 p.m. Eastern AHEC Conference Center (Edwin W. Monroe Center) Pamlico Room 2000 Venture Tower Drive Greenville, NC
Charlotte	July 24, 2002 (Wednesday)	1:30-2:30 p.m. Carolinas Medical Center Classroom 158, Rankin Education Center (just down from the auditorium) 1200 Blythe Boulevard Charlotte, NC
Greensboro	July 25, 2002 (Thursday)	1:30-2:30 p.m. Greensboro AHEC Room 0031 Moses Cone Hospital Campus 1200 North Elm Street Greensboro, NC
Asheville	July 26, 2002 (Friday)	1:30-2:30 p.m. Mountain Area Health Education Center (Between Mission St. Joseph's and entrance for Memorial Mission Emergency Room) 501 Biltmore Avenue Second Floor, Classroom #4 Asheville, NC
Raleigh	July 29, 2002 (Monday)	1:30-2:30 p.m. Wake County Office Park Commons Building; Room 100-A 4011 Carya Drive Raleigh, NC

All persons commenting on the Draft Plan at the public hearings are asked to supply WRITTEN COPIES of their remarks.

Persons with disabilities who need assistance to participate in the public hearing are requested to notify the Medical Facilities Planning Section in advance so that reasonable accommodations can be arranged.

The State Medical Facilities Plan projects need for acute care hospital beds, rehabilitation facilities and beds, ambulatory surgery facilities and operating rooms, technology services and equipment, nursing care beds, home health agencies, kidney dialysis stations, hospice home care programs and inpatient beds, psychiatric hospitals, substance abuse treatment facilities, adult care home beds, and intermediate care facilities for the mentally retarded. **NOTE: After the need determinations and policies are adopted by the SHCC and approved by the Governor, they will be incorporated in Administrative Procedure Act Rules for the 2003 State Medical Facilities Plan.**

Persons wishing to review or purchase the Draft 2003 State Medical Facilities Plan or who want information about the Plan or the series of public hearings may call 919-855-3865, or write to: Medical Facilities Planning Section, Division of Facility Services, 2714 Mail Service Center, Raleigh, NC 27699-2714. Inquiries may be made to this same address about comments or petitions received regarding the Draft Plan. Copies of the Draft Plan will also be made available to all Area Health Education Centers and to all Lead

IN ADDITION

Regional Organizations (Councils of Government) in the State. **ALL WRITTEN COMMENTS AND PETITIONS ON THE DRAFT 2003 STATE MEDICAL FACILITIES PLAN MUST BE RECEIVED IN THE MEDICAL FACILITIES PLANNING SECTION OFFICE BY 5:00 P.M. ON FRIDAY, AUGUST 2, 2002.**

Notice to Subscribers

Due to the State's budget shortfall and the increasing cost of printing, the Cumulative Index of published rules will no longer be printed in the NC Register. This change will be effective July 1, 2002. The Office of Administrative Hearings will continue to maintain the index and make available on the OAH website: www.ncoah.com.

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 03 – FACILITY SERVICES

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

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

Authority for the Rule-making: G.S. 131E-149

Statement of the Subject Matter: This Subchapter deals with the licensure of ambulatory surgical facilities.

Reason for Proposed Action: The NC Medical Care Commission proposes to adopt rules regarding the licensure of ambulatory surgical facilities. Changes are needed to conform with current building code requirements and practices.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Mark Benton, Chief of Budget Planning/Rule-making Coordinator, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 03 – MARINE FISHERIES

Notice of Rule-making Proceedings is hereby given by the NC Marine Fisheries 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 03 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113-134; 113-182; 113-221; 143B-289.52

Statement of the Subject Matter: Sargassum and fishing gear restrictions for specific areas.

Reason for Proposed Action: Restrict the taking of sargassum if so required by federal fishery management plan. Revise the specific areas for fishing gear restrictions in response to Petition for Rulemaking for Carolina Marlin Club Marina. Also revise specific areas for fishing gear restrictions to incorporate Goose Creek State Park and delete areas where restrictions are no longer valid or needed.

Comment Procedures: Written comments are encouraged and may be submitted to MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

Notice of Rule-making Proceedings is hereby given by NC Wildlife Resources 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 10A,B,F,H,I. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 75A-15; 113-132; 113-134; 113-264; 113-267; 113-270; 113-270.1; 113-270.1A; 113-273; 113-291.2; 113-291.4

Statement of the Subject Matter: General Regulations, Hunting, Water Safety, Conservation, Endangered, Threatened and Special Concern Species.

Reason for Proposed Action: To set/amend regulations necessary to manage and conserve wildlife resources and maintain public safety.

Comment Procedures: The record will be open for receipt of written comments. Such comments must be delivered or mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.

CHAPTER 18 – ENVIRONMENTAL HEALTH

Notice of Rule-making Proceedings is hereby given by the 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 18A .2500 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 130A-280 through 130A-282

Statement of the Subject Matter: *To identify and update sanitation requirements for public swimming pools as needed.*

Reason for Proposed Action: *To identify and update sanitation requirements as needed.*

Comment Procedures: *Written comments may be mailed to Jim Hayes, NCDENR/EHSS, 1632 Mail Service Center, Raleigh, NC 27699-1632.*

TITLE 19A – DEPARTMENT ON TRANSPORTATION

CHAPTER 03 – DIVISION OF MOTOR VEHICLES

Notice of Rule-making Proceedings *is hereby given by NC Department of Transportation – Division of Motor Vehicles 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: 19A NCAC 03G .0205. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 20-39(b); 20-218

Statement of the Subject Matter: *Rule sets out conditions for certification of school bus drivers*

Reason for Proposed Action: *Temporary amendments to this rule were filed effective June 1, 2001 which added a physical exam requirement for certification as a school bus driver. The permanent rule was to be effective August 1, 2002. However,*

the current budget constraints on state agencies will not allow the Department of Public Instruction to fund the physical exams. The Division of Motor Vehicles is deleting the school bus driver physical exam requirement due to budgetary constraints.

Comment Procedures: *Any interested person may submit comments in writing by sending the comments to Emily Lee, APA Coordinator, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 08 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

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

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 08 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 93-12

Statement of the Subject Matter: *Definitions, requirements for examination and certificates, continuing professional education, reciprocity, revocations, renewals and registrations, professional corporations and professional limited liability companies, state quality review programs, professional ethics and conduct.*

Reason for Proposed Action: *The purpose of these Rule changes are to clarify, simplify and amend this Chapter to reflect the Uniform Accountancy Act.*

Comment Procedures: *Written comments should be sent to Felecia Ashe, APA Coordinator, NC State Board of CPA Examiners, PO Box 12827, Raleigh, NC 27605-2827.*

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 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHHS – Division of Medical Assistance intends to amend the rule cited as 10 NCAC 50B .0102. Notice of Rule-making Proceedings was published in the Register on January 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: July 3, 2002

Time: 11:30 a.m.-1:00 p.m.

Location: Room 132, Kirby Building, 1985 Umstead Dr., Raleigh, NC

Reason for Proposed Action: *This change is based on recent General Assembly legislation to enact a new optional federal coverage group for women who have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention, breast and cervical cancer early detection program and need treatment for breast or cervical cancer, including precancerous conditions. The women are not otherwise covered under creditable coverage including Medicaid and are under the age of 65.*

Comment Procedures: *Written comments concerning this Rule-making action must be submitted by August 17, 2002 to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Dr., 2504 Mail Service Center, Raleigh, NC 27699-2504.*

Fiscal Impact

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

CHAPTER 50 – MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0100 - COVERAGE GROUPS

10 NCAC 50B .0102 OPTIONAL

The following optional groups of individuals described by 42 U.S.C. 1396a(a)(10)(A)(ii) and 42 U.S.C. 1396a(a)(10)(C) shall be eligible for Medicaid:

- (1) Children:
 - (a) Children under age one whose family income is more than the amount established under Item ~~(14)~~, (16), Rule .0101 of this Section and not more than a percent of the federal

poverty level established by the General Assembly;

- (b) Children under age 21 who meet the eligibility requirements of this Subchapter;
 - (c) Qualified children under age 19 as described in Item ~~(4)~~, (6), Rule .0101 of this Section, who were born on or before September 30, 1983, and whose income is not more than 100% of the federal poverty level;
 - (d) Adopted children under age 18 with special needs, as described at 42 U.S.C. 1396a(a)(10)(A)(ii)(VIII).
- (2) Individuals receiving optional state supplemental payment.
 - (3) Caretaker relatives of eligible dependent children.
 - (4) Pregnant women:
 - (a) Whose countable income is more than the amount established under Item ~~(13)~~, (15), Rule .0101 of this Section and not more than a percent of the federal poverty level established by the General Assembly, or
 - (b) Who, if their countable income exceeds the percent of the federal poverty level, established in Sub-item (4)(a) of this Rule, meet the eligibility criteria for medically needy set forth in this Subchapter.
 - (5) Aged, blind and disabled individuals whose income is at or below 100% of the Federal Poverty Level, adjusted each April 1, and who meet the resource requirements of SSI, but who do not receive cash assistance.
 - (6) Women, as described at 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) who:
 - (a) have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the Public Health Service Act in accordance with the requirements of section 1504 of that Act and need treatment for breast or cervical cancer, including a precancerous condition of the breast or cervix;
 - (b) are not otherwise covered under creditable coverage, as defined in

- section 2701(c) of the Public Health Service Act;
 (c) are not otherwise eligible for Medicaid; and
 (d) have not attained age 65.

Authority G.S. 108A-54; 42 C.F.R. 435.210; 42 C.F.R. 435.222; 42 C.F.R. 435.230; 42 C.F.R. 435.301; 42 C.F.R. 435.308; 42 C.F.R. 435.322; 42 C.F.R. 435.330; 42 U.S.C. 1396(a)(10)(A)(ii); 42 U.S.C. 1396a(a)(10)(C); S.L. 1983, c. 1034, s. 62.2; S.L. 1987, c. 738, s. 69 and 70; S.L. 1989, c. 752, s. 133.

TITLE 15A – DEPARTMENT ON ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR/DWQ intends to amend the rule cited as 15A NCAC 02R .0402. Notice of Rule-making Proceedings was published in the Register on November 15, 2001.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: July 15, 2002

Time: 7:00 p.m.

Location: Hal Marshall County Services Center, 700 N. Tryon Street, Cooperative Extension office (the room is in the Extension Kitchen), Charlotte, NC, 28202

Date: July 18, 2002

Time: 7:00 p.m.

Location: Ground Floor Hearing Room, Archdale Bldg., 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *An evaluation of the cost of stream restoration projects implemented by the NC Wetlands Restoration Program indicates that the current Schedule of Fees for this activity are inadequate to cover the actual cost of project implementation. In addition, the Environmental Management Commission is interested in incorporating an adjustment for inflation into the Schedule of Fees to minimize the need for rule revision. There is also a need for the NC Wetlands Restoration Program to recoup costs associated with the maintenance and monitoring of easements and land held by the program in absence of a restoration project.*

Comment Procedures: *The Environmental Management Commission encourages written comments. Written as well as oral comments may be submitted at the public hearing and written comments may be submitted to Suzanne Klimek, NC Division of Water Quality – Wetlands Restoration Program, 1619 Mail Service Center, Raleigh, NC 27699-1619. Comments post-marked on or before August 16, 2002 will be made a part of the public record. The Environmental Management Commission is especially interested in comments concerning the fee for stream restoration. The Commission will consider setting the fee higher or lower than the proposed rate of \$200 per linear foot of stream included in the proposed revised text. Comments regarding methods for adjusting fees for wetland and stream*

restoration to account for inflation and costs associated with the monitoring and maintenance of easements and property over time are also encouraged. Data to support comments submitted is strongly encouraged.

Fiscal Impact

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02R - WETLANDS RESTORATION PROGRAM

SECTION .0400 - WETLANDS RESTORATION FUND

15A NCAC 02R .0402 SCHEDULE OF FEES

(a) The amount of payment into the Fund necessary to achieve compliance with compensatory mitigation requirements shall be determined in accordance with Subparagraphs (1) through (3) of this Paragraph. The fee will be based on the acres and types of compensatory mitigation specified in the approved certifications issued by the Department under 33 USC ' 1341; and permits or authorizations issued by the United States Army Corps of Engineers under 33 USC ' 1344. Payments shall be rounded up in increments of linear feet for streams and in 0.25 acre increments for wetlands, e.g. for streams, 520.3 linear feet of compensatory mitigation would be considered as 521 feet, and for wetlands, 2.35 acres of required compensatory mitigation would be considered as 2.5 acres for the purpose of calculating the amount of payment.

- (1) Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The payment shall be ~~one hundred twenty five dollars (\$125.00)~~ two hundred dollars (\$200.00) per linear foot of stream.
- (2) Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8). The payment shall be:
 - (A) Twelve thousand dollars (\$12,000.00) per acre for non-riparian wetlands.
 - (B) Twenty four thousand dollars (\$24,000.00) per acre for riparian wetlands.
- (3) Class SWL wetlands as defined in 15A NCAC 02B .0101(d)(4). The payment shall be one hundred twenty thousand dollars (\$120,000.00) per acre.

(b) The fees outlined in Subparagraphs (a)(1) through (a)(3) of this Rule shall be reviewed annually and compared to the actual cost of restoration activities conducted by the Department, including planning, monitoring and maintenance costs. Based upon this annual review, revisions to Paragraph (a) of this Rule will be recommended when adjustments to this Schedule of Fees are deemed necessary.

(c) The fees outlined in Subparagraphs (a)(1) through (a)(3) of this Rule shall be adjusted for inflation on an annual basis using the Cost Construction Index of the Engineering News-Record. This adjustment will occur at the end of each calendar year as follows: the fees in Subparagraphs (a)(1) through (a)(3) of this

Rule will be multiplied by the annual average (composite of monthly averages from January through December) of the Construction Cost Index and the result will be the increase to that fee for the next fiscal year. The revised fees will be made available via the NC Wetland Restoration Program's web site (h2o.enr.state.nc.us/wrp/index.htm) and become effective on the following July 1st. The first adjustment will be made at the close of calendar year 2003 and the first presentation of fees adjusted for inflation in the North Carolina Register will be made in March, 2004. This process will continue annually thereafter.

(d) For properties and easements donated to the NC Wetlands Restoration Program, a fee of three hundred fifty dollars (\$350.00) per acre will be charged at the time the land or easement is transferred to the program to cover costs of long-term management of the property.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07B .0702. Notice of Rule-making Proceedings was published in the Register on March 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: July 9, 2002

Time: 7:00 p.m.

Location: Carteret County Courthouse, Courthouse Square, Beaufort, NC

Date: July 24, 2002

Time: 4:30 p.m.

Location: Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *Substitute a definition for "probable 404 Wetlands" instead of relying on this term from federal law to convey meaning for local government mapping requirements.*

Comment Procedures: *Written comments may be mailed to Kathy Vinson, Planning and Public Access Manager, Division of Coastal Management, 151-B, HWY 24, Hestron Plaza II, Morehead City, NC 28557. 252-808-2808. Comments will be accepted on this Rule through July 24, 2002.*

Fiscal Impact

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

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07B - CAMA LAND USE PLANNING

15A NCAC 07B .0702 ELEMENTS OF CAMA CORE AND ADVANCED CORE LAND USE PLANS

(a) Organization of the Plan. The elements in this Rule provide general direction for development of the CAMA Core and Advanced Core Land Use Plans. A detailed Table of Contents shall be included and if the organization does not follow the outline described in this Rule, a matrix shall be included that shows the exact location of the following required elements.

(b) Community Concerns and Aspirations:

- (1) Significant existing and emerging conditions: The plan shall include a description of the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.
- (2) Key issues: The plan shall include a description of the land use and development topics most important to the future of the planning area. At a minimum, this description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, water quality, and local areas of concern as described in Subparagraph (d)(3) (Land Use Plan Management Topics) of this Rule.
- (3) A community vision: This shall consist of a description of the general physical appearance and form that represents the local government's plan for the future. The community vision shall include statements of general objectives to be achieved by the plan. These objectives shall serve as the foundation for more specific objectives and policies stated elsewhere in the CAMA Land Use Plan. The objectives shall include changes that the local government feels are needed to achieve the planning vision.

(c) Analysis of Existing and Emerging Conditions within the planning jurisdiction. The purpose of this element is to provide a sound factual and analytical base that is necessary to support the land use and development policies included in the plan. The analysis shall be based upon the best available data or mapping information from state, federal and local sources. This element shall describe the following:

- (1) Population, Housing, and Economy. The plan shall include an analysis and discussion of the following data and trends:
 - (A) Population:
 - (i) Permanent population growth trends using data from the two most recent decennial Censuses;
 - (ii) Current permanent and seasonal population estimates;
 - (iii) Key population characteristics;
 - (iv) Age; and
 - (v) Income.
 - (B) Housing stock:
 - (i) Estimate of current housing stock, including permanent and seasonal units, tenure,

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| | and types of units (single-family, multifamily, and manufactured); and | | scrub wetlands and
<u>freshwater marshes;</u> |
| (ii) | Building permits issued for single-family, multifamily, and manufactured homes since last plan update. | (vii) | Water supply watersheds or wellhead protection areas; |
| (C) | Local economy: Employment by major sectors and description of community economic activity. | (viii) | Primary nursery areas, where mapped; |
| (D) | Projections. Short-term (five and ten year) and long-term (20-year) projections of permanent and seasonal population. | (ix) | Environmentally fragile areas, such as, but not limited to wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and |
| (2) | Natural systems analysis. The purpose of the natural systems analysis is to describe and analyze the natural features and environmental conditions of the planning jurisdiction, and to assess their capabilities and limitations for development. This analysis shall include: | (x) | Additional natural features or conditions identified by the local government. |
| (A) | Mapping and analysis of natural features. The 14-digit hydrological units delineated by the Natural Resources Conservation Service shall be used as the basic unit of analysis of natural features. Maps of the following natural features shall be developed with data provided by DCM or other state agencies for analysis and plan development. These maps may be reproduced and included in the CAMA Land Use Plan at the option of the local government. If the maps are not included in the plan, they shall be made available to the public. | (B) | Composite map of environmental conditions: |
| (i) | Areas of Environmental Concern (AECs); | (i) | Composite map of environmental conditions: The plan shall include a map that shows the extent and overlap of natural features listed in Part (c)(2)(A) of this Rule and, based on the local government's determination of the capabilities and limitations of these features and conditions for development, shows the location of the following three categories of land: |
| (ii) | Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development; | (I) | Class I – land containing only minimal hazards and limitations that may be addressed by commonly accepted land planning and development practices; |
| (iii) | Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HQW, and ORW) and related use support designations, and Division of Environmental Health (DEH) shellfish growing areas and water quality conditions; | (II) | Class II – land containing development hazards and limitations that may be addressed by methods such as restrictions on types of land uses; special site planning; or the provision of public services; and |
| (iv) | Flood and other natural hazard areas; | (III) | Class III – land containing serious hazards for development or lands where the |
| (v) | Storm surge areas; | | |
| (vi) | Non-coastal wetlands;
probable 404 wetlands;
<u>Non-coastal wetlands including forested wetlands, shrub-</u> | | |

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| | impact of development may cause serious damage to the functions of natural systems. | (II) | Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities; and |
| (ii) | The CAMA Land Use Plan shall describe or list the features or conditions selected by the local government for inclusion in each class. | (III) | Where data is available, estimates of public and private damage resulting from floods and wind that has occurred since the last plan update. |
| (C) | Environmental conditions. The plan shall provide an assessment of the following environmental conditions and features and discuss their limitations or opportunities for development: | (iii) | Natural resources: |
| (i) | Water quality: | (I) | Environmentally fragile areas (as defined in Part (c)(2)(A)(ix) of this Rule) or areas where resource functions may be impacted as a result of development; and |
| (I) | Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Quality Basinwide Water Quality Plans, 303(d)List and other comparable data; | (II) | Areas containing potentially valuable natural resources. These may include, but are not limited to the following: beach quality sand deposits, protected open space, and agricultural land, that may be impacted or lost as a result of incompatible development. |
| (II) | Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation Section of the N.C. Division of Environmental Health; | | |
| (III) | Areas experiencing chronic wastewater treatment system malfunctions; and | | |
| (IV) | Areas with water quality or public health problems related to non-point source pollution. | | |
| (ii) | Natural hazards: | | |
| (I) | Areas subject to storm hazards such as recurrent flooding, storm surges and high winds; | (3) | Analysis of Land Use and Development. The purpose of the analysis of land use and development is to describe and quantify existing patterns of land uses, identify potential land use and land use/water use conflicts, determine future development trends, and project future land needs. The plan shall include the following mapping and analysis of existing land use: |
| | | (A) | A map of land including the following: Residential, commercial, industrial, institutional, public, dedicated open space, agriculture, forestry, confined animal feeding operations, and undeveloped; |
| | | (B) | The land use analysis shall include the following: |

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| <ul style="list-style-type: none"> (i) Table that shows estimates of the land area allocated to each land use; (ii) Description of any land use conflicts; (iii) Description of any land use – water quality conflicts; (iv) Description of development trends using indicators. These development trends may include, but are not limited to the following: building permits and platted but un-built lots; and (v) Location of areas expected to experience development during the five years following plan certification by the CRC and a description of any potential conflicts with Class II or Class III land identified in the natural systems analysis. <p>(C) Historic, cultural, and scenic areas designated by a state or federal agency or by local government. These areas and sites shall be located on either the existing land use map or a separate map; and</p> <p>(D) Projections of future land needs. The analysis shall include short term (five and ten year) and long term (20-year) projections of residential land area needed to accommodate the planning jurisdiction's projected future permanent and seasonal population (population projections as defined in Part (c)(1)(D) of this Rule (Analysis of Existing and Emerging Conditions). The projections of land needs may be increased up to 50% to allow for unanticipated growth and to provide market flexibility. For local governments experiencing low or no growth (as shown in Figure 1 in 15A NCAC 7B .0701), the projections of land needs may consider economic strategies in the final calculations.</p> <p>(4) Analysis of Community Facilities. The purpose of the analysis of community facilities</p> | <p>is to evaluate existing and planned capacity, location, and adequacy of key community facilities that serve the community's existing and planned population and economic base; that protect important environmental factors such as water quality; and that guide land development in the coastal area. This analysis shall include:</p> <p>(A) Public and private water supply and wastewater systems. The analysis of water and sewer systems shall include a description and map(s) of existing public and private systems, including existing condition and capacity; location of pipelines, documentation of any overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health; existing and planned service areas; and future needs based on population projections. If any required information is not available for private systems, the local government shall so state in the plan and this factor may be eliminated from the analysis.</p> <p>(B) Transportation systems. The analysis of the transportation system shall include a map showing: the existing highway system; any segments deemed by the North Carolina Department of Transportation (NCDOT) as having unacceptable service levels; highway facilities on the current thoroughfare plan; and facilities on the current transportation improvement program. The analysis shall also assess the impact of planned highway or other transportation facilities on growth levels and development patterns.</p> <p>(C) Stormwater systems. The analysis of public and permitted private stormwater systems shall include identification of existing drainage problems in the planning area; identification of water quality issues related to point-source discharges of stormwater runoff; and an overview of potential stormwater system requirements for local governments subject to the EPA's Storm Water Phase II Final Rules.</p> <p>(D) Other facilities. The local government may include additional facilities and services such as solid waste and health and safety in the analysis.</p> <p>(5) Land Suitability Analysis. The purpose of the land suitability analysis is to determine the planning area's supply of land suited for</p> |
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development based on the following considerations: natural system constraints, compatibility with existing land uses and development patterns, the existing land use and development criteria of local, state, and federal agencies and the availability and capacity of water, sewer, stormwater management facilities, and transportation systems. The analysis shall include a land suitability map showing vacant or under-utilized land that is suitable for development. The following factors shall be considered to assess land suitability:

- (A) Water quality;
- (B) Land Classes I, II, and III summary environmental analysis;
- (C) Proximity to existing developed areas and compatibility with existing land uses;
- (D) Potential impact of development on areas and sites designated by local historic commissions or the North Carolina Department of Cultural Resources as historic, culturally significant, or scenic;
- (E) Land use and development requirements of local development regulations, CAMA Use Standards and other applicable state regulations, and applicable federal regulations; and
- (F) Availability of community facilities, including water, sewer, stormwater and transportation.

- (6) Review of Current CAMA Land Use Plan. The purpose of the review of the current CAMA Land Use Plan is for the local governing body to review its success in implementing the policies and programs adopted in the plan and the effectiveness of those policies in achieving the goals of the plan. The review shall include consideration of the following factors:

- (A) Consistency of existing land use and development ordinances with current CAMA Land Use Plan policies;
- (B) Adoption of the land use plan's implementation measures by the governing body; and
- (C) Efficacy of current policies in creating desired land use patterns and protecting natural systems.

(d) Plan for the Future. This element of the plan is intended to guide the development and use of land in the planning jurisdiction in a manner that achieves its goals for the community and CAMA. Policies affecting AECs shall also be used in making CAMA permit decisions. The plan for the future includes the local government's goals, land use and development policies, and future land use map.

- (1) Land use and development goals. The following shall be considered in the development of the plan's goals:

- (A) Community concerns and aspirations identified at the beginning of the planning process; and
- (B) Needs and opportunities identified in the analysis of existing and emerging conditions.

- (2) Policies:

- (A) Policies included in the land use plan shall be consistent with the goals of the CAMA, shall address the CRC management topics for land use plans, and comply with all state and federal rules. The CAMA Land Use Plan shall demonstrate how the land use and development goals, policies and future land use map, as required in Subparagraph (d)(4) of this Rule, will guide the development and use of land in the planning jurisdiction in a manner that is consistent with the specific management goal(s), planning objective(s) and land use plan requirements of each Management Topic.

- (B) The plan shall contain a description of the type and extent of analysis completed to determine the impact of CAMA Land Use Plan policies on the management topics; a description of both positive and negative impacts of the land use plan policies on the management topics; and a description of the policies, methods, programs and processes to mitigate any negative impacts on applicable management topics.

- (C) The plan shall contain a clear statement that the governing body either accepts state and federal law regarding land uses and development in AECs or, that the local government's policies exceed the requirements of state and federal agencies. If local policies exceed the State and Federal requirements, the CAMA Land Use Plan shall identify which policies exceed these requirements and to what extent. If the governing body intends to rely on Federal and State laws and regulations it shall reference these in the plan.

- (3) Land Use Plan Management Topics. The purposes of the CRC management topics are to insure that CAMA Land Use Plans support the goals of CAMA, to define the CRC's expectations for the land use planning process, and to give the CRC a substantive basis for

review and certification of CAMA Land Use Plans. Each of the following management topics (Public Access, Land Use Compatibility, Infrastructure Carrying Capacity, Natural Hazard Areas, Water Quality, and Local Areas of Concern) include three components: a management goal, a statement of the CRC's planning objective, and requirements for the CAMA Land Use Plans.

(A) Public Access:

- (i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.
- (ii) Planning Objective: Develop comprehensive policies that provide beach and public trust water access opportunities for the public along the shoreline within the planning jurisdiction. Policies shall address access needs and opportunities, include strategies to develop public access, and identify feasible funding options.
- (iii) Land Use Plan Requirements: Land use plan policies on ocean and public waterfront access shall establish local criteria for frequency and type of access facilities. These policies shall contain provisions for public access for all segments of the community, including persons with disabilities, and shall establish access criteria for beach areas targeted for nourishment.

(B) Land Use Compatibility:

- (i) Management Goal: Ensure that development and use of resources or preservation of land minimizes direct and secondary environmental impacts, avoids risks to public health, safety and welfare and is consistent with the capability of the land based on considerations of interactions of natural and manmade features.
- (ii) Planning Objective:
 - (I) Adopt and apply local development policies, that balance protection of natural resources

and fragile areas with economic development.

- (II) Policies to provide clear direction to assist local decision making and consistency findings for zoning, divisions of land, and public and private projects.

(iii) Land Use Plan Requirements:

- (I) Establish building intensity and density criteria, such as floor area ratio and units per acre, consistent with the land suitability analysis for each land use designation on the Future Land Use Map.
- (II) Establish local mitigation criteria and concepts. These may include, but are not limited to the following: cluster subdivision design, enacting local buffers, impervious surface limits, and effective innovative stormwater management alternatives.

(C) Infrastructure Carrying Capacity:

- (i) Management Goal: Ensure that public infrastructure systems are appropriately sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored.
- (ii) Planning Objective: Establish level of service policies and criteria for infrastructure consistent with Part (c)(3)(D) (Projections of Future Land Needs) of this Rule.
- (iii) Land Use Plan Requirements:
 - (I) Identify/establish service area

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| | boundaries for existing and future infrastructure. | (ii) | Planning Objective: Adopt policies for coastal waters within the planning jurisdiction to help ensure that water quality is maintained if not impaired and improved if impaired. |
| (II) | Correlate future land use map categories with existing and planned infrastructure such as wastewater, water infrastructure and transportation. | (iii) | Land Use Plan Requirements: |
| (D) | Natural Hazard Areas: | (I) | Devise policies that help prevent or control nonpoint source discharges (sewage and storm water) such as, but not limited to the following: impervious surface limits, vegetated riparian buffers, natural areas, natural area buffers, and wetland protection. |
| (i) | Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues. | (II) | Establish policies and land use categories aimed at protecting open shellfishing waters and restoring closed or conditionally closed shellfishing waters. |
| (ii) | Planning Objective: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise. | (F) | Local Areas of Concern: |
| (iii) | Land Use Plan Requirements: | (i) | Management Goal: Integrate local concerns with the overall goals of CAMA in the context of land use planning. |
| (I) | Develop location, density, and intensity criteria for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards. | (ii) | Planning Objective: Identify and address local concerns and issues, such as cultural and historic areas, scenic areas, economic development, downtown revitalization or general health and human services needs. |
| (II) | Correlate existing and planned development with existing and planned evacuation infrastructure. | (iii) | Land Use Plan Requirements: Evaluate local concerns and issues for the development of goals, policies and implementation strategies. These may include timelines and identification of funding options. |
| (E) | Water Quality: | (4) | Future land use map. This map depicts application of the policies for growth and development, and the desired future patterns of land use and land development with |
| (i) | Management Goal: Maintain, protect and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries. | | |

consideration given to natural system constraints and infrastructure policies. The local government shall include such categories and descriptions of land uses and development as are required to accurately illustrate the application of its policies. At a minimum, the map shall show the following:

- (A) 14-digit hydrological units encompassed by the planning area;
- (B) areas and locations planned for conservation or open space and a description of compatible land uses and activities;
- (C) areas and locations planned for future growth and development with descriptions of the following characteristics:
 - (i) predominant and supporting land uses that are encouraged in each area;
 - (ii) overall density and development intensity planned for each area; and
 - (iii) infrastructure required to support planned development in each area.
- (D) areas in existing developed areas for infill, preservation, and redevelopment;
- (E) existing and planned infrastructure, including major roads, water, and sewer.

The local government may use additional or more detailed categories if required to depict its land use policies.

If the future land use map shows development patterns or land uses that are not consistent with the natural systems analysis, or the land suitability analysis, then the plan shall include a description of the steps that the local government shall take to mitigate the impacts. In addition, the plan shall include an estimate of the cost of any community facilities or services that shall be extended or developed. The amount of land allocated to various uses shall be calculated and compared to the projection of land needs. The amount of land area thus allocated to various uses may not exceed projected needs as delineated in Part (c)(3)(D) of this Rule (Projections of Future Land Needs).

(e) Tools for Managing Development. This element of the plan provides a description of the management tools that the local government selects and the actions to be taken to implement the CAMA Land Use Plan. It also includes a five-year schedule for implementation. This element shall at a minimum include:

- (1) Guide for land use decision-making. Describe the specific role and the status of the land use plan policies and future land use plan map in local decisions regarding land use and development.
- (2) Existing development program. Describe the community's existing development management program, including local

ordinances, codes, and policies, state and federal laws and regulations, and the role that the existing management program plays in implementing the plan. This description shall also include the community's approach to coordinating these codes and rules to implement the land use and development policies.

- (3) Additional tools. Describe any of the following additional tools selected by the local government to implement the CAMA land use plan policies.

(A) Ordinances:

- (i) Amendments or adjustments in existing development codes required for consistency with the plan;
- (ii) New ordinances or codes to be developed;

(B) Capital improvements program. New, upgraded or expanded community facilities, such as but not limited to the following: water, sewer, stormwater, transportation, and other facilities, and policies regarding connections to and extensions of community facilities;

(C) Acquisition program. Planned acquisition of property, easements, or rights-of-way; and

(D) Specific projects to reach goals.

- (4) Action plan/schedule. Describe the priority actions that will be taken by the local government to implement the CAMA Land Use Plan and specify the fiscal year(s) in which each action is anticipated to start and finish. The document shall contain a description of the specific steps that the local government plans to take to involve the public in monitoring implementation of the CAMA Land Use Plan, including the adoption of local ordinances that affect AECs. The action plan shall be used to prepare the implementation status report for the CAMA Land Use Plan.

Authority G.S. 113A-102, 113A-107(a); 113A-110, 113A-111; 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .1101, .1201, .1205, 1301, .1401, .2001, .2101, .2201, .2401. Notice of Rule-making Proceedings was published in the Register on January 15, 2002 and March 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: July 9, 2002

Time: 7:00 p.m.

Location: Carteret County Courthouse, Courthouse Square, Beaufort, NC

Date: July 24, 2002

Time: 4:30 p.m.

Location: Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action:

15A NCAC 07H .1101, .1201, .1301, .1401, .2001, .2101, .2201, .2401 – The proposed changes would allow more projects to become eligible for CAMA General Permits if they are located on the sound side of a barrier island and within the Ocean Hazards Area of Environmental Concern. At present, many of the CAMA and Dredge and Fill General Permits prohibit development in the Ocean Hazard AEC. However, the situation has changed in recent years due to the significant inland expanse of high hazard flood areas. Because of the changes in these areas, the CRC feels that there is a need to expand the availability for General Permits.

15A NCAC 07H .1205 – Staff has reviewed the specific conditions of the CRC's General Permit for Construction of Piers, Docks and Boat Houses. Staff believes that these proposed changes will allow piers that existed on or before July 1, 2001 to be structurally modified outside of their footprint in a manner that will minimize impacts to adjacent coastal wetlands, estuarine waters and/or public trust areas.

Comment Procedures: Comments may be submitted to Charles S. Jones, Assistant Director, Division of Coastal Management, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, 252-808-2808. Comments will be accepted on these Rules through July 24, 2002.

Fiscal Impact

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

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .1100 - GENERAL PERMIT FOR CONSTRUCTION OF BULKHEADS AND THE PLACEMENT OF RIPRAP FOR SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1101 PURPOSE

This permit will allow the construction of bulkheads and the placement of riprap for shoreline protection in the public trust waters and estuarine waters AECs according to authority provided in Subchapter 07J .1100 and according to the following guidelines. This permit will not apply to shoreline protection along the oceanfront or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such

features include the presence of wetland vegetation, lower wave energy and lower erosion rates than the adjoining Ocean Erodible Area within the ocean hazard AEC.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

SECTION .1200 - GENERAL PERMIT FOR CONSTRUCTION OF PIERS, DOCKS, AND BOAT HOUSES IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1201 PURPOSE

This permit will allow the construction of new piers, docks, and boat houses in the estuarine and public trust waters AECs and construction of new piers and docks within coastal wetlands AECs according to the authority provided in Subchapter 07J .1100 and according to the following guidelines. This permit will not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area within the Ocean Hazard AEC.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

15A NCAC 07H .1205 SPECIFIC CONDITIONS

- (a) Piers, docks, and boat houses may extend or be located up to a maximum of 400 feet from the normal high water line, or the normal water level, whichever is applicable.
- (b) Piers, docks, and boat houses shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public. The length of piers shall be measured from the waterward edge of any wetlands that border the water body.
- (c) Piers longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier lengths shall be made from the waterward edge of any coastal wetland vegetation which borders the water body.
- (d) Piers and docks shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
- (e) Any portion of a pier (either fixed or floating) extending from the main structure and six feet or less in width shall be considered either a "T" or a finger pier.
- (f) Any portion of a pier (either fixed or floating) greater than six feet wide shall be considered a platform or deck.
- (g) "T"s, finger piers, platforms, and decks of piers on lots with shorelines 100 feet or greater in length shall not exceed a combined total area of 400 square feet. The combined total area for lots less than 100 feet shall not exceed four square feet per linear foot of shoreline.
- (h) Platforms and decks shall have no more than six feet of any dimension extending over coastal wetlands.

(i) The width requirements established in Paragraphs (d), (e), (f), (g) and (h) of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than two feet on either side of the principal structure. These modifications may not be used to expand the floor decking of platforms and piers.

~~(j)~~(j) Boathouses shall not exceed 400 square feet and shall have sides extending no further than one-half the height of the walls and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.

~~(k)~~(k) Areas enclosed by boat lifts shall not exceed 400 square feet.

~~(l)~~(l) Piers, docks, decks, platforms and boat houses shall be single story. They may be roofed but shall not be designed to allow second story use.

~~(m)~~(m) Pier alignments along federally maintained channels must also meet Corps of Engineers regulations for pier construction pursuant to Section 10 of the Rivers and Harbors Act.

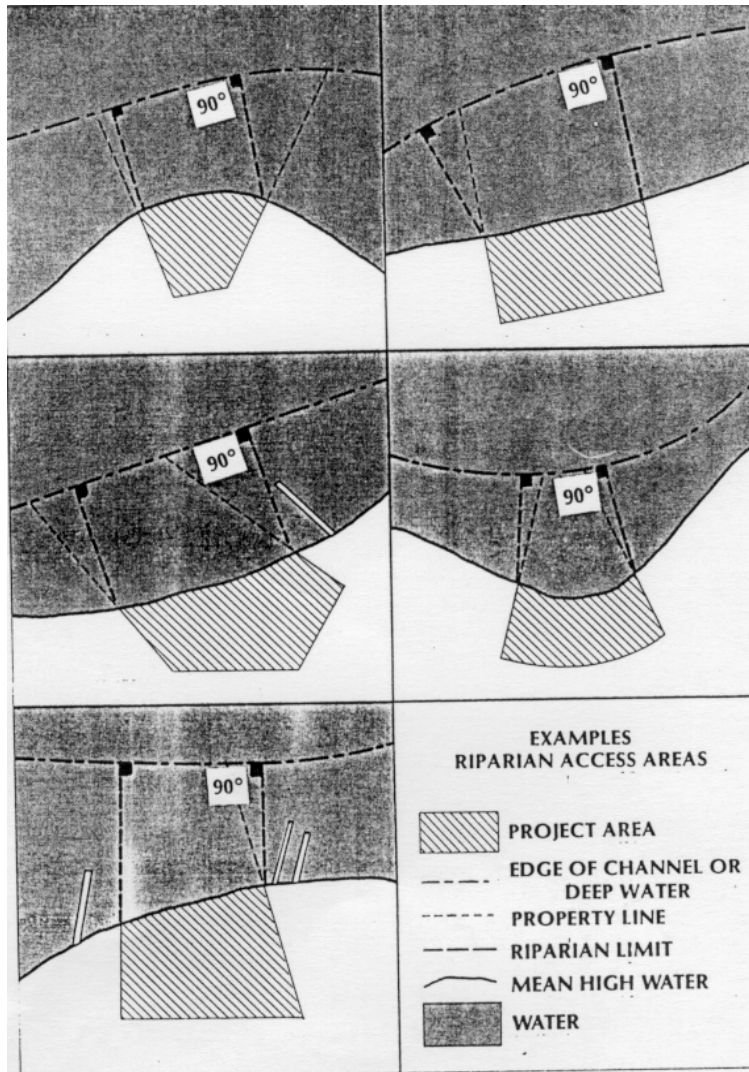
~~(n)~~(n) Piers, docks, and boat houses shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier is located between longer piers within 200 feet of the applicant's property. However, the proposed pier shall not be longer than the pier head line established by the adjacent piers, nor, longer than 1/3 the width of the water body.

~~(o)~~(o) Piers, docks and boat houses shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier, dock, or boat house. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (q) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable.

~~(p)~~(p) Piers, and mooring facilities shall be designed to provide docking space for no more than two boats.

~~(q)~~(q) Applicants for authorization to construct a dock or pier shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

~~(r)~~(r) The diagram shown below illustrates the various shoreline configurations.



Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

**SECTION .1300 - GENERAL PERMIT TO MAINTAIN:
REPAIR AND CONSTRUCT BOAT RAMPS ALONG
ESTUARINE AND PUBLIC TRUST SHORELINES AND
INTO ESTUARINE AND PUBLIC TRUST WATERS AND
OCEAN HAZARD AREAS**

15A NCAC 07H .1301 PURPOSE

A permit under this Section shall allow for the construction of boat ramps along estuarine and public trust shorelines and into estuarine and public trust waters AECs according to the authority provided in Subchapter 07J .1100 and according to the Rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

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

113A-118.1; 113A-124.

**SECTION .1400 - GENERAL PERMIT FOR
CONSTRUCTION OF WOODEN GROINS IN
ESTUARINE AND PUBLIC TRUST WATERS AND
OCEAN HAZARD AREAS**

15A NCAC 07H .1401 PURPOSE

This permit will allow the construction of wooden groins in the estuarine and public trust waters AECs according to the authority provided in Subchapter 07J .1100 and according to the following guidelines. This general permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

**SECTION .2000 - GENERAL PERMIT FOR
AUTHORIZING MINOR MODIFICATIONS AND
REPAIR TO EXISTING PIER/MOORING FACILITIES IN
ESTUARINE AND PUBLIC TRUST WATERS AND
OCEAN HAZARD AREAS**

15A NCAC 07H .2001 PURPOSE

This permit will allow for reconfiguration, minor modifications, repair and improvements to existing pier and mooring facilities in estuarine waters and public trust areas according to the authority provided in Subchapter 07J .1100 of this Chapter and according to the following guidelines. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.~~the Ocean Hazard AEC.~~

Authority G.S. 113A-107; 113A-118.1.

**SECTION .2100 - GENERAL PERMIT FOR
CONSTRUCTION OF MARSH ENHANCEMENT
BREAKWATERS FOR SHORELINE PROTECTION IN
ESTUARINE AND PUBLIC TRUST WATERS AND
OCEAN HAZARD AREAS**

15A NCAC 07H .2101 PURPOSE

This general permit shall allow the construction of offshore parallel breakwaters, made from wood, plastic lumber, or metal sheet piling for shoreline protection in conjunction with existing or created coastal wetlands. This permit shall only be applicable where a shoreline is experiencing erosion in public trust areas and estuarine waters according to authority provided in 15A NCAC 07J .1100 and according to the procedures and conditions outlined in this subchapter. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines within the ocean hazard AEC, the inlet hazard AEC, or waters adjacent to these AEC's, with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in adjoining Ocean Erodible Area.

Authority G.S. 113A-107; 113A-118.1.

**SECTION .2200 - GENERAL PERMIT FOR
CONSTRUCTION OF FREESTANDING MOORINGS IN
ESTUARINE WATERS AND PUBLIC TRUST AREAS
AND OCEAN HAZARD AREAS**

15A NCAC 07H .2201 PURPOSE

This permit shall allow the construction of freestanding moorings in the estuarine waters and public trust areas AECs according to the procedures provided in 15A NCAC 07J .1100 and according to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the

Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.~~the Ocean Hazard AEC.~~

Authority G.S. 113A-107; 113A-118.1.

**SECTION .2400 - GENERAL PERMIT FOR PLACEMENT
OF RIPRAP FOR WETLAND PROTECTION IN
ESTUARINE AND PUBLIC TRUST WATERS AND
OCEAN HAZARD AREAS**

15A NCAC 07H .2401 PURPOSE

The general permit for placement riprap for wetland protection in estuarine and public trust waters shall allow the placement of riprap immediately adjacent to and waterward of wetlands. This permit shall only be applicable where a shoreline is experiencing erosion in public trust areas and estuarine waters according to authority provided in 15A NCAC 07J .1100 and according to the rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AEC's with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

Authority G.S. 113A-107; 113A-118.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR – Forest Resources intends to adopt the rules cited as 15A NCAC 09C .1201-.1227. Notice of Rule-making Proceedings was published in the Register on February 1, 2002 and April 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: July 9, 2002

Time: 5:00 p.m. – 8:00 p.m.

Location: Transylvania County Courthouse, 28 E. Main St., Brevard, NC

Reason for Proposed Action: *To initiate rules to provide for public safety and appropriate use of the DuPont State Forest.*

Comment Procedures: *Written comments will be accepted through July 31, 2002 and should be addressed to DuPont State Forest Supervisor, NC Division of Forest Resources, 14 Gaston Mountain Rd., Asheville, NC 28806-9101.*

Fiscal Impact

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

CHAPTER 09 – DIVISION OF FOREST RESOURCES

SUBCHAPTER 09C – DIVISION PROGRAMS

SECTION .1200 – DUPONT STATE FOREST

15A NCAC 09C .1201 PURPOSE

(a) This Section coordinates all uses of DuPont State Forest in order to promise its best use for the most people.

(b) DuPont State Forest is located in southwest Henderson and northeast Transylvania Counties in western North Carolina.

Authority G.S. 113-8; 113-34; 113-35.

15A NCAC 09C .1202 DEFINITIONS OF TERMS

Whenever used in this Subchapter:

- (1) "Bridle Trail" means any trail maintained for persons riding on horseback.
- (2) "Public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.
- (3) "Hiking Trail" means any trail maintained for pedestrians.
- (4) "Bathing Area" means any beach or water area designated by the department as a bathing area.
- (5) "Permit" means any written license issued by or under the authority of the department permitting the performance of a specified act or acts.
- (6) "Group" means a number of individuals related by a common factor, having structured organization, defined leadership, and whose activities are directed by a charter or written bylaws.

Authority G.S. 113-35.

15A NCAC 09C .1203 PERMITS

(a) A permit authorizes an act only when that act strictly conforms with the terms contained on the permit, or in applicable rules, and with existing state laws.

(b) Any violation of the permit constitutes grounds for its revocation by the department. In case of revocation the permit holder shall forfeit to the department all money for the permit. Furthermore, the department shall consider the permit holder, together with his agents and employees who violated such terms, jointly and severally liable to the department for all damages suffered in excess of money so forfeited. However, neither the forfeiture of such money, nor the recovery of such damages, nor both, in any manner relieves such person from statutory punishment for any violation of a provision of any state forest rule.

(c) A permit may be issued to a person or a group as defined in Rule .1202 of this Section engaged in an activity whose purpose is civic, educational, scientific, or non-profit; to government entities engaged in training activities; or to persons or groups performing volunteer maintenance activities on the forest that are authorized in advance by the forest supervisor.

(d) Applications for permits shall be made at the State Forest Office during business hours.

Authority G.S. 113-8; 113-34; 113-35.

15A NCAC 09C .1204 ROCK OR CLIFF CLIMBING AND RAPPELLING

A person shall not engage in rock or cliff climbing or rappelling in DuPont State Forest, except at designated areas and only after obtaining a special use permit from a forest official. Application for permits may be made as provided by Rule .1203 of this Section.

Authority G.S. 113-35.

15A NCAC 09C .1205 BATHING OR SWIMMING

(a) A person shall not dive or jump from any falls or rocks or overhangs into any body of water.

(b) A person shall not bathe or swim in any body of water in the Forest, except at such times and in such places as the Division may designate as swimming areas.

(c) Public Nudity

(1) Public nudity, including public nude bathing, is prohibited in all of DuPont State Forest lands or waters. This Rule does not apply to the enclosed portions of bathhouses, restrooms, tents and recreational vehicles.

(2) Children under the age of five are exempt from this restriction.

Authority G.S. 14-190.9; 113-35.

15A NCAC 09C .1206 HUNTING

(a) Hunting Restricted. A person shall not hunt any wild bird or wild animal in the State Forest, except that:

(1) a person may hunt game birds or game animals:

(A) during open seasons prescribed by the North Carolina Wildlife Resources Commission; and

(B) provided that he has a valid game lands use permit and special hunt permit in addition to an appropriate hunting or sportsman's license.

(2) Safety Requirements. A hunter shall not:

(A) be under the influence of alcohol;

(B) discharge a firearm or bow and arrow from a vehicle, or within 150 yards of any building or designated camping area, or within, into, or across a posted safety zone;

(C) discharge a firearm within, into, or across a posted restricted zone;

(D) drive a motorized vehicle other than on roads and trails maintained for vehicular use, or in excess of 20 miles per hour; and

(E) obstruct a state forest road or trail.

(b) Tree Stands. Hunters shall not erect or occupy any tree stand attached to any tree, unless they use a portable stand that leaves no metal in the tree.

(c) Trapping. A person may trap furbearing animals during open seasons, except in posted safety zones, provided that he has a valid

game lands use permit and trapping license, and provided that he obeys all state laws, rules and regulations.

Authority G.S. 113-8; 113-34; 113-35; 113-264(a).

15A NCAC 09C .1207 FISHING

A person may fish in any stream in DuPont State Forest provided that he has a valid state or county fishing license, and provided that he obeys all state fishing laws, rules and regulations.

Authority G.S. 113-8; 113-34; 113-35.

15A NCAC 09C .1208 ANIMALS AT LARGE

(a) No person shall have any dog, cat or other pet upon DuPont State Forest unless the animal is on a leash no longer than six feet and under the control of the owner or some other person. Hunting dogs used in accordance with NC Wildlife Commission Game Lands Regulations pertaining to DuPont State Forest are exempt from this Rule.

(b) No dog, cat or other pet shall be allowed to enter the toilet or bathhouse on DuPont State Forest except assistance animals for persons with disabilities.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1209 BOATING

(a) Privately owned boats or canoes may be operated in any waters on DuPont State Forest, provided they are manually operated or propelled by means of oars, paddles or electric trolling motors. Boats with gas motors attached are prohibited on any waters of the forest, except for use by rescue squads, diving teams, or other organizations conducting emergency operations.

(b) Operation of boats or canoes within 50 yards of the water intake on Lake Julia is prohibited.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1210 CAMPING

No person shall spend the night or maintain a camp in DuPont State Forest except under permit, and at such places and for such periods as may be designated. Application for permits may be made as provided by Rule .1203 of this Section.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1211 SPORTS AND GAMES

No games or athletic contests shall be allowed except in places as may be designated.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1212 HORSES

(a) No person shall use, ride or drive a horse except to, from, or along a bridle path or other designated area.

(b) Each user shall remove from designated parking areas all residues (including manure) generated by his/her horse.

(c) When dismounted, horses shall be tied in such a manner as to prevent damage to trees or any other plants.

(d) When crossing rivers or streams, horse use shall be confined to bridges or culverts if available.

(e) Users shall possess valid Coggins papers for each horse and make them available for inspection upon request.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1213 BICYCLES

(a) No person shall use or ride a bicycle except on a road or trail authorized for use by motor vehicles or specifically designated as a bicycle trail.

(b) When crossing rivers or streams, bicycle use shall be confined to bridges or culverts if available.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1214 EXPLOSIVES

No person shall carry or possess any explosives or explosive substance including fireworks upon DuPont State Forest. This does not apply to employees of the department when they engage in construction or maintenance of the area.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1215 FIREARMS

No person except authorized forest law enforcement officers of the department, game protectors, and bona fide peace officers on official duty shall carry or possess firearms of any description, or air guns or pellet guns, on or upon DuPont State Forest. Properly licensed hunters that meet the requirements of Rule .1206 of this Section are exempt from this Rule.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1216 FIRES

No person shall build or start a fire in any area unless that area is designed for such purpose. These areas include fireplaces and grills made for this purpose.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1217 DISORDERLY CONDUCT

No person visiting on DuPont State Forest shall disobey a lawful order of a state forest supervisor, ranger, assistant ranger, or law enforcement officer or endanger or disrupt others.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1218 INTOXICATING BEVERAGES AND DRUGS

No person shall use or be intoxicated or under the influences of intoxicants, marijuana, or non-prescribed narcotic drugs as defined in G.S. 90-87. The public display or use of beer, wine, whiskey, other intoxicating beverages, marijuana or non-prescribed narcotic drugs is hereby prohibited.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1219 COMMERCIAL ENTERPRISES

No person, being without a permit, shall in or on DuPont State Forest, sell or offer for sale, hire, or lease, any object or

merchandise, property, privilege, service or any other thing, or engage in any business. Application for permits may be made as provided by Rule .1203 of this Section.

Authority G.S. 113-22; 113-34; 113-35.

15A NCAC 09C .1220 NOISE REGULATION

The production or emission in DuPont State Forest by any person of noises, amplified speech, music or other sounds that annoy, disturb or frighten forest users, in the opinion of a Division of Forest Resources employee, is prohibited.

Authority G.S. 113-34; 113-35; 113-264(a).

15A NCAC 09C .1221 MEETINGS AND EXHIBITIONS

A person shall not hold any meetings or exhibitions, perform any ceremony, or make any speech, on DuPont State Forest without a permit. Application for permits may be made as provided by Rule .1203 of this Section.

Authority G.S. 113-35.

15A NCAC 09C .1222 ALMS AND CONTRIBUTIONS

A person shall not solicit alms or contributions for any purpose within DuPont State Forest, unless approved by the Division of Forest Resources, and such contributions will be used to benefit the forest.

Authority G.S. 113-35.

15A NCAC 09C .1223 AVIATION

(a) Except as noted in Paragraphs (b) and (c) of this Rule, a person shall not voluntarily bring, land or cause to descend or alight, ascend or take off within or upon any DuPont State Forest area, any airplane, flying machine, balloon, parachute, glider, hang glider, or other apparatus for aviation. Voluntarily in this connection shall mean anything other than a forced landing.

(b) In forest areas where aviation activities are part of the planned forest activities, a special use permit will be required. Application for permits may be made as provided by Rule .1203 of this Section.

(c) Emergency aircraft such as air ambulances and fire fighters are exempt from this Rule.

Authority G.S. 113-35.

15A NCAC 09C .1224 EXPULSION

For violation of the Rules in this Section, the department may withdraw the right of a person or persons to remain in DuPont State Forest.

Authority G.S. 113-8; 113-34; 113-35.

15A NCAC 09C .1225 MOTORIZED VEHICLES: WHERE PROHIBITED

A person shall not drive a motorized vehicle in the forest within or upon a safety zone, walk, bridle trail, fire trail, service road, or any part of the forest not designated for such purposes. Motor bikes, mini-bikes, all terrain vehicles, and unlicensed motor vehicles are prohibited within the forest.

Authority G.S. 113-35.

15A NCAC 09C .1226 FLOWERS: PLANTS: MINERALS: ETC.

(a) A person shall not remove, destroy or injure any tree, flower, artifact, fern, shrub, rock or other plant or mineral in any forest area. Silvicultural activities performed in accordance with the DuPont State Forest Management Plan, as approved by the Director of the Division of Forest Resources, are exempt from this Rule.

(b) A person shall not collect plants, animals, minerals or artifacts from any forest area without first having obtained a collector's permit. Application for permits may be made as provided by Rule .1203 of this Section.

Authority G.S. 113-35.

15A NCAC 09C .1227 FEES AND CHARGES

The following fee schedule shall apply at DuPont State Forest. Payment of the appropriate fee shall be a prerequisite for the use of the public service facility or convenience provided. Unless otherwise provided in this Rule, the number of persons camping at a particular site may be limited by the forest supervisor depending upon the size of the camping group and the size and nature of the campsite. The forest supervisor may waive fees for groups performing volunteer trail maintenance or other activities providing benefit to the forest.

TYPE OF FACILITY OR CONVENIENCE

FEE

(1) CAMPING

(a) Primitive, unimproved campsites with pit privies.

\$8.00 (per campsite, daily)

Fresh water also available.

(b) Primitive group tent camping, unimproved campsites with pit privies.

\$1.00 (per person, with \$8.00 minimum)

(c) Improved group camping (water, restrooms and shower facilities available).

\$35.00 (per day, maximum capacity 35)

(2) PICNIC SHELTER RENTAL

(by reservation only)

\$20.00 (1-2 tables)

\$35.00 (3-4 tables)

\$50.00 (5-8 tables)

\$75.00 (9-12 tables)

(3) COMMUNITY BUILDINGS

passes)

\$150.00 (per day, includes up to 20 car

(4) HORSE BARN

20

\$10.00 (daily per horse, maximum capacity

(5) SPECIAL ACTIVITIES (for uses not identified in this Rule)

horses)

\$1.00 (per person, with a \$25.00 maximum).

Authority G.S. 113-35(b).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

Authority G.S. 89E-4; 89E-5; 143-318(6); 143-318.11.

CHAPTER 21 - BOARD OF GEOLOGISTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board for Licensing of Geologists intends to adopt the rules cited as 21 NCAC 21 .0606-.0607, amend the rules cited as 21 NCAC 21 .0103-.0104, .0107, .0301-.0302, .0501-.0502, .0514-.0515, .0603-.0605, .0802-.0804, .0902-.0903, .1001-.1002 and repeal the rules cited as 21 NCAC 21 .0106, .0503-.0504. Notice of Rule-making Proceedings was published in the Register on February 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: July 9, 2002

Time: 10:00 a.m.

Location: 3733 Benson Dr., Raleigh, NC

Reason for Proposed Action: *Some of the rules were outdated in that they did not conform to the Administrative Procedures Act; the office address has changed; rules are changed to be more specific, including authority citation; new rules clarify procedures for disciplinary hearings.*

Comment Procedures: *Address comments to Robert Upton, PO Box 41225, Raleigh, NC 27629, call 919-850-9669. Comments will be accepted through July 17, 2002.*

Fiscal Impact

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

SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

21 NCAC 21 .0103 ORGANIZATION OF THE BOARD

~~(a) Meetings shall be open and public except that the Board may meet in closed sessions for the purposes specified in G.S. 143-318.11. The Board is exempt from the requirement to meet in public when it meets to prepare, approve, administer or grade examinations, to deliberate the qualifications of an applicant for license or registration, or to deliberate on the disposition of a proceeding to discipline a licensed geologist. any disciplinary action for a licensed geologist or registered geological corporation or geological limited liability company.~~

~~(b) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction.~~

~~(c) The chairman and ex-officio member shall be full voting members of the Board.~~

21 NCAC 21 .0104 DUTIES OF OFFICERS

(a) Chairman. The chairman shall, when present, preside at all meetings, appoint all committees, sign all certificates issued and perform all other duties pertaining to his office.

(b) Vice-Chairman. The vice-chairman, in the absence of the chairman, shall perform all of the duties of the chairman.

(c) Secretary Treasurer:

(1) The secretary treasurer, with the assistance of an executive director or such other officers or employees as may be approved by the Board, shall conduct and care for all the correspondence of the Board, keep the minutes of all the meetings, keep all books and records, and shall sign all certificates issued. He shall have charge, care and custody of the official documents by order of the Board. He shall provide due notice of the time and place of all meetings of the Board to each member of the Board.

(2) The secretary treasurer, with the assistance of an executive director or such other officers or employees as may be approved by the Board, shall receive all moneys from applicants for annual renewal or other fees and deposit them in an authorized depository of the Board. The secretary treasurer shall give bond to be conditioned on the faithful performance of the duties of his office and on the faithful accounting of all monies and other property as shall come into his hands.

(3) ~~The secretary treasurer shall mail a copy of Chapter 89E of the North Carolina General Statutes, as amended, and the rules of this Chapter, to each applicant for a license in and out of the state, with the assistance of an executive director or such other officers or employees as may be approved by the Board, shall provide to each applicant for a license or registration a current copy of G.S. 89E and the rules of this Chapter. Copies of the Geologists Licensing Act and the rules of this Chapter shall be provided by mail with the application packet or in electronic format on the Board's Internet website (www.ncblg.org) with the on-line application packet.~~

Authority G.S. 89E-4; 89 E-5.

21 NCAC 21 .0106 FORMS

~~Forms used by the Board, and available from the Board office upon request, include the following:~~

(1) — Application for Licensing as a Geologist,

PROPOSED RULES

- ~~(2) Application for License by Comity;~~
- ~~(3) Application for Renewal of License;~~
- ~~(4) Application for Reinstatement of License;~~
- ~~(5) Application for Corporate Registration, and~~
- ~~(6) Certificate of Registration.~~

Authority G.S. 55B-2(6); 55B-10; 89E-8; 89E-10; 89E-11; 89E-12.

21 NCAC 21 .0107 FEES

(a) Completed application forms must be accompanied by the prescribed fee. Application fees will not be refunded regardless of Board approval or disapproval of the application. Prescribed fees shall not be more than:

- ~~(1) application forms for licensing as a geologist, including a copy of the Geologists Licensing Act and Rules: \$ 5.00~~
- ~~(2)(1) Application for license \$50.00 \$ 55.00~~
- ~~(2) Application for registration \$ 50.00~~
- ~~(3) Examination per part: cost plus \$350.00 \$ 30.00~~
- ~~(4) application for license by comity: \$ 50.00~~
- ~~(5)(4) Biennial Annual renewal of license \$70.00 \$ 85.00~~
- ~~(5) Annual renewal of certificate of registration for corporation or limited liability company \$ 25.00~~
- ~~(7)(6) Application for reinstatement of license \$50.00 \$ 150.00~~
- ~~(7) Application for reinstatement of registration \$10.00~~
- ~~(8) licensed geologist stamp and seal: cost plus \$5.00~~
- ~~(6)(8) Replacement of license or registration certificate \$10.00~~
- ~~(9) application for corporate registration: \$50.00~~
- ~~(9) Licensed geologist stamp or seal: cost plus \$ 7.50~~
- ~~(10) annual renewal of certificate of registration for corporations \$25.00~~
- ~~(11)(10) Registered geological corporation or limited liability company stamp and/or seal: cost plus \$7.50~~

(b) All licenses will expire ~~biennially~~ on July 1. ~~Biennial Annual license renewal fees received after July 1 and before September 1-August 1 of the year due shall be subject to the assessment of a late payment penalty of twenty five dollars (\$25.00). All certificates of registration for corporations will expire annually on July 1. Annual renewal fees for certificates of registration for corporations received after August 1 and before December 31 shall be subject to a late payment penalty of twenty five dollars (\$25.00). accompanied by a late payment penalty of fifty dollars (\$50.00).~~

(c) Licenses that have not been renewed by ~~September 1-August 1~~ may only be renewed by:

- ~~(1) filing a reinstatement application and submitting a reinstatement fee. application, demonstrating that the applicant is otherwise qualified and entitled to license renewal, in accordance with Rule .0302 of this Chapter;~~

- ~~(2) payment of any delinquent annual fees having accrued since the last timely renewal of the license or registration; and~~
- ~~(3) payment of the reinstatement fee specified in Subparagraph (a)(6) of this Rule.~~

~~(d) All registrations will expire on July 1. If a corporation or limited liability company fails to apply for renewal of its certificate of registration by August 1 of the year due, the registration may only be renewed by:~~

- ~~(1) filing a reinstatement application, demonstrating that the firm is otherwise qualified and entitled to a renewal of its certificate of registration, in accordance with Rule .0302 of this Chapter;~~
- ~~(2) payment of the required renewal fee; and~~
- ~~(3) payment of the ten dollar (\$10.00) fee specified in Subparagraph (a)(7) of this Rule.~~

~~(d) (e) Licenses and registrations that have been suspended revoked under G.S. 89E-19 may be reinstated by filing a reinstatement application in accordance with Rule .0302 of this Chapter and paying the reinstatement fee-fee specified in Subparagraph (a)(6) or (a)(7) of this Rule, as applicable.~~

~~(f) Extensions for certain members of armed forces. Individuals who are serving in the armed forces of the United States to whom an extension of time to file a tax return has been granted by G.S. 105-249.2 shall be granted an extension of time to pay their annual license fee. Such individuals shall provide to the Board documentation to support their request for extension.~~

Authority G.S. 55B-2(6); 55B-10; 55B-11; 89E-5; 89E-8; 89E-10; 89E-12; 89E- 13; 89E-19; 93B-15; 105-249.2.

SECTION .0300 - LICENSING OF GEOLOGISTS

21 NCAC 21 .0301 REQUIREMENTS FOR LICENSING

(a) Education. In determining whether an applicant meets the minimum education requirements of the Geologists Licensing Act, the Board is authorized to determine which colleges and universities are properly accredited, and which geologic science courses qualify for meeting the minimum requirements.

(b) References. Five letters of reference submitted to the Board which shall satisfy the Board as to the character, reputation, responsibility, integrity and competence of the applicant. These letters of reference must be submitted by licensed or qualified geologists or professional engineers. No member of the Board shall act as a reference for any applicant for licensing. At least two of the five letters of reference must be submitted by licensed or qualified geologists who are familiar with the applicant's work in the field of geology.

(c) Written Examination. A written examination approved by the Board shall be required of all applicants. The passing grade on any written examination for licensing shall be established by the Board in advance of the examination. The applicant shall be notified, not less than 30 days before the examination, as to the time and place of the examination. A person who has failed an examination is allowed to take the examination again at the next regularly scheduled examination period. A person having a record of three failures will not be allowed to take that examination again until a written appeal is made to the Board and qualifications for examination are reviewed and reaffirmed

by the Board. The applicant must demonstrate to the Board that actions have been taken to improve the applicant's possibility of passing the exam.

(d) Experience. In determining whether an applicant meets the minimum experience requirements of the Geologists Licensing Act, the Board will consider the total work experience record of the applicant. The Board will look for the applicant's ability to conduct geological work in a satisfactory manner with little or no supervision. The Board is authorized to determine which colleges and universities are properly accredited and which geological science courses qualify for experience in the field of geology.

(e) ~~Certificate by comity:~~

(1) ~~The Board, within its discretion, may grant a license, by comity, to a person holding a license or certificate in good standing of registration in geology from any legally constituted Board of examiners in another state whose licensing, registration and requirements are deemed to be equal or equivalent to those of this state.~~

(2) ~~To assure that the requirements of the other state are at least equivalent to those of this state, the applicant shall be required to show evidence of education and experience equal to those required of geologists licensed in this state who obtained a license by examination as set out in this Rule and Rule .0302 of this Section.~~

(e) Certificate by comity. The Board shall grant a license without further examination to a person holding a license to engage in the practice of geology, which license has been issued by another jurisdiction, when the applicant meets the following conditions:

- (1) the applicant has filed an application for license and paid the fee required by Rule .0107 of this Chapter;
- (2) the applicant has provided evidence of education and experience equal to the requirements of Paragraphs (a), (b), and (d) of this Rule as indicated in Rule .0302 of this Section;
- (3) the applicant is in good standing with the agency regulating the practice of geology in any jurisdiction in which the applicant holds a license to practice geology; and
- (4) the applicant has successfully passed a written examination deemed to be equal or equivalent to the examination administered by the Board pursuant to G.S. 89E-9 and Paragraph (c) of this Rule.

Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11.

21 NCAC 21 .0302 APPLICATION PROCEDURE

(a) All applicants for licensing, ~~except those applying under comity,~~ are required to furnish with their applications the following:

- (1) A legible official copy of their college transcript(s), and verification of graduation sent directly from the institution to the Board;

(2) ~~A record—Verification of experience in the practice of geology including any of the applicant's written reports, maps, published articles or other materials the Board determines are appropriate to document the applicant's experience as a geologist; on forms provided by the Board;~~

(3) Five references as defined in Rule .0301(b) of this Section;

(4) A notarized copy of a completed application form as prescribed by the Board; and

(5) The application fee as prescribed in Rule .0107 of this Chapter.

~~(b) Applicants for licensing under comity shall submit an application form as prescribed by the Board along with the fee as provided in Rule .0107 of this Chapter. The Board may require the submittal of additional information.~~

~~(b)(c) Applicants for reinstatement of an expired license or registration shall submit a reinstatement application and shall submit the prescribed fee in as provided by Rule .0107 of this Chapter.~~

~~(c)(d) Applicants for reinstatement of a revoked or suspended license or registration shall submit such information as is required by the Board on a case-by-case basis, to determine eligibility for reinstatement pursuant to G.S. 89E-21, and shall submit the fee as provided by Rule .0107 of this Chapter.~~

~~(e) Applicants for renewal of license who practice geology less than 15 days per year must submit a notarized affidavit that they have practiced geology in North Carolina less than 15 days during the past year and that they will practice less than 15 days in each of the coming two years. If a licensed geologist in fact practices 15 or more days in either year in North Carolina, he shall submit to the Board the balance of the fee prescribed for regular license renewal in Rule .0107 of this Chapter.~~

~~(d) Additional information required by the Board to approve or deny approval on any application shall be filed with the Board within 60 days of the applicant's receipt of notice to provide such information. This may include any of the applicant's written reports, maps, published articles or other materials the Board determines are appropriate to document the applicant's experience as a geologist. Failure to submit the supplemental information requested within the time allowed by this Rule may result in the Board's rejection of the application without further notice prior to such rejection.~~

Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11; 89E-12; 89E-21.

SECTION .0500 - DISCIPLINARY ACTION AND PROCEDURE

21 NCAC 21 .0501 FILING OF CHARGES AND DISCIPLINARY ACTIONS

(a) Any person may file with the Board a charge of negligence, incompetence, dishonest practice, or other misconduct or of any violation of G.S. 89E or of these Rules.

(b) Upon receipt of such charge or upon its own initiative, the Board may, consistent with procedures required by G.S. 150B, suspend or revoke the license or certificate of registration, ~~may impose a civil penalty not in excess of five thousand dollars (\$5,000), may issue a reprimand or caution as provided in Rules Rule .0502 and .0504 of this Section or may upon a statement of~~

the reasons therefore dismiss the charge as unfounded or trivial, which statement shall be mailed to the geologist and the person who filed the ~~charge~~ charge by certified mail. If the Board determines that a licensee is professionally incompetent, the Board may require the licensee to demonstrate fitness to practice as allowed in G.S. 89E-19(b). In addition to issuing a reprimand or suspending or revoking a license or certificate of registration, the Board may impose a civil penalty for any violation of G.S. 89E or these Rules, such penalty not to exceed five thousand dollars (\$5,000.00).

(c) The Board may publish in the Board's newsletter or other public media any disciplinary action taken against a licensee or registrant or any legal action taken against any person engaged in the practice of geology in violation of G.S. 89E or these Rules.

Authority G.S. 89E-5; 89E-17; 89E-19; 89E-20.

21 NCAC 21 .0502 REPRIMAND

(a) If ~~probable cause~~ evidence of a violation is found, but it is determined that a disciplinary hearing is not warranted, the Board may issue a reprimand to the accused party. A record of such reprimand shall be mailed to the accused party and within 15 days after receipt of the reprimand the accused party may refuse the reprimand and request that a Hearing be held pursuant to G.S. 150B. Such refusal and request shall be addressed to the Board and filed with the ~~secretary-treasurer~~ Executive Director of the Board.

(b) Upon filing of a notice refusing the reprimand and requesting a hearing, the Board shall determine whether to grant the request and whether, having granted the request, the Board will conduct the evidentiary hearing or whether it will refer the matter to the Office of Administrative Hearings for designation of an administrative law judge to conduct the hearing. If the Board elects to conduct the hearing, ~~the~~ the legal counsel for the Board shall thereafter prepare and file a Notice of Hearing. If the Board refers the matter to the Office of Administrative Hearings, that agency shall prepare and serve all subsequent notices related to the evidentiary hearing, including the Notice of Hearing.

(c) If the letter of reprimand is accepted, a copy of the reprimand shall be maintained in the office of the Board. If a party receiving a reprimand wishes merely to file a letter rebutting his reprimand, he may in writing waive his right to hearing and submit a letter of rebuttal to be placed in his file.

Authority G.S. 89E-5; 89E-19; 89E-20.

21 NCAC 21 .0503 APPLICABLE HEARING RULES

~~When the Board elects to have the Office of Administrative Hearings hear a contested case, the Board's rules pertaining to contested case hearings, instead of the rules of the Office of Administrative Hearings, shall apply.~~

Authority G.S. 89E-5; 89E-20; 150B-38.

21 NCAC 21 .0504 CAUTION

~~If no probable cause is found, but it is determined by the Board that the conduct of the accused party is not in accord with accepted professional practice or may be the subject of discipline if continued or repeated, the Board may issue a letter of caution~~

~~to the accused party stating that the conduct, while not the basis for a disciplinary hearing, is not professionally acceptable or may be the basis for a disciplinary hearing if repeated. A record of such letter of caution shall be maintained in the office of the Board.~~

Authority G.S. 89E-5.

21 NCAC 21 .0514 INVESTIGATION

(a) Valid complaints received by the Board shall be forwarded to an investigator for further inquiry as to whether the acts or omissions alleged violate the provisions of G.S. 89E, the Board's code of professional conduct, or any other rules of this Chapter. The Board's executive director shall notify the licensee or corporate registrant of the complaint and advise the licensee or corporate registrant that:

- (1) He has a duty to cooperate fully with the investigation by the Board; and
- (2) He may submit a written response to the complaint.

(b) The investigator shall collect all information needed to determine whether a violation has occurred and the nature and severity of the violation. Information gathered during the course of an investigation shall be treated by the Board as confidential information in accordance with G.S. 89E-18(c) until the Board ~~takes~~ makes a final agency decision taking disciplinary action against the licensee or ~~corporate registrant~~ registrant; however, the Board cannot ensure the confidentiality of any information introduced into evidence in a hearing conducted by the Office of Administrative Hearings upon referral from the Board, because the information becomes part of the public record of that agency at the time of introduction.

(c) After collecting information relevant to the complaint, the investigator will submit a report consisting of the complaint, information gathered in the course of investigation, and the investigator's conclusion to a peer review committee for evaluation. The peer review committee will consist of at least two professional geologists, each of whom hold a currently valid license issued by the Board.

(d) The investigation report (including, but not limited to, the supporting information relevant to the complaint) and the written evaluation of the peer review committee shall be submitted to the Executive Director of the Board to be combined with the licensee's written response to the complaint, if any, for further proceedings in accordance with Rule .0515 of this Section.

Authority G.S. 89E-5; 89E-17; 89E-20.

21 NCAC 21 .0515 DISCIPLINARY PROCEDURE

(a) Upon receipt of an investigation report and evaluation from the Board's investigator and peer review committee in accordance with Rule .0514 of this Section, the Board's Executive Director shall forward to the Chairman of the Board (or to a member of the Board designated by the Chairman) the investigation report, evaluation, and the supporting documentation along with the licensee's or registrant's written response to the complaint, if any.

(b) The Chairman (or a member of the Board designated by the Chairman) is delegated authority to propose the disciplinary action for the violation(s) revealed by the investigation consistent with the provisions of G.S. 89E-19. The Chairman

(or a member of the Board designated by the Chairman) is also delegated authority to issue a summary suspension pursuant to G.S. 150B-3(c).

(c) After review of the investigation report, evaluation, and supporting documentation, the Chairman shall notify the licensee or ~~corporate~~-registrant of the proposed disciplinary action by certified mail sent to the last known address of the licensee or ~~corporate~~-registrant as indicated by the Board's official roster. This notification shall contain a summary of the alleged facts or conduct upon which the proposed disciplinary action is based, the effective date of the proposed disciplinary action, and an explanation of the licensee's or ~~registrant's~~ hearing rights pursuant to G.S. 150B, Article 3A. Notification for summary suspensions shall meet the requirements of G.S. 150B-3(c).

(d) The licensee or ~~corporate~~-registrant has 15 days from receipt of notification of proposed disciplinary action to file with the Board a written request for hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the date due. If the licensee or ~~corporate~~-registrant does not file a written request for hearing with the Board, the Board shall receive the Chairman's recommendation on disciplinary action at its next meeting. If a majority of the Board members agree with the Chairman's recommendation the proposed disciplinary action becomes a final agency decision. If a majority of the Board members do not agree with the Chairman's recommendation, the Board shall make a review of the facts (limited to the investigator's report without supporting documentation) solely for the purpose of determining whether probable cause exists to support the allegations of violation of law and for the purpose of proposing an appropriate disciplinary action. The Chairman shall not participate in the deliberations or the voting with regard to either his recommendation or the Board's decision regarding a substitute disciplinary action. A new notice of proposed disciplinary action will be sent to the licensee or ~~corporate~~ registrant, if necessary, in accordance with the procedure set out in Paragraph (c) of this Rule, and the licensee or ~~corporate~~ registrant has 15 days from receipt of the new notice of proposed disciplinary action to file with the Board a written request for a hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the date due.

(e) The licensee or ~~corporate~~-registrant may request a settlement conference; however, neither the request for settlement conference nor the Board's agreement to enter into settlement negotiations will extend the 15-day deadline for requesting an opportunity for a hearing or any other deadlines in the hearing process. The Chairman (or a member of the Board designated by the Chairman) is delegated authority to negotiate a settlement; however, the settlement agreement must be approved by a majority of the members of the Board before the proposed disciplinary action will be rescinded.

(f) Upon receipt of written request for hearing, the Board may conduct an administrative hearing as authorized by G.S. 150B-38 or the Board may request the Office of Administrative Hearings to conduct the hearing as authorized by G.S. 150B-40. Hearings shall be conducted in accordance with the rules of this Chapter.

(g) A majority of the members of the Board will render the final agency decision, in accordance with G.S. 150B-42, after a hearing on the proposed disciplinary action. The Chairman, or if applicable the designated member, who proposed the

disciplinary action after a full review of the facts available to the investigator and peer review committee will not participate in the discussion of the contested case and will not vote on the final decision for disciplinary action. Nothing in this Rule shall prevent members of the Board from participating in the discussion and vote on a final agency decision with regard to proposed disciplinary action if they have reviewed the investigator's report without supporting documentation solely for the purpose of determining whether probable cause existed to support the allegations of violation and for the purpose of proposing an appropriate disciplinary action.

Authority G.S. 89E-5; 89E-19; 89E-20; 150B-3; 150B-38 through 150B-42.

SECTION .0600 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS

21 NCAC 21 .0603 SUBPOENAS

~~(a) Requests for subpoenas for the attendance and testimony of witness or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within three days of receipt of the request. The Board may use the following procedure to issue a subpoena pursuant to the authority granted the Board by G.S. 150B-39:~~

- ~~(b)~~(1) Subpoenas shall be issued in duplicate, with a "Return of Service" form attached to each copy. The person serving the subpoena shall fill out the "Return of Service" form for each copy and promptly return one copy of the subpoena, with the attached "Return of Service" form completed to the Board;
- (e)(2) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepayes the Sheriff's service fee;
- ~~(d)~~(3) In accordance with G.S. 150B-39, the Board may quash any subpoena issued in a case for which the Board is conducting a hearing. Any person receiving a subpoena ~~from the Board in such case~~ may object thereto by filing a written objection to the subpoena with the Board by mailing same to the Board office.
- (e)(4) Such objection will include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, lack of particularity in the description of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.
- ~~(f)~~(5) Any such objection to a subpoena must be served on the party who requested the

subpoena simultaneously with the filing of the objection with the Board.

(g)(6) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(h)(7) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party who is challenging it, and may notify all other parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response, if any.

(i)(8) Promptly after the close of such hearing, the Board will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

(j)(9) Subpoenas shall contain the following:

- (A) the caption of the case;
- (B) the name and address of the person subpoenaed;
- (C) the date, hour and location of the hearing in which the witness is commanded to appear;
- (D) a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any;
- (E) the identity of the party on whose application the subpoena was issued, and the date of issue;
- (F) the signature of the presiding officer; and
- (G) a return of service form, fully executed, which shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the location and manner in which service was made, and the signature of the person making service.

(b) Where the Board grants a request for hearing and elects to conduct the evidentiary hearing without referral, subpoenas may be issued by the attorney for any party in accordance with the provisions of G.S. 1A-1, Rule 45. Upon objection by any person receiving a subpoena in such case, the Board may quash the subpoena after following the procedure specified in Paragraph (a) of this Rule.

(c) Where the Board grants a request for hearing and elects to refer the contested case to the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing, the issuance or quashing of subpoenas will be

governed by G.S. 150B-27 or other applicable rules of the Office of Administrative Hearings.

Authority G.S. 89E-5; 89E-20; 150B-38; 150B-39; 150B-40.

21 NCAC 21 .0604 FINAL DECISIONS IN ADMINISTRATIVE HEARINGS

(a) In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the ~~hearing~~ hearing, but no later than 120 days after the close of the hearing as required by G.S. 150B-44. ~~This decision will be the prerequisite "final agency decision" for the right to judicial review.~~

(b) In all cases where a request for hearing is granted by the Board, but the case has been referred to the Office of Administrative Hearings for designation of an administrative law judge to conduct the hearing, the Board will issue its decision within 60 days after its next regularly scheduled meeting following receipt of the proposal for decision, hearing transcript, and other evidence submitted or offered as proof at the hearing conducted by the administrative law judge.

(c) The time for issuing a final agency decision may be extended by agreement of the parties.

Authority G.S. 89-5; 89E-20; 150B-38; 150B-40; 150B-42; 150B-44.

21 NCAC 21 .0605 EXCEPTIONS AND PROPOSED DECISIONS

(a) ~~When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the Rules of the Office of Administrative Hearings, 26 NCAC 03 .0026. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge. When a request for hearing has been granted and the case referred to the Office of Administrative Hearings and the administrative law judge has made a proposal for decision, each party shall do the following:~~

- (1) file written exceptions to the proposal for decision, unless the party accepts the decision in its entirety. Any party may choose to submit alternative findings of fact and conclusions of law. Where a party excepts to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion or recommendation shall be proposed. Exceptions and alternative findings of fact and conclusions of law shall be received by the Board no later than 30 calendar days after the receipt of the proposal for decision and accompanying evidentiary materials by the Board. Each exception and proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the

admissible evidence, and the specific reason(s) the Board should not adopt the administrative law judge's finding of fact or conclusion of law. Each exception and proposed alternative finding or conclusion shall also reference the specific evidence in the record which supports the rejection of the administrative law judge's finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses and any evidentiary exhibits. Any new findings of fact proposed to the Board must be supported by a preponderance of the admissible evidence in the record. Reference must be made to the transcript of the hearing;

- (2) file a Proposed Decision and Order for consideration by the Board to accompany the party's written exceptions. The proposed Decision and Order shall be received by the Board no later than 30 calendar days after the receipt of the administrative law judge's proposal for decision and evidentiary materials by the Board. The Proposed Decision and Order shall indicate separately and in detail, for each finding of fact to be rejected by the Board and for each alternative finding of fact, the reasons therefore and the supporting evidence in the record. The Proposed Decision and Order shall demonstrate that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the record, and shall set forth its reasoning, which shall also describe the exercise of discretion by the Board, if any; and
- (3) file a brief, if any, to accompany any filed exceptions and Proposed Decision and Order. Responsive briefs are not encouraged, but will be considered if received by the Board no later than five days after a party's receipt of the other party's brief, exceptions or proposed final agency decision. Briefs shall be limited to 15 pages in length, unless prior approval is obtained.

~~(b) Any exceptions to the procedures during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matters must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence being excepted to. Such exceptions must be filed with the Board within ten days of the receipt of the hearing officer's proposal for decision. The written exceptions should bear the notation: RE EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case). When a request for hearing has been granted and the Board elects to conduct the evidentiary hearing, the parties may file a hearing brief outlining the important issues of law to be determined by the Board as a result of the evidentiary hearing. These briefs must be filed with the Board no later than 30 days prior to the date of hearing. Response briefs are not encouraged, but will be accepted if filed with the Board no later than five days after receipt of the other party's brief. The parties also may file a proposed decision with~~

findings of fact and conclusions of law. Proposed decisions must be filed with the Board within 15 days of the conclusion of the hearing or within 15 days of the Boards' receipt of the transcript of the hearing, if any, whichever is later. The findings of fact and conclusions of law in the proposed decision must make specific reference to the evidence admitted at the hearing and to the transcript.

~~(c) Any party may present further oral arguments to the Board upon request. The request must be included in the written exceptions. Unless otherwise directed, parties shall file these documents at the Board's office by 5:00 p.m. on the date due. Parties shall submit eight copies of each set of written exceptions, proposed decision, and any brief. Copies of parts of the record which may be useful to the Board may be included in an appendix to pleadings, document or other papers. A copy of any document filed with the Board shall be served on all parties.~~

~~(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating time and place for such oral argument.~~

~~(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.~~

Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40; 150B-42.

21 NCAC 21 .0606 ORAL ARGUMENT

(a) The parties will be notified of the date, time and place of oral argument before the Board (if held separate from an evidentiary hearing). Oral argument in all cases will be limited to 15 minutes per presentation, unless prior approval is obtained. Such arguments shall be based solely on the information contained in the record as compiled by the Board or as submitted to the Board by the Office of Administrative Hearings. If a party fails to appear after receiving notice of the time for oral argument, the Board may proceed to issue a decision in the absence of the party.

(b) If the evidentiary hearing was conducted by an administrative law judge, the party which did not prevail before the administrative law judge is entitled to make the first oral argument and to present a rebuttal. If both parties are seeking changes in the administrative law judge's recommended decision, both parties may present a rebuttal and the party with the burden of proof will make the first oral argument and the first rebuttal.

(c) If the oral argument is part of an evidentiary hearing conducted by the Board, the attorney representing the Board is entitled to make the first oral argument and to present a rebuttal.

Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40.

21 NCAC 21 .0607 EXTENSION OF TIME; NOTIFICATION OF FINAL DECISION

(a) An extension of time to take any action required by these Rules may be granted by the Board for good cause shown.

(b) A final agency decision must be made within the time limits of G.S. 150B-44, and the parties may receive notice of the decision by telephone, electronic mail, facsimile, or any other method deemed by the Board to be helpful in assuring prompt notification of the parties. The written final decision will be filed at the Board's office and served on all parties by certified mail, return receipt requested at the last address given by the party. Service on other persons receiving notice of the final decision will be made by first class mail. The Board will maintain the records of all contested cases in accordance with its records disposition schedule.

Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40; 150B-44.

SECTION .0800 - RULEMAKING PROCEDURES

21 NCAC 21 .0802 COPIES OF RULES: INSPECTION

(a) Anyone desiring to obtain a copy of the rules of the Board may do so by requesting such from the Board. The Board may charge reasonable fees to recover mailing and duplication costs.

(b) The rules of the Board and other public documents maintained by the Board ~~specified in G.S. 150B-11~~ are available for public inspection at the office of the Board ~~(P.O. Box 27402, 3700 National Drive, Caswell Building, Suite 219, Raleigh, N.C. 27612)~~ (3733 Benson Drive, Raleigh, N.C. 27609) during regular office hours.

Authority G.S. 89E-5; 89E-14; 89E-17; 132-1; 132-2; 132-6.

21 NCAC 21 .0803 PETITION FOR RULEMAKING HEARINGS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule ~~(the "proposed rule")~~ by the Board shall ~~forward file~~ the petition ~~to with~~ the Board. The first page of the petition should clearly bear the notation: RULEMAKING PETITION RE and then state the subject area. The Petition shall contain the following information:

- (1) the text of the proposed rule(s) conforming to the Codifier of Rules' requirements for publication of proposed rules in the North Carolina Register;
- (2) the statutory authority for the agency to promulgate the rule(s);
- (3) a statement of the reasons for adoption of the proposed rule(s);
- (4) a statement of the effect on existing rules or orders;
- (5) copies of any documents and data supporting the proposed rule(s);
- (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (7) a statement explaining the computation of the cost factors;
- (8) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and

(9) the name(s) and address(es) of the petitioner(s).

(b) An original and eight copies of the petition and supporting documents shall be filed with the Board.

(c) Petitions failing to contain the information required by this Rule shall not be accepted and shall be returned by the Chairman to the person(s) filing the petition. This return shall not constitute a Board decision denying the petition for rulemaking.

Authority G.S. 89E-5; 150B-20.

21 NCAC 21 .0804 DISPOSITION OF PETITIONS

(a) ~~The Board will determine whether the petition contains sufficient information for the Board to determine whether the public interest will be served by granting the request. The Board The Chairman~~ may request additional information from the petitioner(s), may contact any interested person or persons likely to be affected by the proposed rule and request comments, and may use any other appropriate method for obtaining additional information.

(b) ~~The Board will render a decision on whether to grant the petition within 30 days after the petition is submitted. If the decision is to deny the petition, the Board will notify the petitioner(s) in writing, stating the reasons therefor. When deemed complete by the Chairman, petitions for rulemaking shall be presented to the Board for its consideration and determination at a regularly scheduled meeting of the Board within 120 days following submission of the complete petition. The Chairman shall determine the order and duration of discussion regarding the petition, including discussion by members of the public if any.~~

(c) Within 120 days following submission of the complete petition requesting rulemaking, unless the parties have agreed to an extension of time, the Board shall:

- (1) initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; or
- (2) deny the petition in writing, stating the reason(s) for the denial, and send the written denial to the person(s) who submitted the petition.

Authority G.S. 89E-5; 150B-20.

SECTION .0900 - DECLARATORY RULINGS

21 NCAC 21 .0902 SUBMISSION OF REQUEST FOR DECLARATORY RULING

(a) All requests for declaratory rulings shall be written and ~~mailed to~~ filed with the Board. The first page of the request should bear the notation: REQUEST FOR DECLARATORY RULING. The request must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule or order of the Board to which petition relates on which a ruling is desired;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him; and
- (4) ~~a statement of whether an oral hearing is desired and, if so, the reason therefor. a~~

concise statement as to whether the request is for a ruling on the validity of a rule, statute or order or on the applicability of a rule, statute or order to a given factual situation;

- (5) arguments or data which demonstrate that the petitioner is aggrieved by the rule, statute or order or by the potential application to him;
- (6) a statement of the consequences of a failure to issue a declaratory ruling in favor of petitioner; and
- (7) a statement of whether an oral argument is desired and, if so, the reason(s) for requesting such an oral argument.

(b) A request for a ruling on the applicability of a rule, order, or statute must include a description of the specific factual situation on which the ruling is to be based. A request for a ruling on the validity of a Board rule must state the aggrieved person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a single request. A request for a ruling must include or be accompanied by:

- (1) a statement of the specific statement of facts proposed for adoption by the Board; and
- (2) a draft of the proposed ruling.

Authority G.S. 89E-5; 89E-20; 150B-4.

21 NCAC 21 .0903 DISPOSITION OF REQUESTS

(a) Upon receiving a request, the Board is authorized to initiate a declaratory ruling proceeding to receive information concerning the request. A declaratory ruling proceeding may consist of written submissions, an oral hearing, or other procedures as may be appropriate in the circumstances of the particular request. The Board's Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0902 of this Section, and he shall make a recommendation to the Board on whether to issue or decline to issue a declaratory ruling.

(b) A decision whether to issue the ruling will be made by the Board at the next regularly scheduled meeting of the Board within the 60 day period required by G.S. 150B17. If no meeting is scheduled within that time period, the chairman will call a special meeting so that the Board can comply with the requirements of G.S. 150B17. Before deciding the merits of the request, the Board may:

- (1) request additional written submissions from petitioner(s);
- (2) request a written response from any other person; or
- (3) hear oral argument from the petitioner and other persons on the issues raised by the request.

(c) If the decision of the Board is to issue the ruling, the ruling will be issued by the Board within the 60 day period required by G.S. 150B17. If necessary, the chairman of the Board will call a special meeting so that the Board can comply with this requirement. Other procedures for the declaratory ruling proceeding may be appropriate in the circumstances of the particular request.

(d) For purposes of this Rule, the Board will ordinarily refuse to issue a declaratory ruling:

- (1) unless the petitioner shows that the Board did not give to the factors specified in the request for a declaratory ruling a full consideration at the time the rule was issued;
- (2) where there has been a similar controlling factual determination in a contested case or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
- (3) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.

Upon written request, the party requesting the declaratory ruling and any other person by leave of the Board may be allowed to present oral arguments to the Board at a regularly scheduled meeting or special meeting called for the purpose of considering the request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Board in a declaratory ruling proceeding. The declaratory ruling shall be determined on the basis of the statement of specific facts submitted and agreed to by the parties.

(e) Whenever the Board determines for "good cause" that the issuance of a declaratory ruling is undesirable, the Board may refuse to issue such ruling. The Board shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.

(f) For purposes of Paragraph (e) of this Rule, the Board will ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:

- (1) the petitioner(s) and any other necessary party cannot agree on a specific statement of facts sufficient to support a meaningful ruling;
- (2) there has been a similar determination in a previous contested case or declaratory ruling;
- (3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (4) the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
- (5) no genuine controversy exists as to the application of a statute or rule to the specific factual situation presented; or
- (6) other good cause exists for declining to issue the requested ruling.

(g) A declaratory ruling is binding on the Board and on the person(s) requesting it unless it is altered or set aside by the court. The Board may not retroactively change a declaratory ruling, but nothing in this Section prevents the Board from prospectively changing a ruling.

(h) A declaratory ruling shall be deemed to be "in effect" until:

- (1) the statute or rule interpreted by the declaratory ruling is amended, altered, or repealed;
- (2) the Board changes the declaratory ruling prospectively for good reasons;

- (3) any court sets aside the ruling in litigation between the Board and the party requesting the ruling; or
- (4) until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

(i) Unless the requesting party consents to the delay, failure of the Board to issue a ruling on the merits or deny the request within 60 days of receipt of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request.

Authority G.S. 89E-5; 89E-20; 150B-4.

SECTION .1000 - PROFESSIONAL CORPORATIONS

21 NCAC 21 .1001 PRACTICE OF GEOLOGY BY CORPORATIONS AND LIMITED LIABILITY COMPANIES

(a) ~~Application-forms.~~ Application for a corporate-Certificate of Registration for corporations and limited liability companies tofor the practice of geology within the State of North Carolina shall be made upon forms provided by the Board. Completed applications must be accompanied by the application for corporate registration fee conform to the requirements of Rule .0302 of this Chapter and be accompanied by the fee prescribed in Rule .0107 of this Chapter. Certificates of Registration for corporations may shall be issued only under to corporations meeting the provisions of the Professional Corporation Act, G.S. Chapter 55B, and companies meeting the provisions of the Limited Liability Company Act, G.S. Chapter 57C, except as provided in Paragraph (b) of this Rule.

(b) ~~Geological Corporations Under G.S. 55, the Business Corporation Act.~~ Corporations and Limited Liability Companies Exempt from Chapter 55B. Applications for a Certificate of Registration as exempt from the Professional Corporation Act or the Limited Liability Company Act under the provisions of G.S. 55B-15 and 57C-2-01 shall be made upon forms provided by the Board. To be eligible as an exempt corporation under the provisions of G.S. 55B-15 the following conditions must exist:

- (1) ~~The corporation must have been incorporated prior to September 1, 1991 as a business corporation;~~
- (2) ~~The corporation must have been incorporated Before and after September 1, 1991, the corporation must have been a bonafide firm engaged in the practice of geology and such services as may be ancillary thereto within the State of North Carolina. The corporation or limited liability company must have been incorporated or organized prior to June 5, 1969 and permitted by law to render professional services or must be a corporate successor to such a corporation or limited liability company as defined by G.S. 55B-15; or~~
- (3)(2) ~~The corporation must have applied to be an exempt corporation before July 1, 1992. The corporation or limited liability company must have been incorporated or organized prior to~~

September 1, 1991, and before and after September 1, 1991 the corporation or limited liability company must have been a bonafide firm engaged in the practice of geology and such services as may be ancillary thereto within the State of North Carolina.

(c) Renewal of Certificate. The renewal of Certificates of registration for corporations and limited liability companies shall follow the requirements as set out in Rule .0107 of this Chapter.

(d) Seal. Each registered corporation or limited liability company shall obtain from the Board a seal approved by the Board. Such seal shall contain the name of the corporation or limited liability company, its North Carolina registration number and the words "registered geological corporation" or "registered geological limited liability company" as applicable.

(e) Approval of Name. In addition to the requirements and limitations of Chapters 55, 55B, and 57C of the General Statutes, the name used by a geological corporation or limited liability company shall be approved by the Board before being used. Provided, however, that this Rule shall not prohibit the continued use of any corporate name duly adopted in conformity with the General Statutes of North Carolina and board rules in effect at the date of such adoption.

Authority G.S. 55B-5; 55B-10; 55B-11; 55B-14; 55B-15; 57C-2-01; 89E- 5; 89E-12; 89E-13.

21 NCAC 21 .1002 FOREIGN CORPORATIONS AND LIMITED LIABILITY COMPANIES

(a) ~~Incorporation-Formation~~ in Other States. Corporations ~~of~~ and Limited Liability Companies formed in other states may be granted Certificates of Registration for the practice of geology in this ~~state~~ State on the receipt by the Board of a completed application as specified in Rules .0301 and .0302 of this Chapter and the payment of the ~~corporate registration~~ appropriate application fee indicated in Rule .0107 of this Chapter. In addition to the other requirements as set out in G.S. 89E-12, foreign corporations and limited liability companies must, prior to registration, receive from the Secretary of State of North Carolina a Certificate of Authority to ~~do transact~~ transact business within the ~~state~~ State.

(b) Designated Individuals. Foreign corporations and limited liability companies shall be permitted to practice geology within the State of North Carolina provided that the corporation or limited liability company must designate at least one geologist who is licensed by the State of North Carolina to be in responsible charge for the ~~corporate-firm's~~ practice of geology within the State of North Carolina.

Authority G.S.; 55B-16; 57C-2-01; 89E-5; 89E-12.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Community Colleges intends to amend the rule cited as 23 NCAC 02E .0201. Notice of Rule-making Proceedings was published in the Register on April 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: July 2, 2002

Time: 10:00 a.m.

Location: State Board Room, 1st floor, North Carolina Community College System Office, 200 W. Jones St., Raleigh, NC

Reason for Proposed Action: *This rule-making proceedings was initiated to amend this Rule to regulate approvals and terminations for curriculum programs.*

Comment Procedures: *Written comments may be sent to Clay T. Hines, North Carolina Community College System, 5004 Mail Service Center, Raleigh, NC 27699-5004 until July 17, 2002.*

Fiscal Impact

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

CHAPTER 02 – COMMUNITY COLLEGES

SUBCHAPTER 02E - EDUCATIONAL PROGRAMS

SECTION .0200 - CURRICULUM PROGRAMS

23 NCAC 02E .0201 CURRICULUM PROGRAM APPROVALS AND TERMINATIONS

(a) Curriculum Program Approvals. Community colleges shall issue degrees, diplomas, and certificates to individuals who satisfactorily complete course and program requirements.

- (1) The approval of a college or of a group of colleges in a collaborative arrangement to award the associate degree, diploma, or certificate shall be by individual curriculum program title. Approval by the State Board shall be granted when the college has demonstrated an established need and has provided evidence to the State Board of sufficient instructional faculty, facilities, equipment, and materials required to meet the needs of the communities served without supplanting or duplicating existing programs.
- (2) The application shall be signed by the college president and the chairman of the college's board of trustees.
- (3) The System President shall recommend action on the college's curriculum program application to the State Board.
- (4) Approval to grant degrees, diplomas, and certificates shall be withdrawn if the State

Board determines that a college is not maintaining approved programs or graduation requirements.

(b) Curriculum Program Terminations. The college shall terminate a curriculum program when there has been no enrollment for two years; a college may request a one-year extension of a curriculum program upon justification of the potential for employment opportunities and student enrollment. ~~Curriculum programs shall be terminated by action of the State Board.~~ Each college planning to terminate a curriculum program shall inform the System President by submitting a termination notice. The System President shall have the program removed from the college's program approval list. Program terminations shall be reported to the State Board two times a year.

(c) The System President shall approve Associate in General Education and Associate in Applied Science General Occupational Technology curriculum programs for colleges in the system.

(d) On special approval by the State Board, a degree program title or a stand-alone diploma or certificate program title may exceed the maximum length of programs as set by the curriculum standards. Such an exception shall apply to all colleges approved to offer the curriculum program title. A two-thirds majority of colleges approved to offer the program shall agree with the conditions of the request for the exception. A request for an exception shall be justified based on one or more of the following criteria:

- (1) Additional time in the program is required by law.
- (2) Additional time in the program is required by an external regulatory, accrediting, or professional agency recognized by the State Board.
- (3) Additional time in the program is justified by documented extenuating circumstances such as the following:
 - (A) Documentation that equivalent programs in other states require additional hours of training to teach the competencies of the curriculum;
 - (B) Documentation that the program will not be viable without the exception; or
 - (C) Documentation that employers have certified the competencies required for the program and the length of time needed to teach those competencies.

Authority G.S. 115D-5; 115D-20(6); S.L. 1995, c. 625.

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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *NC Wildlife Resources Commission*

Rule Citation: *15A NCAC 10B .0101; 10H .0301*

Effective Date: *May 17, 2002*

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

Authority for the rulemaking: *G.S. 113-134; 113-272.5; 113-274; 113-291.3; 113-292*

Reason for Proposed Action:

15A NCAC 10B .0101; 10H .0301 - A permanent rule will be filed for these temporary rules. Chronic Wasting Disease is a newly identified disease of white-tailed deer that has the potential of causing serious detriment to deer populations. In addition to its presence in several mid-western and western states, it has been identified in Wisconsin, which is a source for deer imports into North Carolina. It may be in other states. It is imperative that we move quickly to prevent further imports until the US Dept. of Agriculture has taken steps to screen for the disease and identify areas from which imports can be assured to be disease free.

Comment Procedures: *The NC Wildlife Resources Commission has the authority to adopt temporary rules pursuant to S.L. 1997-0403. This temporary rule filing will also serve as a notice of rule-making proceedings for a conforming amendment to the permanent rule.*

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

15A NCAC 10B .0101 IMPORTATION OF WILD ANIMALS AND BIRDS

(a) Before any live wild bird or wild animal is imported into North Carolina for any purpose, a permit shall be obtained from the Executive Director of the North Carolina Wildlife Resources Commission authorizing the importation, using application forms prescribed by the commission.

(b) No deer, elk, or other species in the family Cervidae may be imported into North Carolina for any purpose until the U.S. Department of Agriculture (USDA) formally adopts and implements uniform methods and rules for a Chronic Wasting Disease (CWD) monitoring program that include CWD testing by immunohistochemical staining of brain tissue (or another USDA approved test) from all cervid deaths occurring the previous five years in both the farm/herd of origin or any other

farms/herds where the cervids resided and said farm/herd of origin or farm/herds where the cervids resided has been certified CWD free for a period of five years.

(c) Cervids imported into North Carolina must be individually identified by a permanent marker, such as a legible tattoo or transponder insert.

History Note: Authority G.S. 113-134; 113-274; 113-291.3; 113-292;

Eff. February 1, 1976;

Temporary Amendment Eff. May 17, 2002.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0300 - HOLDING WILDLIFE IN CAPTIVITY

15A NCAC 10H .0301 GENERAL

(a) Captivity Permit:

- (1) Requirement. The possession of any species of wild animal which is or once was native to this State or any species of wild bird which naturally occurs or historically occurred in this State, being native or migratory, is unlawful unless the institution or individual in possession thereof has first obtained from the Wildlife Resources Commission a captivity permit or a captivity license as required by this Rule.
- (2) Injured, Crippled or Orphaned Wildlife. Notwithstanding the preceding Subparagraph (1) of this Rule, a crippled, injured or orphaned wild animal or wild bird, except wild turkey, deer or black bear may be taken and kept in possession for no longer than five days, provided that during such five-day period the individual in possession thereof shall apply to the Wildlife Resources Commission, or a wildlife enforcement officer of the Commission, for a captivity permit.

Deer, Wild Turkey, and Black Bear. Captivity permits will not be issued for crippled, injured or orphaned black bear. No person shall keep a crippled, injured or orphaned black bear in possession for longer than a 24 hour period. Captivity permits for crippled, injured, or orphaned deer will only be issued to certain rehabilitators predesignated by the Commission to provide temporary care for fawn deer. No captivity permits will be issued for holding wild turkeys.

- (3) Application and Term. A captivity permit will be issued without charge and may be issued upon informal request by mail, telephone, or other means of communication; but such permit shall authorize possession of the animal or bird only for such period of time as may be required for the rehabilitation and release to

the wild; or to obtain a captivity license as provided by Paragraph (b) of this Rule, if such a license is authorized, or to make a proper disposition of the animal or bird, as determined by the Executive Director, if the application for such license is denied, or when an existing captivity license is not renewed or is terminated.

(b) Captivity License:

- (1) **Requirement.** Except as provided in Paragraph (a) of this Rule, no person shall keep any species of wild animal which is or once was native to this State or any deer, elk, or other member of the family Cervidae; or any coyote, wolf, or other nonindigenous member of the family Canidae; or any species of wild bird which naturally occurs or historically occurred in this State, either resident or migratory, without first having obtained from the Wildlife Resources Commission a license to hold the particular species of animal or bird in captivity. No wildlife captivity license will be issued for exotic wild animals, non-indigenous wild animals, or native big game species when the reason for holding such wild animals is release for hunting. No captivity license will be issued for holding wild turkeys.

Acquisition of Wildlife. Notwithstanding the provisions of Subparagraph (a)(2) of this Rule, captivity licenses may not be issued if the wild animal or wild bird was acquired unlawfully or merely as a pet.

- (2) **Required Facilities.** No captivity license shall be issued until the applicant has constructed or acquired a facility for keeping the animal or bird in captivity which shall comply with the minimum standards set forth in Rule .0302 of this Section, and the adequacy of such facility has been verified on inspection by a representative of the Commission.

(3) Term of License

- (A) **Dependent Wildlife.** If the wild animal or wild bird has been permanently rendered incapable of subsisting in the wild, the license authorizing its retention in captivity shall be an annual license terminating on December 31 of the year for which issued.
- (B) **Rehabilitable Wildlife.** When the wild animal or wild bird is temporarily incapacitated, and may be rehabilitated for release to the wild, any captivity license which is issued shall be for a period less than one year as rehabilitation may require. Captivity licenses will not be issued for rehabilitation of deer, turkey, and black bear.
- (C) **Concurrent Federal Permit.** No State captivity license for an endangered or

threatened species or a migratory bird shall be operative to authorize retention thereof for a longer period than is allowed by any concurrent federal permit that may be required for its retention.

(c) **Nontransferability.** No license or permit issued pursuant to this Rule shall be transferable, either as to the holder or the site of a holding facility.

(d) **Sale or Transfer of Captive Wildlife.** It is unlawful for any person to transfer or receive any wild animal or wild bird which is being held under a captivity permit issued under Paragraph (a) of this Rule, except that any such animal or bird may be surrendered to an agent of the Wildlife Resources Commission. It is unlawful for any person holding a captivity license issued under Paragraph (b) of this Rule to sell or transfer the animal or bird held under such license, except that such animal or bird may be surrendered to an agent of the Commission, and any such licensee may sell or transfer the animal or bird, other than deer, elk, or other members of the family Cervidae, to another person who has obtained a license to hold it in captivity. Upon such a sale or transfer, the seller or transferor shall obtain a receipt for the animal or bird showing the name, address, and license number of the buyer or transferee, a copy of which shall be transmitted to the Wildlife Resources Commission. It is unlawful for any person to release into the wild for any purpose or allow to range free any species of deer, elk or other members of the family Cervidae or any wolf, coyote, or other nonindigenous member of the family Canidae.

(e) **Applicability of Section.** The following licenses include authority for incidental transportation and possession of wildlife covered under the license:

- (1) Wildlife and fish collection licenses [G.S. 113-272.4; 15A NCAC 10B .0119; 15A NCAC 10C .0214];
- (2) Controlled hunting preserve license [G.S. 113-273(g); 15A NCAC 10H .0100];
- (3) Commercial trout pond license [G.S. 113-273(c); 15A NCAC 10H .0400];
- (4) Fish propagation license [G.S. 113-273(e); 15A NCAC 10H .0700];
- (5) Falconry permit and license [G.S. 113-270.3(b)(5); 15A NCAC 10H .0800];
- (6) Game bird propagation license [G.S. 113-273(h); 15A NCAC 10H .0900].
- (7) Furbearer propagation license [G.S. 113-273(i); 15A NCAC 10H .1100].
- (8) Controlled fox hunting preserve license [G.S. 113-273(g); 15A NCAC 10H .1200].
- (9) Depredation permit [G.S. 113-274(c); 15A NCAC 10B .0106].

(f) Transportation Permit

- (1) **Requirement.** Except in the case of injured, crippled or orphaned wildlife being transported directly to a facility within state for rehabilitation and in the case of those applicable licenses listed in Paragraph (e) of this Rule that include incidental transportation, the transportation of any species of wild live animal which is or once was native to this state or any species of wild bird which naturally

occurs or historically occurred in this state, being resident or migratory, is unlawful unless the institution or individual in possession thereof has first obtained from the Wildlife Resources Commission a Transportation Permit. Also exempted from this requirement are quail and pheasant, held under a Captivity License and rabbits legally box trapped during the established season.

- (2) Transportation permits will not be issued in those situations where transportation within or through the state will pose a threat of disease or a threat to the welfare of existing wildlife in the area. Furthermore, no transportation permits will be issued for the purpose of relocating or restocking wildlife in the state unless such an effort is part of an approved restoration effort by the Wildlife Resources Commission. No transportation permits will be issued for deer, elk, or other species in the family Cervidae.

History Note: Authority G.S. 113-134; 113-272.5; 113-274; 113-292;
Eff. February 1, 1976;
Amended Eff. April 1, 1991; September 1, 1990; June 1, 1990; July 1, 1988;
Temporary Amendment Eff. May 17, 2002; July 1, 2001.

Editor's Note: *This publication will serve as Notice of Temporary Rules and as Notice of Text for permanent rulemaking.*

Rule-making Agency: *North Carolina Wildlife Resources Commission*

Rule Citation: *15A NCAC 10F .0318*

Effective Date for Temporary Rule: *June 17, 2002*

Findings Reviewed and Approved by: *Julian Mann, III*

Authority for the rulemaking: *G.S. 75A-3; 75A-15*

Reason for Proposed Action for Temporary Rule: *The Warren County Board of Commissioners initiated the no-wake zone pursuant to G.S. 75A-15, to protect public safety in the areas by restricting vessel speed.*

Public Hearing:

Date: *September 19, 2002*

Time: *10:00 a.m.*

Location: *Room 332, Archdale Building, 512 N. Salisbury St., Raleigh, NC*

Proposed Effective Date for Permanent Rule: *April 1, 2003*

Reason for Proposed Action: *The Warren County Board of Commissioners initiated the no-wake zone pursuant to G.S. 75A-*

15, to protect public safety in the area by restricting vessel speed. The Wildlife Resources Commission may adopt this as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the notice of rule-making.

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments through September 9, 2002. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

Fiscal Impact

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0318 WARREN COUNTY IS AMENDED AS FOLLOWS:

(a) **Regulated Area.** This Rule applies only to that portion of Lake Gaston which lies within the boundaries of Warren County.

(b) **Speed Limit Near Ramps.** No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the waters of Gaston Lake in Warren County.

(c) **Speed Limit in Mooring Areas.** No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the waters of Gaston Lake in Warren County.

(d) **Restricted Swimming Areas.** No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the waters of Gaston Lake in Warren County.

(e) **Speed Limit in Specific Zones.** No person shall operate a vessel at greater than no-wake speed within 50 yards of the following marked zone located on the regulated area described in Paragraph (a) of this Rule: the entrance of the Camp Willow Run Canoe/Sail Cove; and the shoreline of the Mariner's Cove Subdivision 50 yards across State Road 1498 off Hubquarter Creek on Lake Gaston.

(f) **Placement and Maintenance of Markers.** The Board of Commissioners of Warren County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking Gaston Lake, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. February 1, 1976;
Amended Eff. October 1, 1992; March 25, 1978;
Temporary Amendment Eff. June 17, 2002.

Rule-making Agency: HHS -Commission for Health Services

Rule Citation: 15A NCAC 19A .0401; 19C .0801

Effective Date: May 17, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 130A-134; 130A-135;
130A-139; 130A-141; 130A-453

Reason for Proposed Action:

15A NCAC 19A .0401 – This temporary action will bring the immunization requirements in line with the February 8, 2002 revision of General Recommendations on Immunization which updates the 1994 statement by the Advisory Committee on Immunization Practices (ACIP) (CDC). The revised General Recommendations on Immunization are titled: Recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR February 8, 2002;51[No. RR-02]:1-36. The changes include vaccination spacing and timing. This national recommendation has a direct impact on the requirements for immunization. In clinical practice, vaccine doses occasionally are administered at intervals less than the minimum interval or at ages younger than the minimum age. Doses administered too close together or at too young an age can lead to a suboptimal immune response. However, administering a dose a limited number of days earlier than the minimum interval or age is unlikely to have a substantially negative effect on the immune response to that dose. Therefore, ACIP recommends that vaccine doses administered less than or equal to 4 days before the minimum interval or age be counted as valid. Doses administered greater than or equal to 5 days earlier than the minimum interval or age should not be counted as valid doses and should be repeated as age-appropriate. The repeat dose should be spaced after the invalid dose by the recommended minimum interval as provided in this report. Doses administered greater than or equal to 5 days before the minimum age should be repeated on or after the child reaches the minimum age and less than or equal to 4 weeks after the invalid dose. The recommendations will also impact the timing and spacing of the hepatitis B and rubella vaccines. ACIP recommendations regarding immunization can be accessed at CDC's National Immunization Program website at <http://www.cdc.gov/nip>.

15A NCAC 19C .0801 – This change is necessary in order to ensure that program guidelines are in compliance with current applicable Federal Regulations.

Comment Procedures:

15A NCAC 19A .0401 – Written comments concerning this rule-making action may be submitted to Chris Hoke, Rule-making

Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001.

15A NCAC 19A .0801 – Comments, statements, data, and other information may be submitted in writing within 30 days of publication in this issue of the NC Register. Copies of the proposed rule and information packet may be obtained by contacting the Health Hazards Control Unit at (919) 733-0820. Written comments may be sent to Chris G. Hoke, 1915 Mail Service Center, Raleigh, NC 27699-1915.

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

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~~ 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:

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| <p>(A) An individual attending school who has attained his or her 18th birthday shall not be required to receive polio vaccine;</p> <p>(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;</p> <p>(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.</p> <p>(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:</p> <p>(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;</p> <p>(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;</p> <p>(C) An individual born prior to 1957 shall not be required to receive measles vaccine;</p> <p>(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.</p> <p>(4) Rubella vaccine--one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:</p> <p>(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;</p> <p>(B) An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine; <u>vaccine except in outbreak situations;</u></p> <p>(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. <u>except in outbreak situations.</u></p> <p>(5) Mumps vaccine--one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months. However:</p> | <p>(A) An individual born prior to 1957 shall not be required to receive mumps vaccine;</p> <p>(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.</p> <p>(6) <i>Haemophilus influenzae, b</i>, conjugate vaccine--three doses of HbOC or PRP-T 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 <i>Haemophilus influenzae, b</i>. Individuals who receive the first dose of <i>Haemophilus influenzae, b</i>, vaccine on or after 12 months of age and before 15 months of age shall be required to have only two doses of HbOC, PRP-T or PRP-OMP. Individuals who receive the first dose of <i>Haemophilus influenzae, b</i>, vaccine on or after 15 months of age shall be required to have only one dose of any of the <i>Haemophilus influenzae</i> conjugate vaccines, including PRP-D. However, no individual who has passed their fifth birthday shall be required to be vaccinated against <i>Haemophilus influenzae, b</i>.</p> <p>(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. <u>The third dose of hepatitis B vaccine shall not be administered prior to 6 months of age.</u> Individuals born before July 1, 1994 shall not be required to be vaccinated against hepatitis B.</p> <p>(8) Varicella vaccine--1 dose administered on or after age 12 months and before age 19 months. However:</p> <p>(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:</p> |
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- (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.

(9) The healthcare provider shall administer immunizations in accordance with this Rule. However, if a healthcare provider administers vaccine up to and including the fourth day prior to the required minimum age, the individual dose will not be required to be repeated. Doses administered more than four days prior to the requirements are considered invalid doses and shall be repeated.

(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. ~~The local health director can extend accordingly the period of time for a new enrollee into a school or facility to be in compliance with an immunization requirement in case of temporary vaccine shortage and until the suspension is lifted.~~

History Note: Authority G.S. 130A-152(c); 130A-155.1;
Eff. February 1, 1976;
Amended Eff. July 1, 1977;
Readopted Eff. December 5, 1977;
Filed as a Temporary Amendment Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988;
Amended Eff. October 1, 1995; October 1, 1994; January 1, 1994; January 4, 1993;
Filed as a Temporary Amendment Eff. May 21, 1999;
Temporary Amendment Eff. February 23, 2000; August 20, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. August 1, 2001;
Temporary Amendment Eff. February 18, 2002;
Temporary Amendment Eff. April 1, 2002;
Temporary Amendment Eff. May 17, 2002.

SUBCHAPTER 19C - OCCUPATIONAL HEALTH

SECTION .0800 - LEAD-BASED PAINT HAZARD MANAGEMENT PROGRAM

15A NCAC 19C .0801 GENERAL

(a) In addition to the definitions found in 40 CFR Part 745 Subpart D and Subpart L, the following definitions shall apply throughout this Section:

- (1) "Accredited training course" means a lead training course accredited by the Program.
- (2) "Accredited training provider" means a training provider who is accredited by the Program, and who provides accredited training courses.
- (3) "Design" means a written or graphic plan prepared by a certified project designer specifying how an abatement project will be performed, and includes, but is not limited to, scope of work and technical specifications. The certified project designer's signature and certification number shall be on all such abatement designs.
- (4) "Emergency Lead-Based Paint Abatement" means abatement conducted to remediate a lead-based paint hazard which has been determined by a certified risk assessor and the Program to be an imminent lead-based paint hazard to building occupants in a child occupied facility.
- (5) "Immediate family" means an individual's family members limited to spouse, parents, siblings, grandparents, children, and grandchildren.
- (6) "Occupant Protection Plan" means a written plan which describes the measures and management procedures that will be taken during abatement to protect building occupants from exposure to lead-based paint hazards. The plan shall be unique to each residential dwelling or child-occupied facility. For projects less than five units, the plan shall be prepared by a certified supervisor or project designer. For projects with five or more units, the plan shall be prepared by a certified project designer. The plan shall include the preparer's signature and certification number.
- (7) "Program" means the Lead-Based Paint Hazard Management Program within the NC Department of Health and Human Services.
- (8) "Start date" means the date on which activities begin on a permitted lead abatement project requiring the use of certified individuals, including the abatement area isolation and preparation or any other activity which may disturb lead-based paint.
- (9) "Working day" means Monday through Friday. Holidays falling on any of these days are working days.
- (10) "Certified Industrial Hygienist" means a person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for

certified industrial hygienists and whose certification has not been revoked by that organization.

(b) Lead-Based Paint Activities, 40 CFR Part 745 Subpart D and Subpart L, is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Department of Health and Human Services, Health Hazards Control Branch, 2728 Capitol Blvd., Raleigh, NC 27604. A copy of ~~40 CFR Part 745 Subpart L~~ this document may be obtained in writing from the US Government Bookstore, 999 Peachtree Street, Suite 120, Atlanta, GA, at a cost of ~~thirty eight dollars (\$38.00)~~ fifty five dollars (\$55.00).

History Note: Authority G.S. 130A-453.01; 130A-453.11; 150B-21.1(a)(3);

Temporary Adoption Eff. July 7, 1997;

Eff. July 1 1998;

Temporary Amendment Eff. May 17, 2002.

Rule-making Agency: HHS Commission for Health Services

Rule Citation: 15A NCAC 21F .1204

Effective Date: May 17, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 130A-125(b1); S.L. 2000, c. 67, s. 11(b)

Reason for Proposed Action: *Birthing/neonatal facilities and providers were required by a permanent rule change effective August 1, 2000 to report results of physiologic newborn hearing screenings, diagnostic audiological evaluations and amplification selection for infants to the Department of Health and Human Services. The varied reporting mechanisms employed by facilities and providers have resulted in inconsistent reporting, and incomplete and non-compatible data. The North Carolina General Assembly [G.S. 130A-125(b1) and S.L. 2000, c. 67, s. 11(b)] directed the Commission for Health Services to adopt temporary and permanent rules to implement newborn hearing screening. The Department of Health and Human Services has the responsibility to track infants with hearing loss to assure appropriate referrals for services and to provide annual reports to the General Assembly regarding the implementation of universal newborn hearing screening. In response to these needs, the Department of Health and Human Services has established standardized reporting protocols. A temporary rule reflecting those protocols was established January 8, 2001 and has since expired. This request re-establishes the temporary rule and serves as notice for permanent rule-making.*

Comment Procedures: *Comments, statements, and other information may be submitted in writing within 30 days of publication of this issue of the NC Register. Copies of the proposed rule and information may be obtained by contacting the Newborn Hearing Screening Program at 919-715-3192. Written comments may be sent to Marshall Tyson, Division of*

Public Health, 1928 Mail Service Center, Raleigh, NC 27699-1928.

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21F - CHILDREN'S SPECIAL HEALTH SERVICES: CHILDREN AND YOUTH SECTION

SECTION .1200 - NEWBORN SCREENING PROGRAM

15A NCAC 21F .1204 REPORTING REQUIREMENTS

(a) The attending physician shall order ~~and that~~ all persons performing physiologic hearing screenings for infants less than six months of age shall ~~identify and report to the local health department of residence all infants who were not successfully screened or who failed to pass the physiologic hearing screening. When the infant's residence is out of state, the report shall be made to CSHS. These reports shall be submitted within 30 days after medical facility discharge, and within 30 days after the date of the screening following discharge and the date of any missed scheduled appointment for such screening report within five days following the screening (or date of the appointment for the screening) to the North Carolina State Laboratory for Public Health:~~

- (1) Identifying information for each infant; and
- (2) The outcome of each hearing screening; or
- (3) Date of missed scheduled appointment for such screening.

Birthing/neonatal facilities shall submit initial hearing screening outcomes simultaneously with each infant's blood specimen for genetic screening.

(b) All ~~persons~~ birthing/neonatal facilities performing neonatal physiologic hearing screenings shall report quarterly to ~~CSHS, the Division of Public Health,~~ within 30 days after the end of each quarter in the calendar year, ~~the following; total unduplicated count of:~~

- (1) Total number of neonates-Neonates who were screened; screened by each tester and the number who passed that screening, with the results of multiple screenings for the same neonate being clarified;
- (2) Total number of neonates-Neonates whose parents or guardians objected to the hearing screening; screening.
- (3) Total number of live-Live births, if the report is being submitted by a medical facility; facility.
- (4) Transfers into the facility, not previously screened; and
- (5) Neonates not screened due to transfer out of the facility, NICU complications, missed screening, death or other reasons.

(c) All persons performing diagnostic auditory tests ~~which supercede or follow physiologic hearing screenings for infants less than six months of age shall identify the child and report the outcome of the diagnostic testing procedure to the local health department of residence, within 30 days following the infant's initial testing date and the date of any missed scheduled appointment for such testing. When the infant's residence is out of state, the report shall be made to CSHS. evaluations and assessments for selection of amplification for infants less than 12~~

months of age shall report within five days of the appointment to the North Carolina State Laboratory for Public Health:

- (1) Identifying information for each child; and
- (2) Outcome of the diagnostic evaluation; and/or
- (3) Amplification selection; or
- (4) Date of missed appointment for such evaluations or assessments.

*History Note: Authority G.S. 130A-125;
Temporary Amendment Eff. October 1, 1999;
Eff. August 1, 2000;
Temporary Amendment Eff. January 8, 2001;
Temporary Amendment Expired October 29, 2001;
Temporary Amendment Eff. May 17, 2002.*

TITLE 18 – SECRETARY OF STATE

Rule-making Agency: *NC Department of the Secretary of State*

Rule Citation: *18 NCAC 06 .1213*

Effective Date: *July 1, 2002*

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

Authority for the rulemaking: *S.L. 2001, c. 436, s. 8*

Reason for Proposed Action: *The 2001 General Assembly passed an act, S.L. 2001-436 revising North Carolina's insurance and securities laws regulating viatical settlement contracts. S.L. 2001-436 became effective April 1, 2001. On March 22, 2002, the Department of the Secretary of State initiated temporary rule-making procedures in an application for the adoption of rules governing the offer and sales of any viatical settlement contract or any fractionalized or pooled interest therein. The rules were reviewed and approved and became effective on April 1, 2002. The filing fee provision proposed and found in this Rule could not be included in the initial application for the adoption of rules because the Department of the Secretary of State is required to consult with the Joint Legislative Commission on Governmental Operations pursuant to recent enactment of G.S. 12-3.1(a)(2). The Department of the Secretary of State submits this amendment to the temporary adoption of this Rule because on April 17, 2002, the Department consulted with the Joint Legislative Commission on Governmental Operations. In accordance with G.S. 12-3.1(a)(2), the amount and purpose of the fee was authorized.*

Comment Procedures: *Comments concerning this amendment to the temporary rule may be addressed to David S. Massey, Deputy Securities Administrator, NC Secretary of State, Securities Division, 300 N. Salisbury Street, Suite 100, Raleigh, NC 27606, telephone (919) 733-3924.*

CHAPTER 06 – SECURITIES DIVISION

SECTION .1200 - EXEMPTIONS

18 NCAC 06 .1213 TRANSACTIONAL EXEMPTION PURSUANT TO G.S. 78A-17(19)

Conditions of Eligibility for Exemption. For the purposes of eligibility for the exemption provided at G.S. 78A-17(19), an offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction must meet all of the following criteria:

- (1) Suitability Standards. Sales of viatical settlement contracts may be made only to purchasers meeting the requirements of Rule .1320 of this Chapter.
- (2) Purchase Not for Resale. Each purchaser must represent in writing that the purchaser is purchasing for investment and for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security.
- (3) Required Disclosures. The information set forth in G.S. 78A-13 and in Rule .1319 shall be disclosed in accordance with that Section.
- (4) Rescission by Purchaser. Each purchaser shall be provided with written notice of his or her rights of rescission as set forth in G.S. 78A-56 and in Rule .1501 of this Chapter.
- (5) Exemption Filing and Fee. A notice of the issuer's intent to sell securities in reliance on G.S. 78A-17(19), signed by the issuer or by a duly authorized officer of the issuer and notarized, together with a nonrefundable filing fee of five hundred dollars (\$500.00), payable to the Secretary of State, shall be filed with the Administrator not later than 10 business days before any offers or sales of securities are made pursuant to G.S. 78A-17(19). Such notice shall include:
 - (a) The issuer's name, the issuer's type of business organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;
 - (b) A consent to service of process naming the Secretary of State as agent for service of process;
 - (c) Such financial statements as may be required to be disclosed under G.S. 78A-13;
 - (d) the names and CRD numbers, if any, of all persons who will be offering the securities for sale in or from the State of North Carolina; and
 - (e) an undertaking to notify the Administrator in writing of any material change or material omission in the information filed with the Administrator pursuant to this Rule not later than five business days following the change or discovery of the omission.
- (6) No Commissions to Unregistered Sellers. No commission or remuneration is paid directly or indirectly for soliciting any prospective

- purchaser, except to a registered salesman of a registered dealer.
- (7) Filing of Advertising Materials. At least 10 days before use within this state, the issuer files with the Administrator all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state, including the written disclosures required by G.S. 78A-13 and by Rule .1319 of this Chapter.
- (8) Legends Required. Any prospectus or disclosure document used in this state in connection with an offer and sale of securities made in reliance upon the exemption provided by this Rule shall disclose conspicuously the appropriate legends:
- (a) THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;
- (b) IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOW CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE; and
- (c) THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE

APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

History Note: Authority S.L. 2001, c. 436, s. 7, 8, 10, 11; Temporary Adoption Eff. April 1, 2002; Temporary Amendment Eff. July 1, 2002.

TITLE 20 – DEPARTMENT OF STATE TREASURER

Rule-making Agency: *Health & Wellness Trust Fund Commission*

Rule Citation: *20 NCAC 10 .0101-.0102; .0201-.0210; .0301-.0302*

Effective Date: *June 15, 2002*

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

Authority for the rulemaking: *G.S. 147-86.30; 147-86.31; 147-86.33; 147-86.36*

Reason for Proposed Action: *The Health & Wellness Trust Fund Commission was created by the General Assembly in 2000 to administer a portion of the funds received by the State from the National Tobacco Master Settlement Agreement. The Commission was authorized to adopt temporary rules at that time in order to expedite the distribution of the funds. The Commission was unable for a variety of reasons to adopt temporary rules before that authority expired, so the General Assembly, in 2001, again authorized the Commission to adopt temporary rules. The rules establish purposes and procedures for disbursements of these funds.*

Comment Procedures: *Written comments may be submitted to Jim Davis, Executive Director, Health & Wellness Trust Fund Commission, PO Box 24976, Raleigh, NC 27611.*

CHAPTER 10 - HEALTH AND WELLNESS TRUST FUND COMMISSION

SECTION .0100 - GENERAL PROVISIONS

20 NCAC 10 .0101 AUTHORIZATION

- (a) The Health and Wellness Trust Fund Commission is authorized by G.S. 147, Article 6C, to develop a comprehensive plan to finance programs intended to improve the health and wellness of the people of North Carolina. Funds provided pursuant to this authority are to be used to supplement, not supplant, existing funding of health and wellness programs.
- (b) As part of its authority to develop guidelines and criteria for awarding grants, the Commission may periodically set a list of funding priorities which it will follow in awarding grants. The

Commission may also request proposals to address these specific funding priorities or to encourage specific programs intended to improve the health and wellness of the residents of North Carolina.

*History Note: Authority G.S. 147-86.30; 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0102 DEFINITIONS

The following definitions are in effect throughout this Chapter:

- (1) Advisory Committee. One or more committees appointed by the Commission consisting of experts to advise the Commission on drafting Requests for Proposals or reviewing grant applications.
- (2) Capacity building. Any resources that strengthen or enhance a community's ability to meet the health and wellness needs of its residents. More specifically, capacity building is a term referring to the collective traits that enable an organization to perform at an optimum level. Capacity building leads to organizational effectiveness and may include assistance to hire staffing to acquire technology, to train staff and/or Boards, and to learn new skills.
- (3) Commission. The Health and Wellness Trust Fund Commission appointed pursuant to G.S. 147-86.32 and/or the Commission staff.
- (4) Corporation. A legal entity created under the laws of North Carolina or another State which is vested with the authority to transact business.
- (5) Fund. The Health and Wellness Trust Fund established by G.S. 147-86.30(a).
- (6) Fund Reserve. 50% of each annual payment from the tobacco Master Settlement Agreement from 2001 through 2025 as defined in G.S. 147-86.30 (c).
- (7) Master Settlement Agreement. The settlement agreement between certain tobacco manufacturers and the states, as incorporated in the consent decree entered in the action of State of North Carolina v Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.
- (8) Person. An individual human being.
- (9) Requests for proposals. Specific written requests for grant proposals solicited by the Commission to fund specific priorities or programs.
- (10) Tobacco products. Cigarettes, cigars, smokeless tobacco, pipe tobacco, roll your own tobacco or any other tobacco product sold at retail intended for human consumption.

*History Note: Authority G.S. 147-86.30; 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

SECTION .0200 - GRANT PROGRAM

20 NCAC 10 .0201 PURPOSE

The purpose of the Commission's Grant Program is to provide funding for projects:

- (1) which address the health needs of vulnerable and underserved populations in North Carolina;
- (2) which address research, education, prevention and treatment of health programs in North Carolina;
- (3) which increase the capacity of communities to respond to public health needs in North Carolina; or
- (4) which develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of the people of North Carolina with an emphasis on reducing youth tobacco use. In developing comprehensive, community-based plans, the Commission will consider all facets of health, including prevention, education, treatment, research and related areas.

*History Note: Authority G.S. 147-86.30;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0202 TYPES OF GRANTS

The Commission shall have two types of grant programs.

- (1) General Grants. General grants are grants awarded to applicants seeking funding for programs to address a health need or wellness issue existing in North Carolina which the application highlights as needing attention. General grants may also address an area of health and wellness which the Commission has identified as a funding priority. General grants shall follow an annual funding cycle beginning January 1st of any year through December 31st of that same year. Applications for any funding year are due on or before August 1st.
- (2) Requests for Proposals (RFP) Grants. Requests for proposals grants are grants awarded in response to requests for proposals published by the Commission to address its funding priorities or to provide specific health and wellness programs identified by the Commission.

*History Note: Authority G.S. 147-86.30; 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0203 ELIGIBILITY TO RECEIVE GRANTS

Only the following organizations are eligible to receive Commission grants of any kind:

- (1) State agencies; or
- (2) A local government or other political subdivision of the State or a combination of such entities; or
- (3) A nonprofit corporation which has a significant purpose promoting the public's

health, or limiting youth access to tobacco products, or reducing the health consequences of tobacco use.

*History Note: Authority G.S. 147-86.31;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0204 APPLICATIONS FOR GENERAL GRANTS

(a) General grant proposals shall be typed or printed in ink in 12 point type on 8 ½" by 11" white or light colored paper and five one-sided copies submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611. To the extent possible, applicants should also provide an electronic copy in a format such as a formatted diskette or via e-mail using Microsoft Word. Completed general grant proposals postmarked later than August 1 of any funding year will be considered in the subsequent funding year.

(b) To be eligible for consideration for funding, applicants shall complete the Health and Wellness Trust Fund General Grant Application Form which shall contain at a minimum the following information:

- (1) Name, mailing address, telephone number, facsimile number, email and federal identification number for the applying organization and name of the key contact person at the applying organization;
- (2) A description of the applying organization including history, current programs, activities, accomplishments, a mission statement, financial information, audit statements (if available), organizational goals, a list of members of the Board of Directors, a list of major contributors to the organization with the amounts given for the current year, and if a nonprofit organization, evidence of tax-exempt status. If the application involves more than one organization, person or entity, it shall identify participating organizations, persons or entities and define their roles in completing the general grant, but there must be a lead organization identified which shall have fiscal responsibility for the grant and for the activities proposed;
- (3) A verified statement from the chair of the Board of Directors or the head of the applying entity from the applying entity stating that the grant application has the approval of the governing body;
- (4) A description of the proposed project, including the project's goals and measurable objectives, the manner in which the applicant intends to accomplish these goals and objectives, and a statement of how these goals and objectives meet the Commission's current funding priorities. The description of the need for the project or program should be brief;
- (5) A detailed statement of the projected annual budget of the proposed project, including any administrative costs as well as the budget of the applying organization or in case there is

more than one organization, of the lead organization which reflects expected funding from any other sources which have been applied for or have been received. The projected annual budget must also include an allocation for conducting an outcomes analysis and/or evaluation of the project;

- (6) A complete list of sub-recipients under the grant and a specification of how the applicant's methodology for accounting for funds disbursed to sub-recipients will work. The applicant shall have a continuing duty to identify sub-recipients under the grant;
- (7) A description of how the project will be completed including time lines;
- (8) A description of the geographic area and population the project will serve and an explanation of how these people will benefit from the project;
- (9) A description of the bank accounts and internal accounting ledgers or books that will be set up and used and an assurance that all accounts, books and ledgers can be audited by the Commission or the State auditor;
- (10) A list of expected outcomes from the project including what the applicant expects the project to accomplish and an explanation of how the project's results will be evaluated along with a definition of the long-term impact of the project;
- (11) At least three references whom the Commission may contact;
- (12) Any other information required by G.S. 147, Article 6C, or required by the Commission in order to make a decision on the grant proposal;
- (13) An explanation of how the project will be sustained beyond the life of the grant;
- (14) An explanation of how the program will build or enhance health care capacity in the community served; and
- (15) A list and history of applicant's past projects funded by grants or awards as well as the names of all granting entities involved in those grants or awards.

(c) As a condition of applying for, or of receiving a grant, applicants or grantees must allow the Commission or the Commission staff to make site visits at the Commission's convenience and must also allow the State auditor or an outside auditor hired by the Commission to have access to all books and records of the grant project.

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0205 APPLICATION FOR GRANTS ISSUED IN RESPONSE TO REQUESTS FOR PROPOSALS

The Commission may specify programs based on its funding priorities which address specific health needs of the residents of North Carolina or programs intended to improve the health and wellness of the residents of North Carolina and grant money to

eligible entities that can best perform the specified work. Specifications shall include the information required for general grants listed in 20 NCAC 10 .0204 to the maximum extent possible and may be published in formal documents available on the Commission website. To be complete, responses to requests for proposals must address each and every specification contained in the request for proposals. Incomplete responses to requests for proposals will be returned to the applicant with an explanation of what is missing. Formal requests for proposals will be kept open for at least 30 days.

*History Note: Authority G.S. 147-86.30; 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0206 OUT OF CYCLE AWARD OF GENERAL GRANTS

The Commission may consider and award general grants out of cycle for good cause shown if the following conditions are met:

- (1) The requested program will respond to a serious and unforeseen threat to the public health, safety or welfare; or
- (2) The requested program is required in response to a recent change in federal or State budgetary and/or health care related policy; or
- (3) The requested program is in response to a disaster as that term is defined in G.S. 166A, Article 1; or
- (4) The Commission determines that awarding a grant or grants out of cycle is in the public interest.

The maximum amount which can be awarded to an out of cycle grant is twenty five thousand dollars (\$25,000).

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0207 REVIEW OF PROPOSALS

- (a) The Executive Director of the Commission and his or her staff or designee shall screen all grant applications, whether general grant applications or applications in response to requests for proposals, to see if they are complete. The Executive Director shall notify applicants if the grant application is incomplete.
- (b) Applications that have been deemed complete will be forwarded to one or more Grant Review Committees of the Commission. Grant Review Committee members shall include Commissioners. Grant Review Committees may hire consultants or appoint advisory committees to advise them in their review and evaluation of the grant proposals.
- (c) During the review and evaluation of proposals, the Grant Review Committees may request that the Commission staff or designee make site visits and report to the Grant Review Committee. At the conclusion of their review and evaluation, Grant Review Committees will make recommendations to the Commission.
- (d) The Commission will receive the suggestions of the Grant Review Committees and will evaluate proposals based on the beneficial impact of the request on the health and wellness of the people of North Carolina. In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, the cost of administering the

grant, capacity building and sustainability of the grant application and whether the grant will benefit the health and wellness of the residents of the State in a measurable manner. Scoring and ranking of proposals may be determined by using any consistent rating methodology, including adjectival, numerical, or ordinal rankings.

(e) No grant may be awarded for a project that is unlawful.

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0208 AWARD OF GRANTS

- (a) All applicants will be notified in writing whether they have received a grant or not. All awards will be made subject to the availability of funds to the Commission.
- (b) All grant awards shall be incorporated in a written grant agreement between the Commission and the grantee. The grant proposal, whether for a general grant or a requests for proposals grant, shall be incorporated into the grant agreement and the goals, time lines and other grant objectives shall be performance standards for the grant agreement.
- (c) Funds will be transmitted to grantees based on a schedule agreed upon in a grant agreement with the Commission.
- (d) The grant agreement may allow up to 50 percent of the total funding for the first program year to be paid upon signing of the contract if such payment is requested in the grant application for start up costs and initial administration.
- (e) Of the total funds granted for each project, 25 percent shall be held back and paid only for completion of the final stage of the project which completion shall demonstrate to the Commission or the Commission staff that the performance standards of the grant will be met. This term shall be incorporated within all grant agreements of the Commission. This requirement may be waived if the grant applicant demonstrates undue hardship as a result of this term at the time of signing of the grant agreement.
- (f) Other payments to successful applicants shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals in the grant agreement.
- (g) For good cause shown, the Commission or the Commission staff may agree to amend time lines and/or payment schedules specified in the grant agreement when such changes do not undermine the purposes and goals of grant.
- (h) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding grants. The Commission shall not award money to an applicant whose past performance of Commission grants and program has been unsatisfactory.
- (i) The granting agreement will also outline the standard accounting practices which the applicant must follow in order to facilitate review by the Commission staff and/or the State Auditor, or an outside auditor hired by the Commission.
- (j) If the Commission determines that grant funds are not being used for the purpose for which they were awarded, the Commission may cease making payments under the grant schedule until the problem has been resolved. Grantees must pay back to the Commission any funds that the Commission determines have not been spent for the purpose for which they were awarded.

History Note: Authority G.S. 147-86.33;

Temporary Adoption Eff. June 15, 2002.

20 NCAC 10 .0209 REPORTING

(a) Successful applicants for both general grants and requests for proposals grants shall submit written progress reports at six-month intervals or at shorter intervals as established by the Commission. Written reports shall describe the status of the grant project, progress toward achieving grant objectives, notable occurrences and any significant problems encountered and steps taken to overcome the problems. These reports are due no later than 30 days after completion of the six-month intervals or at other predetermined intervals specified in the grant agreement. Within 60 days of completion of the grant, the successful applicant must make a final written report to the Commission which final report shall include an evaluation of the success of the program.

(b) A representative of the Commission shall review the progress reports for completeness which shall include a showing of how the project is meeting its stated goals and performance standards. If the representative finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee will be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received in the specified time the Commission may withhold grant payments.

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0210 POLICIES GOVERNING GRANTS

(a) Successful applicants must keep financial and other records of the grant for five years and must comply with audit requests. If the Commission in its informed discretion determines that the amount of the money awarded or the performance or alleged non-performance of the grantee compels it, the Commission may require a compliance audit of the grant project.

(b) All applications, attachments to applications and written reports received by the Commission are public records.

*History Note: Authority G.S. 147-86.33; 147-86.36;
Temporary Adoption Eff. June 15, 2002.*

SECTION .0300 – GIFTS AND GRANTS

20 NCAC 10 .0301 GIFTS MADE TO THE COMMISSION

All proposed gifts must be submitted to the Commission for a decision on whether to accept the gift or not. The Commission will direct how all gifts will be used or spent. The Commission may accept gifts and honor the request of the donor or grantor regarding the use of the gift for a specific funding priority, without conditions, if the Commission determines that honoring the request is consistent with the public interest. Under no circumstances can a donor require that the Commission use a gift to award a grant to any specific entity. Upon acceptance, the gift will be deposited in the Commission's general fund at the Treasurer's Office.

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

20 NCAC 10 .0302 GRANTS ACCEPTED BY THE COMMISSION

The Commission may apply for and may accept grants. Grants may be accepted based upon a mutual agreement with the grantor regarding the use of the grant. All money awarded to the Commission pursuant to a grant will be deposited in the Commission's general fund at the Treasurer's Office.

*History Note: Authority G.S. 147-86.33;
Temporary Adoption Eff. June 15, 2002.*

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meetings of April 18 and April 30, 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	09L	.1303*	16:14 NCR
02	NCAC	09L	.1305*	16:14 NCR
02	NCAC	09L	.1306	16:14 NCR
02	NCAC	34	.0102*	16:14 NCR
02	NCAC	34	.0501*	16:14 NCR
02	NCAC	34	.0503*	16:14 NCR
02	NCAC	34	.0505*	16:14 NCR
02	NCAC	34	.0506	16:14 NCR
02	NCAC	34	.0601*	16:14 NCR
02	NCAC	34	.0604-.0605*	16:14 NCR
02	NCAC	34	.0703*	16:14 NCR
02	NCAC	34	.0803*	16:14 NCR
02	NCAC	34	.0805-.0806*	16:14 NCR
02	NCAC	34	.0904*	16:14 NCR
02	NCAC	38	.0701*	16:12 NCR
10	NCAC	14J	.0201*	16:04 NCR
10	NCAC	14J	.0203*	16:04 NCR
10	NCAC	14J	.0211-.0212*	16:04 NCR
10	NCAC	14P	.0101-.0102*	16:04 NCR
10	NCAC	14Q	.0101*	16:04 NCR
10	NCAC	14R	.0101*	16:04 NCR
10	NCAC	14R	.0104-.0105*	16:04 NCR
10	NCAC	14R	.0108-.0109*	16:04 NCR
10	NCAC	14V	.6002*	16:04 NCR
10	NCAC	19H	.0104*	16:09 NCR
10	NCAC	41F	.0502*	16:14 NCR
10	NCAC	41F	.0504*	16:14 NCR
10	NCAC	41F	.0601-.0602*	16:14 NCR
10	NCAC	41F	.0701-.0702*	16:14 NCR
10	NCAC	41F	.0704-.0705*	16:14 NCR
10	NCAC	41F	.0802*	16:14 NCR
10	NCAC	41F	.0805*	16:14 NCR
10	NCAC	41F	.0806	16:14 NCR
10	NCAC	41F	.0807-.0808*	16:14 NCR
10	NCAC	41F	.0811*	16:14 NCR
10	NCAC	41F	.0814*	16:14 NCR
10	NCAC	41N	.0203*	16:14 NCR
10	NCAC	41N	.0209*	16:14 NCR
10	NCAC	41N	.0211*	16:14 NCR
10	NCAC	41O	.0207-.0208*	16:14 NCR
11	NCAC	08	.1418*	16:13 NCR
11	NCAC	10	.1113-.1114	16:15 NCR
11	NCAC	10	.1203	16:15 NCR
11	NCAC	10	.1206	16:15 NCR
11	NCAC	10	.1209	16:15 NCR

APPROVED RULES

11	NCAC	12	.1006*	16:13 NCR
11	NCAC	12	.1028*	16:13 NCR
12	NCAC	07D	.0807*	16:14 NCR
12	NCAC	07D	.0902*	16:14 NCR
13	NCAC	07A	.0302*	16:15 NCR
13	NCAC	07F	.0201	16:13 NCR
15A	NCAC	02D	.1001	16:12 NCR
15A	NCAC	02D	.1002*	16:12 NCR
15A	NCAC	02D	.1004*	16:12 NCR
15A	NCAC	02D	.1005	16:12 NCR
15A	NCAC	06E	.0103*	16:05 NCR
15A	NCAC	09C	.0507*	16:14 NCR
15A	NCAC	09C	.0510*	16:14 NCR
15A	NCAC	09C	.0516*	16:14 NCR
15A	NCAC	09C	.0604-.0605*	16:14 NCR
15A	NCAC	09C	.0607*	16:14 NCR
15A	NCAC	09C	.0902-.0903*	16:14 NCR
15A	NCAC	10B	.0106*	16:12 NCR
15A	NCAC	10B	.0110	16:12 NCR
15A	NCAC	10B	.0116	16:12 NCR
15A	NCAC	10B	.0117*	16:12 NCR
15A	NCAC	10B	.0118	16:12 NCR
15A	NCAC	10B	.0202*	16:12 NCR
15A	NCAC	10B	.0203	16:12 NCR
15A	NCAC	10B	.0209*	16:12 NCR
15A	NCAC	10C	.0205-.0206*	16:12 NCR
15A	NCAC	10C	.0302	16:12 NCR
15A	NCAC	10C	.0305*	16:12 NCR
15A	NCAC	10C	.0401	16:12 NCR
15A	NCAC	10C	.0407*	16:12 NCR
15A	NCAC	10D	.0102-.0104*	16:12 NCR
15A	NCAC	10F	.0323*	16:04 NCR
15A	NCAC	11	.0104*	16:12 NCR
15A	NCAC	11	.0320*	16:12 NCR
15A	NCAC	11	.1403*	16:12 NCR
15A	NCAC	11	.1408*	16:12 NCR
15A	NCAC	11	.1417-.1418*	16:12 NCR
15A	NCAC	11	.1610*	16:12 NCR
15A	NCAC	11	.1613*	16:12 NCR
15A	NCAC	13A	.0104*	not required (G.S. 150B-21.5) Eff. May 1, 2002
15A	NCAC	18D	.0105*	16:14 NCR
15A	NCAC	18D	.0205*	16:14 NCR
15A	NCAC	18D	.0206	16:14 NCR
15A	NCAC	18D	.0307	16:14 NCR
15A	NCAC	18D	.0701*	16:14 NCR
17	NCAC	03C	.0106-.0108*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	05C	.0703*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	05C	.2404*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	06B	.0101*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	06B	.0104*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	06B	.0107*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	06B	.0112*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	06B	.0118*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	06B	.3901*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	06B	.3905*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	06C	.0123*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07B	.0104*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07B	.0108*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07B	.2201*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07B	.2602*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07B	.2611*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002

APPROVED RULES

17	NCAC	07B	.3201-.3202*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07B	.3204*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07B	.3907*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07B	.4602*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07B	.4901-.4902*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
17	NCAC	07C	.0304*	not required (G.S. 150B-1(d)(4), Eff. August 1, 2002
18	NCAC	05B	.0103*	16:02 NCR
18	NCAC	05B	.0105-.0108*	16:02 NCR
18	NCAC	05B	.0310*	16:02 NCR
18	NCAC	05B	.0410*	16:02 NCR
19A	NCAC	02D	.0601*	16:15 NCR
19A	NCAC	02D	.0607	16:15 NCR
21	NCAC	14B	.0603*	16:15 NCR
21	NCAC	14G	.0103*	16:15 NCR
21	NCAC	14J	.0208*	16:15 NCR
21	NCAC	14K	.0106	16:15 NCR
21	NCAC	14P	.0105-.0106*	16:15 NCR
21	NCAC	14P	.0108*	16:15 NCR
21	NCAC	14P	.0116*	16:15 NCR
21	NCAC	14Q	.0101-.0106*	16:15 NCR
21	NCAC	14Q	.0108-.0109	16:15 NCR
21	NCAC	14Q	.0110*	16:15 NCR
21	NCAC	16B	.0315*	16:10 NCR
21	NCAC	16C	.0310*	16:10 NCR
21	NCAC	16D	.0102*	16:10 NCR
21	NCAC	16Q	.0202*	16:10 NCR
21	NCAC	16Q	.0302*	16:10 NCR
21	NCAC	16Y	.0101-.0104*	16:10 NCR
21	NCAC	32A	.0101*	16:12 NCR
21	NCAC	32A	.0105-.0106	16:12 NCR
21	NCAC	32B	.0103	16:12 NCR
21	NCAC	32B	.0201-.0203	16:12 NCR
21	NCAC	32B	.0508*	16:12 NCR
21	NCAC	33	.0105*	16:14 NCR
21	NCAC	36	.0109*	16:14 NCR
21	NCAC	36	.0112*	16:14 NCR
21	NCAC	36	.0113	16:14 NCR
21	NCAC	36	.0224-.0225*	16:14 NCR
21	NCAC	36	.0227*	16:13 NCR
21	NCAC	36	.0301-.0302*	16:13 NCR
21	NCAC	36	.0321*	16:13 NCR
21	NCAC	50	.0104	16:11 NCR
21	NCAC	50	.0404*	16:11 NCR
21	NCAC	56	.0501-.0502*	16:15 NCR
21	NCAC	56	.0505*	16:15 NCR
21	NCAC	56	.0602*	16:15 NCR
21	NCAC	56	.0606*	16:15 NCR
21	NCAC	56	.0701	16:15 NCR
21	NCAC	56	.0804*	16:15 NCR
21	NCAC	56	.0901	16:15 NCR
21	NCAC	56	.1103*	16:15 NCR
21	NCAC	56	.1605-.1608*	16:15 NCR
21	NCAC	56	.1609	16:15 NCR
21	NCAC	56	.1708	16:15 NCR
21	NCAC	56	.1713*	16:15 NCR
21	NCAC	68	.0202-.0203*	16:14 NCR
21	NCAC	68	.0205*	16:14 NCR
21	NCAC	68	.0215*	16:14 NCR
25	NCAC	01L	.0104*	16:12 NCR

**TITLE 2 – DEPARTMENT OF AGRICULTURE
& CONSUMER SERVICES**

02 NCAC 09L .1303 EXEMPTIONS

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

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

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

*History Note: Authority G.S. 143-437; 143-440; 143-466;
Eff. August 26, 1977;
Amended Eff. November 1, 1988; February 5, 1978;
Temporary Amendment Eff. November 1, 2001;
Amended Eff. August 1, 2002.*

**02 NCAC 09L .1305 RECORD KEEPING
REQUIREMENTS**

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

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

*History Note: Authority G.S. 143-437; 143-440; 143-466;
Temporary Adoption Eff. November 1, 2001;
Eff. August 1, 2002.*

02 NCAC 34 .0102 DEFINITIONS

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

- (1) "Act or law" means the Structural Pest Control Act of North Carolina of 1955.

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

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| <p>(16) "Enclosed space" means any structure by whatever name known, including household structures; commercial buildings; warehouses; docks; vacant structures; places where people congregate such as hospitals, schools, churches, and others; railroad cars; trucks; ships; aircraft; and common carriers. It shall also mean vaults, tanks, chambers, and special rooms designed for use, being used, or intended to be used for fumigation operations.</p> <p>(17) "EPA" means the Environmental Protection Agency of the United States Government.</p> <p>(18) "EPA registration number" means the number assigned to a pesticide label by EPA.</p> <p>(19) "Flammable pesticidal fog" means the fog dispelled into space and produced:</p> <p style="padding-left: 20px;">(a) from oil solutions of pesticides finely atomized by a blast of heated air or exhaust gases from a gasoline engine, or from mixtures of water and pesticidal oil solutions passed through a combustion chamber, the water being converted to steam, which exerts a shearing action, breaking up the pesticidal oil into small droplets (thermal fog); or</p> <p style="padding-left: 20px;">(b) from oil solutions of pesticides which are forced through very narrow space by centrifugal force and atomized as they are thrown off into the air (mechanical or cold fogs).</p> <p>(20) "Fog or fogging" means micron sized particles of pesticide(s) dispersed by means of a thermal or centrifugal fogger or a pressurized aerosol pesticide.</p> <p>(21) "Fumigation" means the use of fumigants within an enclosed space, or in, or under a structure, in concentrations which may be hazardous to man.</p> <p>(22) "Fumigation crew" or "crew" means personnel performing the fumigation operation.</p> <p>(23) "Fumigation operation" means all details prior to application of fumigant(s), the application of fumigant(s), fumigation period, and post fumigation details as outlined in these Rules.</p> <p>(24) "Fumigation period" means the period of time from application of fumigant(s) until ventilation of the fumigated structure(s) is completed and the structure or structures are declared safe for occupancy for human beings or domestic animals.</p> <p>(25) "Fumigator" means a person licensed under the provisions of G.S. 106-65.25(a)(3) or certified under the provisions of G.S. 106-65.26 to engage in or supervise fumigation operations.</p> <p>(26) "Gas-retaining cover" means a cover which will confine fumigant(s) to the space(s) intended to be fumigated.</p> <p>(27) "General fumigation" means the application of fumigant(s) to one or more rooms and their</p> | <p>contents in a structure, at the desired concentration and for the necessary length of time to control rodents, insects, or other pests.</p> <p>(28) "Household" means any structure and its contents which are used for man.</p> <p>(29) "Household pest" means any vertebrate or invertebrate organism occurring in a structure or the surrounding areas thereof, including but not limited to insects and other arthropods, commensal rodents, and birds which have been declared pests under G.S. 143-444. "Household pest" does not include wood-destroying organisms.</p> <p>(30) "Household pest control" means that phase of structural pest control other than the control of wood-destroying organisms and fumigation and shall include the application of remedial measures for the purpose of curbing, reducing, preventing, controlling, eradicating, and repelling household pests.</p> <p>(31) "Inactive license" shall mean any structural pest control license held by an individual who has no employees and is not engaged in any structural pest control work except as a certified applicator or registered technician.</p> <p>(32) "Infestation of a specific organism" means evidence of past or present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.</p> <p>(33) "Inspection for a specific wood-destroying organism" means the careful visual examination of all accessible areas of a building and the probing of accessible structural members adjacent to slab areas, chimneys, and other areas particularly susceptible to attack by wood-destroying organisms to determine the presence of and the damage by that specific wood-destroying organism.</p> <p>(34) "Inspector" means any employee of the Structural Pest Control Division of the Department of Agriculture and Consumer Services of the State of North Carolina.</p> <p>(35) "Licensed structural pest control operation," or "pest control operation," or "operator," or "licensed operator" means any person licensed under the provisions of G.S. 106-65.25(a) or unlicensed who, for direct or indirect hire or compensation is engaged in the business of structural pest control work, as defined in G.S. 106-65.24(23).</p> <p>(36) "Liquefied gas aerosol" means the spray produced by the extreme rapid volatilization of a compressed and liquefied gas, to which has been added a nonvolatile oil solution containing a pesticide.</p> <p>(37) "Noncommercial certified applicator" shall mean any certified applicator not employed by a licensed individual.</p> <p>(38) "Open porch" means any porch without fill in which the distance from the bottom of the slab</p> |
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- to the top of the soil beneath the slab is greater than 12 inches.
- (39) "Physical barrier" as used in 02 NCAC 34 .0500, means a barrier, which, by its physical properties and proper installation, is capable of preventing the passage of subterranean termites into a structure to be protected from subterranean termites.
- (40) "Residential structure" means any structure used, or suitable for use, as a dwelling such as a single- or multi-family home, house trailer, motor home, mobile home, a condominium or townhouse, or an apartment or any other structure, or portion thereof.
- (41) "Secretary" means the Secretary to the North Carolina Structural Pest Control Committee.
- (42) "Service vehicle" means any vehicle used regularly to transport the licensee or certified applicator or registered technician or other employee or any equipment or pesticides used in providing structural pest control services.
- (43) "Slab-on-ground" means a concrete slab in which all or part of that concrete slab is resting on or is in direct contact with the ground immediately beneath the slab.
- (44) "Solid masonry cap" means a continuous concrete or masonry barrier covering the entire top, width and length, of any wall, or any part of a wall, that provides support for the exterior or structural parts of a building.
- (45) "Space spray" means any pesticide, regardless of its particle size, which is applied to the atmosphere within an enclosed space in such a manner that dispersal of the pesticide particles is uncontrolled. Pesticidal fogs or aerosols, including those produced by centrifugal or thermal fogging equipment or pressurized aerosol pesticides, shall be considered space sprays.
- (46) "Spot fumigation" means the application of a fumigant to a localized space or harborage within, on, under, outside of, or adjacent to, a structure for local household pest or rodent control.
- (47) "Spot surface residual spray" means the application of pesticidal spray directly to a surface and only in specific areas where necessary and in such a manner that the pesticidal material will largely adhere to the surface where applied and will remain toxic to household pests or rodents or other pests for which applied for an extended period of time.
- (48) "Structure" means all parts of a building, whether vacant or occupied, in all stages of construction.
- (49) "Structural pests" means all pests that occur in any type of structure of man and all pests associated with the immediate environs of such structures.
- (50) "Sub-slab fumigation" means the application of a fumigant below or underneath a concrete slab and is considered spot fumigation.
- (51) "Supervision" as used in 02 NCAC 34 .0325, shall mean the oversight by the licensee of the structural pest control activities performed under that license. Such oversight may be in person by the licensee or through instructions, verbal, written or otherwise, to persons performing such activities. Instructions may be disseminated to such persons either in person or through persons employed by the licensee for that purpose.
- (52) "Termiticide(s)" (as used in these Rules) means those pesticides specified in 02 NCAC 34 .0502, Pesticides for Subterranean Termite Prevention and/or Control.
- (53) "Termiticide barrier" shall mean an area of soil treated with an approved termiticide, which, when analyzed, is not deficient in termiticide.
- (54) "To use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling. Provided that, the term shall not include:
- (a) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency;
 - (b) applying a pesticide against any target pest not specified on the labeling if the application is to the site specified on the labeling, unless the EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling; or
 - (c) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified by the labeling.
- (55) "Type of treatment" means the method used to apply a pesticide formulation to a specific location, including but not limited to: space spray, crack and crevice, complete surface residual, spot surface residual, bait placement, or fog.
- (56) "Unauthorized personnel" means any individual or individuals not given specific authorization by the licensee or certified applicator to enter areas to which access is restricted by these Rules.
- (57) "Waiver" means a standard form prescribed by the Committee pursuant to 02 NCAC 34 .0603 which will, when completed correctly, permit the licensee to deviate from or omit one or more of the minimum treatment methods and procedures for structural pests which are set

- forth in the Committee rules, definitions, and requirements.
- (58) "Wood-destroying insect report" means any written statement or certificate issued by an operator or his authorized agent, regarding the presence or absence of wood-destroying insects or their damage in a structure.
- (59) "Wood-destroying organism" is an organism such as a termite, beetle, other insect, or fungus which may devour or destroy wood or wood products and other cellulose material in, on, under, in contact with, and around structures.
- (60) "Wood-destroying organism report" means any written statement or certificate issued by an operator or his authorized agent, regarding the presence or absence of wood-destroying organisms or their damage in a structure.

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. August 1, 2002; July 1, 2000; July 1, 1998;

August 3, 1992; January 1, 1991; January 1, 1989.

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

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

- (1) Powder Post Beetle(s) (Anobiidae, Bostrichidae and Lyctidae)
 - (A) The presence of frass, the color of fresh cut wood, will be acceptable as evidence of an active infestation of powder post beetles.
 - (B) The presence of holes alone or holes and dull colored frass shall not be acceptable evidence of an active infestation of powder post beetles except in cases where live larvae or pupae are found in wood members.
 - (C) If an active infestation of powder post beetles is found by the Division in any structure treated for said beetles, during or after the first complete adult beetle emergence period within 18 months of the treatment date, the licensee or certified applicator

responsible for said treatment shall retreat the infested areas of the structure within 30 days of written notice from the Division. Retreatment shall be performed, upon request of the Division, in the presence of a structural pest control inspector.

- (D) If a licensee provides a guarantee, warranty or service agreement in connection with a treatment for powder post beetles, the period of initial liability with regard to active infestation shall be 18 months from the original treatment date.
- (2) Old House Borer (*Hylotrupes bajulus*). The presence of old house borer or oval exit holes with sawdust-like frass consisting of fine powder with tiny pellets in oval galleries in pine or other softwoods shall constitute evidence of an active infestation of the old house borer. The sound of feeding larvae of the old house borer without the presence of frass shall not constitute sufficient evidence of an active infestation.

(b) Identifying Other Wood-Destroying Insects. There are other species of wood-destroying insects which occur in structures. Before recommending treatment or selling a service for the prevention or control of wood-destroying insects, other than powder post beetles or old house borer, the licensee, certified applicator, or their representative(s) shall identify the wood-destroying insect(s) in question and inform the property owner or his authorized representative of the identity and habits of the wood-destroying insect(s) in question.

(c) Any reapplication of pesticides under this Rule shall be in accordance with the label of the pesticide used.

(d) Pesticide applications for the prevention of wood-boring beetles shall be performed only after informing the property owner or their authorized agent in writing of the biology and conditions supporting an infestation and survival of said insects. Such notice shall include an evaluation of the condition of the structure(s) to be treated and a statement as to whether or not such condition will support an infestation by wood-boring beetles.

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. August 1, 2002; July 1, 1998; January 1, 1989;

August 1, 1980.

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

(a) The following standards and requirements shall apply to the treatment of a building for subterranean termite control after construction if the building has a basement or crawl space:

- (1) Access openings shall be provided to permit inspection of all basement and crawl space areas of a building and all open porches.
- (2) Clean up and remove all wood debris and cellulose material, such as wood, paper, cloth,

- etc., contacting soil in all crawl space areas. This excludes shavings or other cellulose material too small to be raked with the tines of an ordinary garden rake. Remove all visible stumps from all crawl space areas. Remove all visible form boards in contact with soil.
- (3) Remove all earth which is within 12 inches of the bottom edges of floor joists or within eight inches of the bottom edges of subsills or supporting girders, but not below footings of foundation walls. If foundation footings are less than 12 inches below the bottom edges of joists or subsills or supporting girders, a bank of soil 12 inches to 18 inches wide shall be left adjacent to footings for the purpose of support. Clearance shall be adequate to provide passage of a person to all crawl space areas of a building.
- (4) All visible termite tubes or tunnels on pillars, pilasters, foundation walls, chimneys, step buttresses, sills, pipes, and other structures below the sill line shall be removed.
- (5) Eliminate all wooden parts making contact with the building and soil, either outside or inside.
- (A) No wood of any access opening shall be in contact with the soil.
- (B) Where wood parts such as door frames, partition walls, posts, stair carriages, or other wood parts can be reasonably ascertained to be making direct soil contact through concrete or where there is evidence of termite activity or damage they shall be cut off above the ground or floor level and the wood removed from the concrete; and the hole shall be filled with concrete or covered with a metal plate, after the point of contact has been treated with a termiticide.
- (C) Where wood parts such as vertical wood supports or other wood parts under a building or steps outside a building are not resting on solid masonry or concrete bases extending at least two inches above the soil surface or are in direct soil contact and such supports or steps are not removed, the supports and steps shall be cut off and set on a solid masonry or concrete footing extending at least two inches above the ground after the point of contact has been treated with a termiticide.
- (D) When wood skirting and lattice work are suspended, there shall be at least a two-inch clearance between the top of the soil and the bottom edges of the wood skirting or lattice work. If the two-inch clearance is not acceptable to the property owner, it may be closed with solid masonry or concrete but a minimum clearance of one-fourth of one inch shall be provided between the masonry and wood.
- (E) Where houses or decks are built on pressure treated wood pilings, pillars, or all-weather wood foundations, such pilings, pillars, and wood foundation members, including wood step supports, shall not be subject to Parts (a)(5)(A), (B), or (C) of this Rule.
- (6) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in multiple masonry foundation and bearing walls and all voids created by their placement at and a minimum distance of four feet in all directions from such evidence. Porch foundation walls shall be drilled to a distance of three feet from the main foundation wall and the point of contact with any wooden members.
- (A) The distance between drill holes shall not exceed 16 lineal inches and holes shall be no more than 16 inches above the footing or for footings deeper than 16 inches, immediately above the lowest soil level.
- (B) Test drill the main foundation wall behind any porch or slab area to determine if the porch or slab is supported by a wall whose placement creates a void between itself and the main foundation wall. If test reveals that a void exists, drill and treat all voids therein as specified in this Rule.
- (7) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in all multiple masonry pillars, pilasters, chimneys, and step buttresses associated or in contact with such evidence, and any void created by their placement:
- (A) The distance between drill holes shall not exceed 16 lineal inches and shall be no more than 16 inches above the footing or for footings deeper than 16 inches, immediately above the lowest soil level.
- (B) Drilling shall not be required if solid concrete masonry footings of pillars, pilasters, chimneys, or step buttresses extend eight inches or more above top of soil surface.
- (8) Where concrete slabs over dirt-filled areas are at the level of, above the level of, or in contact with, wood foundation members treat dirt-filled areas with a termiticide as follows:
- (A) Drill vertically three-eighths of one inch or larger holes in the slab, no more than six inches from the

- building foundation, at no more than 12-inch intervals and treat soil below slab from the bottom of the slab to the top of the footing; or
- (B) Drill horizontally three-eighths of one inch or larger holes in the foundation wall of the concrete slab, no more than six inches from the building foundation, every 16 vertical inches starting immediately below the bottom of the slab and rod treat all soil adjacent to building foundation from the bottom of the slab to the lowest outside grade.
- (9) Trench or trench and rod treat soil to establish a continuous termiticide barrier in the soil adjacent to, but not more than six inches from, all pillars, pilasters, chimneys, pressure treated wood supports, and step buttresses; inside of foundation walls; outside of foundation walls; the outside of foundation walls of concrete slabs over dirt-filled areas and the entire perimeter of a slab foundation wall from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where outside concrete slabs adjacent to the foundation prevent trenching of soil, drill three-eighths of one inch or larger holes, not more than 12 inches apart and within six inches of the foundation wall, through slabs or through adjoining foundation wall, and rod treat soil below slabs as indicated above to establish a continuous termiticide barrier at all known points of entry. The soil immediately around pipes and other utility conduits making contact with the structure shall be treated.
- (10) Where stucco on wood or similar type materials, including extruded or expanded rigid foam insulation or similar materials, extend to or below grade, trench soil to a depth below and under the edge of the stucco or similar type materials and treat soil to establish a continuous termiticide barrier in the soil. After the soil has been treated, a masonry barrier wall may be erected to hold back the soil from making direct contact with the stucco or similar type materials. Where outside slabs on grade adjacent to foundation prevent trenching of soil, drill three-eighths of one inch or larger holes through slabs within six inches of the foundation wall, or through adjoining foundation wall, not more than 12 inches apart and rod treat soil below slabs. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (11) Paragraph (b) of this Rule shall be followed if applicable to basement or crawl space construction.
- (b) The following standards and requirements shall apply to the treatment of a building for subterranean termite control after construction if the building has a slab-on-ground construction:
- (1) Treat soil to establish a continuous termiticide barrier in, under, and around, all traps and openings in the slab.
 - (2) Drill vertically three-eighths inch or larger holes, at all visible or known expansion and construction joints, cracks, and crevices in slab and around all utility conduits in the slab at no more than 12-inch intervals and rod treat soil below slab to establish a continuous termiticide barrier from the bottom of the slab to a depth of 30 inches or to the top of the footing, whichever is less, at all known points of entry. Where wooden structural members are in contact with concrete or masonry floors which have joints or cracks beneath the wooden structural members, including wall plates in utility or storage rooms adjoining the main building, the concrete or masonry shall be drilled and treated in order to achieve treatment of the soil beneath them. As an exception, expansion and construction joints at the perimeter of the exterior wall may be rod treated by drilling through the foundation wall at no more than 12-inch intervals directly below the bottom of the slab.
 - (3) Paragraph (a) of this Rule shall also be followed, where applicable.
- (c) Reapplication of Pesticide(s) to a Structure Previously Treated for Subterranean Termite Control:
- (1) A reapplication of termiticide shall be required if soil test by the Division reveals that the soil is deficient in the termiticide which was applied to the soil.
 - (2) Any reapplication of pesticides under this Rule shall be in accordance with the label of the pesticide used.
- (d) A licensee may enter into a written agreement for the control or prevention of subterranean termites in a building after it has been constructed without having to abide by Paragraphs (a) and (b) of this Rule provided that:
- (1) The licensee has written proof that he or his authorized agent treated the entire building for subterranean termites at the time of its construction as required in 02 NCAC 34 .0505 or 02 NCAC 34 .0506 (or comparable rules in effect at the time of treatment); and
 - (2) A written agreement is issued in compliance with 02 NCAC 34 .0605.
- (e) Paragraphs (a) and (b) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee provides a warranty for the control of subterranean termites on

the entire structure.

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. August 1, 1980;

Temporary Repeal Eff. August 24, 1987 for a period of 30 days to expire on September 22, 1987;

Temporary Repeal Expired Eff. September 22, 1987;

Amended Eff. January 1, 1989;

Temporary Amendment Eff. January 10, 1997;

Temporary Amendment Expired Eff. October 31, 1997;

Amended Eff. August 1, 2002; July 1, 1998.

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

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

(b) The following standards and requirements shall apply to the treatment of a building for subterranean termite control during construction if the building has a basement or crawl space:

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

system.

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

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

*Readopted Eff. November 22, 1977;
Amended Eff. August 1, 1980;
Temporary Repeal Eff. August 24, 1987 for a period of 30 days
to expire on September 22, 1987;
Temporary Repeal Expired Eff. September 22, 1987;
Amended Eff. August 1, 2002; April 1, 2001; July 1, 1998;
January 1, 1991; January 1, 1989.*

02 NCAC 34 .0601 AGREEMENTS

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

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

*History Note: Authority G.S. 106-65.29;
Eff. July 1, 1976;
Readopted Eff. November 22, 1977;
Amended Eff. August 1, 1980;
Temporary Amendment Eff. October 15, 1987 for a Period of
180 Days to Expire on April 12, 1988;
Temporary Amendment Expired Eff. January 19, 1988;
Amended Eff. August 1, 2002; August 3, 1992; January 1, 1989.*

**02 NCAC 34 .0604 WOOD-DESTROYING
ORGANISMS RECORDS**

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

- (1) EPA approved brand name of pesticide used;
- (2) Names of all employees who applied pesticide;
- (3) Information required by EPA;
- (4) For restricted use pesticides, the concentration and approximate total volume of each pesticide applied. For restricted use pesticides, this information, along with the information required by Subparagraphs (a)(1) and (a)(2) of this Rule shall also be included on the customer's copy of the written agreement; and
- (5) In addition, for all treatments performed pursuant to 02 NCAC 34 .0505 or .0506, the following records shall be made and maintained:
 - (A) the date of each termiticide application;

- (B) the portion or portions of the structure treated;
- (C) the approximate volume of termiticide applied during each treatment; and
- (D) the concentration at which the termiticide is applied.

(b) A duplicate of each wood-destroying insect or wood-destroying organism report shall be kept by the licensee for a minimum of two years beyond the date of issuance.

(c) Noncommercial certified applicators shall maintain the following records for two years beyond the last date of treatment:

- (1) EPA approved brand name of all pesticides used;
- (2) Concentration and approximate total volume of pesticide applied;
- (3) Names of all employees that applied pesticide;
- (4) Target pest;
- (5) Site of application;
- (6) Date of application; and
- (7) Information required by EPA.

(d) If the pesticide used to control any wood-destroying organism requires or recommends monitoring or inspecting for the pest to be controlled, the licensee, certified applicator, or their employees shall make and maintain records of all such inspection or monitoring activities. Such records shall be made available for inspection as provided for in 02 NCAC 34 .0328.

*History Note: Authority G.S. 106-65.29;
Eff. July 1, 1976;
Readopted Eff. November 22, 1977;
Amended Eff. August 3, 1992; January 1, 1989; August 1, 1980;
Temporary Amendment Eff. January 10, 1997;
Temporary Amendment Expired Eff. October 31, 1997;
Amended Eff. August 1, 2002; July 1, 1998.*

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

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

- (1) Date property was inspected and full name of the inspector;
- (2) Exact location of property inspected or treated;
- (3) Name and address of the property owner or his authorized agent;
- (4) Name and address of the company proposing or performing the treatment;
- (5) License number and phase(s) of the licensee and under whose license the work is to be performed;
- (6) Signature of licensee or his authorized agent;
- (7) A foundation diagram or, if required or recommended by the label of the pesticide used, a site plan of the structure(s) or portions of such structure(s) inspected. The diagram or site plan shall indicate:
 - (A) The location of individual water sources;
 - (B) Any visible evidence of wood-

- destroying organism infestation;
- (C) Whether the infestation is active or inactive;
- (D) The location of any visibly damaged timbers;
- (E) Portions of the structure treated and not treated;
- (F) The approximate number and proposed location(s) of bait or monitoring device placements, if applicable. Upon completion of the installation the property owner or agent shall be provided with a diagram or site plan showing the actual number and locations of all stations; and
- (G) For treatment of wood-decay fungus infestations, the location and result of all moisture meter readings obtained pursuant to 02 NCAC 34 .0508;
- (8) The date upon which the written agreement is entered into and the period of time covered by the written agreement;
- (9) The wood-destroying organism(s) to be controlled or prevented and the terms of the service agreement or warranty to be issued, if any;
- (10) Whether or not reinspections are to be made and, if so, approximate time interval between, and renewal fees for same;
- (11) Conditions under which retreatments will be made;
- (12) Total price to be charged for treatment service and for repairs or excavations, where such are to be performed;
- (13) The written agreement, waiver (if applicable), and Wood-Destroying Insect Report or Wood-Destroying Organism Report, shall not show or include the address and telephone number of any licensee's representative or employee other than the address and telephone number of those specified in Subparagraphs (a)(4) and (a)(5) of this Rule;
- (14) Any licensee or business entity advertising to be bonded shall advise each customer, in writing, in the proposal, whether or not the warranty or written agreement will be covered by a bond of any type;
- (15) If the performance of the work is guaranteed by a bond, the agreement shall set forth those performance guarantees in wording identical to that in the bond itself;
- (16) 02 NCAC 34 .0501(a) shall also be followed; and
- (17) Whether the written agreement or warranty may be transferred to subsequent owners of the property and the terms of any such transfer.
- (b) A structure or structures covered by a written agreement or warranty for wood-destroying organism(s) treatment shall not knowingly be placed under an additional written agreement or warranty for the same treatment while the first written agreement or warranty is still in effect without first obtaining a separate written acknowledgment of such signed by the property owner or authorized agent.
- (c) When periodic reinspections or retreatments are specified in written agreements for the control or prevention of wood-destroying organisms, the licensee shall issue to the property owner or his authorized agent, after each reinspection or retreatment, a signed report of each reinspection or retreatment showing the condition of the property with respect to the presence or absence of wood-destroying organisms. A record of such reinspections and retreatments shall be kept in the file of the licensee. Such reports shall be subject to inspection by the enforcement agency or committee.
- (d) All agreements for the control or prevention of wood-destroying organisms in buildings under construction shall be in writing and shall include the following:
- (1) Date of final treatment and period of time covered by the written agreement;
 - (2) Exact location of the treated property;
 - (3) Name and address of the property owner or his authorized agent;
 - (4) Name and address of the licensee;
 - (5) License number and phase(s) of the licensee and full name of company licensee represents;
 - (6) Signature of licensee or his authorized agent;
 - (7) The wood-destroying organism(s) to be controlled or prevented and the terms of the warranty to be issued, if any;
 - (8) Whether or not reinspections are to be made and, if so, approximate time interval between, and renewal fees, if any, for same;
 - (9) Conditions under which retreatments will be made;
 - (10) Total price to be charged for treatment service;
 - (11) Any licensee or business entity advertising to be bonded shall advise each customer, in writing, in the proposal, whether or not the warranty or written agreement will be covered by a bond of any type;
 - (12) If the performance of the work is guaranteed by a bond, the agreement shall set forth those performance guarantees in wording identical to that in the bond itself;
 - (13) 02 NCAC 34 .0604(a) shall also be followed;
 - (14) Whether the written agreement or warranty may be transferred to subsequent owners of the property and the terms of any such transfer.
- (e) If the licensee provides preventive treatment(s) for subterranean termites to a structure(s) for someone such as a builder or construction company who is constructing the building(s) for someone else or with the purpose of offering the building(s) for sale, the licensee may enter into a single master agreement with the builder to provide the preventive treatment(s) for subterranean termites. This single master agreement shall include the following:
- (1) Name and address of the builder or his authorized agent; and
 - (2) That information required in Subparagraphs (d)(4), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9),

(d)(10), (d)(11), (d)(12), (d)(13), and (d)(14) of this Rule.

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

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

History Note: Authority G.S. 106-65.29; Eff. July 1, 1976; Readopted Eff. November 22, 1977; Amended Eff. August 20, 1980; August 1, 1980; Temporary Amendment Eff. October 15, 1987 for a period of 180 days to expire on April 12, 1988; Temporary Amendment Expired Eff. January 19, 1988; Amended Eff. August 3, 1992; January 1, 1991; January 1, 1989; Temporary Amendment Eff. January 10, 1997; Temporary Amendment Expired Eff. October 31, 1997; Amended Eff. August 1, 2002; July 1, 1998.

02 NCAC 34 .0703 WRITTEN RECORDS OF HOUSEHOLD PEST CONTROL

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

- (1) Name(s) and address(es) of the property owner(s) or his authorized representative(s);
- (2) Name and address of company represented by the certified applicator or licensee or their authorized representatives and the license number of licensee responsible for the treatment;
- (3) Address(es) of property(ies) treated, type(s) of treatment(s), and date(s) treatment(s) performed;
- (4) Common name(s) of pest(s) to be controlled or covered by the initial agreement or any subsequent treatments;
- (5) EPA approved brand name of pesticide used;

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

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

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

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

History Note: Authority G.S. 106-65.29; Eff. July 1, 1976; Readopted Eff. November 22, 1977; Amended Eff. August 1, 2002; July 1, 1998; January 1, 1989; August 20, 1980; August 1, 1980.

02 NCAC 34 .0803 WRITTEN RECORDS OF FUMIGATION

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

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

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

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

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

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. August 1, 2002; July 1, 1998; January 1, 1989;

August 20, 1980; August 1, 1980.

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

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

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

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

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

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

National Institute for Occupational Safety and Health with correct canister and gas detector for the type of fumigant used.

(e) If there is an approved antidote first aid kit, as referred to in 02 NCAC 34 .0403 for the fumigant involved and the antidote may be legally administered by the fumigator, such an antidote-first aid kit shall be assembled and maintained in sanitary and serviceable condition and shall be continuously and immediately available at the fumigation site during the application of fumigant(s) and during the ventilation period. It shall contain the specific items required for each and every fumigant in the conduction of business at each business location of the certified applicator or the licensed fumigator and shall otherwise conform to all specifications prescribed by the North Carolina State Board of Pharmacy or the manufacturer. Antidote-first aid kit items shall be labeled individually, and kept in a single, sturdy box marked "Antidote-First Aid Kit."

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

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

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. August 1, 2002; January 1, 1989; August 1, 1980.

02 NCAC 34 .0806 FUMIGATION REQUIREMENTS FOR FUMIGATION CREW

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

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

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

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

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

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

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. August 1, 2002; January 1, 1989; August 1, 1980.

02 NCAC 34 .0904 PROHIBITED ACTS

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

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

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

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

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

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

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

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

(i) No certified applicator or licensee or their employees shall

advertise or contract in a company name style contradictory to that shown on the certified applicator's identification card or license certificate; provided, however, when there is a sale of a business or other name change the company may use both names together for a period not to exceed three years from the date of the name change or sale of business.

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

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

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

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

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. January 1, 1991 January 1, 1989;

August 20, 1980;

Temporary Amendment Eff. July 10, 1995 for a period of 120 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. August 1, 2002; July 1, 1998; November 1, 1995.

02 NCAC 38 .0701 ADOPTION BY REFERENCE

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

- (1) National Fire Protection Association, Pamphlet No. 58, "Storage and Handling of Liquefied Petroleum Gases," with the following additions and exceptions:
 - (a) All cut-off valves and regulating equipment exposed to rain, sleet, or snow shall be protected against such elements either by design or by a hood;
 - (b) "Firm Foundation" as used in Chapter 3 of Pamphlet 58 means that the foundation material has a level top surface, rests on solid ground, is constructed of a masonry material or wood treated to prevent decay by moisture rot and will not settle, careen or deteriorate;
 - (c) No person shall use liquefied petroleum gas as a source of pressure in lieu of compressed air in spray guns or other pressure operated equipment;

- (d) Piping, tubing or regulators shall be considered well supported when they are rigidly fastened in their intended position;
- (e) At bulk storage installations, the bulkhead and the plant piping on the hose side of the bulkhead shall be designed and constructed so that an application of force from the hose side will not result in damage to the plant piping on the tank side of the bulkhead. In addition, the bulkhead shall incorporate a mechanical means to automatically close emergency valves in the event of a pull away;
- (f) As an alternative to the requirement for a fire safety analysis (Section 3.10 of NFPA 58, 2001 Edition, or equivalent provisions in later editions), the owner, or his designee, of an LP-gas facility which utilizes individual storage containers in excess of 2,000 gallons water capacity, storage containers interconnected through the liquid withdrawal outlets of the containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers interconnected through the vapor withdrawal outlets of the containers with an aggregate capacity in excess of 6,000 gallons, shall, for new installations of containers of such capacity or for additions to an existing LP-gas facility which result in containers of such capacity, meet with fire officials for the jurisdiction in which the facility is located in order to:
 - (i) review potential exposure to fire hazards to or from real property which is adjacent to such facility;
 - (ii) identify emergency access routes to such facility; and
 - (iii) review the equipment and emergency shut-down procedures for the facility.

The owner of such facility or his designee shall document in writing the time, date and place of such meeting(s), the participants in the meeting, and the discussions at the meeting in order to provide a written record. This documentation shall be made available to the Department not later than 60 days after installation of the new or additional containers. Compliance with the availability requirement shall be met by having a copy of the documentation kept on

site or at the owner's office and immediately available for review by NCDA&CS inspection personnel. This meeting, review, and documentation shall be repeated when NCDA&CS determines that the plant design has changed or that potential exposures have significantly changed;

- (g) As an alternative to the requirement for a fire safety analysis (Section 3.10 of NFPA 58, 2001 Edition, or equivalent provisions in later editions), the owner, or his designee, of an LP-gas facility existing on July 1, 2001, which utilizes individual storage containers in excess of 2,000 gallons water capacity, storage containers interconnected through the liquid withdrawal outlets of the containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers interconnected through the vapor withdrawal outlets of the containers with an aggregate capacity in excess of 6,000 gallons shall meet with fire officials for the jurisdiction in which the facility is located in order to:

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

The owner of such facility or his designee shall document in writing the time, date and place of such meeting(s), the participants in the meeting, and the discussions at the meeting in order to provide a written record. This documentation shall be made available to the Department not later than July 1, 2005. Compliance with the availability requirement shall be met by having a copy of the documentation kept on site or at the owner's office and immediately available for review by NCDA&CS inspection personnel. This meeting, review, and documentation shall be repeated when NCDA&CS determines that the plant design has changed or that potential exposures have significantly changed. Compliance with Sub-item (1)(f) of this Rule for additions to an existing LP-gas facility shall be deemed to be

- in compliance with Sub-item (1)(g) of this Rule;
- (h) An LP-gas facility which utilizes storage containers that are interconnected through the vapor withdrawal outlets of the containers only with an aggregate water capacity in excess of 4,000 gallons, but not in excess of 6,000 gallons, shall be exempt from the requirements of a fire safety analysis; and
 - (i) A fire safety analysis as described in NFPA 58 may be prepared by the owner of an LP-Gas facility, or by an employee of such owner in the course of the employee's employment, and the Department shall not require that it be prepared, approved or sealed by a professional engineer. Note: This is in keeping with a formal interpretation (F.I. No.: 58-01-2) by the technical committee for Liquefied Petroleum Gases issued by the National Fire Protection Association on November 7, 2001, with an effective date of November 27, 2001. However, the North Carolina Board of Examiners for Engineers and Surveyors regulates the practice of engineering, and has taken the position that the preparation of a fire safety analysis constitutes the practice of engineering.

- (2) National Fire Protection Association, Pamphlet No. 54, "National Fuel Gas Code," with the addition that underground service piping shall rise above ground immediately before entering a building.

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

History Note: Authority G.S. 119-55; 150B-21.6; Eff. May 1, 1983; Amended Eff. August 1, 2002; January 1, 1994; June 1, 1993; December 1, 1988; December 1, 1987.

- (a) Each facility shall provide services/supports that promote a safe and respectful environment. These include:
 - (1) using the least restrictive and most appropriate settings and methods;
 - (2) promoting coping and engagements skills that are alternatives to injurious behavior towards self or others;
 - (3) providing choices of activities meaningful to the clients serviced/supported; and
 - (4) sharing of control over decisions with the client/legally responsible person and staff.
- (b) The use of a restrictive intervention procedure designed to reduce a behavior shall always be accompanied by actions designed to insure dignity and respect during and after the intervention. These include:
 - (1) using the intervention as a last resort; and
 - (2) employing the intervention by people trained in its use.
- (c) Each state facility shall develop policies relative to prohibited interventions. Such policies shall specify:
 - (1) those interventions which have been prohibited by statute or rule which shall include:
 - (A) any intervention which would be considered corporal punishment under G.S. 122C-59;
 - (B) the contingent use of painful body contact;
 - (C) substances administered to induce painful bodily reactions exclusive of Antabuse;
 - (D) electric shock (excluding medically administered electroconvulsive therapy);
 - (E) insulin shock; and
 - (F) psychosurgery; and
 - (2) those interventions specified in this Subchapter determined by the state facility director to be unacceptable for use in the state facility. Such policies shall specify interventions prohibited by funding sources including the use of seclusion or the emergency use of isolation time out in an ICF/MR facility.
- (d) In addition to the procedures prohibited in Paragraph (c) of this Rule, the state facility director may specify other procedures which shall be prohibited.

History Note: Authority G.S. 122C-51; 122C-57; 122C-59; 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.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10 NCAC 14J .0201 LEAST RESTRICTIVE ALTERNATIVE AND PROHIBITED PROCEDURES

10 NCAC 14J .0203 GENERAL POLICIES REGARDING INTERVENTIVE PROCEDURES

- (a) This Rule governs the policies and requirements regarding the use of the following interventions:
 - (1) seclusion;
 - (2) physical restraint including:

- (A) mechanical restraint; or
 - (B) manual restraint;
 - (3) isolation time-out;
 - (4) exclusionary time-out for more than 15 minutes;
 - (5) time-out for more than one hour;
 - (6) protective devices when used for behavioral control;
 - (7) contingent withdrawal or delay of access to personal possessions or goods to which the client would ordinarily be entitled;
 - (8) consistent deprivation of items or cessation of an activity which the client is scheduled to receive (other than basic necessities); and
 - (9) overcorrection which the client resists.
- (b) The state facility director shall develop policies and procedures for those interventions determined to be acceptable for use in the state facility. Such policies and procedures shall include that:
- (1) positive alternatives and less restrictive alternatives are considered and used whenever possible prior to the use of seclusion, physical restraint or isolation time-out; and
 - (2) consideration is given to the client's physical and psychological well-being before, during and after utilization of a restrictive intervention, including:
 - (A) review of the client's health history or the comprehensive health assessment conducted upon admission to a facility. The health history or comprehensive health assessment shall include the identification of pre-existing medical conditions or any disabilities and limitations that would place the client at greater risk during the use of restrictive interventions;
 - (B) continuous assessment and monitoring of the physical and psychological well-being of the client and the safe use of physical restraint throughout the duration of the restrictive intervention by staff who are physically present and trained in the use of emergency safety interventions;
 - (C) continuous monitoring of the client's physical and psychological well-being by an individual trained in the use of cardiopulmonary resuscitation during the use of manual restraint; and
 - (D) continued monitoring of the client's physical and psychological well-being by an individual trained in the use of cardiopulmonary resuscitation for a minimum of 30 minutes subsequent to the termination of a restrictive intervention;
 - (3) procedures for ensuring that the competent adult client or legally responsible person of a minor client or incompetent adult client is informed in a manner he or she can understand:
 - (A) of the general types of intrusive interventions that are authorized for use by the state facility; and
 - (B) that the legally responsible person can request notification of each use of an intervention as specified in this Rule, in addition to those situations required by G.S. 122C-62;
 - (4) provisions for humane, secure and safe conditions in areas used for the intervention, such as ventilation, light and a room temperature consistent with the rest of the state facility;
 - (5) attention paid to the need for fluid intake and the provision of regular meals, bathing and the use of the toilet. Such attention shall be documented in the client record; and
 - (6) procedures for assuring that when an intervention as specified in this Rule has been used with a client three or more times in a calendar month, the following requirements are met:
 - (A) A treatment/habilitation plan shall be developed within 10 working days of the third intervention. The treatment/habilitation plan shall include, but not be limited to:
 - (i) indication of need;
 - (ii) specific description of problem behavior;
 - (iii) specific goals to be achieved and estimated duration of procedures;
 - (iv) specific early interventions to prevent tension from escalating to the point of loss of control whenever possible;
 - (v) consideration, whenever possible, for client's preference for the type of physical restraint to be used;
 - (vi) specific procedure(s) to be employed;
 - (vii) specific methodology of the intervention;
 - (viii) methods for measuring treatment efficacy;
 - (ix) guidelines for discontinuation of the procedure;
 - (x) the accompanying positive treatment or habilitation methods which shall be at least as strong as the negative aspects of the plan;

- (xi) description and frequency of debriefing, if determined to be clinically necessary;
 - (xii) specific limitations on approved uses of the intervention per episode, per day and requirements for on-site assessments by the responsible professional; and
 - (xiii) description of any requirements in Rule .0206 of this Section to be incorporated into the plan;
- (B) In emergency situations, with the approval of the state facility director, the treatment/habilitation team may continue to use the intervention until the planned intervention is addressed in the treatment/habilitation plan;
- (C) The treatment/habilitation team shall explain the intervention and the reason for the intervention to the client and the legally responsible person, if applicable, and document such explanation in the client record;
- (D) Before implementation of the planned intervention, the treatment/habilitation team, with the participation of the client and legally responsible person if applicable, shall approve the treatment/habilitation plan and consent shall be obtained as specified in Rule .0210(e) in this Section;
- (E) The use of the intervention shall be reviewed at least monthly by the treatment/habilitation team and at least quarterly, if still in effect, by a designee of the state facility director. The designee of the state facility director may not be a member of the client's treatment/habilitation team. Reviews shall be documented in the client record;
- (F) Treatment/habilitation plans which include these interventions shall be subject to review by the Human Rights Committee in compliance with confidentiality rules as specified in 10 NCAC 14G;
- (G) Each treatment/habilitation team shall maintain a record of the use of the intervention. Such records or reports shall be available to the Human Rights Committee and internal client advocate within the constraints of 10 NCAC 18D .0215 and G.S. 122C-53(g);
- (H) The state facility director shall follow the Right to Refuse Treatment
- (I) Procedures as specified in Section .0300 of this Subchapter; and
The interventions specified in this Rule shall never be the sole treatment modality designed to eliminate the target behavior. The interventions are to be used consistently and shall always be accompanied by positive treatment or habilitation methods.
- (c) Whenever the interventions specified in this Subchapter other than seclusion, physical restraint or isolation time-out result in the restriction of a right specified in G.S. 122C-62(b) and (d), the procedures specified in G.S. 122C-62(e) shall be followed. The requirements for restriction of rights associated with the use of seclusion, physical restraint or isolation time-out are specified in Paragraph (f) of Rule .0206 of this Section.
- (d) The state facility director shall assure by documentation in the personnel records that state facility employees who authorize interventions shall be qualified professionals and state facility employees who implement interventions shall be trained and shall demonstrate competence in the area of such interventions, as well as in the use of alternative approaches.
- (e) The state facility director shall maintain a statistical record that reflects the frequency and duration of the individual uses of interventions specified in this Rule. This statistical record shall be made available to the Human Rights Committee and the Division at least quarterly.

History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 143B-147; Eff. October 1, 1984; Amended Eff. November 1, 1993; July 1, 1989; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Amended Eff. April 1, 2003.

10 NCAC 14J .0211 TRAINING: EMPHASIS ON ALTERNATIVES TO RESTRICTIVE INTERVENTIONS

- (a) Facilities shall implement policies and practices that emphasize the use of alternatives to seclusion, physical restraint and isolation time-out.
- (b) Prior to providing services to people with disabilities, staff including service providers, employees, students or volunteers, shall demonstrate competence by successfully completing training in communication skills and other strategies for creating an environment in which the likelihood of imminent danger of abuse or injury to a person with disabilities or others, or to property is prevented.
- (c) Provider agencies shall establish training based on state competencies, monitor for internal compliance and demonstrate they acted on data gathered.
- (d) The training shall be competency based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.
- (e) Formal refresher training shall be completed at least annually by each service provider.
- (f) Content of the training that the service provider plans to use shall be approved by the Division of MH/DD/SAS pursuant to Paragraph (g) of this Rule.

(g) Staff shall demonstrate competence in the following core areas:

- (1) knowledge and understanding of the people being served;
- (2) recognizing and interpreting human behavior;
- (3) recognizing the effect of internal and external stressors that may affect people with disabilities;
- (4) strategies for building positive relationships with people with disabilities;
- (5) recognizing cultural, environmental and organizational factors that may affect people with disabilities;
- (6) recognizing the importance, and assisting people with disabilities in making decisions about their life;
- (7) skills in assessing individual risk for escalating behavior;
- (8) communication strategies for defusing and de-escalating potentially dangerous behavior; and
- (9) positive behavioral supports (providing means for people with disabilities to choose activities which directly oppose or replace behaviors which are unsafe).

(h) Service providers shall maintain documentation of initial and refresher training for at least three years.

- (1) Documentation shall include:
 - (A) who participated in the training and the outcomes (pass/fail);
 - (B) when and where they attended; and
 - (C) instructor's name.
- (2) The Division of MH/DD/SAS may request and review this documentation at any time.

(i) Instructor Qualifications and Training Requirements:

- (1) Trainers shall demonstrate competence by scoring 100% on testing in a training program aimed at preventing, reducing and eliminating the need for seclusion, physical restraint and isolation time-out.
- (2) Trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program.
- (3) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.
- (4) The content of the instructor training the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Subparagraph (i)(5) of this Rule.
- (5) Acceptable instructor training programs shall include but not be limited to presentation of:
 - (A) understanding the adult learner;
 - (B) methods for teaching content of the course;
 - (C) methods for evaluating trainee performance; and
 - (D) documentation procedures.

(6) Trainers shall have coached experience teaching a training program aimed at preventing, reducing and eliminating the need for physical restraint, seclusion and isolation time-out at least one time, with a positive review by the coach.

(7) Trainers shall teach a training program aimed at preventing, reducing and eliminating the need for seclusion, physical restraint and isolation time-out at least once annually.

(8) Trainers shall complete a refresher instructor training at least every two years.

(j) Service providers shall maintain documentation of initial and refresher instructor training for at least three years.

(1) Documentation shall include:

- (A) who participated in the training and the outcomes (pass/fail);
- (B) when and where attended; and
- (C) instructor's name; and

(2) The Division of MH/DD/SAS may request and review this documentation at any time.

(k) Qualifications of Coaches:

- (1) Coaches shall meet all preparation requirements as a trainer.
- (2) Coaches shall teach at least three times the course which is being coached.
- (3) Coaches shall demonstrate competence by completion of coaching or train-the-trainer instruction.

(l) Documentation shall be the same preparation as for trainers.

*History Note: Authority G.S 143B-147;
Temporary Adoption Eff. February 1, 2001;
Temporary Adoption Expired October 13, 2001;
Amended Eff. April 1, 2003.*

10 NCAC 14J .0212 TRAINING IN SECLUSION, PHYSICAL RESTRAINT AND ISOLATION TIME-OUT

(a) Seclusion, physical restraint and isolation time-out may be employed only by staff who have been trained and have demonstrated competence in the proper use of and alternatives to these procedures. Facilities shall ensure that staff authorized to employ and terminate these procedures are retrained at least annually and have demonstrated competence.

(b) Prior to providing direct care to people with disabilities whose treatment/habilitation plan includes restrictive interventions, staff including service providers, employees, students or volunteers, shall complete training in the use of seclusion, physical restraint and isolation time-out and shall not use these interventions until the training is completed and competence is demonstrated.

(c) A prerequisite for taking this training is demonstrating competence by completion of training in preventing, reducing and eliminating the need for seclusion, physical restraint and isolation time-out.

(d) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.

(e) Formal refresher training shall be completed by each service provider periodically (minimum annually).

(f) Content of the training that the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Paragraph (g) of this Rule.

(g) Acceptable training programs shall include, but not be limited to, presentation of:

- (1) refresher information on alternatives to the use of seclusion, physical restraint and isolation time-out;
- (2) guidelines on when to intervene (understanding imminent danger to self and others);
- (3) emphasis on safety and respect for the rights and dignity of all persons involved (using concepts of least restrictive interventions and incremental steps in an intervention);
- (4) strategies for the safe implementation of seclusion, physical restraint and isolation time-out;
- (5) the use of emergency safety interventions which include continuous assessment and monitoring of the physical and psychological well-being of the client and the safe use of restraint throughout the duration of the restrictive intervention;
- (6) prohibited procedures;
- (7) debriefing strategies, including importance and purpose; and
- (8) documentation methods and procedures.

(h) Service providers shall maintain documentation of initial and refresher training for at least three years.

- (1) Documentation shall include:
 - (A) who participated in the training and the outcomes (pass/fail);
 - (B) when and where they attended; and
 - (C) instructor's name.
- (2) The Division of MH/DD/SAS may request and review this documentation at any time.

(i) Instructor Qualifications and Training Requirements:

- (1) Trainers shall demonstrate competence by scoring 100% on testing in a training program aimed at preventing, reducing and eliminating the need for seclusion, physical restraint and isolation time-out.
- (2) Trainers shall demonstrate competence by scoring 100% on testing in a training program teaching the use of seclusion, physical restraint and isolation time-out.
- (3) Trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program.
- (4) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course. The content of the instructor training the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Subparagraph (i)(6) of this Rule.

(5) The content of the instructor training the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Subparagraph (i)(6) of this Rule.

(6) Acceptable instructor training programs shall include, but not be limited to, presentation of:

- (A) understanding the adult learner;
- (B) methods for teaching content of the course;
- (C) evaluation of trainee performance; and
- (D) documentation procedures.

(7) Trainers shall be retrained at least annually and demonstrate competence in the use of seclusion, physical restraint and isolation time-out, as specified in Paragraph (a) of this Rule.

(8) Trainers shall be currently trained in CPR.

(9) Trainers shall have coached experience in teaching the use of seclusion, physical restraint and isolation time-out at least two times with a positive review by the coach.

(10) Trainers shall teach a program on the use of seclusion, physical restraint and isolation time-out at least once annually.

(11) Trainers shall complete a refresher instructor training at least every two years.

(j) Service providers shall maintain documentation of initial and refresher instructor training for at least three years.

(1) Documentation shall include:

- (A) who participated in the training and the outcome (pass/fail);
- (B) when and where they attended; and
- (C) instructor's name.

(2) The Division of MH/DD/SAS may request and review this documentation at any time.

(k) Qualifications of Coaches:

- (1) Coaches shall meet all preparation requirements as a trainer.
- (2) Coaches shall teach at least three times the course which is being coached.
- (3) Coaches shall demonstrate competence by completion of coaching or train-the-trainer instruction.

(l) Documentation shall be the same preparation as for trainers.

*History Note: Authority G.S 143B-147;
Temporary Adoption Eff. February 1, 2001;
Temporary Adoption Expired October 13, 2001;
Eff. April 1, 2003.*

10 NCAC 14P .0101 SCOPE

(a) These Rules, 10 NCAC 14P, 14Q, 14R and 14S, set forth procedures governing the protection of client rights in each public or private facility that provides mental health, developmental disabilities and substance abuse services, with the exception of a state-operated facility. In addition to these Rules, the governing body shall comply with the provisions of G.S. 122C, Article 3, regarding client rights.

(b) A facility that is certified by the Centers for Medicare and Medicaid Services (CMS) as an Intermediate Care Facility for the Mentally Retarded (ICF/MR), or a Medicare/Medicaid

Hospital or a Psychiatric Residential Treatment Facility (PRTF) is deemed to be in compliance with the rules in Subchapters 14P, 14Q, 14R and 14S, with the exception of Rules 14P .0102; 14Q .0101; .0303; 14R .0104; .0105; .0108 and .0109.

(c) A facility that is certified as specified in Paragraph (b) of this Rule shall comply with the following:

- (1) use of the definition of physical restraint as specified in Rule .0102 Subparagraph (b)(19) of this Section;
- (2) documentation requirements as specified in 10 NCAC 14Q .0303 and 10 NCAC 14R .0104; .0105; .0108 and .0109;
- (3) debriefing requirements as specified in 10 NCAC 14Q .0101 and 10 NCAC 14R .0104; and
- (4) training requirements as specified in 10 NCAC 14R .0108 and .0109.

*History Note: Authority G.S. 122C-51; 143B-17; 143B-147; Eff. February 1, 1991;
Amended Eff. January 1, 1992;
Temporary Amendment Eff. January 1, 2001;
Temporary Amendment Expired October 13, 2001;
Amended Eff. April 1, 2003.*

10 NCAC 14P .0102 DEFINITIONS

(a) The definitions contained in this Rule, and the terms defined in G.S. 122C-3, G.S. 122C-4 and G.S. 122C-53(f) also apply to all rules in Subchapters 14P, 14Q, 14R and 14S.

(b) As used in these Rules, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of mental or physical pain or injury by other than accidental means, or unreasonable confinement, or the deprivation by an employee of services which are necessary to the mental or physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.
- (2) "Anti-psychotic medication" means the category of psychotropic drugs which is used to treat schizophrenia and related disorders. Examples of neuroleptic medications are Chlorpromazine, Thioridazine and Haloperidol.
- (3) "Basic necessity" means an essential item or substance needed to support life and health which includes, but is not limited to, a nutritionally sound balanced diet consisting of three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications prescribed by a physician, time for sleeping and frequent access to social contacts.
- (4) "Client advocate" means the term as defined in G.S. 122C-3. For the purpose of these Rules, a client advocate may be a facility employee who is not directly involved in the treatment/habilitation of a specific client, but

who is assigned, in addition to other duties, to act as an advocate for that client.

- (5) "Consent" means acceptance or agreement by a client or legally responsible person following receipt of information from the qualified professional who will administer the proposed treatment or procedure. Consent implies that the client or legally responsible person was provided with sufficient information, in a manner that the client or legally responsible person can understand, concerning proposed treatment, including both benefits and risks, in order to make a decision with regard to such treatment.
- (6) "Day/night facility" means a facility wherein a service is provided on a regular basis, in a structured environment, and is offered to the same individual for a period of three or more hours within a 24-hour period.
- (7) "Director of Clinical Services" means Medical Director, Director of Medical Services, or other qualified professional designated by the governing body as the Director of Clinical Services.
- (8) "Emergency" means a situation in which a client is in imminent danger of causing abuse or injury to self or others or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior and rapid intervention by the staff is needed.
- (9) "Exploitation" means the use of a client's person or property for another's profit or advantage or breach of a fiduciary relationship through improper use of a client's person or property including situations where an individual obtains money, property or services from a client from undue influence, harassment, deception or fraud.
- (10) "Facility" means the term as defined in G.S. 122C-3. For the purpose of these Rules, when more than one type of service is provided by the facility, each service shall be specifically addressed by required policy and procedures when applicable.
- (11) "Governing body" means, in the case of a corporation, the board of directors; in the case of an area authority, the area board; and in all other cases, the owner of the facility.
- (12) "Governor's Advocacy Council for Persons with Disabilities (GACPD)" means the council legislatively mandated to provide protection and advocacy systems and promote employment for all persons with disabilities in North Carolina.
- (13) "Intervention Advisory Committee" means a group established by the governing body in a facility that utilizes restrictive interventions as specified in Rule .0104 of Subchapter 14R.

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| <p>(14) "Involuntary client" means an individual who is admitted to a facility in accordance with G.S. 122C, Article 5, Parts 6 through 12.</p> <p>(15) "Isolation time-out" means the removal of a client for a period of 30 minutes or more to a separate room from which exit is barred by staff, but not locked, and where there is continuous supervision by staff, for the purpose of modifying behavior.</p> <p>(16) "Minor client" means a person under 18 years of age who has neither been married nor been emancipated by a decree issued by a court of competent jurisdiction.</p> <p>(17) "Neglect" means the failure to provide care or services necessary to maintain the mental or physical health and well-being of the client.</p> <p>(18) "Normalization" means the utilization of culturally valued resources to establish or maintain personal behaviors, experiences and characteristics that are culturally normative or valued.</p> <p>(19) "Physical Restraint" means the application or use of any manual method of restraint that restricts freedom of movement; or the application or use of any physical or mechanical device that restricts freedom of movement or normal access to one's body, including material or equipment attached or adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic hold or other manner that restricts his or her movement constitutes manual restraint for that client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, posey mittens, and helmets. Excluded from this definition of physical restraint are physical guidance, gentle physical prompting techniques, escorting a client who is walking; soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices; and prosthetic devices or assistive technology which are designed and used to increase client adaptive skills. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a client to walk to a safe location.</p> <p>(20) "Protective device" means an intervention that provides support for a medically fragile client or enhances the safety of a self-injurious client. Such devices may include geri-chairs or table top chairs to provide support and safety for a client with a physical handicap; devices such as seizure helmets or helmets and mittens for self-injurious behaviors; prosthetic devices or assistive technology which are designed to increase client adaptive skills; or</p> | <p>soft ties used to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices. As provided in Rule .0105(b) of Subchapter 14R, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0104 in Subchapter 14R.</p> <p>(21) "Privileged" means authorization through governing body procedures for a facility employee to provide specific treatment or habilitation services to clients, based on the employee's education, training, experience, competence and judgment.</p> <p>(22) "Responsible professional" means the term as defined in G.S. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in Rule .0104 of Subchapter 14V.</p> <p>(23) "Restrictive intervention" means an intervention procedure which presents a risk of mental or physical harm to the client and, therefore, requires additional safeguards. Such interventions include the emergency or planned use of seclusion, physical restraint (including the use of protective devices for the purpose or with the intent of controlling unacceptable behavior), isolation time-out, and any combination thereof.</p> <p>(24) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior.</p> <p>(25) "Treatment" means the process of providing for the physical, emotional, psychological and social needs of a client through services.</p> <p>(26) "Treatment/habilitation plan" means the term as defined in 10 NCAC 14V .0103.</p> <p>(27) "Treatment or habilitation team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to assess and address the identified needs of a client and which is responsible for the formulation, implementation and periodic review of the client's treatment/habilitation plan.</p> <p>(28) "24-Hour Facility" means a facility wherein service is provided to the same client on a 24-hour continuous basis, and includes residential and hospital facilities.</p> <p>(29) "Voluntary client" means an individual who is admitted to a facility upon his own application or that of the legally responsible person, in accordance with G.S. 122C, Article 5, Parts 2 through 5.</p> |
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- History Note: Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 122C-60; 143B-147; Eff. February 1, 1991; Amended Eff. January 1, 1992; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.*

10 NCAC 14Q .0101 POLICY ON RIGHTS RESTRICTIONS AND INTERVENTIONS

(a) The governing body shall develop policy that assures the implementation of G.S. 122C-59, G.S. 122C-65, and G.S. 122C-66.

(b) The governing body shall develop and implement policy to assure that:

- (1) all instances of alleged or suspected abuse, neglect or exploitation of clients are reported to the County Department of Social Services as specified in G.S. 108A, Article 6 or G.S. 7A, Article 44; and
- (2) procedures and safeguards are instituted in accordance with sound medical practice when a medication that is known to present serious risk to the client is prescribed. Particular attention shall be given to the use of neuroleptic medications.

(c) In addition to those procedures prohibited in 10 NCAC 14R .0102(1), the governing body of each facility shall develop and implement policy that identifies:

- (1) any restrictive intervention that is prohibited from use within the facility; and
- (2) in a 24-hour facility, the circumstances under which staff are prohibited from restricting the rights of a client.

(d) If the governing body allows the use of restrictive interventions or if, in a 24-hour facility, the restrictions of client rights specified in G.S. 122C-62(b) and (d) are allowed, the policy shall identify:

- (1) the permitted restrictive interventions or allowed restrictions;
- (2) the individual responsible for informing the client; and
- (3) the due process procedures for an involuntary client who refuses the use of restrictive interventions.

(e) If restrictive interventions are allowed for use within the facility, the governing body shall develop and implement policy that assures compliance with Subchapter 14R, Section .0100, which includes:

- (1) the designation of an individual, who has been trained and who has demonstrated competence to use restrictive interventions, to provide written authorization for the use of restrictive interventions when the original order is renewed for up to a total of 24 hours in accordance with the time limits specified in 10 NCAC 14R .0104(e)(10)(E);
- (2) the designation of an individual to be responsible for reviews of the use of restrictive interventions; and
- (3) the establishment of a process for appeal for the resolution of any disagreement over the planned use of a restrictive intervention.

(f) If restrictive interventions are allowed for use within the facility, the governing body shall develop and implement policies which require that:

- (1) positive alternatives and less restrictive interventions are considered and are used

whenever possible prior to the use of more restrictive interventions; and

- (2) consideration is given to the client's physical and psychological well-being before, during and after utilization of a restrictive intervention, including:

(A) review of the client's health history or the comprehensive health assessment conducted upon admission to a facility. The health history or comprehensive health assessment shall include the identification of pre-existing medical conditions or any disabilities and limitations that would place the client at greater risk during the use of restrictive interventions;

(B) continuous assessment and monitoring of the physical and psychological well-being of the client and the safe use of physical restraint throughout the duration of the restrictive intervention by staff who are physically present and trained in the use of emergency safety interventions;

(C) continuous monitoring by an individual trained in the use of cardiopulmonary resuscitation of the client's physical and psychological well-being during the use of manual restraint; and

(D) continued monitoring by an individual trained in the use of cardiopulmonary resuscitation of the client's physical and psychological well-being for a minimum of 30 minutes subsequent to the termination of a restrictive intervention; and

- (3) following the utilization of a restrictive intervention, staff shall conduct debriefing and planning with the client and the legally responsible person, if applicable, as specified in 10 NCAC 14R .0104, to eliminate or reduce the probability of the future use of restrictive interventions. Debriefing and planning shall be conducted, as appropriate, to the level of cognitive functioning of the client.

History Note: Authority G.S. 122C-51; 143B-147;

Eff. February 1, 1991;

Amended Eff. January 1, 1992;

Temporary Amendment Eff. January 1, 2001;

Temporary Amendment Expired October 13, 2001;

Amended Eff. April 1, 2003.

10 NCAC 14R .0101 LEAST RESTRICTIVE ALTERNATIVE

(a) Each facility shall provide services/supports that promote a safe and respectful environment. These include:

- (1) using the least restrictive and most appropriate settings and methods;

- (2) promoting coping and engagement skills that are alternatives to injurious behavior to self or others;
- (3) providing choices of activities meaningful to the clients served/supported; and
- (4) sharing of control over decisions with the client/legally responsible person and staff.

(b) The use of a restrictive intervention procedure designed to reduce a behavior shall always be accompanied by actions designed to insure dignity and respect during and after the intervention. These include:

- (1) using the intervention as a last resort; and
- (2) employing the intervention by people trained in its use.

History Note: Authority G.S. 122C-51; 122C-53; 143B-147; Eff. February 1, 1991; Amended Eff. January 1, 1992; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

10 NCAC 14R .0104 SECLUSION, PHYSICAL RESTRAINT AND ISOLATION TIME-OUT AND PROTECTIVE DEVICES USED FOR BEHAVIORAL CONTROL

(a) This Rule governs the use of restrictive interventions which shall include:

- (1) seclusion;
- (2) physical restraint;
- (3) isolation time-out;
- (4) any combination thereof; and
- (5) protective devices used for behavioral control.

(b) The use of restrictive interventions shall be limited to:

- (1) emergency situations, in order to terminate a behavior or action in which a client is in imminent danger of abuse or injury to self or other persons or when property damage is occurring that poses imminent risk of danger of injury or harm to self or others; or
- (2) as a planned measure of therapeutic treatment as specified in Paragraph (f) of this Rule.

(c) Restrictive interventions shall not be employed as a means of coercion, punishment or retaliation by staff or for the convenience of staff or due to inadequacy of staffing. Restrictive interventions shall not be used in a manner that causes harm or abuse.

(d) In accordance with Rule .0101 of Subchapter 14Q, the governing body shall have policy that delineates the permissible use of restrictive interventions within a facility.

(e) Within a facility where restrictive interventions may be used, the policy and procedures shall be in accordance with the following provisions:

- (1) the requirement that positive and less restrictive alternatives are considered and attempted whenever possible prior to the use of more restrictive interventions;
- (2) consideration is given to the client's physical and psychological well-being before, during and after utilization of a restrictive intervention, including:

(A) review of the client's health history or the client's comprehensive health assessment conducted upon admission to a facility. The health history or comprehensive health assessment shall include the identification of pre-existing medical conditions or any disabilities and limitations that would place the client at greater risk during the use of restrictive interventions;

(B) continuous assessment and monitoring of the physical and psychological well-being of the client and the safe use of restraint throughout the duration of the restrictive intervention by staff who are physically present and trained in the use of emergency safety interventions;

(C) continuous monitoring by an individual trained in the use of cardiopulmonary resuscitation of the client's physical and psychological well-being during the use of manual restraint; and

(D) continued monitoring by an individual trained in the use of cardiopulmonary resuscitation of the client's physical and psychological well-being for a minimum of 30 minutes subsequent to the termination of a restrictive intervention;

(3) the process for identifying, training, assessing competence of facility employees who may authorize and implement restrictive interventions;

(4) the duties and responsibilities of responsible professionals regarding the use of restrictive interventions;

(5) the person responsible for documentation when restrictive interventions are used;

(6) the person responsible for the notification of others when restrictive interventions are used; and

(7) the person responsible for checking the client's physical and psychological well-being and assessing the possible consequences of the use of a restrictive intervention and, in such cases there shall be procedures regarding:

(A) documentation if a client has a physical disability or has had surgery that would make affected nerves and bones sensitive to injury; and

(B) the identification and documentation of alternative emergency procedures, if needed;

(8) any room used for seclusion or isolation time-out shall meet the following criteria:

- (A) the room shall be designed and constructed to ensure the health, safety and well-being of the client;
 - (B) the floor space shall not be less than 50 square feet, with a ceiling height of not less than eight feet;
 - (C) the floor and wall coverings, as well as any contents of the room, shall have a one-hour fire rating and shall not produce toxic fumes if burned;
 - (D) the walls shall be kept completely free of objects;
 - (E) a lighting fixture, equipped with a minimum of a 75 watt bulb, shall be mounted in the ceiling and be screened to prevent tampering by the client;
 - (F) one door of the room shall be equipped with a window mounted in a manner which allows inspection of the entire room;
 - (G) glass in any windows shall be impact resistant and shatterproof;
 - (H) the room temperature and ventilation shall be comparable and compatible with the rest of the facility; and
 - (I) in a lockable room the lock shall be interlocked with the fire alarm system so that the door automatically unlocks when the fire alarm is activated if the room is to be used for seclusion.
- (9) Whenever a restrictive intervention is utilized, documentation shall be made in the client record to include, at a minimum:
- (A) notation of the client's physical and psychological well-being;
 - (B) notation of the frequency, intensity and duration of the behavior which led to the intervention, and any precipitating circumstance contributing to the onset of the behavior;
 - (C) the rationale for the use of the intervention, the positive or less restrictive interventions considered and used and the inadequacy of less restrictive intervention techniques that were used;
 - (D) a description of the intervention and the date, time and duration of its use;
 - (E) a description of accompanying positive methods of intervention;
 - (F) a description of the debriefing and planning with the client and the legally responsible person, if applicable, for the emergency use of seclusion, physical restraint or isolation time-out to eliminate or reduce the probability of the future use of restrictive interventions;
 - (G) a description of the debriefing and planning with the client and the legally responsible person, if applicable, for the planned use of seclusion, physical restraint or isolation time-out, if determined to be clinically necessary; and
 - (H) signature and title of the facility employee who initiated, and of the employee who further authorized, the use of the intervention.
- (10) The emergency use of restrictive interventions shall be limited, as follows:
- (A) a facility employee approved to administer emergency interventions may employ such procedures for up to 15 minutes without further authorization;
 - (B) the continued use of such interventions shall be authorized only by the responsible professional or another qualified professional who is approved to use and to authorize the use of the restrictive intervention based on experience and training;
 - (C) the responsible professional shall meet with and conduct an assessment that includes the physical and psychological well-being of the client and write a continuation authorization as soon as possible after the time of initial employment of the intervention. If the responsible professional or a qualified professional is not immediately available to conduct an assessment of the client, but concurs that the intervention is justified after discussion with the facility employee, continuation of the intervention may be verbally authorized until an on-site assessment of the client can be made;
 - (D) a verbal authorization shall not exceed three hours after the time of initial employment of the intervention; and
 - (E) each written order for seclusion, physical restraint or isolation time-out is limited to four hours for adult clients; two hours for children and adolescent clients ages nine to 17; or one hour for clients under the age of nine. The original order shall only be renewed in accordance with these limits or up to a total of 24 hours.
- (11) The following precautions and actions shall be employed whenever a client is in:
- (A) seclusion or physical restraint, including a protective device when used for the purpose or with the intent of controlling unacceptable behavior:

- periodic observation of the client shall occur at least every 15 minutes, or more often as necessary, to assure the safety of the client, attention shall be paid to the provision of regular meals, bathing and the use of the toilet; and such observation and attention shall be documented in the client record;
- (B) isolation time-out: there shall be a facility employee in attendance with no other immediate responsibility than to monitor the client who is placed in isolation time-out; there shall be continuous observation and verbal interaction with the client when appropriate; and such observation shall be documented in the client record; and
- (C) physical restraint and may be subject to injury: a facility employee shall remain present with the client continuously.
- (12) The use of a restrictive intervention shall be discontinued immediately at any indication of risk to the client's health or safety or immediately after the client gains behavioral control. If the client is unable to gain behavioral control within the time frame specified in the authorization of the intervention, a new authorization must be obtained.
- (13) The written approval of the designee of the governing body shall be required when the original order for a restrictive intervention is renewed for up to a total of 24 hours in accordance with the limits specified in Item (E) of Subparagraph (e)(10) of this Rule.
- (14) Standing orders or PRN orders shall not be used to authorize the use of seclusion, physical restraint or isolation timeout.
- (15) The use of a restrictive intervention shall be considered a restriction of the client's rights as specified in G.S. 122C-62(b) or (d). The documentation requirements in this Rule shall satisfy the requirements specified in G.S. 122C-62(e) for rights restrictions.
- (16) When any restrictive intervention is utilized for a client, notification of others shall occur as follows:
- (A) those to be notified as soon as possible but within 24 hours of the next working day, to include:
- (i) the treatment or habilitation team, or its designee, after each use of the intervention; and
- (ii) a designee of the governing body; and
- (B) the legally responsible person of a minor client or an incompetent adult
- client shall be notified immediately unless she/he has requested not to be notified.
- (17) The facility shall conduct reviews and reports on any and all use of restrictive interventions, including:
- (A) a regular review by a designee of the governing body, and review by the Client Rights Committee, in compliance with confidentiality rules as specified in 10 NCAC 14G;
- (B) an investigation of any unusual or possibly unwarranted patterns of utilization; and
- (C) documentation of the following shall be maintained on a log:
- (i) name of the client;
- (ii) name of the responsible professional;
- (iii) date of each intervention;
- (iv) time of each intervention;
- (v) type of intervention;
- (vi) duration of each intervention;
- (vii) reason for use of the intervention;
- (viii) positive and less restrictive alternatives that were used or that were considered but not used and why those alternatives were not used;
- (ix) debriefing and planning conducted with the client, legally responsible person, if applicable, and staff, as specified in Parts (e)(9)(F) and (G) of this Rule, to eliminate or reduce the probability of the future use of restrictive interventions; and
- (x) negative effects of the restrictive intervention, if any, on the physical and psychological well-being of the client.
- (18) The facility shall collect and analyze data on the use of seclusion and physical restraint. The data collected and analyzed shall reflect for each incident:
- (A) the type of procedure used and the length of time employed;
- (B) alternatives considered or employed; and
- (C) the effectiveness of the procedure or alternative employed.
- The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends and take corrective action where necessary. The facility shall make the data available to the Secretary upon request.

- (19) Nothing in this Rule shall be interpreted to prohibit the use of voluntary restrictive interventions at the client's request; however, the procedures in this Rule shall apply with the exception of Subparagraph (f)(3) of this Rule.
- (f) The restrictive intervention shall be considered a planned intervention and shall be included in the client's treatment/habilitation plan whenever it is used:
- (1) more than four times, or for more than 40 hours, in a calendar month;
 - (2) in a single episode in which the original order is renewed for up to a total of 24 hours in accordance with the limit specified in Item (E) of Subparagraph (e)(10) of this Rule; or
 - (3) as a measure of therapeutic treatment designed to reduce dangerous, aggressive, self-injurious or undesirable behaviors to a level which will allow the use of less restrictive treatment or habilitation procedures.
- (g) When a restrictive intervention is used as a planned intervention, facility policy shall specify:
- (1) the requirement that a consent or approval shall be considered valid for no more than six months and that the decision to continue the specific intervention shall be based on clear and recent behavioral evidence that the intervention is having a positive impact and continues to be needed;
 - (2) prior to the initiation or continued use of any planned intervention, the following written notifications, consents and approvals shall be obtained and documented in the client record:
 - (A) approval of the plan by the responsible professional and the treatment and habilitation team, if applicable, shall be based on an assessment of the client and a review of the documentation required by Subparagraph (e)(9) and (e)(14) of this Rule if applicable;
 - (B) consent of the client or legally responsible person, after participation in treatment planning and after the specific intervention and the reason for it have been explained in accordance with 10 NCAC 14Q .0201;
 - (C) notification of an advocate/client rights representative that the specific intervention has been planned for the client and the rationale for utilization of the intervention; and
 - (D) physician approval, after an initial medical examination, when the plan includes a specific intervention with reasonably foreseeable physical consequences. In such cases, periodic planned monitoring by a physician shall be incorporated into the plan.
 - (3) within 30 days of initiation of the use of a planned intervention, the Intervention Advisory Committee established in accordance with Rule .0107 of this Section, by majority vote, may recommend approval or disapproval of the plan or may abstain from making a recommendation;
 - (4) within any time during the use of a planned intervention, if requested, the Intervention Advisory Committee shall be given the opportunity to review the treatment/habilitation plan;
 - (5) if any of the persons or committees specified in Subparagraphs (h)(2) or (h)(3) of this Rule do not approve the initial use or continued use of a planned intervention, the intervention shall not be initiated or continued. Appeals regarding the resolution of any disagreement over the use of the planned intervention shall be handled in accordance with governing body policy; and
 - (6) documentation in the client record regarding the use of a planned intervention shall indicate:
 - (A) description and frequency of debriefing with the client, legally responsible person, if applicable, and staff if determined to be clinically necessary. Debriefing shall be conducted as to the level of cognitive functioning of the client;
 - (B) bi-monthly evaluation of the planned by the responsible professional who approved the planned intervention; and
 - (C) review, at least monthly, by the treatment/habilitation team that approved the planned intervention.

History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 143B-147; Eff. February 1, 1991; Amended Eff. January 4, 1993; January 1, 1992; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Amended Eff. April 1, 2003.

10 NCAC 14R .0105 PROTECTIVE DEVICES

(a) Whenever a protective device is utilized for a client, the governing body shall develop and implement policy to ensure that:

- (1) the necessity for the protective device has been assessed and the device is applied by a facility employee who has been trained and has demonstrated competence in the utilization of protective devices;
- (2) the use of positive and less restrictive alternatives have been reviewed and documented and the protective device selected is the appropriate measure;
- (3) the client is frequently observed and provided opportunities for toileting, exercise, etc. as needed. When a protective device limits the

client's freedom of movement, the client shall be observed at least every hour. Whenever the client is restrained and subject to injury by another client, a facility employee shall remain present with the client continuously. Observations and interventions shall be documented in the client record;

(4) protective devices are cleaned at regular intervals; and

(5) for facilities operated by or under contract with an area program, the utilization of protective devices in the treatment/habilitation plan shall be subject to review by the Client Rights Committee, as required in 10 NCAC 14V .0504. Copies of this Rule and other pertinent rules are published as Division publication **RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES**, APSM 30-1, and may be purchased at a cost of five dollars and seventy-five cents (\$5.75) per copy.

(b) The use of any protective device for the purpose or with the intent of controlling unacceptable behavior shall comply with the requirements of Rule .0104 of this Section.

History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 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 14R .0108 TRAINING ON ALTERNATIVES TO RESTRICTIVE INTERVENTIONS

(a) Facilities shall implement policies and practices that emphasize the use of alternatives to restrictive interventions.

(b) Prior to providing services to people with disabilities, staff including service providers, employees, students or volunteers, shall demonstrate competence by successfully completing training in communication skills and other strategies for creating an environment in which the likelihood of imminent danger of abuse or injury to a person with disabilities or others or property damage is prevented.

(c) Provider agencies shall establish training based on state competencies, monitor for internal compliance and demonstrate they acted on data gathered.

(d) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.

(e) Formal refresher training must be completed by each service provider periodically (minimum annually).

(f) Content of the training that the service provider wishes to employ must be approved by the Division of MH/DD/SAS pursuant to Paragraph (g) of this Rule.

(g) Staff shall demonstrate competence in the following core areas:

(1) knowledge and understanding of the people being served;

(2) recognizing and interpreting human behavior;

(3) recognizing the effect of internal and external stressors that may affect people with disabilities;

(4) strategies for building positive relationships with persons with disabilities;

(5) recognizing cultural, environmental and organizational factors that may affect people with disabilities;

(6) recognizing the importance of and assisting in the person's involvement in making decisions about their life;

(7) skills in assessing individual risk for escalating behavior;

(8) communication strategies for defusing and de-escalating potentially dangerous behavior; and

(9) positive behavioral supports (providing means for people with disabilities to choose activities which directly oppose or replace behaviors which are unsafe).

(h) Service providers shall maintain documentation of initial and refresher training for at least three years.

(1) Documentation shall include:

(A) who participated in the training and the outcomes (pass/fail);

(B) when and where they attended; and

(C) instructor's name;

(2) The Division of MH/DD/SAS may review/request this documentation at any time.

(i) Instructor Qualifications and Training Requirements:

(1) Trainers shall demonstrate competence by scoring 100% on testing in a training program aimed at preventing, reducing and eliminating the need for restrictive interventions.

(2) Trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program.

(3) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.

(4) The content of the instructor training the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Subparagraph (i)(5) of this Rule.

(5) Acceptable instructor training programs shall include but are not limited to presentation of:

(A) understanding the adult learner;

(B) methods for teaching content of the course;

(C) methods for evaluating trainee performance; and

(D) documentation procedures.

(6) Trainers shall have coached experience teaching a training program aimed at preventing, reducing and eliminating the need for restrictive interventions at least one time, with positive review by the coach.

(7) Trainers shall teach a training program aimed at preventing, reducing and eliminating the

- need for restrictive interventions at least once annually.
- (8) Trainers shall complete a refresher instructor training at least every two years.
- (j) Service providers shall maintain documentation of initial and refresher instructor training for at least three years.
 - (1) Documentation shall include:
 - (A) who participated in the training and the outcomes (pass/fail);
 - (B) when and where attended; and
 - (C) instructor's name.
 - (2) The Division of MH/DD/SAS may request and review this documentation any time.
- (k) Qualifications of Coaches:
 - (1) Coaches shall meet all preparation requirements as a trainer.
 - (2) Coaches shall teach at least three times the course which is being coached.
 - (3) Coaches shall demonstrate competence by completion of coaching or train-the-trainer instruction.
- (l) Documentation shall be the same preparation as for trainers.

*History Note: Authority G.S. 143B-147;
 Temporary Adoption Eff. February 1, 2001;
 Temporary Adoption Expired October 13, 2001;
 Eff. April 1, 2003.*

10 NCAC 14R .0109 TRAINING IN SECLUSION, PHYSICAL RESTRAINT AND ISOLATION TIME-OUT

- (a) Seclusion, physical restraint and isolation time-out may be employed only by staff who have been trained and have demonstrated competence in the proper use of and alternatives to these procedures. Facilities shall ensure that staff authorized to employ and terminate these procedures are retrained and have demonstrated competence at least annually.
- (b) Prior to providing direct care to people with disabilities whose treatment/habilitation plan includes restrictive interventions, staff including service providers, employees, students or volunteers shall complete training in the use of seclusion, physical restraint and isolation time-out and shall not use these interventions until the training is completed and competence is demonstrated.
- (c) A pre-requisite for taking this training is demonstrating competence by completion of training in preventing, reducing and eliminating the need for restrictive interventions.
- (d) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.
- (e) Formal refresher training must be completed by each service provider periodically (minimum annually).
- (f) Content of the training that the service provider plans to employ must be approved by the Division of MH/DD/SAS pursuant to Paragraph (g) of this Rule.
- (g) Acceptable training programs shall include, but are not limited to, presentation of:
 - (1) refresher information on alternatives to the use of restrictive interventions;

- (2) guidelines on when to intervene (understanding imminent danger to self and others);
- (3) emphasis on safety and respect for the rights and dignity of all persons involved (using concepts of least restrictive interventions and incremental steps in an intervention);
- (4) strategies for the safe implementation of restrictive interventions;
- (5) the use of emergency safety interventions which include continuous assessment and monitoring of the physical and psychological well-being of the client and the safe use of restraint throughout the duration of the restrictive intervention;
- (6) prohibited procedures;
- (7) debriefing strategies, including their importance and purpose; and
- (8) documentation methods/procedures.
- (h) Service providers shall maintain documentation of initial and refresher training for at least three years.
 - (1) Documentation shall include:
 - (A) who participated in the training and the outcomes (pass/fail);
 - (B) when and where they attended; and
 - (C) instructor's name.
 - (2) The Division of MH/DD/SAS may review/request this documentation at any time.
- (i) Instructor Qualification and Training Requirements:
 - (1) Trainers shall demonstrate competence by scoring 100% on testing in a training program aimed at preventing, reducing and eliminating the need for restrictive interventions.
 - (2) Trainers shall demonstrate competence by scoring 100% on testing in a training program teaching the use of seclusion, physical restraint and isolation time-out.
 - (3) Trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program.
 - (4) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.
 - (5) The content of the instructor training the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Subparagraph (j)(6) of this Rule.
 - (6) Acceptable instructor training programs shall include, but not be limited to, presentation of:
 - (A) understanding the adult learner;
 - (B) methods for teaching content of the course;
 - (C) evaluation of trainee performance; and
 - (D) documentation procedures.
 - (7) Trainers shall be retrained at least annually and demonstrate competence in the use of

- seclusion, physical restraint and isolation time-out, as specified in Paragraph (a) of this Rule.
- (8) Trainers shall be currently trained in CPR.
- (9) Trainers shall have coached experience in teaching the use of restrictive interventions at least two times with a positive review by the coach.
- (10) Trainers shall teach a program on the use of restrictive interventions at least once annually.
- (11) Trainers shall complete a refresher instructor training at least every two years.
- (k) Service providers shall maintain documentation of initial and refresher instructor training for at least three years.
 - (1) Documentation shall include:
 - (A) who participated in the training and the outcome (pass/fail);
 - (B) when and where they attended; and
 - (C) instructor's name.
 - (2) The Division of MH/DD/SAS may review/request this documentation at any time.
- (l) Qualifications of Coaches:
 - (1) Coaches shall meet all preparation requirements as a trainer.
 - (2) Coaches shall teach at least three times, the course which is being coached.
 - (3) Coaches shall demonstrate competence by completion of coaching or train-the-trainer instruction.
- (m) Documentation shall be the same preparation as for trainers.

*History Note: Authority G.S. 143B-147;
 Temporary Adoption Eff. February 1, 2001;
 Temporary Adoption Expired October 13, 2001;
 Eff. April 1, 2003.*

10 NCAC 14V .6002 STAFF

- (a) Each facility shall delineate in writing the numbers and qualification of its personnel.
- (b) Each facility shall have a designated director. The director shall be an individual who is a graduate of a college or university and who meets at least one of the following additional qualification criteria:
 - (1) has an advanced degree in a human service field and two years of management or supervisory experience in inpatient mental health services; or
 - (2) has a bachelor's degree in a human service field and four years of management or supervisory experience in inpatient mental health services; or
 - (3) has an advanced degree in a field related to the management of health care facilities and two years of management experience in inpatient mental health services.
- (c) Each facility shall have a designated medical director. In a substance abuse facility, the medical director shall be a physician with at least two years experience in the treatment of substance abuse.
- (d) A physician shall be present in the facility or on call 24 hours per day.
- (e) A physician shall supervise the treatment of each client.

- (f) Staff coverage in a psychiatric facility shall include at least one of each of the following:
 - (1) psychiatrist;
 - (2) licensed practicing psychologist;
 - (3) psychiatric social worker;
 - (4) psychiatric nurse; and
 - (5) the services of a qualified mental health professional readily available by telephone or page.
- (g) Staff Coverage in a substance abuse facility shall include at a minimum:
 - (1) one full-time certified alcoholism, drug abuse or substance abuse counselor for every 10 or fewer clients. If the facility falls below this prescribed ratio and is unable to employ an individual who is certified because of unavailability of certified persons in the facility's hiring area, then it may employ an uncertified person, provided that this employee meets the certification requirements within a maximum of 26 months from the date of his employment;
 - (2) at least one registered nurse on duty during each shift;
 - (3) at least two direct care staff members on duty at all times;
 - (4) one direct care staff member for each 20 or fewer clients on duty at all times in facilities serving adults;
 - (5) a minimum of one staff member for each five or fewer minor clients on duty during the hours 7:00 a.m. to 11:00 p.m.; and
 - (6) at least one staff member on duty trained in substance abuse withdrawal and symptoms of secondary complications to substance abuse.

*History Note: Authority G.S. 122C-26; 143B-147;
 Eff. May 1, 1996;
 Temporary Amendment Eff. January 1, 2001;
 Amended Eff. August 1, 2002.*

10 NCAC 19H .0104 ELIGIBILITY FOR SERVICES

- (a) The Division may, based upon the availability of funds, issue any resident determined eligible for services an authorization for an eye examination and a certification for fitting and dispensing of eyeglasses. These copies must be taken by the applicant to his selected vendor and will authorize the Division of Services for the Blind to pay only for eye examinations by physicians (ophthalmologists) or optometrists and fitting and dispensing of eyeglasses. If the Division determines that sufficient funds are not available to provide all services, the Division may elect to fund surgery, treatment, and medication first.
- (b) All other services including purchase of eyeglasses, medications, follow-up visits, surgery, and other treatments must receive prior approval from the Division of Services for the Blind.

*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; July 1, 1981; June 1, 1978.

10 NCAC 41F .0502 AGENCY FOSTER PARENTS' AGREEMENT

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

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

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

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

parents reasonable notice before removing a child;

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

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

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 .0504 DEPARTMENT OF SOCIAL SERVICES INTERCOUNTY AGREEMENT

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

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

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

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

- (c) The agreement shall specify the manner in which payment for clothes, medical costs, and allowances will be made.
- (d) The agreement shall specify the dates between which the agreement will be effective. The agreement shall be signed by the directors of the two county departments. The responsible county shall have one signed copy, and the supervising county shall have the other copy. The responsible county shall provide the children's services program representative with a signed copy.

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 .0601 DEFINITIONS

The following definition shall apply to the rules in Subchapters 41F, 41N, 41O and 41P: Agency means a county department of social services or a private child placing agency that is duly authorized by law to receive children for purposes of placement in family foster homes or adoptive homes.

History Note: Authority G.S. 131D, Art. 1A; 143B-153; Eff. July 1, 1982; Temporary Amendment Eff. February 1, 2002; Amended Eff. July 18, 2002.

10 NCAC 41F .0602 FAMILY FOSTER HOME: QUALIFICATIONS

- (a) Not more than seven children may be provided care in any family foster home at any given time. These seven children shall include the foster parent's own children, children placed for foster or therapeutic care, day care children or any other children.
- (b) Not more than five children placed for foster care shall reside in a family foster home at any one time. Not more than three children placed for therapeutic care shall reside in a family foster home at any given time. With prior approval from the Children's Services Section, an exception to these standards may be made if:

- (1) Written documentation is submitted to the licensing authority that the family foster home meets the fire and building safety standards of the North Carolina State Building Code applicable for the number of children in the home. The North Carolina State Building Code is hereby incorporated by reference including subsequent amendments and additions. The North Carolina State Building Code may be obtained from the North Carolina Department of Insurance, Code Council Building, 410 North Boylan Avenue, Raleigh, North Carolina 27603 at a cost of one hundred eighteen dollars (\$118.00).
- (2) Written documentation is submitted to the licensing authority regarding the foster parents' skill, stamina, and capacity to care for the children.

- (c) Members of the household 18 years old and over are not included in capacity, but there must be physical accommodations in the home to provide them room and board.

History Note: Authority G.S. 131D, Art. 1A; 143B-153; Eff. July 1, 1982; Temporary Amendment Eff. February 1, 2002; Amended Eff. July 18, 2002.

10 NCAC 41F .0701 CLIENT RIGHTS AND CARE OF FOSTER CHILDREN

- (a) The foster parents shall ensure that each foster child:
- (1) has clothing to wear that is appropriate to the weather;
 - (2) is allowed to have personal property;
 - (3) is encouraged to express opinions on issues concerning care;
 - (4) is provided care in a manner that recognizes variations in cultural values and traditions;
 - (5) is provided the opportunity for spiritual development and is not denied the right to practice religious beliefs;
 - (6) is not identified in connection with the agency in any way that would bring the child or the child's family embarrassment;
 - (7) is not forced to acknowledge dependency on or gratitude to the parents;
 - (8) is encouraged to contact and have telephone conversations with family members, when not contraindicated in the child's treatment or service plan;
 - (9) is provided training and discipline that is appropriate for the child's age, intelligence, emotional makeup and past experience;
 - (10) is not subjected to cruel, severe, or unusual punishment;
 - (11) is not subjected to corporal punishment;
 - (12) is not deprived of a meal or contacts with family for punishment or placed in isolation time-out except when isolation time-out means the removal of a child to a separate unlocked room or area from which the child is not physically prevented from leaving. The foster parent may use isolation time-out as a behavioral control measure when the foster parent provides it within hearing distance and sight of another foster parent. The length of time alone shall be appropriate to the child's age and development;
 - (13) is not subjected to verbal abuse, threats, or humiliating remarks about themselves or their families;
 - (14) is provided a daily routine in the home that promotes good mental health and provides an opportunity for normal activities with time for rest and play;
 - (15) is provided training in good health habits, including proper eating, frequent bathing and good grooming. Each child shall be provided food with appropriate nutritional content for normal growth and health. Any diets recommended by a physician must be provided;

- (16) is provided medical care in accordance with the treatment prescribed for the child;
 - (17) of mandatory school age maintains regular school attendance unless the child has been officially excused by the proper authorities ;
 - (18) is encouraged to participate in neighborhood and group activities, to have friends visit the home and to visit in the homes of friends;
 - (19) assumes some responsibility for himself and household duties in accordance with his age, health and ability. Household tasks shall not interfere with school, sleep, play or study periods;
 - (20) is not permitted to do any task which is in violation of child labor laws or not appropriate for a child of that age;
 - (21) is provided supervision in accordance with the child's age, intelligence, emotional makeup and past experience; and
 - (22) if less than six years of age is properly secured in a child passenger restraint system which is of a type and which is installed in a manner approved by the Commissioner of Motor Vehicles.
- (b) Foster parents shall be responsible for the following regarding medication.
- (1) Medication administration:
 - (A) retain the manufacturer's label with expiration dates clearly visible on non-prescription drug containers not dispensed by a pharmacist;
 - (B) administer prescription drugs to a child only on the written order of a person authorized by law to prescribe drugs;
 - (C) allow prescription medications to be self-administered by children only when authorized in writing by the child's physician. When a child is taking prescription medications, allowing non-prescription medications to be self-administered by a child only when authorized in writing by the child's physician;
 - (D) allow non-prescription medications to be administered to a child, not on prescription medication, with the authorization of the legal custodian;
 - (E) allow medications, including injections, to be administered only by licensed persons, or by unlicensed persons trained by a registered nurse, pharmacist or other legally qualified person and privileged to prepare and administer medications;
 - (F) immediately record after administration in a Medication Administration Record (MAR) all drugs administered to, discontinued, and disposed of regarding each child and document medications at the times of discontinuation or disposal. The MAR is to include the following:
 - (i) child's name;
 - (ii) name, strength, and quantity of the drug;
 - (iii) instructions for administering the drug;
 - (iv) date and time the drug is administered; discontinued or disposed of;
 - (v) name or initials of person administering or disposing of the drug;
 - (vi) child requests for medication changes or checks; and
 - (vii) child's refusal of any drug; and
 - (2) Medication disposal: Return controlled substances to the agency;
 - (3) Medication Storage:
 - (A) store medications in a securely locked cabinet in a clean, well-lighted, ventilated room between 59° and 86° F.;
 - (B) if required, store medications in a refrigerator, between 36° and 46° F. If the refrigerator is used for food items, medications shall be kept in a separate, locked compartment or container;
 - (C) store prescription medication separately for each child; and
 - (D) if approved by a physician for a child to self-administer medication, then store in a manner that it is inaccessible to non-approved children.
 - (4) Medication review:
 - (A) If the child receives psychotropic drugs, coordinate the review by the child's physician of each child's drug regimen at least every six months;
 - (B) report the findings of the drug regimen review to the agency; and
 - (C) document the drug review in the MAR along with corrective action, if applicable.
 - (5) Medication errors:
 - (A) report drug administration errors or significant adverse drug reactions immediately to a physician or pharmacist. An adverse drug reaction is significant based on its severity, frequency, magnitude or duration; and
 - (B) document the drug administered and the drug reaction in the MAR.

(c) Foster parents who utilize physical restraint holds shall not engage in discipline or behavior management, which includes:

- (1) Mechanical restraints;
- (2) Drug used as a restraint, except as outlined in Paragraph (d) of this Rule;
- (3) Seclusion of a child in a locked room; or
- (4) Physical restraint holds except when the physical restraint hold of a child is physically holding a child who is at imminent risk of harm to himself or others until the child is calm.

(d) Drug used as a restraint means a medication used to control behavior or to restrict a child's freedom of movement and is not a standard treatment for the child's medical or psychiatric condition. A drug used as a restraint shall be employed only if required to treat a medical condition. It shall not be employed for the purpose of punishment, foster parent convenience or as a substitute for adequate supervision.

(e) Only foster parents trained in the use of physical restraint holds shall administer physical restraint holds. No child or group of children shall be allowed to participate in the physical restraint of another child. The following shall apply.

- (1) Before employing a physical restraint hold, the foster parent shall take into consideration the child's medical condition and any medications the child may be taking.
- (2) No child shall be physically restrained utilizing a protective or mechanical device.
- (3) Physical restraint holds shall:
 - (A) not be used for purposes of discipline or convenience;
 - (B) only be used when there is imminent risk of harm to the child or others and less restrictive approaches have failed;
 - (C) be administered in the least restrictive manner possible to protect the child or others from imminent risk of harm; and
 - (D) end when the child becomes calm.
- (4) The foster parent shall:
 - (A) Ensure that any physical restraint hold utilized on a child is administered by a trained foster parent with a second foster parent in attendance. Concurrent with the administration of a physical restraint hold and for a minimum of 15 minutes subsequent to the termination of the hold, a foster parent shall:
 - (i) monitor the child's breathing;
 - (ii) ascertain that the child is verbally responsive and motorically in control; and
 - (iii) ensure that the child remains conscious without any complaints of pain.
 If at any time during the administration of a physical restraint hold the child complains of being

unable to breathe or loses motor control, the foster parent administering the physical restraint hold shall immediately terminate the hold or adjust the position to ensure that the child's breathing and motor control are not restricted. If at any time the child appears to be in distress, the foster parent shall immediately seek medical attention for the child.

Following the use of a physical restraint hold, the foster parent shall conduct an interview with the child about the incident, and the foster parent administering the physical restraint hold shall be interviewed about the incident by the agency.

(B) Document each incident of a child being subjected to a physical restraint hold on an incident report. This report shall include:

- (i) the child's name, age, height and weight;
- (ii) the type of hold utilized;
- (iii) the duration of the hold;
- (iv) the parent administering the hold;
- (v) the parent witnessing the hold;
- (vi) less restrictive alternatives that were attempted prior to utilizing physical restraint;
- (vii) the child's behavior which necessitated the use of physical restraint; and
- (viii) whether the child's condition necessitated medical attention.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1982; Amended Eff. May 1, 1990; Temporary Amendment Eff. February 1, 2002; Amended Eff. July 18, 2002.

10 NCAC 41F .0702 CRITERIA FOR THE FAMILY

(a) Qualities. Foster parents shall be persons whose behaviors, circumstances and health are conducive to the safety and well-being of children. Foster parents shall also be selected on the basis of demonstrating strengths in the skill areas of Subparagraphs (1) through (12) of this Paragraph which will permit them to undertake and perform the responsibilities of meeting the needs of children, in providing continuity of care, and in working with the agency. Foster parents shall demonstrate skills in:

- (1) assessing individual and family strengths and needs and building on strengths and meeting needs;
- (2) using and developing effective communication;

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

(b) Age. A license may be issued to persons 21 years of age and older.

(c) Health. The foster family shall be in good physical and mental health as evidenced by:

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

(d) The homes of Agency Employees, Social Services Board Members, and County Commissioners may be licensed if such licensure does not constitute a conflict of interest regarding supervision of children placed in the home. The agency's position concerning conflict of interest questions shall be documented in the family's record.

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

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

- (1) The family foster home living quarters can not be part of the day care operation.
- (2) There must be a separate entrance to the day care operation.
- (3) Staff as specified in day care center rules must be available to provide care for the day care children.

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

- (1) Work with the child and the child's birth family, when appropriate: in the placement process, reunification process, adoption process, or replacement process;
- (2) Consult with social workers, mental health personnel and physicians and other authorized persons who are involved with the child;
- (3) Maintain confidentiality regarding children and their birth parent(s);
- (4) Keep records regarding the child's, illnesses, behavior, social needs, school, family visits, etc.; and
- (5) Report immediately to the agency any changes as required by 10 NCAC 41F .0502.

(h) In addition to Subparagraphs (g)(1) – (5) of this Rule, the foster parents who provide behavioral mental health treatment services shall:

- (1) be trained to work with children who have mental health developmental disability or substance abuse needs in accordance with 10 NCAC 41F .0814 (c);
- (2) provide for children with intensive living, social, therapeutic and skill learning needs; and
- (3) accept weekly supervision and support from a professional as defined in 10 NCAC 14V .0203.

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

Eff. July 1, 1982;

Amended Eff. May 1, 1990; July 1, 1983;

Temporary Amendment Eff. February 14, 2002;

Amended Eff. July 18, 2002.

10 NCAC 41F .0704 PHYSICAL FACILITY

(a) Fire and Building Safety:

- (1) Each home shall be in compliance with all applicable portions of the NC Building Code in effect at the time the home was constructed or last renovated. The NC Building Code is hereby incorporated by reference including subsequent amendments and additions. The NC Building Code may be obtained from the North Carolina Department of Insurance, Code Council Building, 410 North Boylan Avenue, Raleigh, North Carolina 27603 at a cost of one hundred eighteen dollars (\$118.00), at the time of adoption of this Rule. Where strict

- conformance with current requirements would be impractical, or because of extraordinary circumstances or unusual conditions, the licensing authority may approve alternative methods or procedures, addressing criteria and functional variations for the physical plant requirements, when it can be effectively demonstrated to the licensing authority that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the home.
 - (2) All homes shall be reasonably protected from all fire hazards, included but not limited to the following:
 - (A) All hallways, doorways, entrances, ramps, steps and corridors shall be kept clear and unobstructed at all times;
 - (B) an evacuation plan shall be developed, and all persons in the home shall be knowledgeable of the plan;
 - (C) all homes shall have one smoke detector outside each bedroom that is within 10 feet of each bedroom door, with at least one smoke detector on each level; and at least one five pound ABC type fire extinguisher; and
 - (D) all homes shall have a telephone that functions without use of electric power.
 - (3) Before a home is fully licensed, and biennially thereafter, it must be inspected and receive a passing rating on the fire and building safety inspection report completed by the local jurisdiction.
- (b) Health Regulations:
 - (1) All homes must meet the minimum sanitation standards for a residential care facility as set forth by the North Carolina Health Services Commission and codified in 15A NCAC 18A .1600 which is incorporated by reference including all subsequent amendments and editions. Copies of this Rule may be obtained from the Office of Administrative Hearings (OAH) Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages and fifteen cents (\$0.15) for each additional page at the time of adoption of this Rule.
 - (2) Before a home not on public water and sewer systems, is fully licensed, and annually thereafter, it must be inspected by the county sanitarian and receive a passing rating on the inspection form for residential care facilities.
- (c) Environmental Regulations:
 - (1) The home and yard shall be maintained and repaired so that they are not hazardous to the children in care.
- (2) The house shall be kept free of uncontrolled rodents and insects.
 - (3) Windows and doors used for ventilation shall be screened.
 - (4) The kitchen shall be equipped with an operable stove and refrigerator, running water and eating, cooking and drinking utensils to accommodate the household members. The eating, cooking, and drinking utensils shall be cleaned and stored after each use.
 - (5) Household equipment and furniture shall be in good repair.
 - (6) Flammable and poisonous substances, medications and cleaning materials shall be stored out of the reach of children placed for foster care.
 - (7) Explosive materials, ammunition, and firearms shall each be stored separately, in locked places.
 - (8) Documentation that household pets have been vaccinated for rabies shall be maintained by the foster parents.
 - (9) Comfort Zone: each home shall have heating, air-cooling or ventilating capability to maintain a comfort range between 65 and 85 degrees F.
 - (10) Rooms including toilets, baths, and kitchens, in family foster homes licensed for the first time after the effective date of these Rules, without operable windows must have mechanical ventilation to the outside.
 - (d) Room Arrangements:
 - (1) Family Room. Each home shall have a family room to meet the needs of the family including children placed for foster care.
 - (2) Kitchen and Dining Area. The kitchen shall be large enough for preparation of food and cleaning of dishes. Each home shall have a dining area to meet the needs of the family including children placed for foster care.
 - (3) Bedrooms. Bedrooms shall be clearly identified on a floor plan as bedrooms and shall not serve dual functions.
 - (A) Space. Children shall not be permitted to sleep in an unfinished basement or in an unfinished attic.
 - (B) Sleeping Arrangements.
 - (i) Each child shall have his own bed except:
 - (I) siblings of same sex may share a double bed;
 - (II) two children, other than siblings, of the same sex and near the same age may at the discretion of the foster parents and agency share a double bed, but

- only if the children so desire.
- (ii) Each bed shall be provided with a comfortable, supported mattress, two sheets, blanket, and bedspread, and be of a size to accommodate the child.
- (iii) No day bed, convertible sofa, or other bedding of a temporary nature shall be used except for temporary care of up to two weeks.
- (iv) Sleeping room shall not be shared by children of opposite sex except children age five and under may share a room.
- (v) Sleeping arrangements shall be such that space is provided within the bedroom for the bed, and the child's personal possessions.
- (vi) When children share a bedroom, a child under six shall not share a room with a child over 12, except when siblings are being placed together. No more than four children shall share a room.
- (C) Storage. Separate and accessible drawer space for personal belongings and sufficient closet space for indoor and outdoor clothing shall be available for each child.
- (4) Bathrooms. The home shall have indoor, operable sanitary toilet, hand washing, and bathing facilities. Homes shall be designed in a manner that will provide children privacy while bathing, dressing and using toilet facilities.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1982; Amended Eff. July 18, 2002; May 1, 1994; May 1, 1990;.

10 NCAC 41F .0705 LICENSING COMPLIANCE VISITS

Quarterly Visits. Agency staff shall visit with the foster family on at least a quarterly basis each year for the specific purpose of assessing licensing requirements. Two of the quarterly visits each year shall take place in the home.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1983; Amended Eff. July 18, 2002; July 1, 1997; May 1, 1990.

10 NCAC 41F .0802 NEW LICENSES

(a) All licensing material must be completed and dated within 90 days prior to submitting material for licensure.

- (b) All licensing information and reports required for a license must be submitted at one time.
- (c) A new license, if approved according to these Rules, shall be issued effective the date the application and all required 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.

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

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

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1982; Amended Eff. July 18, 2002; May 1, 1990.

10 NCAC 41F .0807 REVOCATION

- (a) Licenses may be revoked when an agency duly authorized by law to investigate allegations of abuse or neglect finds the foster parent has abused or neglected a child.
- (b) Revocation of a license may also occur when the foster family home is not in compliance with licensing standards.
- (c) Revocation shall be based on the following:
 - (1) a child's circumstances;
 - (2) a child's permanency plan;
 - (3) the nature of the non-compliance; and
 - (4) the circumstances of the placement.
- (d) Foster parents must be made aware of the reasons for the agency's decision to revoke a license.
- (e) Foster parents must submit their license to the agency for it to be returned to the Division of Social Services, Children's Services. Section.
- (f) Appeal procedures specified in 10 NCAC 41A .0107, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, shall be applicable for persons seeking an appeal to the Department's decision to revoke a license.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1982; Amended Eff. May 1, 1990; February 1, 1986; Temporary Amendment Eff. February 1, 2002; Amended Eff. July 18, 2002.

10 NCAC 41F .0808 LICENSING AUTHORITY FUNCTION

(a) When the licensing authority receives licensing materials, the licensing materials are reviewed relative to standards, policies, and procedures for licensing. The licensing authority

will communicate with the agency submitting the materials if additional information, clarification or materials are needed to make a decision regarding license approval.

(b) A license shall be valid for the period of time stated on the license for the number of children specified and for the place of residence identified on the license.

(c) When a family under the administrative auspices of a county department of social services moves from one county to another county with a child placed for foster care, a notice of termination of the license must be submitted to the licensing authority and the license may be kept for a maximum of three months in order to give the county where the family moved time to complete a mutual home assessment. Within the three-month time period of the foster parents' move from one county to another county, licensing materials must be submitted by the new county department of social services and the procedure for issuing a new license shall be followed.

(d) When a family under the administrative auspices of an agency transfers licensure from one agency to another agency, a license application and mutual home assessment must be submitted by the new agency and the procedure for transferring a license shall be followed.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1982;
Amended Eff. July 18, 2002; May 1, 1990.*

10 NCAC 41F .0811 REPORTS OF ABUSE AND NEGLECT

The agency shall respond to reports of abuse or neglect as required by 10 NCAC 41N .0209.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. April 1, 1987;
Amended Eff. July 18, 2002.*

10 NCAC 41F .0814 TRAINING REQUIREMENTS

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

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

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

- (12) Teamwork to Achieve Permanence;
- (13) Cultural Sensitivity;
- (14) Confidentiality; and
- (15) Health and Safety.

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

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

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

- (1) During the first year following initial licensure, the parent identified as the primary parent shall receive training in the following:
 - (A) First Aid;
 - (B) CPR; and
 - (C) Universal Precautions.
- (2) Each agency shall provide, or cause to be provided, at least 10 hours of inservice training for foster parents annually.
- (3) Such training shall include subjects that would enhance the skills of foster parents and promote stability for children.
- (4) A foster parent may complete relevant training provided by: a community college, a licensed child placing agency, or other departments of State or county governments and, upon approval by the agency, such training shall count toward meeting the requirements specified in this Section.
- (5) Each agency shall document in the foster parent record the type of activity the foster parent has completed in pursuance of this Section.

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

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

History Note: Authority G.S. 143B-153; S.L. 1993, c. 769, s. 25.11;
Eff. April 1, 1997;
Amended Eff. July 18, 2002.

10 NCAC 41N .0203 RESPONSIBILITIES OF THE GOVERNING BODY

- (a) The governing body shall provide leadership for the agency and shall be responsible for establishing the agency's policies, programs, and guiding its development.
- (b) The governing body shall assure the employment of an administrator and delegate responsibility to that person for the administration and operation of the agency, including the employment and discharge of all agency staff.
- (c) The governing body shall annually evaluate the administrator's performance except a sole proprietor or partner is exempt from this Rule if he serves as administrator.
- (d) The governing body shall approve the annual budget of anticipated income and expenditures necessary to provide the services described in its statement of purpose. The governing body shall provide for an annual audit of agency financial records.
- (e) The governing body shall establish and utilize personnel practices for selection and retention of staff which are sufficient to operate the agency.
- (f) The governing body shall establish and utilize policies and procedures for periodic evaluation of the agency's services. This evaluation must include the agency's interaction with other community agencies to serve its clients.
- (g) The governing body or their appointed advisory boards or committees shall meet as often as necessary with a minimum of four meetings a year. A quorum of its members shall be present at all meetings at which decisions with respect to the agency are made. Meeting minutes of the governing body shall be permanently maintained.
- (h) The governing body shall establish in writing the policies and procedures for control and access to or receipt, use, and release of information about its clients.
- (i) The governing body, in the event of the closing of the agency, shall develop a plan for the retention and long term storage of case records. The specifics of this plan must be submitted to the licensing authority before the actual closing of the agency.

History Note: Authority G.S. 131D-1; 131D-10.5; 143B-153;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Amendment Eff. February 1, 2002;
Amended Eff. July 18, 2002.

10 NCAC 41N .0209 RESPONSIBILITY TO LICENSING AUTHORITY

- (a) The agency shall annually submit to the licensing authority the information and materials to document compliance and to support issuance of a license.
- (b) The agency shall submit to the licensing authority an annual statistical report of program activities.
- (c) The agency shall provide written notification immediately to the licensing authority of change in the administrator.

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

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

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

History Note: Authority G.S. 131D-1; 131D-10.5; 143B-153;
Eff. February 1, 1986;
Amended Eff. July 18, 2002; July 1, 1990.

10 NCAC 41N .0211 STAFF

- (a) The agency shall verify prior to employment the personal qualifications of employees through at least three character references.
- (b) The agency shall require that each applicant provide a signed statement that the applicant has no criminal, social or medical history which would adversely affect the applicant's capacity to work with children and adults.
- (c) The agency shall employ qualified staff to perform administrative, supervisory, care, and placement services.
- (d) The agency shall have staff to keep correspondence, records, bookkeeping and files current and in good order. The staff must maintain strict confidentiality concerning contents of the case records.
- (e) The agency shall maintain a roster of members of the staff listing position, title, and qualifications and a current organizational chart showing administrative structure and staffing, including lines of authority. The organizational chart must be submitted prior to initial licensure and annually thereafter.
- (f) An agency which uses volunteers as unpaid staff to work directly with clients shall:

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

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

- (1) a provision for recording any suspected incident of abuse or neglect and for immediately reporting it to the executive

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

(11)

(12)

for medical attention, name of staff or parent completing the report, name of child's legal custodian, date and time of notification to the legal custodian and signature of agency staff reviewing the report;

documentation of searches, including date and time of the search, action taken by parents and the agency, name of parent informing the agency, the time the agency is informed of the search, the name of the child's legal custodian and the date and time of notification and signature of agency staff; and

if applicable:

- (A) documentation of physical disorders diagnosis according to International Classification of Diseases (ICD-9-CM);
- (B) medication orders and Medication Administration Record (MAR);
- (C) orders and copies of lab tests;
- (D) documentation of medication and administration errors;
- (E) documentation of adverse drug reactions;
- (F) legal documents; and
- (G) record of prior placements.

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

History Note: Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237; Eff. July 18, 2002.

10 NCAC 410 .0208 MEDICATION REQUIREMENTS

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

(b) Medication education:

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

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

History Note: Authority G.S. 131D-1; 131D-10.5; 143B-153; Eff. February 1, 1986; Amended Eff. July 18, 2002.

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

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

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

Eff. July 18, 2002.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 08 .1418 INSTRUCTOR REQUIREMENTS

(a) Instructors shall assure that class sessions are started on time and are conducted for the full amount of time that is scheduled. Instructors shall also assure that each CE course is taught according to the course outline and plan that was approved by the Board, including the furnishing of approved student materials.

(b) Instructors shall possess the ability to:

- (1) Communicate through speech, with the ability to speak clearly, and with voice inflection, using proper grammar, and vocabulary;
- (2) Present instruction in a thorough, accurate, logical, orderly and understandable manner;
- (3) Use varied instructional techniques in addition to straight lecture, such as class discussion, role-playing, or other techniques; and
- (4) Use instructional aids, such as the overhead projector, to enhance learning.

*History Note: Authority G.S. 143-143.10; 143-143.11B;
Eff. August 1, 2002.*

11 NCAC 12 .1006 REQUIRED DISCLOSURE PROVISIONS

(a) Renewability. Individual long-term care insurance policies shall contain a renewability provision. This provision shall be prominently displayed, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable. This provision does not apply to long-term care policies which are part of or combined with life insurance policies.

(b) Premium Rate Changes. A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(c) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider or endorsement.

(d) Payment of Benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(e) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(f) Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in 11 NCAC 12 .1008 and G.S. 58-55-30 shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

(g) Disclosure of Tax Consequences. With regard to life insurance policies that provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This Paragraph shall not apply to tax qualified long-term care insurance contracts.

(h) Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section. If these triggers differ for different benefits, explanation of the trigger shall 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 shall be specified.

(i) Tax Qualified. A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in 11 NCAC 12 .1015(e) that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(j) Tax Non-Qualified. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in 11 NCAC 12 .1015(e) that the policy is not intended to be a qualified long-term care insurance contract.

*History Note: Authority G.S. 58-2-40(1); 58-55-30(a);
Eff. September 1, 1990;
Amended Eff. August 1, 2002; December 1, 1992.*

11 NCAC 12 .1028 PREMIUM RATE SCHEDULE INCREASES

(a) This Rule shall apply as follows:

- (1) Except as provided in Paragraph (a)(2) of this Rule, this Rule applies to any long-term care policy or certificate issued in this state on or after February 1, 2003; and
- (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 August 1, 2003.

(b) An insurer shall request approval of a pending premium rate schedule increase, including an exceptional increase, from the Commissioner at least 90 days prior to the notice to the policyholders and shall include:

- (1) Information required by 11 NCAC 12 .1027;
- (2) Certification by an actuary who is a member in good standing with the American Academy of Actuaries that:
 - (A) If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated; and
 - (B) The premium rate filing is in compliance with the provisions of this Rule;
- (3) An actuarial memorandum justifying the rate schedule change request that includes:
 - (A) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale:
 - (i) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;
 - (ii) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;
 - (iii) The projections shall demonstrate compliance with Paragraph (c) of this Rule; and
 - (iv) For exceptional increases:
 - (I) The projected experience shall be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
 - (II) In the event the Commissioner determines, as provided in 11 NCAC 12 .1002 that offsets may

exist, the insurer shall use net projected experience;

- (B) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;
 - (C) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;
 - (D) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and
 - (E) In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;
- (4) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, or underwriting criteria; and
 - (5) All projected premium rate schedule increases shall be filed with the Commissioner for review and approval under G.S. 58-51-95.
- (c) All premium rate schedule increases shall be determined in accordance with the following requirements:
- (1) Exceptional increases shall provide that 70 percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;
 - (2) Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:
 - (A) The accumulated value of the initial earned premium times 58 percent;
 - (B) 85 percent of the accumulated value of prior premium rate schedule increases on an earned basis;
 - (C) The present value of future projected initial earned premiums times 58 percent; and
 - (D) 85 percent of the present value of future projected premiums not in Part (c)(2)(C) of this Rule on an earned basis;

(3) In the event that a policy form has both exceptional and other increases, the values in Subparagraphs (c) (2)(B) and (D) of this Rule will also include 70 percent for exceptional rate increase amounts; and

(4) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in 11 NCAC 11F .0207(c). The actuary shall disclose as part of the actuarial memorandum the use of any actuarially appropriate averages.

(d) For each rate increase that is implemented, the insurer shall file for review and approval under G.S. 58-51-95 by the Commissioner the updated projections, as defined in Part (b)(3)(A) of this Rule, annually for the next three years and include a comparison of actual results to projected values. The Commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Paragraph (l) of this Rule, the projections required by this Paragraph shall be provided to the policyholder in lieu of filing with the Commissioner.

(e) If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in Part (b)(3)(A) of this Rule, shall be filed for review and approval under G.S. 58-51-95 by the Commissioner every five years following the end of the required period in Paragraph (d) of this Rule. For group insurance policies that meet the conditions in Paragraph (l) of this Rule, the projections required by this Rule shall be provided to the policyholder in lieu of filing with the Commissioner.

(f) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Paragraph (c) of this Rule, the Commissioner may require the insurer to implement any of the following:

- (1) Premium rate schedule adjustments; or
- (2) Other measures to reduce the difference between the projected and actual experience.

It is to be expected that the actual experience will not exactly match the insurer's projections. During the period that projections are monitored as described in Paragraphs (d) and (e) of this Rule, the Commissioner shall determine that there is not an adequate match if the differences in earned premiums and incurred claims are not in the same direction (both actual values higher or lower than projections) or the difference as a percentage of the projected is not of the same order. In determining whether the actual experience adequately matches the projected experience, consideration shall be given to Part (b)(3)(E) of this Rule, if applicable.

(g) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

- (1) A plan, subject to the Commissioner's approval under G.S. 58-51-95 for improved administration or claims processing, or both, designed to eliminate the potential for further

deterioration of the policy form requiring further premium rate increases; otherwise the Commissioner may impose the condition in Paragraph (i) of this Rule; and

- (2) The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to Paragraph (c) of this Rule had the greater of the original anticipated lifetime loss ratio or 58 percent been used in the calculations described in Parts (c)(2)(A) and (C) of this Rule.

(h) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if adverse lapsation has occurred or is anticipated:

- (1) The rate increase is not the first rate increase requested for the specific policy form or forms;
- (2) The rate increase is not an exceptional increase; and
- (3) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(i) In the event adverse lapsation has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the Commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the Commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

- (1) The offer shall:
 - (A) Be subject to the approval under G.S. 58-51-95 of the Commissioner;
 - (B) Be based on actuarially sound principles, but not be based on attained age; and
 - (C) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy;
- (2) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:
 - (A) The maximum rate increase determined based on the combined experience; or
 - (B) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10 percent.

(j) If the Commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the Commissioner

may, in addition to the provisions of Paragraph (i) of this Rule, prohibit the insurer from either of the following:

- (1) Filing and marketing comparable coverage for a period of up to five years; or
- (2) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

A premium rate is inadequate if the rate is unreasonably low for the insurance provided and the use or continued use of the rate by the insurer has had or will have the effect of endangering the solvency of the insurer; destroying competition; creating a monopoly; or violating actuarial principles, practices, or soundness.

(k) Paragraphs (a) through (j) of this Rule shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in 11 NCAC 12 .1002, 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, are guaranteed to be not 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 insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following: G.S. 58-58-55; 58-58-60; and 11 NCAC 12 .0436;
- (3) The policy meets the disclosure requirements of 11 NCAC 12 .1006 and 11 NCAC 12 .1206;
- (4) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:
 - (A) Policy illustrations as required by 11 NCAC 04 .0500;
 - (B) Disclosure requirements in 11 NCAC 12 .1212;
 - (C) Disclosure requirements in 11 NCAC 12 .0420 and 12 .0422;
 - (D) Disclosure requirements in G.S. 58-7-95; and
 - (E) Disclosure requirements in G.S. 58-60-15;
- (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 insurance policy, both for active lives and those in long-term care claim status.

(l) Paragraphs (f) and (h) of this Rule shall not apply to group insurance policies as defined in G.S. 58-55-20(3) where:

- (1) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
- (2) The policyholder, and not the certificate-holders, pays a material portion of the premium, which shall not be less than 20 percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

History Note: Authority G.S. 58-2-40; 58-51-95(f); Eff. August 1, 2002.

TITLE 12 – DEPARTMENT OF JUSTICE

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

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

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

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including but not limited to, familiarity with rules and regulations relating to armed security guards (minimum of four hours);

- (2) handgun safety, including but not limited to, range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

(c) In addition to the requirements set forth in Paragraphs (a) and (b) of this Rule and prior to being issued a permit, applicants shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office.

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

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

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

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

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

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

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

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

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

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

*History Note: Authority G.S. 74C-5; 74C-13;
Eff. June 1, 1984;
Amended Eff. November 1, 1991; February 1, 1990;
July 1, 1987;
Temporary Amendment Eff. January 14, 2002;
Amended Eff. August 1, 2002.*

12 NCAC 07D .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE

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

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

*History Note: Authority G.S. 74C-5; 74C-13;
Eff. June 1, 1984;
Amended Eff. August 1, 1998; December 1, 1995; July 1, 1987;
December 1, 1985;
Temporary Amendment Eff. July 17, 2001;
Amended Eff. August 1, 2002.*

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 07A .0302 COPIES AVAILABLE

APPROVED RULES

Copies of the applicable Code of Federal Regulations (CFR) Parts or sections and industry standards referred to in this Chapter are available for public inspection by contacting the North Carolina Department of Labor (NCDOL), Division of Occupational Safety and Health or the NCDOL Library. The following table provides acquisition locations and the costs of the applicable materials on the date this Rule was adopted:

Referenced Materials	Available for Purchase From	Cost
29 CFR 1903; 29 CFR 1904; 29 CFR 1905; 29 CFR 1908; 29 CFR 1913.10	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$1/page requested
29 CFR 1910	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$27.00 each
29 CFR 1915; 29 CFR 1917	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$2.50 each
29 CFR 1926	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$22.00 each
29 CFR 1928	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$2.50 each
The above CFR Parts and other CFR Parts	U.S. Government Printing Office Washington, D.C. 20402 (202) 512-1800 http://www.gpo.gov/	\$34.00/Part
ANSI/NFPA 101-1991	National Fire Protection Association 1 Battery Arch Park Quincy, Massachusetts 02269 (617) 770-3000 http://www.nfpa.org/	\$53.50 Non- members; \$48.25 members
ANSI standards	American National Standards Institute 11 West 42 nd Street New York, New York 10036 (212) 642-4900 http://www.ansi.org/	Z88.2: \$54.00
ANSI standards	Global Engineering Documents 15 Inverness Way East Englewood, CO 80112 http://global.his.com/	B30.9: \$105 with additional \$20.00 update service, optional; Z9.2: \$ 60 Z41.1: \$ 20 Z87.1: \$ 94 Z89.2: \$ 40 Z229.1: \$ 25
Federal Specification QQ-P-416	Federal Supply Services Specification Section 470 East L'Enfant Plaza SW, Suite 8100 Washington, DC 20407 (202) 619-8925 http://www.gsa.gov/fssintro.htm	\$ 7.00 each
Schedule 30 Bureau of Mines	24 FR 245 pages 10210-10204, December 17, 1959 or Division of Occupational Safety & Health http://www.msha.gov/	\$1.00/page requested
Institute of Makers of Explosives (IME) Publications	1120 Nineteenth St. NW, Suite 310 Washington, DC 20036 (202) 429-9280 http://www.ime.org	No. 17 \$15.00 No. 20 \$10.00 No. 20 \$ 15.00 No. 22 \$15.00

History Note: Authority G.S. 95-133; 150B-21.6;
Eff. August 2, 1993;
Amended Eff. July 1, 1998; June 1, 1994;
Codifier determined that agency's findings of need did not meet

criteria for temporary rule on March 20, 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. December 1, 2001;
March 20, 2000;
Amended Eff. August 1, 2002.

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

15A NCAC 02D .1002 APPLICABILITY

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

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

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

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

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

Vehicle Class	Model Year	CO Standard At Idle(%)	HC Standard At Idle(PPM)
Light-duty Vehicle	1978-1979	3.5	350
	1980	2.0	250
	1981-1985	1.2	220
Heavy-duty Vehicle	1978	5.0	500
	1979-1995	4.0	400

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

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

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

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

History Note: Authority G.S. 20-128.2(a); 20-183.5; 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7);
Eff. December 1, 1982;
Amended Eff. August 1, 2002; July 1, 1993; April 1, 1991;
November 1, 1986; July 1, 1984.

143-215.107A;
Eff. December 1, 1982;
Amended Eff. July 1, 1992; April 1, 1991;
Temporary Amendment Eff. January 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. August 1, 2002; July 1, 1994; July 1, 1993.

**15A NCAC 2D .1004 TAILPIPE EMISSION
STANDARDS FOR CO AND HC**

(a) This Rule applies according to Rule .1002 of this Section to all 1995 and earlier gasoline-powered motor vehicles, except motorcycles, that are fewer than 25 model years old in the following counties:

- (1) Mecklenburg;
- (2) Wake;
- (3) Forsyth;
- (4) Guilford;
- (5) Durham;
- (6) Gaston;
- (7) Cabarrus;
- (8) Orange; and
- (9) Union.

**15A NCAC 06E .0103 ALLOCATION GUIDELINES
AND PROCEDURES**

(a) The Commission shall allocate the cost share funds to the districts in the designated program areas. To receive fund allocations, each district designated eligible by the Commission shall submit an annual strategy plan to the Commission at the beginning of each fiscal year. Funds may be allocated to each district for any or all of the following purposes: cost share payments, cost share incentive payments, technical assistance, or administrative assistance. Use of funds for technical and administrative assistance must follow the guidelines set forth in Rule .0106 of this Subchapter.

(b) Funds shall be allocated to the districts at the beginning of the fiscal year. Districts shall be allocated monies based on the identified level of agricultural related nonpoint source pollution problems and the respective district's BMP installation goals and

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available technical services as demonstrated in the district annual strategy plan. The allocation method used for disbursement of funds is based on the relative position of each respective district for those parameters approved by the Commission pursuant to Paragraph (g) of this Rule. These parameters are designed to reflect the agricultural nonpoint

source problems, the conservation needs, and the technical assistance available in the area of the state included in the current program year funding. Each district is assigned points for its relative position for each parameter, and the points are totaled and proportioned to the total dollars available under the current program year funding.

- (1) Sum of Parameter Points = Total Points
 - (2)

Percentage Total Points Each District	x	Total Dollars Available	=	Dollars Available to Each District
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 - (3) Because of other program restraints or increased demands for funds a district may request fewer (Group A) or more (Group B) dollars than are available.
Thus,
Dollars

District, (2)	-	Dollars Requested by the District	=	Available Per Difference
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 - (A) Group A Districts request less than amount (2).
 - (B) Group B Districts request more than amount (2).
 - (4) The dollars in excess of Group A District requests are apportioned to Group B Districts in the following manner:

Total of Those Funds in Excess of that Requested by Group A Districts	x	Percentage of Total Excess Requests by each Group B District Request	=	Amount Added to Group B
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 - (5) Therefore, there are two categories of districts in the allocation method:
 - (A) Those receiving 100 percent of request (Group A).
 - (B) Those receiving less than 100 percent of requests (Group B) who receive amounts (2) plus (4).
- (c) 95 percent of the total program funding shall be allotted to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to be used to respond to an emergency or natural disaster. If the funds are not needed to respond to an emergency, then the contingency fund shall be allocated at the March meeting of the Commission.
- (d) The Commission may recall funds allocated to a district during a fiscal year that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.
- (e) At any time a district may submit a revised strategy plan and apply to the Commission for additional funds.
- (f) CPO's that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on the first Wednesday in June.
- (g) Districts shall be allocated funds based on their relative ranking for each of the following parameters:
- (1) Number of acres of agricultural land in the district (including cropland, hayland, and pasture land) as reported in the most recent edition of the North Carolina Agricultural Statistics.
 - (2) Number of acres of cultivated cropland in the district as reported in the most recent edition of the North Carolina Agricultural Statistics.
 - (3) Number of confined animal operations and number of animals by type that are eligible for cost share as reported in the district's Annual Strategy Plan.
 - (4) Number of stream protection systems needed by agricultural operations in the district that are eligible for cost share as reported in the district's Annual Strategy Plan.
 - (5) Number of water control structures needed in the district by agricultural operations that are eligible for cost share as reported in the district's Annual Strategy Plan.
 - (6) Number of miles of stream identified as less than fully supporting due to agricultural nonpoint source pollution as reported in the state's 303(d) list, 305(b) report, and basin plan.
 - (7) Percentage of the county draining to waters classified as Primary Nursery Areas, Outstanding Resource Waters, High Quality Waters, Trout, Shellfishing, and Critical Water Supply on the current schedule of Water Quality Standards and Classifications.
 - (8) The number of full-time equivalent positions available to provide technical assistance to cooperators in planning and installing best management practices as reported in the district's Annual Strategy Plan.

- (9) Percentage of cost share funds encumbered to contracts over the last three program years that are actually paid out in installed BMPs as reported on the NC Agriculture Cost Share Program Database.
- (10) Cumulative funds encumbered into existing cost share contracts for which BMPs have not yet been installed as reported on the NC Agriculture Cost Share Program Database.

History Note: Authority G.S. 139-4; 139-8; 143-215.74; 143B-294;
Eff. May 1, 1987;
Recodified from 15A NCAC 06E .0003 Eff. December 20, 1996;
Amended Eff. April 1, 1997.
Temporary Amendment Eff. May 1, 2001;
Amended Eff. August 1, 2002.

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

Applicants may order tree seedlings prior to the sowing of seed in the nursery. The nursery and tree improvement forester may accept such custom orders. The Nursery and Tree Improvement Forester shall evaluate each request for custom orders, considering the nursery production capacity and capability to fulfill the request. A review of past credit payment records or credit reference shall be conducted prior to executing a custom sales agreement. The Director shall require 50% of the contract price, non-refundable, at the time the custom agreement is executed when he has reason to believe that economic conditions may cause a default in purchase of total contracted number of seedlings.

History Note: Authority G.S. 113-8; 113-35; 143B-10(j);
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; October 1, 1984.

15A NCAC 09C .0510 PAYMENT FOR TREE SEEDLINGS

All applications shall include full payment unless the nursery and tree improvement forester has approved the applicant's credit after a review of the applicant's past credit payment record or credit reference.

- (1) If the applicant has no record of default or late payment, no deposit shall be required.
- (2) If there is a history of late payment of invoices, a 25% deposit of the total sales price shall be required.
- (3) If there is a history of non-payment of invoices, credit shall not be approved without a letter of credit from a financial institution and shall require a 50% deposit of the total sales price.
- (4) If there is no past payment history a letter of credit from a financial institution shall be required.

The Director shall waive collection of under payments of five dollars (\$5.00) or less and refunds of over payments of five dollars (\$5.00) or less, unless a refund is requested.

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, 1988; October 1, 1984.

15A NCAC 09C .0516 STORAGE FEES

- (a) Seedlings - The Director shall charge a storage fee for containerized seedlings stored after December 15th and bareroot seedlings stored after May 15th when storage coolers are at 80% or greater capacity. The storage fee shall be a monthly fee of 1.5%, or a prorata share thereof, of product value as per current published price list, assessed on the value of the seedlings left in storage after the above dates.
- (b) Seed - The Director shall charge a storage fee if seeds are stored for a period of longer than 30 days. The storage fee shall be a monthly fee of ten cents (\$.10) per pound of seed. The Director shall waive this fee if the seeds are stored for custom seedling production.

History Note: Authority G.S. 113-8; 113-35; 143B-10(j);
Eff. August 1, 2002.

15A NCAC 09C .0604 FEES FOR SERVICES

- (a) The Division charges a fee to cover costs.
- (b) These contract fees are determined by applying fixed hourly rates to the time required to perform the service and by including material costs. Fixed hourly rates are the sum of the purchase price, maintenance cost and operating cost divided by expected lifespan plus the operator's salary. Most contracted service fees are converted to per acre rates. Fixed hourly rates are converted to per acre rates by multiplying the fixed hourly rate by the production rate. Some services require a fee on a per unit basis such as per mile or per tree. These fees are established by applying the same fixed hourly rates, time required, and material costs.
- (c) Designated Division employees, trained in such services, shall establish contract fees prior to beginning work.

History Note: Authority G.S. 113-81.1; 143B-10;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; October 1, 1984.

15A NCAC 09C .0605 CONTRACTS FOR SERVICES

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

- (1) Landowner contracts executed when the Division performs services for individual landowners or agencies.
- (2) Rental contracts executed when the Division rents specialized forestry equipment to contracting firms, companies, or individuals.
- (3) Sub-contracting contracts shall be executed when the Division sub-contracts custom services to sub-contractors.

History Note: Authority G.S. 113-8; 113-81.1; 143B-10(j);
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;

Amended Eff. August 1, 2002; October 1, 1984.

15A NCAC 09C .0607 PRACTICES

*History Note: Authority G.S. 113-81.1; 143B-10;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. October 1, 1984;
Repealed Eff. August 1, 2002.*

15A NCAC 09C .0902 ADMINISTRATION OF PROGRAM

(a) The manner and requirements of making application for cost sharing funds pursuant to the Forest Development Act are as follows:

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

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

(c) At the beginning of each fiscal year, the Secretary may designate a portion of funds for practices designed to encourage reforestation at reduced costs or for other special purposes in designated areas. Such designations shall be for the current fiscal year only. Funds may be designated for a "Plant-Only" allocation and for a "Mountain Area" allocation annually. The amount of these allocations shall be based on the prior year's demand for these allocations, however, any increase of these allocations shall not exceed 50% of the previous year's allocation. Funding so designated must be committed by March 31 for "Plant-Only" practices and December 31 for "Mountain

Area" practices. Funds remaining uncommitted after the specified date shall be reallocated on the "first come, first served" basis. The determination to designate funds by the Secretary shall be made in writing not less than three months prior to beginning of the fiscal year for which funds are designated.

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

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

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

(g) Maximum Cost Sharing Rate. The maximum cost sharing rates shall not exceed 60%. Planting of Longleaf Pine, hardwoods, and wetland conifer species shall be cost-shared at 60 percent. All other practices shall be cost-shared at 40 percent.

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

(i) Withdrawal of Allotted Funds:

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

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

(k) Cost-shared project maintenance. The Division shall periodically check projects funded by the program to insure compliance with the 10-year maintenance requirement. Landowners with projects discovered to be destroyed or otherwise not maintained as specified in the approved plan shall be required to reimburse the program. The Division's Raleigh office shall be notified of all such projects and shall be responsible for seeking and collecting reimbursement as allowed in 113A-180.1.

History Note: Authority G.S. 113A-176; 113A-183; 143B-10(j); Eff. August 8, 1978; Amended Eff. August 1, 2002; July 1, 1986; October 1, 1984; August 1, 1982; January 15, 1981.

15A NCAC 09C .0903 APPROVED PRACTICES

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

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

- the purpose of site preparation in a single pass operation;
- (i) Furrowing. The use of a plow pulled by a tractor to prepare a shallow trench or furrow to reduce competing vegetation for the purpose of site preparation;
- (j) Bulldozing and Piling. The use of a bulldozer to push over non-merchantable trees and brush for the purpose of site preparation; the material is pushed into piles or windrows;
- (k) Other. The use of hand tools or other machines to destroy or reduce competing vegetation for the purpose of site preparation;
- (l) Chemical Control; Aerial. The use of herbicides, applied from the air, to reduce competing vegetation for the purpose of site preparation; and
- (m) Chemical Control; Ground. The use of hand tools or ground chemical applications to reduce competing vegetation for the purpose of site preparation.
- (n) Preharvest Treatment. Use of chemical or mechanical means, including hand methods, to control vegetation to develop a stand of trees from advanced hardwood regeneration, natural pine regeneration, or artificial regeneration:
 - (i) The landowner must agree to harvest overstory stand once regeneration of at least 300 seedlings of a commercial timber species is established;
 - (ii) This practice cannot be used to prepare an area for pine straw production; and
 - (iii) The only other site prep technique that can be cost shared at a later date is prescribed burning, if needed.
- (2) Silvicultural Clearcut. The felling of trees in unmerchantable stands for the purpose of removing all stems in the overstory to allow regeneration of desirable species by exposing the site to direct sunlight:
 - (a) Fell and Leave. Felling all trees on an area with no removal of merchantable material, for the purpose of accomplishing a silvicultural clearcut; and
 - (b) Fell and Remove. Felling all trees on an area, both merchantable and unmerchantable, for the purpose of accomplishing a silvicultural clearcut;

the stumpage value of all merchantable trees removed from the area, as determined by the Director, shall be deducted from the allowable cost of completing the practice.

- (3) Tree Planting or Seeding. Planting seedlings or applying seed to establish a commercial forest stand:
 - (a) Hand Planting. The use of planting bars or other hand tools to plant forest tree seedlings;
 - (b) Machine Planting. The use of a planting machine to plant forest tree seedlings;
 - (c) Machine Plant – Chemical. The combined use of a planting machine to plant forest tree seedlings and application equipment to apply herbicides to reduce competing vegetation in a single pass operation;
 - (d) V-Blade Planting. The use of a tractor with attached V-shaped blade and planting machine to plant forest tree seedlings;
 - (e) Direct Seeding. The use of any type applicator to apply desirable forest tree seed directly to the soil.
- (4) Tree Planting Followed by Site Preparation. Tree planting followed by the use of a herbicide treatment, within one year after planting.
- (5) Mixed Stand Plantings. Tree planting to establish a mixed pine-hardwood stand, or a mixed stand of hardwood species.
- (6) Release of Seedlings. Releasing established reproduction of desired tree species for the purpose of ensuring regeneration, of at least 300 seedlings of a commercial timber species, is established:
 - (a) Chemical Control: Aerial. The use of herbicides, applied from the air, to reduce competing vegetation for the purpose of releasing desirable reproduction;
 - (b) Chemical Control; Ground. The use of hand tools or ground chemical applicators to reduce competing vegetation for the purpose of releasing desirable reproduction;
 - (c) Mechanical Control. The use of hand tools or machines to reduce competing vegetation for the purpose of releasing desirable reproduction.
- (7) Uneven-Aged Management. A planned sequence of silvicultural treatments designed to maintain and regenerate a stand with three or more age classes.

Amended Eff. August 1, 2002; October 1, 1984.

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

(a) Depredation Permit:

- (1) Endangered or Threatened Species. No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I by reason of depredations to property. An individual may take an endangered or threatened species in immediate defense of his own life or of the lives of others without a permit. Any endangered or threatened species which may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0102.
- (2) Other Wildlife Species. Except as provided in Subparagraph (1) of this Paragraph, the Executive Director or an agent of the Wildlife Resources Commission may, upon application of a landholder and after such investigation of the circumstances as he may require, issue a permit to such landholder to take any species of wildlife which is or has been damaging or destroying his property provided there is evidence of property damage in excess of fifty dollars (\$50.00). No permit may be issued for the taking of any migratory birds and other federally protected animals unless a corresponding valid U.S. Fish and Wildlife Service depredation permit has been issued. The permit shall name the species allowed to be taken and, in the discretion of the Executive Director or an agent, may contain limitations as to age, sex or any other condition within the species so named. The permit may be used only by the landholder or another person named on the permit.
- (3) Wildlife Damage Control Agents: Upon completion of a training course designed for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques and demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual with no record of wildlife law violations may apply to the Wildlife Resources Commission (Commission) to become a Wildlife Damage Control Agent (WDCA). Those persons who demonstrate knowledge of wildlife laws and safe, humane wildlife handling techniques by a passing score of at least 85 percent on a written examination provided by a representative of the Wildlife Resources Commission in cooperation with the training course provider shall be approved. Those persons failing to obtain a passing score

History Note: Authority G.S. 113A-176; 113A-183; 143B-10(j); Eff. August 8, 1978;

will be given one chance for re-testing without re-taking the course. Those persons approved as agents by the Commission may then issue depredation permits to landholders and be listed as a second party to provide the control service. WDCAs may not issue depredation permits for big game animals, bats, or species listed as endangered, threatened or special concern under 15A NCAC 10I .0103, .0104 and .0105 of this Chapter. WDCAs must report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records must be available for inspection by a Wildlife Enforcement officer at any time during normal business hours. Wildlife Damage Control Agent status may be revoked at any time by the Executive Director when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. A WDCA may not charge for the permit, but may charge for his or her investigations and control services. In order to maintain a knowledge of current laws, rules, and techniques, each WDCA must renew his or her agent status every three years by showing proof of having attended at least one training course provided for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques within the previous 12 months.

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

(c) Manner of Taking:

- (1) Taking Without a Permit. Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season such depredating wildlife may be taken without a permit only by the use of firearms.
- (2) Taking With a Permit. Wildlife taken under a depredation permit may be taken only by the method or methods specifically authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, according to the particular circumstances, within which the traps must be set. The Executive Director or agent may also state in a permit authorizing trapping whether or not bait may be used and the type of bait, if any, that is authorized. In addition to any trapping restrictions that may be contained in the permit the method of trapping must be in

accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of 1971, the Structural Pest Control Act of 1955, and G.S. 113, Article 22A. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of another.

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

(d) Disposition of Wildlife Taken:

- (1) Generally. Except as provided by the succeeding Subparagraphs of this Paragraph, any wildlife killed accidentally or without a permit while committing depredations shall be buried or otherwise disposed of in a safe and sanitary manner on the property. Wildlife killed under a depredation permit may be transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals being transported under a depredation permit must have the depredation permit in their possession. Except as provided by the succeeding Subparagraphs of (d)(2) through (6) of this Rule, all wildlife killed under a depredation permit must be buried or otherwise disposed of in a safe and sanitary manner.
- (2) Deer. The edible portions of up to five deer may be retained by the landholder for consumption but must not be transported from the property where the depredations took place without a valid depredation permit. An enforcement officer, if so requested by the permittee, shall provide the permittee a written authorization for the use by a charitable organization of the edible portions of the carcass. The nonedible portions of the carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife enforcement officer for disposition. When a deer is accidentally killed on a road or highway by reason of collision with a motor vehicle, the law enforcement officer who investigates the accident shall, upon request of the operator of the vehicle, provide such operator a written permit authorizing him to possess and transport the carcass of such deer for his personal and lawful use, including delivery of such carcass to a second person for his private use or the use by a charitable organization upon endorsement of such permit

- to such person or organization by name and when no money or other consideration of value is received for such delivery or endorsement.
- (3) Fox. Any fox killed accidentally shall be disposed of in the manner provided by Subparagraph (1) or (6) of this Paragraph. Any fox killed under a depredation permit may be disposed of in the same manner or, upon compliance with the fur tagging requirements of 15A NCAC 10B .0400, the carcass or pelt thereof may be sold to a licensed fur dealer. Any live fox taken under a depredation permit may be sold to a licensed controlled hunting preserve for fox in accordance with G.S. 113-273(g).
 - (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal either accidentally or for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping license, provided further that, bobcats and otters may only be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.
 - (5) Animals Taken Alive. Wild animals in the order Carnivora and beaver shall be humanely euthanized either at the site of capture or at a facility designed to humanely handle the euthanasia or released on the property where captured. Animals transported or held for euthanasia must be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit must have the depredation permit in their possession.
 - (6) A person killing a wild bird or wild animal accidentally with a motor vehicle or finding a dead wild bird or wild animal which was killed accidentally may possess that wild bird or wild animal for a period not to exceed 10 days for the purpose of delivering it to a licensed taxidermist for preparation. The licensed taxidermist may accept the wild bird or wild animal after satisfying himself that the animal was killed accidentally. The taxidermist shall certify and record the circumstances of acquisition as determined by the injuries to the animal. Licensed taxidermists shall keep accurate records of each wildlife specimen received pursuant to the rule as required by 15A NCAC 10H .1003 of this Chapter. Upon delivery of the finished taxidermy product to the person presenting the animal, the taxidermist shall give the person a receipt indicating the sex and species, date of delivery, circumstances of initial acquisition

and the name, address, and signature of the taxidermist. The receipt shall be permanently affixed to the back or bottom of the finished product and shall be retained by the person for as long as the mounted specimen is kept. Mounted specimens possessed pursuant to this Rule may not be sold and, if such specimens are transferred by gift or inheritance, the new owner must retain the permit to document the legality of possession. This provision does not allow possession of accidentally killed raptors; nongame migratory birds; species listed as endangered, threatened, or of special concern under 15A NCAC 10I .0103, .0104, and .0105 of this Chapter; black bear or wild turkey.

- (7) Edible portions of wild boar taken under depredation permit may be retained by the landowner for consumption or, if stipulated on the permit, donated to a charitable food organization.

(e) Reporting Requirements. Any landholder who kills a deer, bear or wild turkey under a currently valid depredation permit shall report such kill on the form provided with the permit and mail the form immediately upon the expiration date to the Wildlife Resources Commission. The killing and method of disposition of every game animal and game bird, every furbearing animal, and every nongame animal or nongame bird for which there is no open season, when killed for committing depredations to property, without a permit, shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing, except that when the carcass or pelt of a fox, killed under a depredation permit, or of a furbearing animal, killed with or without a permit, is lawfully sold to a licensed fur dealer in this State the fur dealer is required to report the source of acquisition and no report is required of the seller.

History Note: Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337; Eff. February 1, 1976; Amended Eff. August 1, 2002; July 1, 1997; July 1, 1995; January 1, 1995; January 1, 1992; August 1, 1990.

15A NCAC 10B .0117 REPLACEMENT COSTS OF WILDLIFE RESOURCES

(a) Replacement Costs Distinguished. As it applies to wildlife resources, the term "replacement costs" must be distinguished from the "value" of the wildlife concerned. Except in cases where wild animals and wild birds may lawfully be sold on the open market, as with the carcasses or pelts of furbearing animals, the monetary value of the specimens cannot be determined easily. The degree of special interest or concern in a particular species by the public, including not only hunters and trappers, but conservationists and those to whom the value of wildlife resources is primarily aesthetic, cannot be measured in dollar amounts. The average cost per animal or bird legally taken by hunters, including travel and lodging, weapons and ammunition, excise taxes on equipment, licenses, and hunting club fees, may fairly be estimated. This too, however, is a reflection of the value of existing wildlife resources rather than a measure of the cost of its replacement. Thus, the relative values

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of wildlife species shall be considered only as they may bear on the necessity or desirability of actual replacement.

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

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

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

Species	Replacement Cost
Any endangered species	\$4,960.00
Any threatened species	4313.00
Any other species with no open season	54.00
Beaver	104.00
Black Bear	2232.00
Crow	4.00
Deer	602.00
Dove	13.00
Duck	41.00
Elk	2500.00
Fox	88.00
Goose	125.00
Grouse	37.00
Mink	75.00

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

(d) Costs of Investigations:

- (1) Factors to Be Considered. Upon any investigation required as provided by G.S. 143-215.3(a)(7) or by court order for the purpose of determining the cost of replacement of wildlife resources which have been killed, taken, injured, removed, harmfully altered, damaged, or destroyed, the factors to be considered in determining the cost of the investigation are as follows:
 - (A) the time expended by the employee or employees making the investigation, including travel time between the place of usual employment and the site of the investigation, and the time required in formulating and rendering the report;
 - (B) the cost of service to the state of each employee concerned, including annual salary, hospitalization insurance, and the state's contribution to social security taxes and to the applicable retirement system;
 - (C) subsistence of the investigating personnel, including meals, reasonable gratuities, and lodging away from home, when required;
 - (D) the cost of all necessary transportation;
 - (E) the use or rental of boats and motors, when required;
 - (F) the cost of cleaning or repairing any uniform or clothing that may be damaged, soiled or contaminated by reason of completing the investigation;
 - (G) the cost of necessary telephonic communications;
 - (H) any other expense directly related to and necessitated by the investigation.

- (2) Computation of Costs. In assessing the cost of time expended in completing the investigation, the time expended by each person required to take part in the investigation shall be recorded in hours, the value of which shall be computed according to the ratio between the annual costs of service of the employee and his total annual working hours (2087 hours reduced by holidays, annual leave entitlement, and earned sick leave). Other costs shall be assessed as follows:
- (A) subsistence: the actual cost of meals, reasonable gratuities, and lodging away from home, not to exceed the then current maximum per diem for state employees;
 - (B) transportation: total mileage by motor vehicle multiplied by:
 - (i) the then current rate per mile for travel by state-owned vehicle; or
 - (ii) the then current rate per mile for travel by privately owned vehicle, as applicable;
 - (C) boat and motor: five dollars (\$5.00) per hour;
 - (D) uniform and clothing cleaning and repair: actual cost;
 - (E) telephonic communications: actual cost; and
 - (F) other expenses: actual cost.

- (4) Second Monday in December to January 1 in Brunswick and Columbus counties.
- (5) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in all of Beaufort, Bertie, Camden, Craven, Dare, Gates, Hyde, Jones, Pamlico, Pasquotank, Tyrrell, and Washington counties, and in the following parts of counties:
 Chowan: that part north of US 17.
 Currituck: except Knotts Island and the Outer Banks.

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

Avery, Burke and Caldwell counties--Daniel Boone bear sanctuary
 Beaufort, Bertie and Washington counties--Bachelor Bay bear sanctuary
 Beaufort and Pamlico counties--Gum Swamp bear sanctuary
 Bladen County--Suggs Mill Pond bear sanctuary
 Brunswick County--Green Swamp bear sanctuary
 Buncombe, Haywood, Henderson and Transylvania counties--Pisgah bear sanctuary
 Carteret, Craven and Jones counties--Croatan bear sanctuary
 Clay County--Fires Creek bear sanctuary
 Columbus County--Columbus County bear sanctuary
 Currituck County--North River bear sanctuary
 Dare County--Bombing Range bear sanctuary
 Haywood County--Harmon Den bear sanctuary
 Haywood County--Sherwood bear sanctuary
 Hyde County--Gull Rock bear sanctuary
 Hyde County--Pungo River bear sanctuary
 Jackson County--Panthertown-Bonas Defeat bear sanctuary
 Macon County--Standing Indian bear sanctuary
 Macon County--Wayah bear sanctuary
 Madison County--Rich Mountain bear sanctuary
 McDowell and Yancey counties--Mt. Mitchell bear sanctuary
 Mitchell and Yancey counties--Flat Top bear sanctuary
 Wilkes County--Thurmond Chatham bear sanctuary

(c) Bag limits shall be:

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

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

*History Note: Authority G.S. 113-134; 113-267;
 Eff. October 1, 1980;
 Amended Eff. August 1, 2002; December 1, 1993;
 October 1, 1989.*

15A NCAC 10B .0202 BEAR

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

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

History Note: Authority G.S. 113-134; 113-291.2;

113-291.7; 113-305;
 Eff. February 1, 1976;
 Amended Eff. July 1, 1998; September 1, 1995; July 1, 1995;
 July 1, 1994; April 1, 1992;
 Temporary Amendment Eff. July 1, 1999;
 Amended Eff. July 1, 2000;
 Temporary Amendment Eff. July 1, 2002;
 Amended Eff. August 1, 2002.

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

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

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

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

Davidson: That part south of I-85.

Guilford: That part north of I-40.

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

Johnston: That part east of I-95.

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

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

Pamlico: That part west of NC 306.

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

Randolph: That part west of US 220.

Robeson: That part east of I-95.

Union: That part south of US 74.

Wayne: That part south of US 70.

**The Sandhills Game Land in Hoke, Moore, Richmond, and Scotland counties; the Bladen Lakes State Forest Game Lands in Bladen County; the North River Game Lands in Camden County; Northeast Cape Fear Wetlands Game Lands in Pender County; the Jordan Game Land in Chatham, Durham, Orange, and Wake counties, the Butner-Falls of the Neuse Game Land in Durham, Granville, and Wake counties; the Roanoke River Wetlands in Bertie, Halifax, and Martin counties; Chatham Game Land in Chatham and Harnett counties; Lantern Acres Game Land in Washington and Tyrrell counties; and the Shearon-Harris Game Land in

Chatham and Wake counties are closed to turkey hunting except by holders of special permits authorizing turkey hunting as provided in G.S. 113-264(d).

(b) Bag Limits shall be:

(1) daily, one;

(2) possession, two; and

(3) season, two.

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

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

History Note: Authority G.S. 113-134; 113-270.3;

113-276.1; 113-291.2;

Eff. February 1, 1976;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2001;

Amended Eff. July 1, 2002;

Temporary Amendment Eff. July 1, 2002 [This rule replaces the rule proposed for permanent amendment on July 1, 2002];

Amended Eff. August 1, 2002.

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

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

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

(A) Alleghany County:

New River (not trout water)

Little River (Whitehead to McCann Dam)

Crab Creek

- | | |
|---|--|
| <p>Brush Creek (except where posted against trespass)</p> <p>Big Pine Creek</p> <p>Laurel Branch</p> <p>Big Glade Creek</p> <p>Bledsoe Creek</p> <p>Pine Swamp Creek</p> <p>South Fork New River (not trout water)</p> <p>Prather Creek</p> <p>Cranberry Creek</p> <p>Piney Fork</p> <p>Meadow Fork</p> <p>Yadkin River (not trout water)</p> <p>Roaring River (not trout water)</p> <p>East Prong Roaring River (that portion on Stone Mountain State Park) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]</p> | <p>Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]</p> <p>Roan Creek</p> <p>North Beaver Creek</p> <p>Pine Swamp Creek (all forks)</p> <p>Old Fields Creek</p> <p>Mill Creek (except where posted against trespass)</p> |
| <p>(B) Ashe County:</p> <p>New River (not trout waters)</p> <p>North Fork New River (Watauga Co. line to Sharp Dam)</p> <p>Helton Creek (Virginia State line to New River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]</p> <p>Big Horse Creek (Mud Creek at SR 1363 to Tuckerdale)</p> <p>Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)</p> <p>Big Laurel Creek</p> <p>Three Top Creek (portion not on game lands)</p> <p>Hoskins Fork (Watauga County line to North Fork New River)</p> <p>South Fork New River (not trout waters)</p> <p>Cranberry Creek (Alleghany County line to South Fork New River)</p> <p>Nathans Creek</p> <p>Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)</p> | <p>(C) Avery County:</p> <p>Nolichucky River (not trout waters)</p> <p>North Toe River (headwaters to Mitchell County line, except where posted against trespass)</p> <p>Squirrel Creek</p> <p>Elk River (SR 1306 crossing to Tennessee State line, including portions of tributaries on game lands)</p> <p>Catawba River (not trout water)</p> <p>Johns River (not trout water)</p> <p>Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]</p> <p>Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]</p> <p>Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]</p> <p>Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]</p> <p>Boyde Coffey Lake</p> <p>Archie Coffey Lake</p> <p>Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]</p> <p>Milltimber Creek</p> |
| | <p>(D) Buncombe County:</p> <p>French Broad River (not trout water)</p> |

- | | | | |
|--|--|--|---|
| <p>Big Ivy Creek (Ivy River)
(Dillingham Creek to US
19-23 bridge)</p> | | <p>Lake James powerhouse to
Muddy Creek)</p> | |
| <p>Dillingham Creek
(Corner Rock Creek to
Big Ivy Creek)</p> | | (F) | Caldwell County: |
| <p>Stony Creek</p> | | | Catawba River (not trout water) |
| <p>Mineral Creek
(including portions of
tributaries on game
lands)</p> | | | Johns River (not trout water) |
| <p>Corner Rock Creek
(including tributaries,
except Walker Branch)</p> | | | Wilson Creek (Phillips
Branch to Browns
Mountain Beach dam,
except where posted
against trespass) |
| <p>Reems Creek (Sugar Camp Fork
to US 19-23 bridge, except
where posted against
trespass)</p> | | | Estes Mill Creek
(not trout water) |
| <p>Swannanoa River (SR 2702
bridge near Ridgecrest to
Sayles Bleachery in
Asheville, except where
posted against trespass)</p> | | | Thorps Creek (falls
to NC 90 bridge) |
| <p>Bent Creek (headwaters to
N.C. Arboretum boundary
line, including portions of
tributaries on game lands)</p> | | | Mulberry Creek (portion not
on game lands not trout
water) |
| <p>Lake Powhatan</p> | | | Boone Fork [not
Hatchery Supported
trout water. See
Subparagraph (a)(2) of
this Rule.] |
| <p>Cane Creek (headwaters to
SR 3138 bridge)</p> | | | Boone Fork Pond |
| (E) | Burke County: | | Yadkin River (not trout water) |
| | Catawba River (not trout water) | (G) | Cherokee County: |
| | South Fork Catawba River
(not trout water) | | Hiwassee River (not trout water) |
| | Henry Fork (lower
South Mountains State
Park line downstream to
SR 1919 at Ivy Creek) | | Shuler Creek (headwaters to
Tennessee line, except
where posted against
trespass including portions
of tributaries on game lands) |
| | Jacob Fork (Shinny
Creek to lower
South Mountain
State Park
boundary)
[Delayed Harvest
Regulations apply.
See Subparagraph
(a)(5) of this Rule.] | | North Shoal Creek (Crane
Creek) (headwaters to SR
1325, including portions of
tributaries on game lands) |
| | Johns River (not trout water) | | Persimmon Creek |
| | Parks Creek
(portion not on game lands
not trout water) | | Davis Creek (confluence of
Bald and Dockery creeks to
Hanging Dog Creek) |
| | Carroll Creek
(game lands portion above
SR 1405 including
tributaries) | | Beaver Dam Creek
(headwaters to SR 1326
bridge, including portions of
tributaries on game lands) |
| | Linville River (game lands
portion below the Blue
Ridge Parkway including
portions of tributaries on
game lands and from first
bridge on SR 1223 below | | Valley River |
| | | | Hyatt Creek
(including portions of
tributaries on game lands) |
| | | | Webb Creek
(including portions of
tributaries on game lands) |
| | | | Junaluska Creek
(Ashturn Creek to
Valley River, including
portions of |

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| | tributaries on game lands) | | Long Creek (portion not on game lands) |
| (H) | Clay County: | | Tulula Creek (headwaters to lower bridge on SR 1275) |
| | Hiwassee River (not trout water) | | Franks Creek |
| | Fires Creek (first bridge above the lower game land line on US Forest Service road 442 to SR 1300) | | Cheoah Reservoir |
| | Tusquitee Creek (headwaters to lower SR 1300 bridge, including portions of Bluff Branch on game lands) | | Fontana Reservoir (not trout water) |
| | Tuni Creek (including portions of tributaries on game lands) | | Stecoah Creek |
| | Chatuge Lake (not trout water) | | Sawyer Creek |
| | Shooting Creek (SR 1349 bridge to US 64 bridge at SR 1338) | | Panther Creek (including portions of tributaries on game lands) |
| | Hothouse Branch (including portions of tributaries on gamelands) | (J) | Haywood County: |
| | Vineyard Creek (including portions of tributaries on game lands) | | Pigeon River (not trout water) |
| (I) | Graham County: | | Cold Springs Creek (including portions of tributaries on game lands) |
| | Little Tennessee River (not trout water) | | Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River) |
| | Calderwood Reservoir (Cheoah Dam to Tennessee State line) | | Jonathans Creek - upper [SR 1302 bridge (west) to SR 1307 bridge] |
| | Cheoah River (not trout water) | | Hemphill Creek |
| | Yellow Creek | | West Fork Pigeon River (triple arch bridge on highway NC 215 to Queens Creek, including portions of tributaries within this section located on game lands, except Middle Prong) |
| | Santeetlah Reservoir (not trout water) | | Richland Creek (Russ Avenue bridge to US 19A-23 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.] |
| | West Buffalo Creek | | West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.] |
| | Huffman Creek (Little Buffalo Creek) | (K) | Henderson County: |
| | Santeetlah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands, excluding Johns Branch and Little Santeetlah Creek) | | (Rocky) Broad River (one-half mile north of Bat Cave to Rutherford County line) |
| | (Big) Snowbird Creek (old railroad junction to mouth, including portions of tributaries on game lands) | | Green River - upper (mouth of Bobs Creek to mouth of Rock Creek) |
| | Mountain Creek (game lands boundary to SR 1138 bridge) | | Green River - lower (Lake Summit Dam to I-26 bridge) |

- Camp Creek (SR 1919 to Polk County line)
(Big) Hungry River
Little Hungry River
French Broad River (not trout water)
Mills River (not trout water)
North Fork Mills River (game lands portion below the Hendersonville watershed dam). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (L) Jackson County:
Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1392 bridge at Wilmot) [Delayed Harvest Regulations apply to that portion between NC 107 bridge at Love Field and the Dillsboro dam. See Subparagraph (a)(5) of this Rule.]
Scott Creek (entire stream, except where posted against trespass)
Dark Ridge Creek (Jones Creek to Scotts Creek)
Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)
Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
Cullowhee Creek (Tilley Creek to Tuckasegee River)
Bear Creek Lake
Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Wolf Creek Lake
Balsam Lake
Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Tanasee Creek Lake
West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)
Shoal Creek (Glenville Reservoir pipeline to mouth)
- (M) Macon County:
Little Tennessee River (not trout water)
Nantahala River (Nantahala Dam to Swain County line)
- [Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.]
Queens Creek Lake
Burningtown Creek (including portions of tributaries on game lands)
Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Big Buck Creek and Turtle Pond Creek on game lands. [Wild Trout Regulations apply. See Subparagraphs (a)(2) and (a)(6) of this Rule.]
Ellijay Creek (except where posted against trespass, including portions of tributaries on game lands)
Skitty Creek
Cliffside Lake
Cartoogechaye Creek (US 64 bridge to Little Tennessee River)
Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)
Savannah River (not trout water)
Big Creek (base of falls to Georgia State line, including portions of tributaries within this Section located on game lands)
- (N) Madison County:
French Broad River (not trout water)
Shut-In Creek (including portions of tributaries on game lands)
Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line, including portions of tributaries on game lands)
Meadow Fork Creek

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| <p>Roaring Fork
(including portions of
tributaries on game lands)</p> <p>Little Creek
Max Patch Pond
Mill Ridge Pond
Big Laurel Creek (Mars Hill
Watershed boundary to
Rice's Mill Dam)
Big Laurel Creek (NC 208
bridge to US 25-70 bridge)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]</p> <p>Shelton Laurel Creek
(confluence of Big
Creek and Mill Creek to
NC 208 bridge at Belva)
Shelton Laurel Creek
(NC 208 bridge at Belva
to the confluence with
Big Laurel Creek)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of
this Rule.]</p> <p>Mill Creek (upper
game lands boundary to confluence
with Big Creek)</p> <p>Puncheon Fork
(Hampton Creek to Big
Laurel Creek)</p> <p>Big Pine Creek (SR
1151 bridge to French Broad
River)</p> | <p>except where posted against
trespass)</p> <p>(P) Mitchell County:
Nolichucky River (not trout
water)
Big Rock Creek (headwaters
to NC 226 bridge at SR 1307
intersection)
Little Rock Creek
(Green Creek Bridge to
Big Rock Creek, except
where posted against
trespass)
Cane Creek (SR 1219 to NC
226 bridge)
Cane Creek (NC 226 bridge
to NC 80 bridge) [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
Grassy Creek (East Fork
Grassy Creek to mouth)
East Fork Grassy Creek
North Toe River (Avery
County line to SR 1121
bridge)</p> <p>(Q) Polk County:
Broad River (not trout water)
North Pacolet River (Pacolet
Falls to NC 108 bridge)
Fork Creek (Fork Creek
Church on SR 1100 to
North Pacolet River)
Big Fall Creek (portion
above and below water
supply reservoir)
Green River (Fishtop Falls
Access Area to mouth of
Brights Creek) [Delayed
Harvest Regulations apply to
the portion from Fishtop
Falls Access Area to Cove
Creek. See Subparagraph
(a)(5) of this Rule.]
Little Cove Creek
(including portions of
tributaries on game lands)
Cove Creek (including
portions of tributaries on
game lands)
Camp Creek
[Henderson County line (top
of falls) to Green River]</p> <p>(R) Rutherford County:
(Rocky) Broad River (Henderson
County line to US 64/74 bridge,
except where posted against
trespass)</p> <p>(S) Stokes County:</p> |
| <p>(O) McDowell County:
Catawba River (portion not on
game lands, not trout water)
Buck Creek (portion not on
game lands, not trout water)
Little Buck Creek
(game land portion including
portions of tributaries on
game
lands)
Curtis Creek game lands
portion downstream of US
Forest Service boundary at
Deep Branch. [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
North Fork Catawba River
(headwaters to SR 1569
bridge)
Armstrong Creek (Cato
Holler line downstream to
upper Greenlee line)
Mill Creek (upper railroad
bridge to U.S. 70 Bridge,</p> | |

- (T) Dan River (Virginia State line downstream to a point 200 yards below the end of SR 1421)
 Surry County:
 Yadkin River (not trout water)
 Ararat River (SR 1727 bridge downstream to the NC 103 bridge)
 Stewarts Creek (not trout water)
 Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)
 Fisher River (Cooper Creek) (Virginia State line to SR 1331 bridge)
 Little Fisher River (Virginia State line to NC 89 bridge)
 Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (U) Swain County:
 Little Tennessee River (not trout water)
 Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 Cheoah Reservoir
 Fontana Reservoir (not trout water)
 Alarka Creek (game lands boundary to Fontana Reservoir)
 Nantahala River (Macon County line to existing Fontana Reservoir water level)
 Tuckasegee River (not trout water)
 Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
 Connelly Creek (including portions of tributaries on game lands)
- (V) Transylvania County:
 French Broad River (junction of west and north forks to US 276 bridge)
- (W) Davidson River (Avery Creek to Ecusta intake)
 East Fork French Broad River (Gladly Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Middle Fork French Broad River
 West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)
- (W) Watauga County:
 New River (not trout waters)
 North Fork New River (from confluence with Maine and Mine branches to Ashe County line)
 Maine Branch (headwaters to North Fork New River)
 South New Fork River (not trout water)
 Meat Camp Creek
 Norris Fork Creek
 Howards Creek (downstream from lower falls)
 Middle Fork New River (Lake Chetola Dam to South Fork New River)
 Yadkin River (not trout water)
 Stony Fork (headwaters to Wilkes County line)
 Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
 Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crusis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Beech Creek
 Buckeye Creek Reservoir
 Coffee Lake
 Beaverdam Creek (SR 1209 bridge at Bethel to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)
 Laurel Creek

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| <p>Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)</p> <p>Dutch Creek (second bridge on SR 1134 to mouth)</p> <p>(X) Wilkes County:</p> <p>Yadkin River (not trout water)</p> <p>Roaring River (not trout water)</p> <p>East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) [Delayed Harvest Regulations apply to portion on Stone Mountain State Park. See Subparagraph (a)(5) of this Rule.]</p> <p>Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]</p> <p>Middle Prong Roaring River (headwaters to second bridge on SR 1736)</p> <p>Bell Branch Pond</p> <p>Boundary Line Pond</p> <p>West Prong Roaring River (not trout waters)</p> <p>Pike Creek</p> <p>Pike Creek Pond</p> <p>Reddies River (not trout water)</p> <p>Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)</p> <p>South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River)</p> <p>North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)</p> <p>Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)</p> <p>Lewis Fork Creek (not trout water)</p> | <p>South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)</p> <p>Fall Creek (except portions posted against trespass)</p> <p>(Y) Yancey County:</p> <p>Nolichucky River (not trout water)</p> <p>Cane River [Bee Branch (SR 1110) to Bowlens Creek]</p> <p>Bald Mountain Creek (except portions posted against trespass)</p> <p>Indian Creek (not trout water)</p> <p>Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)</p> <p>North Toe River (not trout water)</p> <p>South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)</p> <p>(2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless specifically classified otherwise in Subparagraph (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters:</p> <p>(A) Alleghany County:</p> <p>Big Sandy Creek (portion on Stone Mountain State Park)</p> <p>Ramey Creek (entire stream)</p> <p>Stone Mountain Creek (that portion on Stone Mountain State Park)</p> <p>(B) Ashe County:</p> <p>Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> <p>Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> <p>(C) Avery County:</p> <p>Birchfield Creek (entire stream)</p> <p>Cow Camp Creek (entire stream)</p> <p>Cranberry Creek (entire stream)</p> <p>Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See</p> |
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	Subparagraph (a)(4) of this Rule.]		Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
	Gragg Prong (entire stream)		
	Horse Creek (entire stream)	(J)	Henderson County:
	Jones Creek (entire stream)		Green River (I-26 bridge to Henderson/Polk County line)
	Kentucky Creek (entire stream)	(K)	Jackson County:
	North Harper Creek (entire stream)		Gage Creek (entire stream)
	Plumtree Creek (entire stream)		North Fork Scott Creek (entire stream)
	Roaring Creek (entire stream)		Tanasee Creek (entire stream)
	Rockhouse Creek (entire stream)		Whitewater River (downstream from Silver Run Creek to South Carolina State line)
	South Harper Creek (entire stream)		Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
	Webb Prong (entire stream)		
	Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]		
(D)	Buncombe County:	(L)	Madison County:
	Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]		Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
(E)	Burke County:		Spillcorn Creek (entire stream) [Wild Trout/Natural Bait Waters regulations apply. See Subparagraph (a)(6) of this Rule.]
	All waters located on South Mountain State Park, except the main stream of Jacob Fork		
	Between the mouth of Shinny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.	(M)	Mitchell County:
	Nettle Branch (game land portion)		Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
(F)	Caldwell County:		Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
	Buffalo Creek (Watauga County line to Long Ridge Branch)		Wiles Creek (game land boundary to mouth)
	Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)	(N)	Polk County
	Rockhouse Creek (entire stream)		Green River (Henderson County line to Fishtop Falls Access Area)
(G)	Cherokee County:	(O)	Pulliam (Fulloms) Creek and tributaries (game lands portions)
	Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]		Transylvania County:
	Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]	(P)	Whitewater River (downstream from Silver Run Creek to South Carolina State line)
			Watauga County:
(H)	Graham County:		Dutch Creek (headwaters to second bridge on SR 1134)
	South Fork Squally Creek (entire stream)		Howards Creek (headwaters to lower falls)
	Squally Creek (entire stream)		Watauga River (Avery County line to steel bridge at Riverside Farm Road)
(I)	Haywood County	(Q)	Wilkes County:
	Hurricane Creek (including portions of tributaries on game lands) [Wild		Big Sandy Creek (portion on Stone Mountain State Park)
			Garden Creek (portion on Stone Mountain State Park)

- Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
Widow Creek (portion on Stone Mountain State Park)
- (R) Yancey County:
Lickskillet Creek (entire stream)
Middle Creek (game land boundary to mouth)
Rock Creek (game land boundary to mouth)
South Toe River (game land boundary downstream to Clear Creek)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:
Wilson Creek (game land portion)
- (C) Buncombe County:
Carter Creek (game land portion)
- (D) Burke County:
Henry Fork (portion on South Mountains State Park)
- (E) Jackson County:
Flat Creek
Tuckasegee River (upstream of Clarke property)
- (F) McDowell County:
Newberry Creek (game land portion)
- (G) Wilkes County:
Harris Creek (portion on Stone Mountain State Park)
- (H) Yancey County:
Lower Creek
Upper Creek
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish
- may be harvested or be in possession while fishing these streams:
- (A) Avery County:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Yancey County:
South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Big Lost Cove Creek)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules:
- (A) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)
- (B) Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Haywood County:
Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- (D) Henderson County:
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (E) Jackson County:

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| <p>(F) Tuckasegee River (NC 107 bridge at Love Field Downstream to the Dillsboro dam)
Macon County:
Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light power house discharge canal)</p> <p>(G) Madison County:
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)</p> <p>(H) McDowell County:
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)</p> <p>(I) Mitchell County:
Cane Creek (NC 226 bridge to NC 80 bridge)</p> <p>(J) Polk County:
Green River (Fishtop Falls Access Area to confluence with Cove Creek)</p> <p>(K) Surry County:
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)</p> <p>(L) Transylvania County:
East Fork French Broad River (Gladly Fork to French Broad River)</p> <p>(M) Watauga County:
Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)</p> <p>(N) Wilkes County:
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)</p> <p>(6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].</p> <p>(A) Cherokee County:
Bald Creek (game land portions)
Dockery Creek (game land portions)
Tellico River (Fain Ford to Tennessee state line excluding tributaries)</p> | <p>(B) Clay County:
Buck Creek (game land portion downstream of US 64 bridge)</p> <p>(C) Graham County:
Deep Creek
Long Creek (game land portion)</p> <p>(D) Haywood County:
Hurricane Creek (including portions of tributaries on game lands)</p> <p>(E) Jackson County:
Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)</p> <p>(F) Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)</p> <p>(G) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries)
Spillcorn Creek (entire stream, excluding tributaries)</p> <p>(H) Transylvania County:
North Fork French Broad River (game land portions downstream of SR 1326)
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)</p> <p>(b) Fishing in Trout Waters:</p> <p>(1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].</p> <p>(2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters:</p> |
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APPROVED RULES

- (A) Open Season. There is a year round open season for the licensed taking of trout.
- (B) Creel Limit. The daily creel limit is four trout.
- (C) Size Limit. The minimum size limit is seven inches.
- (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).
- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976;
 Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996;
 July 1, 1995; July 1, 1994; July 1, 1993;
 October 1, 1992;
 Temporary Amendment Eff. July 1, 1999;
 Amended Eff. July 1, 2000;
 Temporary Amendment Eff. July 1, 2001
 Amended Eff. July 1, 2002;
 Temporary Amendment Eff. July 1, 2002; [This rule replaces the rule proposed for permanent amendment effective July 1, 2002];
 Amended Eff. August 1, 2002.

from October 1 through April 30. For the purposes of this Rule, a set-hook is defined as any hook and line which is attached at one end only to a stationary or floating object and which is not under immediate control and attendance of the person using such device. Each trotline and set-hook, except jug-hooks, shall have attached the name and address of the user legibly and indelibly inscribed. For purposes of this Rule, a "jug-hook" is a single hook and line attached to a floating jug. Each trotline shall be conspicuously marked at each end and each set-hook conspicuously marked at one end with a flag, float, or other prominent object so that its location is readily discernable by boat operators and swimmers. Trotlines must be set parallel to the nearest shore in ponds, lakes, and reservoirs. All trotlines and throwlines must be fished at least once daily and all fish removed at that time. Untended trotlines and set-hooks other than jug hooks may be removed from the water by wildlife enforcement officers when located in areas of multiple water use. For purposes of this Rule, a trotline or set-hook is considered "untended" when no bait is present on the device. Recognizing the safety hazards to swimmers, boaters and water skiers which are created by floating metal cans and glass jugs, it is unlawful to use metal cans or glass jugs as floats. This shall not be construed to prohibit the use of plastic jugs, cork, styrofoam, or similar materials as floats.

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976;
 Amended Eff. July 1, 1993; May 1, 1992; July 1, 1989;
 January 1, 1982;
 Temporary Amendment Eff. July 1, 2002;
 Amended Eff. August 1, 2002.

15A NCAC 10C .0206 TROTTLINES AND SET-HOOKS

Trotlines and set-hooks may be set in the inland waters of North Carolina, provided no live bait is used; except that no trotlines or set-hooks may be set in designated public mountain trout waters or in any of the impounded waters on the Sandhills Game Land, and in Lake Waccamaw, trotlines or set-hooks may be set only

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

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

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. 2)
Hatchery Supported Trout Waters and undesignated waters	7 (exc. 2)	None (exc. 2)	All year, except March 1 to 6:00 a.m. on first Saturday in April (exc. 2)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (ex. 9)	None	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. (excs. 3, 8 & 10)	ALL YEAR (exc. 17)
Smallmouth	5	12 in.	ALL YEAR

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and Spotted		(excs. 3, 8 & 10)	
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	1	18 in. (exc. 20)	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1, 5, 6, 11 & 13)	16 in. (excs. 1, 5, 6, 11 & 13)	ALL YEAR (excs. 6, 13 & 15)
Shad: (American and hickory)	10 aggregate (exc. 18)	None	ALL YEAR (excs. 18)
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 4, 12 & 16)	None (exc. 12)	ALL YEAR (exc. 4)
NONGAME FISHES	None (exc. 14)	None (exc. 14)	ALL YEAR (excs. 7)

(b) Exceptions:

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Lure the daily creel limit for trout is five fish and minimum size limit for trout is 15 inches.
- (3) Bass taken from Calderwood Reservoir may be retained without restriction as to size limit.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Cape Fear, Neuse, Pee Dee, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and Lake Mattamuskeet, the daily creel limit for striped bass and their hybrids is three fish in aggregate and the minimum length limit is 18 inches. In the Tar-Pamlico River and its tributaries upstream of the Grimesland bridge and in the Neuse River and its tributaries upstream of the NC 55 bridge in Lenoir County, no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches shall be retained during the period April 1 through May 31.
- (6) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie,

Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 15 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to the US 258 bridge and is March 15 through April 30 from the US 258 bridge upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit.

(7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.

(8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, High Rock Lake downstream of I-85, Badin Lake, Falls Lake, Lake Tillery, Blewett Falls Lake, Tuckertown Lake and in the following waters and their tributaries: the New River in Onslow County, Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U.S. 258 bridge, Lake Mattamuskeet, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir, in Falls of the Neuse Reservoir, east of SR 1004, and in Lake Lure the minimum size limit for largemouth bass is 16 inches, with no

- exception. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass. In Lake Lure the minimum size limit for smallmouth bass is 14 inches, with no exception. In Lake Phelps the minimum size for black bass is 14 inches, with no exception, and no fish between 16 and 20 inches shall be possessed. In Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
- (A) Cane Creek Lake in Union County;
- (B) Lake Thom-A-Lex in Davidson County; and
- (C) Sutton Lake in New Hanover County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (5), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (12) A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: Lake Tillery, Falls Lake, High Rock Lake, Badin Lake, Tuckertown Lake, Lake Hyco, Lake Ramseur, Cane Creek Lake, and the following waters and all their tributaries: Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U. S. 258 bridge, lake Mattamuskeet, Lake Phelps, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe and Rutherford counties and in Lake James the daily creel limit for crappie is 20 fish.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (14) The daily creel limits for channel, white, and blue catfish in designated urban lakes are stated in 15A NCAC 10C .0401(e).
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
- (17) In Sutton Lake, no largemouth bass shall be retained from December 1 through March 31.
- (18) The season for taking American and hickory shad with dip nets and bow nets is March 1 through April 30.
- (19) No red drum greater than 27 inches in length may be retained.
- History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305;*
Eff. February 1, 1976;
Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990;
Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990;
Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991;
Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992;
Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996;
July 1, 1995;
Temporary Amendment Eff. November 1, 1998;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001;
Amended Eff. July 1, 2002;
Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002];
Amended Eff. August 1, 2002.
- 15A NCAC 10C .0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS**
- Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. The use of special fishing devices, including crab pots in impoundments located entirely on game lands is prohibited. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:
- (1) Alamance:
- (a) July 1 to August 31 with seines in Alamance Creek below NC 49 bridge and Haw River;
- (b) July 1 to June 30 with gigs in all public waters;

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| (2) | Alexander: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir; | (13) | Caldwell: July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters; |
| (3) | Alleghany: July 1 to June 30 with gigs in New River, except designated public mountain trout waters; | (14) | Camden: |
| (4) | Anson: | (a) | July 1 to June 30 with traps in all inland public waters; |
| (a) | July 1 to June 30 with traps and gigs in all public waters; | (b) | December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; |
| (b) | March 1 to April 30 with dip and bow nets in Pee Dee River below Blewett Falls Dam; | (15) | Carteret: December 1 to June 5 with dip and bow nets in all inland public waters except South River and the tributaries of the White Oak River; |
| (c) | July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle; | (16) | Caswell: |
| (5) | Ashe: July 1 to June 30 with gigs in New River (both forks), except designated public mountain trout waters; | (a) | July 1 to June 30 with gigs in all public waters; |
| (6) | Beaufort: | (b) | July 1 to August 31 with seines in all running public waters, except Moons Creek; |
| (a) | July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters; | (c) | July 1 to June 30 with traps in Hyco Reservoir; |
| (b) | December 1 to June 5 with dip and bow nets in all inland public waters; | (17) | Catawba: |
| (7) | Bertie: | (a) | July 1 to August 31 with seines in all running public waters, except Catawba River below Lookout Dam; |
| (a) | July 1 to June 30 with traps in the Broad Creek (tributary of Roanoke); | (b) | July 1 to June 30 with traps, spear guns, and gigs in all public waters; |
| (b) | December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; | (18) | Chatham: |
| (8) | Bladen: December 1 to June 5 with dip and bow nets in Black River; | (a) | December 1 to April 15 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law); |
| (9) | Brunswick: December 1 to May 1 with dip and bow nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek; | (b) | July 1 to August 31 with seines in the Cape Fear River, and Haw River; |
| (10) | Buncombe: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; | (c) | July 1 to June 30 with traps in Deep River; and with gigs in all public waters; |
| (11) | Burke: | (19) | Cherokee: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; |
| (a) | July 1 to August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters; | (20) | Chowan: |
| (b) | July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James; | (a) | December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; |
| (12) | Cabarrus: | (b) | July 1 to June 30 with traps in all inland public waters, excluding public lakes, ponds, and other impounded waters; |
| (a) | July 1 to August 31 with seines in all running public waters, | (21) | Clay: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; |
| (b) | July 1 to June 30 with traps and gigs in all public waters; | (22) | Cleveland: |
| | | (a) | July 1 to August 31 with seines in all running public waters; |
| | | (b) | July 1 to June 30 with gigs, traps and spear guns in all public waters; |
| | | (23) | Columbus: |

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| (a) | December 1 to March 1 with gigs in all inland public waters, except Lake Waccamaw and its tributaries; | (32) | Forsyth: July 1 to June 30 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir; |
| (b) | December 1 to June 5 with dip and bow nets in Livingston Creek; | (33) | Franklin: |
| (24) | Craven: | (a) | July 1 to August 31 with seines in Tar River; |
| (a) | July 1 to June 30 with traps in the main run of the Trent and Neuse Rivers; | (b) | July 1 to June 30 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's Ponds, and in the Franklinton City ponds; |
| (b) | December 1 to June 5 with dip and bow nets in all inland public waters, except Pitch Kettle, Grindle, Slocum (downstream of the US 70 bridge), Spring and Hancock Creeks and their tributaries; and with seines in the Neuse River; | (34) | Gaston: |
| (25) | Currituck: | (a) | July 1 to August 31 with seines in all running public waters; |
| (a) | July 1 to June 30 with traps in Tulls Creek and Northwest River; | (b) | July 1 to June 30 with gigs, traps and spear guns in all public waters; |
| (b) | December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; | (35) | Gates: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; |
| (26) | Dare: | (36) | Graham: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; |
| (a) | July 1 to June 30 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake; | (37) | Granville: |
| (b) | December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; | (a) | July 1 to June 30 with gigs in all public waters, except Kerr Reservoir; |
| (27) | Davidson: | (b) | July 1 to August 31 with seines in the Neuse River and the Tar River below US 158 bridge; |
| (a) | July 1 to August 31 with seines in all running public waters; | (c) | July 1 to June 30 with dip and cast nets in Kerr Reservoir; |
| (b) | July 1 to June 30 with gigs in all public waters, and with traps in all public waters except Leonard's Creek, Abbott's Creek below Lake Thom-A-Lex dam, and the Abbott's Creek arm of High Rock Lake upstream from the NC 8 bridge; | (d) | July 1 to June 30 with cast nets in all public waters; |
| (28) | Davie: | (38) | Greene: December 1 to June 5 with dip and bow nets and reels in Contentnea Creek; |
| (a) | July 1 to June 30 with traps and gigs in all public waters; | (39) | Guilford: |
| (b) | July 1 to August 31 for taking only carp and suckers with seines in Dutchmans Creek from US 601 to Yadkin River and in Hunting Creek from SR 1338 to South Yadkin River; | (a) | July 1 to August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge; |
| (29) | Duplin: December 1 to June 5 with dip and bow nets and seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge; | (b) | July 1 to June 30 with gigs in all public waters; |
| (30) | Durham: | (40) | Halifax: |
| (a) | July 1 to August 31 with seines in Neuse River; | (a) | December 1 to June 5 with dip and bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run; |
| (b) | July 1 to June 30 with gigs in all public waters; | (b) | July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir; |
| (31) | Edgecombe: December 1 to June 5 with dip and bow nets in all public waters; | (41) | Harnett: |
| | | (a) | January 1 to May 31 with gigs in Cape Fear River and tributaries; |
| | | (b) | December 1 to June 5 with dip and bow nets in Cape Fear River; |
| | | (42) | Haywood: July 1 to June 30 with gigs in all public waters, except Lake Junaluska and designated public mountain trout waters; |

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| <p>(43) Henderson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(44) Hertford:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with traps in Wiccacon Creek;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;</p> <p>(45) Hyde:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with traps in all inland waters;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;</p> <p>(46) Iredell: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lookout Shoals Reservoir and Lake Norman;</p> <p>(47) Jackson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(48) Johnston: December 1 to June 5 with dip and bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River and Swift Creek;</p> <p>(49) Jones:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with traps in the Trent River below US 17 bridge and White Oak River below US 17 bridge;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in all inland public waters, except the tributaries to the White Oak River;</p> <p>(50) Lee:</p> <p style="padding-left: 20px;">(a) December 1 to April 15 with dip and gill nets (local law) in Cape Fear River and Deep River; and with gill nets in Morris Pond;</p> <p style="padding-left: 20px;">(b) July 1 to August 31 with seines in Cape Fear River;</p> <p style="padding-left: 20px;">(c) July 1 to June 30 with traps in Deep River, and with gigs in all public waters;</p> <p>(51) Lenoir:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with traps in Neuse River below US 70 bridge at Kinston;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in Neuse River and Contentnea Creek upstream from NC 118 bridge at Grifton; and with seines in Neuse River;</p> <p>(52) Lincoln:</p> <p style="padding-left: 20px;">(a) July 1 to August 31 with seines in all running public waters;</p> <p style="padding-left: 20px;">(b) July 1 to June 30 with traps, gigs and spear guns in all public waters;</p> <p>(53) McDowell:</p> | <p style="padding-left: 20px;">(a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;</p> <p style="padding-left: 20px;">(b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;</p> <p>(54) Macon: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(55) Madison: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(56) Martin: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;</p> <p>(57) Mecklenburg:</p> <p style="padding-left: 20px;">(a) July 1 to August 31 with seines in all running public waters;</p> <p style="padding-left: 20px;">(b) July 1 to June 30 with traps, gigs and spear guns in all public waters except Freedom Park Pond and Hornet's Nest Ponds;</p> <p>(58) Montgomery:</p> <p style="padding-left: 20px;">(a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;</p> <p style="padding-left: 20px;">(b) July 1 to June 30 with traps and gigs in all public waters;</p> <p>(59) Moore:</p> <p style="padding-left: 20px;">(a) December 1 to April 15 with gill nets in Deep River and all tributaries;</p> <p style="padding-left: 20px;">(b) July 1 to August 31 with seines in all running public waters except in Deep River;</p> <p style="padding-left: 20px;">(c) July 1 to June 30 with gigs in all public waters, except lakes located on the Sandhills Game Land; and with traps in Deep River and its tributaries;</p> <p>(60) Nash:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with gigs in all public waters, except Tar River;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam;</p> <p>(61) New Hanover: December 1 to June 5 with dip and bow nets in all inland public waters, except Sutton (Catfish) Lake;</p> <p>(62) Northampton:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with gigs in all public waters, except Gaston and Roanoke Rapids Reservoirs and the Roanoke River above the US 301 bridge;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in Occaneechee Creek, Old</p> |
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| | River Landing Gut and Vaughans Creek below Watsons Mill; | (b) | December 1 to June 5 with dip and bow nets in all inland public waters, except Grindle Creek, and Contentnea Creek between NC 118 bridge at Grifton and the Neuse River; |
| (c) | July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir; | (c) | December 1 to June 5 with seines in Tar River; |
| (63) | Onslow: | (71) | Polk: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; |
| (a) | July 1 to June 30 with traps in White Oak River below US 17 bridge; | (72) | Randolph: |
| (b) | August 1 to March 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek; | (a) | December 1 to March 1 with gill nets in Deep River and Uwharrie River; |
| (c) | December 1 to June 5 with dip and bow nets in the main run of New River and in the main run of the White Oak River; | (b) | July 1 to August 31 with seines in Deep River above the Coleridge Dam and Uwharrie River; |
| (d) | March 1 to April 30 with dip and bow nets in Grant's Creek; | (c) | July 1 to June 30 with gigs in all public waters; |
| (64) | Orange: | (73) | Richmond: |
| (a) | July 1 to August 31 with seines in Haw River; | (a) | July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle; |
| (b) | July 1 to June 30 with gigs in all public waters; | (b) | July 1 to June 30 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land; |
| (65) | Pamlico: December 1 to June 5 with dip and bow nets in all inland public waters, except Dawson Creek; | (c) | March 1 to April 30 with dip and bow nets in Pee Dee River below Blewett Falls Dam; |
| (66) | Pasquotank: | (74) | Robeson: December 1 to March 1 with gigs in all inland public waters; |
| (a) | July 1 to June 30 with traps in all inland waters; | (75) | Rockingham: |
| (b) | December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; | (a) | July 1 to August 31 with seines in Dan River and Haw River; |
| (67) | Pender: | (b) | July 1 to June 30 with traps in Dan River; and with gigs in all public waters; |
| (a) | December 1 to June 5 with dip and bow nets in the Northeast Cape Fear River, Long Creek and Black River; and with seines in the main run of Northeast Cape Fear River; | (76) | Rowan: |
| (b) | December 1 to May 1 with dip and bow nets in Moore's Creek approximately one mile upstream to New Moon Fishing Camp; | (a) | July 1 to August 31 with seines in all running public waters; |
| (68) | Perquimans: | (b) | July 1 to June 30 with traps and gigs in all public waters; |
| (a) | July 1 to June 30 with traps in all inland waters; | (77) | Rutherford: |
| (b) | December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; | (a) | July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters; |
| (69) | Person: | (b) | July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters; |
| (a) | July 1 to August 31 with seines in Hyco Creek and Mayo Creek; | (78) | Sampson: December 1 to June 5 with dip and bow nets in Big Coharie Creek, Black River and Six Runs Creek; |
| (b) | July 1 to June 30 with gigs in all public waters; | (79) | Stanly: |
| (70) | Pitt: | (a) | July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River; |
| (a) | July 1 to June 30 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville; | | |

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| <p>(b) July 1 to June 30 with traps and gigs in all public waters;</p> <p>(80) Stokes: July 1 to June 30 with traps and gigs in all public waters, except designated public mountain trout waters, and traps may not be used in Belews Creek Reservoir;</p> <p>(81) Surry: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; and with traps in the main stem of Yadkin River;</p> <p>(82) Swain: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(83) Transylvania: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(84) Tyrrell:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with traps in Scuppernong River, Alligator Creek, and the drainage canals of Lake Phelps;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impounded waters;</p> <p>(85) Union:</p> <p style="padding-left: 20px;">(a) July 1 to August 31 with seines in all running public waters;</p> <p style="padding-left: 20px;">(b) July 1 to June 30 with traps and gigs in all public waters;</p> <p>(86) Vance:</p> <p style="padding-left: 20px;">(a) July 1 to August 31 with seines in the Tar River;</p> <p style="padding-left: 20px;">(b) July 1 to June 30 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon Ponds, City Lake, and Kerr Reservoir;</p> <p style="padding-left: 20px;">(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;</p> <p style="padding-left: 20px;">(d) July 1 to June 30 with cast nets in all public waters;</p> <p>(87) Wake:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson Lakes;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam;</p> <p>(88) Warren:</p> <p style="padding-left: 20px;">(a) July 1 to August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill Ponds;</p> <p style="padding-left: 20px;">(b) July 1 to June 30 with gigs in all public waters, except Duck and Hammes Mill Ponds, Kerr Reservoir, and Gaston Reservoir;</p> | <p>(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir and Gaston Reservoir;</p> <p>(d) July 1 to June 30 with cast nets in all public waters;</p> <p>(89) Washington:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with traps in the drainage canals of Lake Phelps;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impoundments;</p> <p>(90) Wayne: December 1 to June 5 with dip and bow nets in Little River, Mill Creek and Neuse River;</p> <p>(91) Wilkes: July 1 to June 30 with traps in Yadkin River below W. Kerr Scott Reservoir; and with gigs and spear guns in all public waters, except designated public mountain trout waters;</p> <p>(92) Wilson:</p> <p style="padding-left: 20px;">(a) July 1 to June 30 with gigs in Contentnea Creek (except Buckhorn Reservoir), including unnamed tributaries between Flowers Mill and SR 1163 (Deans) bridge;</p> <p style="padding-left: 20px;">(b) December 1 to June 5 with dip and bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam;</p> <p>(93) Yadkin: July 1 to June 30 with gigs in all public waters, and with traps in the main stem of Yadkin River.</p> |
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History Note: Authority G.S. 113-134; 113-276; 113-292; Eff. February 1, 1976;

Temporary Amendment Eff. December 29, 1988;

Temporary Amendment Eff. December 1, 1993;

Amended Eff. July 1, 2000; July 1, 1998; July 1, 1996;

December 1, 1995; July 1, 1995; July 1, 1994; June 1, 1994;

Temporary Amendment Eff. July 1, 2001;

Amended Eff. July 1, 2002;

Temporary Amendment Eff. July 1, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002;

Amended Eff. August 1, 2002.

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

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

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.

- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited.
- (5) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

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

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

(d) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(2) Exceptions

- (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (B) The resident and nonresident sportsman's licenses include game lands use privileges.
- (C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
- (D) On the game lands described in Rule .0103(e)(2) of this Section the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring

more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts.

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

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge;
- (7) on the John's River Waterfowl Refuge in Burke County;
- (8) on the Dupont State Forest Game Lands.

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

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

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

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

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

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

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

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

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

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

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

(n) Disabled Access Program. Permits issued under this program shall be based upon competent medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands where this special rule applies shall be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is

identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It shall be unlawful for anyone other than those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

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

History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306;
Eff. February 1, 1976;
Amended Eff. April 1, 1992; July 1, 1993;
Temporary Amendment Eff. October 11, 1993;
Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995;
July 1, 1994;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. August 31, 2001;
Amended Eff. August 1, 2002.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On posted waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to

be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or live wild birds shall be removed from any game land.

(e) Definitions:

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

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| <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.</p> <p>(11) Caswell Game Land in Caswell County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.</p> <p>(C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.</p> <p>(12) Caswell Farm Game Land in Lenoir County-Dove-Only Area. Dove hunting is by permit only from opening day through either the first Saturday or Labor Day, which ever comes last, of the first segment of dove season.</p> <p>(13) Catawba Game Land in Catawba County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.</p> <p>(14) Chatham Game Land in Chatham and Harnett counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(B) Wild turkey hunting is by permit only.</p> <p>(15) Cherokee Game Land in Ashe County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(16) Chowan Game Land in Chowan County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.</p> <p>(17) Chowan Swamp Game Land in Gates County</p> <p>(A) Six Days per Week Area</p> | <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(18) Cold Mountain Game Land in Haywood County</p> <p>(A) Six Days per Week Area</p> <p>(B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.</p> <p>(19) Columbus County Game Land in Columbus County.</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(20) Croatan Game Land in Carteret, Craven and Jones counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.</p> <p>(21) Currituck Banks Game Land in Currituck County</p> <p>(A) Six Days per Week Area</p> <p>(B) Permanent waterfowl blinds in Currituck Sound adjacent to these game lands shall be hunted by permit only after November 1.</p> <p>(C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a firearm.</p> <p>(D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.</p> <p>(E) Dogs shall be allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.</p> <p>(F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.</p> <p>(22) Dare Game Land in Dare County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) No hunting on posted parts of bombing range.</p> |
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- (D) The use and training of dogs is prohibited from March 1 through June 30.
- (23) Dupont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by Permit only.
- (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
- (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (24) Dysartsville Game Land in McDowell and Rutherford counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (25) Elk Knob Game Land in Ashe and Watauga counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (26) Gardner-Webb Game Land in Cleveland County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (27) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) On posted waterfowl impoundments waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the duck hunting seasons. After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.
- (D) Camping is restricted to the periods of September 1 through February 28 and April 7 through May 14 in areas designated or posted as camping areas.
- (28) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through-August 31 and all horseback riding is prohibited from September 1 through May 15. This rule includes all equine species.
- (29) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (30) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons.
- (D) Camping is restricted to the periods of September 1 through February 28 and April 7 through May 14 in areas designated or posted as camping areas.
- (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season on the Long Shoal River Tract of Gull Rock Game Land.
- (31) Hickorynut Mountain Game Land in McDowell County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (32) Hofmann Forest Game Land in Jones and Onslow counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (33) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

- Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program
- (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.
- (D) Camping is restricted to the periods of September 1 through February 28 and April 7 through May 14 in areas designated or posted as camping areas.
- (34) Hyco Game land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (35) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (36) Jordan Game Land in Chatham, Durham, Orange and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) Horseback riding, including all equine species, is prohibited.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only.
- (37) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (38) Lee Game Land in Lee County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (39) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (40) Mayo Game Land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer with Visible Antlers Season.
- (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas Day and New Year's Day and on the opening and closing days of the applicable waterfowl seasons.
- (41) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (C) Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.
- (42) Neuse River Game Land in Craven County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (43) New Lake Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (44) North River Game Land in Currituck and Camden counties.
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season except in that part of Camden County south of US 158 where the season is the last six open days of the applicable Deer with Visible Antlers Season.
- (C) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.

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| <p>(D) Wild turkey hunting is by permit only on the portion of the North River Game Land in Camden County.</p> <p>(45) Northwest River Marsh Game Land in Currituck County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.</p> <p>(46) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.</p> <p>(D) On that part of Pee Dee River Game Lands between Blewett Falls Dam and the South Carolina state line waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 PM in this area.</p> <p>(47) Perkins Game Land in Davie County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(48) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery and Yancey counties and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.</p> <p>(C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad</p> | <p>River, south of US 25-70 and west of SR 1319.</p> <p>(49) Pungo River Game Land in Hyde County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(50) Roanoke River Wetlands In Bertie, Halifax and Martin counties</p> <p>(A) Hunting is by Permit only. Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.</p> <p>(B) Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.</p> <p>(C) Camping is restricted to the periods of September 1 through February 28 and April 7 through May 14 in areas designated or posted as camping areas.</p> <p>(51) Roanoke Sound Marshes Game Land in Dare County. Hunting is by permit only.</p> <p>(52) Robeson Game Land in Robeson County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(53) Sampson Game Land in Sampson County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(53) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties</p> <p>(A) Three Days per Week Area</p> <p>(B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the third Saturday before Thanksgiving through the following Wednesday, and during the Deer With Visible Antlers season.</p> |
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| <p>(C) Gun Either-Sex deer hunting is by permit only. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding Paragraph. Except for the deer, opossum, rabbit, and raccoon seasons specifically indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.</p> <p>(D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons</p> <p>(E) Wild turkey hunting is by permit only.</p> <p>(F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.</p> <p>(G) Opossum, rabbit, and raccoon hunting on the field trial grounds is allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving.</p> <p>(55) Sauratown Plantation Game Land in Stokes County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(56) Scuppernong Game Land in Tyrrell and Washington counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(57) Shearon Harris Game Land in Chatham and Wake counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Waterfowl may be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.</p> <p>(D) The use or construction of permanent hunting blinds is prohibited.</p> <p>(E) Wild turkey hunting is by permit only.</p> <p>(58) Shocco Creek Game Land in Warren County</p> <p>(A) Six Days per Week Area</p> | <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer with Visible Antlers Season.</p> <p>(59) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This provision includes all equine species.</p> <p>(60) Suggs Mill Pond Game Land in Bladen County;</p> <p>(A) Hunting is by Permit only.</p> <p>(B) Camping is restricted to the periods of September 1 through February 28 and April 7 through May 14 in areas designated or posted as camping areas.</p> <p>(61) Sutton Lake Game Land in New Hanover County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(62) Three Top Mountain Game Land in Ashe County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This provision includes all equine species.</p> <p>(63) Thurmond Chatham Game Land in Wilkes County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.</p> <p>(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This provision includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.</p> |
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- (64) Toxaway Game Land in Transylvania County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
 (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This provision includes all equine species.
- (65) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (66) Vance Game Land in Vance County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (67) Van Swamp Game Land in Beaufort and Washington counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (68) White Oak River Impoundment Game Land in Onslow County
 (A) Three Days per Week Area
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the statewide waterfowl hunting seasons. After October 1, a special permit is required for hunting waterfowl on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.

(g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the

permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperators agent or by phone.

(h) The following game lands and refuges shall be closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:

Bertie, Halifax and Martin counties--Roanoke River Wetlands
 Bertie County--Roanoke River National Wildlife Refuge
 Bladen County--Suggs Mill Pond Game Lands
 Burke County--John's River Waterfowl Refuge
 Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)
 Dare County--Roanoke Sound Marshes Game Lands
 Davie--Hunting Creek Swamp Waterfowl Refuge
 Gaston, Lincoln and Mecklenburg counties--Cowan's Ford Waterfowl Refuge
 Henderson and Transylvania counties--Dupont State Forest Game Lands

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305;
Eff. February 1, 1976;
Temporary Amendment Eff. October 3, 1991;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996;
September 1, 1995; July 1, 1995; September 1, 1994;
July 1, 1994;
Temporary Amendment Eff. October 1, 1999; July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001;
Amended Eff. July 1, 2002;
Temporary Amendment Eff. July 1, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002];
Amended Eff. August 1, 2002.

15A NCAC 10D .0104 FISHING ON GAME LANDS

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

(b) Designated Public Mountain Trout Waters

- (1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land and in all waters on the Dupont State Forest Game Land from one-half hour

after sunset to one-half hour before sunrise, except in Hatchery Supported Trout waters as stated in 15A NCAC 10C .0305(a), Delayed Harvest waters as stated in 15A NCAC 10C .0205(a)(5), game lands sections of the Nantahala River located downstream from the Swain County line, and in the sections of Green River in Polk County located on Green River Game Lands from Cove Creek downstream to Brights Creek.

- (2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, and Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to the Tennessee state line, Nolichucky River, Mill Ridge Pond Cheoah River downstream of Santeetlah Reservoir, Little River from Hooker Falls downstream to the Dupont State Forest boundary, Lake Imaging, Lake Dense, Lake Alfred, Lake Julia, Fawn Lake and the portion of West Fork Pigeon River below Lake Logan.

Dupont State Forest Game Lands in Henderson and Transylvania counties
Three Top Mountain Game Land, Ashe County

Nantahala National Forest Game Lands in the Counties of Cherokee, Clay, Graham, Jackson,

Macon, Swain and Transylvania
Pisgah National Forest Game Lands in the Counties of Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania and Yancey
Thurmond Chatham Game Land in Wilkes County

Toxaway Game Land in Transylvania County

South Mountains Game Land in the counties of Cleveland and Rutherford
Cold Mountain Game Land in Haywood County

- (3) All designated public mountain trout waters located on the game lands listed in Subparagraph (b)(2) of this Rule are wild trout waters unless classified otherwise. [See 15A NCAC 10C .0205(a)(1)].

- (c) Ponds. In all game lands ponds, it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line and the daily creel limit for forked tail catfish is six fish in aggregate.

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

Eff. February 1, 1976;

Amended Eff. July 1, 2000; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992;

Temporary Amendment Effective July 1, 2001;

Amended Eff. July 1, 2002;

Temporary Amendment Effective July 1, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002];

Amended Eff. August 1, 2002.

15A NCAC 10F .0323 BURKE COUNTY

(a) Regulated Areas. This Rule applies only to the following waters or portions of waters in Burke County described as follows:

- (1) Lake Hickory;
- (2) Lake James;
 - (A) Holiday Shores Subdivision as delineated by appropriate markers;
 - (B) Lake James Campground as delineated by appropriate markers;
 - (C) Laurel Pointe Subdivision as delineated by appropriate markers;
 - (D) Boyd Moore Cove as delineated by appropriate markers;
 - (E) East Shores development as delineated by appropriate markers;
 - (F) Eastern shore of Lake James at Mallard Cove;

- (3) Lake Rhodhiss.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of any designated and marked public boat launching ramp, bridge, marina, boat storage structure, boat service area, dock, or pier, or while on the waters of the regulated areas described in Paragraph (a) of this Rule.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(e) Placement and Maintenance of Markers. The Board of Commissioners of Burke County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. With regard to marking the regulated areas described in Paragraph (a) of this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

History Note: Authority G.S. 75A-3; 75A-15;

Eff. July 1, 1976;

Amended Eff. December 1, 1995; December 1, 1994; December 1, 1992; March 1, 1992;

Temporary Amendment Eff. April 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. August 15, 2001;

Amended Eff. August 1, 2002.

15A NCAC 11 .0104 DEFINITIONS

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

- (1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).
- (2) "Accelerator produced material" means any material made radioactive by use of a particle accelerator.
- (3) "Act" means North Carolina Radiation Protection Act as defined in G.S. 104E-1.
- (4) "Activity" is the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).
- (5) "Adult" means an individual 18 or more years of age.
- (6) "Agency" means the North Carolina Department of Environment and Natural Resources, Division of Radiation Protection.
- (7) "Agreement state" means any state which has consummated an agreement with the United States Nuclear Regulatory Commission under the authority of section 274 of the Atomic Energy Act of 1954 as amended, as authorized by compatible state legislation providing for acceptance by that state of licensing authority for agreement materials and the discontinuance of such licensing activities by the United States Nuclear Regulatory Commission, as defined in G.S. 104E-5(2).
- (8) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.
- (9) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:
 - (a) in excess of the derived air concentrations (DACs) specified in Appendix B to 10 CFR 20.1001 - 20.2401; or
 - (b) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.
- (10) "ALARA" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in the rules of this Chapter as is practical consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of sources of radiation in the public interest.
- (11) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in an effective dose equivalent of five rems (0.05 Sv) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table 1, Columns 1 and 2, of Appendix B to 10 CFR 20.1001 - 20.2401).
- (12) "Annually" means either:
 - (a) at intervals not to exceed 12 consecutive months; or
 - (b) once per year at the same time each year (completed during the same month each year over a period of multiple years).
- (13) "Authorized representative" means an employee of the agency, or an individual outside the agency when the individual is specifically so designated by the agency under Rule .0112 of this Section.
- (14) "Authorized user" means an individual who is authorized by license or registration condition to use a source of radiation.
- (15) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee or registrant. "Background radiation" does not include sources of radiation regulated by the agency.
- (16) "Becquerel" is the SI unit of radioactivity. One becquerel is equal to one disintegration per second (s^{-1}).
- (17) "Bioassay" or "radiobioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.
- (18) "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, as defined in G.S. 104E-5(4).
- (19) "Class", "lung class" or "inhalation class" means a classification scheme for inhaled material according to its rate of clearance from

the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times as follows:

CLASSIFICATION OF INHALED MATERIAL

<u>Class</u>	<u>Clearance half-time</u>
Class D (Day)	less than 10 days
Class W (Weeks)	10 days to 100 days
Class Y (Years)	greater than 100 days

- (20) "Collective dose" is the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.
- (21) "Commission" means the North Carolina Radiation Protection Commission.
- (22) "Committed dose equivalent" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.
- (23) "Committed effective dose equivalent" ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = \sum w_T H_{T,50}$).
- (24) "Constraint (dose constraint)" means a value above which specified licensee actions are required.
- (25) "Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.
- (26) "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.
- (27) "Curie" is the special unit of radioactivity. One curie is equal to 3.7×10^{10} disintegrations per second = 3.7×10^{10} becquerels = 2.22×10^{12} disintegrations per minute.
- (28) "Declared pregnant woman" means a woman who has voluntarily informed the licensee or registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.
- (29) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for either unrestricted use and termination of the license or for restricted use and termination of the license.
- (30) "Deep-dose equivalent" (H_d), which applies to external whole-body exposure, is the dose equivalent at a tissue depth of one cm (1000 mg/cm^2).
- (31) "Department" means the North Carolina Department of Environment and Natural Resources.

- (32) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.
- (33) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate 1.2 cubic meters of air per hour), results in an intake of ALI. DAC values are given in Table 1, Column 3, of Appendix B to 10 CFR 20.1001 - 20.2401).
- (34) "Derived air concentration-hour" (DAC-hour) is the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of five rems (0.05 Sv).
- (35) "Diagnostic clinical procedures manual" means a collection of written procedures governing the use of radioactive material that describes each method by which the licensee performs diagnostic clinical procedures and includes other instructions and precautions. Each diagnostic clinical procedure including but not limited in content to the radiopharmaceutical, dosage and route of administration, shall be approved by an authorized user prior to inclusion in the manual. The radiation safety officer shall ensure that the manual includes the approved written procedure for all diagnostic clinical procedures performed at the facility.
- (36) "Distinguishable from Background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using measurement technology, survey and statistical techniques as defined in 10 CFR 20.1003.
- (37) "Dose" (or radiation dose) is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, effective dose equivalent, or total effective dose equivalent, as defined in other Items of this Rule.
- (38) "Dose equivalent" (H_T) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).
- (39) "Dose limits" (see "Limits" defined in this Rule).

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| <p>(40) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.</p> <p>(41) "Effective dose equivalent" (H_E) is the sum of the products of the dose equivalent to the organ or tissue (H_T) and the weighting factors (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \sum w_T H_T$).</p> <p>(42) "Embryo/fetus" means the developing human organism from conception until the time of birth.</p> <p>(43) "Entrance or access point" means any location through which an individual could gain access to radiation areas or to a source of radiation. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.</p> <p>(44) "Equipment services" means the selling, installation, rebuilding, conversion, repair, inspection, testing, survey or calibration of equipment which can affect compliance with these Rules by a licensee or registrant.</p> <p>(45) "Exposure" means being exposed to ionizing radiation or to radioactive material.</p> <p>(46) "Exposure rate" means the exposure per unit of time, such as R/min and mR/h.</p> <p>(47) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.</p> <p>(48) "Extremity" means hand, elbow, arm, arm below the elbow, foot, knee, or leg below the knee.</p> <p>(49) "Eye dose equivalent" (See "Lens dose equivalent" as defined in this Rule).</p> <p>(50) "Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using sources of radiation.</p> <p>(51) "Gray" (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule/kilogram (100 rads).</p> <p>(52) "High radiation area" means an area, accessible to individuals, in which radiation levels from sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.</p> <p>(53) "Hospital" means a facility that provides as its primary functions diagnostic services and</p> | <p>intensive medical and nursing care in the treatment of acute stages of illness.</p> <p>(54) "Human use" means the internal or external administration of radiation or radioactive materials to human beings.</p> <p>(55) "Individual" means any human being.</p> <p>(56) "Individual monitoring" means:</p> <p style="padding-left: 20px;">(a) the assessment of dose equivalent by the use of devices designed to be worn by an individual;</p> <p style="padding-left: 20px;">(b) the assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e., DAC-hours; or</p> <p style="padding-left: 20px;">(c) the assessment of dose equivalent by the use of survey data.</p> <p>(57) "Individual monitoring devices" or "individual monitoring equipment" means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.</p> <p>(58) "Inhalation class" (see "Class" defined in this Rule).</p> <p>(59) "Inspection" means an official examination or observation to determine compliance with rules, orders, requirements and conditions of the agency or the Commission.</p> <p>(60) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.</p> <p>(61) "Lens dose equivalent" or "LDE" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 cm (300 mg/cm²).</p> <p>(62) "License", except where otherwise specified, means a license issued pursuant to Section .0300 of this Chapter.</p> <p>(63) "Licensee" means any person who is licensed by the agency pursuant to Section .0300 of this Chapter.</p> <p>(64) "Licensing state" means any state designated as such by the Conference of Radiation Control Program Directors, Inc. Unless the context clearly indicates otherwise, use of the term Agreement State in this Chapter shall be deemed to include licensing state with respect to naturally occurring and accelerator produced radioactive material (NARM).</p> <p>(65) "Limits" or "dose limits" means the permissible upper bounds of radiation doses.</p> <p>(66) "Lost or missing licensed radioactive material" means licensed radioactive material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.</p> |
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| <p>(67) "Lung class" (see "Class" as defined in this Rule).</p> <p>(68) "Medical use" means the intentional internal or external administration of radioactive material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.</p> <p>(69) "Member of the public" means any individual except when that individual is receiving an occupational dose.</p> <p>(70) "Minor" means an individual less than 18 years of age.</p> <p>(71) "Misadministration" means the administration of the following:</p> <p style="padding-left: 20px;">(a) a diagnostic radiopharmaceutical dosage:</p> <p style="padding-left: 40px;">(i) involving a dose to the patient that exceeds 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ; and</p> <p style="padding-left: 60px;">(A) the wrong patient;</p> <p style="padding-left: 60px;">(B) the wrong radiopharmaceutical;</p> <p style="padding-left: 60px;">(C) the wrong route of administration; or</p> <p style="padding-left: 60px;">(D) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or</p> <p style="padding-left: 40px;">(ii) for sodium iodide I-125 or I-131 involving:</p> <p style="padding-left: 60px;">(A) the wrong patient or wrong radiopharmaceutical; or</p> <p style="padding-left: 60px;">(B) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries;</p> <p style="padding-left: 20px;">(b) a therapeutic radiopharmaceutical dosage:</p> <p style="padding-left: 40px;">(i) involving:</p> <p style="padding-left: 60px;">(A) the wrong patient;</p> <p style="padding-left: 60px;">(B) wrong radiopharmaceutical;</p> | <p style="padding-left: 60px;">(C) wrong route of administration; or</p> <p style="padding-left: 60px;">(D) when the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or</p> <p style="padding-left: 20px;">(ii) when the administered dosage of sodium iodide I-125 or I-131 differs from the prescribed dosage by more than 20 percent of the prescribed dosage;</p> <p style="padding-left: 20px;">(c) a teletherapy or accelerator radiation dose:</p> <p style="padding-left: 40px;">(i) involving:</p> <p style="padding-left: 60px;">(A) the wrong patient;</p> <p style="padding-left: 60px;">(B) the wrong mode of treatment; or</p> <p style="padding-left: 60px;">(C) wrong treatment site;</p> <p style="padding-left: 40px;">(ii) when the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;</p> <p style="padding-left: 40px;">(iii) when the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or</p> <p style="padding-left: 40px;">(iv) when the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose;</p> <p style="padding-left: 20px;">(d) a brachytherapy radiation dose:</p> <p style="padding-left: 40px;">(i) involving:</p> <p style="padding-left: 60px;">(A) the wrong patient;</p> <p style="padding-left: 60px;">(B) the wrong radioisotope; or</p> <p style="padding-left: 60px;">(C) the wrong treatment site. This excludes, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site;</p> <p style="padding-left: 40px;">(ii) involving a sealed source that is leaking;</p> <p style="padding-left: 40px;">(iii) when, for a temporary implant, one or more sealed sources are not removed</p> |
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- upon completion of the procedure; or
- (iv) when the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose; or
- (e) a gamma stereotactic radiosurgery radiation dose:
- (i) involving the wrong patient or wrong treatment site; or
- (ii) when the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.
- (72) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.
- (73) "Monitoring", "radiation monitoring" or "radiation protection monitoring" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.
- (74) "Natural radioactivity" means radioactivity of naturally occurring nuclides.
- (75) "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).
- (76) "NRC" means the United States Nuclear Regulatory Commission or its duly authorized representatives.
- (77) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or registrant or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, from voluntary participation in medical research programs, or as a member of the general public.
- (78) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles.
- (79) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto, as defined in G.S. 104E-5(11).
- (80) "Personnel monitoring equipment" means devices, such as film badges, pocket dosimeters, and thermoluminescent dosimeters, designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual.
- (81) "Pharmacist" means an individual licensed by this state to compound and dispense drugs, prescriptions and poisons.
- (82) "Physician" means an individual currently licensed to practice medicine in this state.
- (83) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.
- (84) "Prescribed dosage" means the quantity of radiopharmaceutical activity documented in a written directive by an authorized user.
- (85) "Prescribed dose" means:
- (a) for teletherapy or accelerator radiation:
- (i) the total dose; and
- (ii) the dose per fraction as documented in the written directive;
- (b) for brachytherapy:
- (i) the total source strength and exposure time; or
- (ii) the total dose, as documented in the written directive; or
- (c) for gamma stereotactic radiosurgery, the total dose as documented in the written directive.
- (86) "Public dose" means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee or registrant, or to another source of radiation within a licensee's or registrant's control. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, or from voluntary participation in medical research programs.
- (87) "Quality factor" (Q) means the modifying factor that is used to derive dose equivalent from absorbed dose. Quality factors are provided in the definition of rem in this Rule.
- (88) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee or registrant (approximately 13 consecutive

- weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.
- (89) "Quarterly" means either:
- (a) at intervals not to exceed 13 weeks; or
 - (b) once per 13 weeks at about the same time during each 13 week period (completed during the same month of the quarter (first month, second month or third month) each quarter over a time period of several quarters.
- (90) "Rad" is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs/gram or 0.01 joule/kilogram (0.01 gray).
- (91) "Radiation" (ionizing radiation), except as otherwise defined in Section .1400 of this Chapter, means gamma rays and x-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves including those with frequencies between three times 10 to the eighth power cycles per second and three times 10 to the twenty-fourth power cycles per second and wavelengths between one times 10 to the minus fourteenth power centimeters and 100 centimeters as defined in G.S. 104E-5(12).
- (92) "Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.
- (93) "Radiation dose" means dose.
- (94) "Radiation machine" means any device designed to produce or which produces radiation or nuclear particles when the associated control devices of the machine are operated as defined in G.S. 104E-5(13).
- (95) "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection rules.
- (96) "Radioactive material" means any solid, liquid, or gas, which emits ionizing radiation spontaneously as defined in G.S. 104E-5(14).
- (97) "Radioactive waste disposal facility" means any low-level radioactive waste disposal facility, as defined in G.S. 104E-5(9c), established for the purpose of receiving low-level radioactive waste, as defined in Rule .1202 of this Chapter, generated by another licensee for the purpose of disposal.
- (98) "Radioactive waste processing facility" means any low-level radioactive waste facility, as defined in G.S. 104E-5(9b), established for the purpose of receiving waste, as defined in this Rule, generated by another licensee to be stored, compacted, incinerated or treated.
- (99) "Radioactivity" means the disintegration of unstable atomic nuclei by emission of radiation.
- (100) "Radiobioassay" means bioassay.
- (101) "Recordable event" means the administration of the following:
- (a) a radiopharmaceutical or radiation from a licensed source without a written directive where a written directive is required by Sub-items 146(a)(i) and 146(b)-(f) of this Rule;
 - (b) a radiopharmaceutical or radiation from a licensed source where a written directive is required by Sub-items 146(a)(i) and 146(b)-(f) of this Rule without recording each administered radiopharmaceutical dosage or radiation dose in the appropriate record on a daily basis;
 - (c) a radiopharmaceutical dosage of greater than 30 microcuries of sodium iodide I-125 and I-131 when:
 - (i) the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage; and
 - (ii) the difference between the administered dosage and prescribed dose exceeds 15 microcuries;
 - (d) a therapeutic dosage of any radiopharmaceutical dosage other than sodium iodide I-125 or I-131 when the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage;
 - (e) a teletherapy or accelerator radiation dose when the calculated weekly administered dose is 15 percent greater than the weekly prescribed dose; or
 - (f) a brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than 10 percent of the prescribed dose.
- (102) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus as published by the International Commission on Radiological Protection. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

APPROVED RULES

- (103) "Registrant" means any person who is registered with the agency as required by provisions of these Rules or the Act.
- (104) "Registration" means registration with the agency in accordance with these Rules.
- (105) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.

- (106) "Rem" is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (1 rem = 0.01 sievert). As used in this Chapter, the quality factors for converting absorbed dose to dose equivalent are as follows:

QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

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

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

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

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

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

	<u>Neutron Energy (MeV)</u>	<u>Quality Factor^a (Q)</u>	<u>Fluence per Unit Dose Equivalent^b (neutrons cm⁻² rem⁻¹)</u>
(thermal)	2.5 x 10 ⁻⁸	2	980 x 10 ⁶
	1 x 10 ⁻⁷	2	980 x 10 ⁶
	1 x 10 ⁻⁶	2	810 x 10 ⁶
	1 x 10 ⁻⁵	2	810 x 10 ⁶
	1 x 10 ⁻⁴	2	840 x 10 ⁶
	1 x 10 ⁻³	2	980 x 10 ⁶
	1 x 10 ⁻²	2.5	1010 x 10 ⁶
	1 x 10 ⁻¹	7.5	170 x 10 ⁶
	5 x 10 ⁻¹	11	39 x 10 ⁶
	1	11	27 x 10 ⁶
	2.5	9	29 x 10 ⁶
	5	8	23 x 10 ⁶
	7	7	24 x 10 ⁶
	10	6.5	24 x 10 ⁶
	14	7.5	17 x 10 ⁶
	20	8	16 x 10 ⁶
	40	7	14 x 10 ⁶
	60	5.5	16 x 10 ⁶
	1 x 10 ²	4	20 x 10 ⁶
	2 x 10 ²	3.5	19 x 10 ⁶
	3 x 10 ²	3.5	16 x 10 ⁶

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

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

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| <p>(107) "Research and development" means:</p> <ul style="list-style-type: none"> (a) theoretical analysis, exploration, or experimentation; or (b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. <p>Research and development does not include the internal or external administration of radiation or radioactive material to human beings.</p> <p>(108) "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if the burials were made in accordance with the provisions of Section .1600 of this Chapter.</p> <p>(109) "Respiratory protective device" means an apparatus, such as a respirator, used to reduce the individual's intake of airborne radioactive materials.</p> <p>(110) "Restricted area" means an area, access to which is controlled by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.</p> <p>(111) "Roentgen" (R) means the special unit of exposure. One roentgen equals 2.58×10^{-4} coulombs/kilogram of air.</p> <p>(112) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.</p> <p>(113) "Sealed source" means radioactive material that is permanently bonded, fixed or encapsulated so as to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.</p> | <p>(114) "Semiannually" means either:</p> <ul style="list-style-type: none"> (a) at intervals not to exceed six months; or (b) once per six months at about the same time during each six month period (completed during the sixth month of each six month period over multiple six month periods). <p>(115) "Shallow-dose equivalent" (H_s), which applies to the external exposure of the skin or an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm^2) averaged over an area of one square centimeter.</p> <p>(116) "SI unit" means a unit of measure from the International System of Units as established by the General Conference of Weights and Measures.</p> <p>(117) "Sievert" is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor ($1 \text{ Sv} = 100 \text{ rems}$).</p> <p>(118) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.</p> <p>(119) "Source material" means:</p> <ul style="list-style-type: none"> (a) uranium or thorium or any other material which the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto has determined the material to be such; or (b) ores containing one or more of the foregoing materials, in such concentrations as the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material as defined in G.S. 104E-5(15). <p>(120) "Source of radiation" means any radioactive material, or any device or equipment emitting or capable of producing radiation.</p> <p>(121) "Special form radioactive material" means radioactive material which satisfies the following conditions:</p> <ul style="list-style-type: none"> (a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule; |
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- (b) The piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and
- (c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission, Subpart F of 10 CFR Part 71, and the tests prescribed in Rule .0114 of this Section. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements, Subpart F of 10 CFR Part 71, in effect on June 30, 1984, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation either designed or constructed after June 30, 1985, must meet requirements of this definition applicable at the time of its design or construction.
- (122) "Special nuclear material" means:
- (a) plutonium, uranium 233, uranium 235, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Department declares to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or
- (b) any material artificially enriched by any of the foregoing, but does not include source material as defined in G.S. 104E-5(16).
- (123) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope uranium-235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of uranium-235, uranium enriched in uranium-235 and plutonium in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this Rule for the same kind of special nuclear material. The sum of these ratios for all the kinds of special nuclear material in combination shall not exceed unity. For example, the following quantities in combination would not exceed the limitations and are within the formula, as follows:
- $$\frac{175 \text{ (gram contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} \text{ is } < \text{ or } = 1$$
- (124) "State" means the State of North Carolina.
- (125) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects.
- (126) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of sources of radiation and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.
- (127) "These Rules" means Chapter 11 of this Title.
- (128) "To the extent practicable" means to the extent feasible or capable of being done or carried out with reasonable effort.
- (129) "Total effective dose equivalent" (TEDE) means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).
- (130) "Toxic or hazardous constituent of the waste" means the nonradioactive content of waste which, notwithstanding the radioactive content, would be classified as "hazardous waste" as defined in G.S. 130A-290(8).
- (131) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A₁ for special form radioactive material or A₂ for normal form radioactive material, where A₁ and A₂ are given in Rule .0113 of this Section or may be determined by procedures described in Rule .0113 of this Section. All quantities of radioactive material greater than a Type A quantity are Type B.
- (132) "Unit dosage" means a dosage intended for medical use in an individual that has been obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent agreement state requirements.
- (133) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.
- (134) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant.
- (135) "Very high radiation area" means an area, accessible to individuals, in which radiation

- levels from sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at one meter from a radiation source or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (e.g., rads and grays) are appropriate, rather than units of dose equivalent (e.g., rems and sieverts).
- (136) "Waste" means low-level radioactive waste as defined in G.S. 104E-5(9a) and includes licensed naturally occurring and accelerator produced radioactive material which is not subject to regulation by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, except as defined differently in Rule .1202 of this Chapter.
- (137) "Waste, Class A" is defined in Rule .1650 of this Chapter.
- (138) "Waste, Class B" is defined in Rule .1650 of this Chapter.
- (139) "Waste, Class C" is defined in Rule .1650 of this Chapter.
- (140) "Week" means seven consecutive days starting on Sunday.
- (141) "Weighting factor", w_T , for an organ or tissue (T) is the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS

<u>Organ or Tissue</u>	<u>w_T</u>
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^a
Whole body	1.00 ^b

^a 0.30 results from 0.06 for each of 5 "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

^b For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor, $w_T = 1.0$, has been specified.

- (142) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.
- (143) "Worker" means an individual engaged in work under a license or registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.
- (144) "Working level" (WL) is any combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy.
- (145) "Working level month" (WLM) means an exposure to one working level for 170 hours.
- (146) "Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation from a licensed source, except as specified in Sub-item (e) of this definition, containing the following information:
- (a) for the diagnostic administration of a radiopharmaceutical:
- (i) if greater than 30 microcuries of sodium iodide I-125 or I-131, the dosage to be administered in accordance with the diagnostic clinical procedures manual; or
- (ii) if not subject to Sub-item (a)(i) of this Item, the type of study to be performed in accordance with the diagnostic clinical procedures manual;
- (b) for the therapeutic administration of a radiopharmaceutical:
- (i) radiopharmaceutical;
- (ii) dosage; and
- (iii) route of administration;
- (c) for teletherapy or accelerator radiation therapy:
- (i) total dose;
- (ii) dose per fraction;
- (iii) treatment site; and

- (d)
 - (iv) overall treatment period; for high-dose-rate remote afterloading brachytherapy:
 - (i) radioisotope;
 - (ii) treatment site; and
 - (iii) total dose;
 - (e) for all other brachytherapy:
 - (i) prior to implantation:
 - (A) radioisotope;
 - (B) number of sources to be implanted; and
 - (C) source strengths in millicuries; and
 - (ii) after implantation but prior to completion of the procedure:
 - (A) radioisotope;
 - (B) treatment site; and
 - (C) either:
 - (I) total source strength and exposure time; or
 - (II) total dose;
 - (f) for gamma stereotactic radiosurgery:
 - (i) target coordinates;
 - (ii) collimator size;
 - (iii) plug pattern; and
 - (iv) total dose.
- (147) "Year" means the period of time beginning in January used to determine compliance with the provisions of Section .1600 of this Chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

History Note: Authority G.S. 104E-7(a)(2); Eff. February 1, 1980; Amended Eff. November 1, 1989; June 1, 1989; October 1, 1984; Transferred and Recodified from 10 NCAC 3G .2204 Eff. January 4, 1990; Amended Eff. January 1, 1994; May 1, 1992; 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 .0320 SPECIFIC LICENSES: HUMAN USE BY INDIVIDUAL PHYSICIANS

(a) An application by an individual physician or a group of physicians for a specific license for human use of radioactive material shall be approved if:

- (1) the applicant satisfies the general requirements in Rule .0318 of this Section;
 - (2) The application is for use in the applicant's practice in an office(s) outside a medical institution;
 - (3) the applicant has access to a hospital possessing adequate facilities to hospitalize and monitor the applicant's radioactive patients whenever it is advisable;
 - (4) the applicant has extensive experience, which meets the requirements of Subpart J of 10 CFR Part 35, in the proposed use, the handling and administration of radioisotopes, and where applicable, the clinical management of radioactive patients; and
 - (5) the physician(s) furnishes suitable evidence of experience along with the application, except that a statement from the medical isotope committee in the hospital where the applicant acquired experience, indicating its amount and nature, may be submitted as evidence of experience. Subpart J of 10 CFR Part 35 provides the requirements that meet the test for suitable evidence of experience.
- (b) The agency shall not approve an application by an individual physician or group of physicians for a specific license to receive, possess or use radioactive material on the premises of a hospital unless:
 - (1) The use of radioactive material is limited to:
 - (A) the administration of radiopharmaceuticals for diagnostic or therapeutic purposes;
 - (B) the performance of diagnostic studies on patients to whom a radiopharmaceutical has been administered;
 - (C) the performance of IN VITRO diagnostic studies; or
 - (D) the calibration and quality control checks of radioactive assay instrumentation, radiation safety instrumentation and diagnostic instrumentation.
 - (2) The physician brings the radioactive material with him and removes the radioactive material when he departs;
 - (3) No radioactive material is received, possessed or stored in the hospital other than the amount of material remaining in the patient; and
 - (4) The hospital does not hold a radioactive material license under Rule .0319 of this Section.
- (c) The agency shall approve an application by an individual physician or group of physicians for a specific license to receive, possess, or use radioactive materials covered under Rule .0321 of this Section if:
 - (1) the applicant has appointed a medical isotopes committee of at least three members to evaluate all proposals for diagnostic or therapeutic use of radioisotopes within the facility; and

- (2) membership of the committee includes an authorized user from each department where radioactive material is used, a representative of the institution's management and a person trained in radiation safety.

*History Note: Authority G.S. 104E-7; 104E-10(b);
Eff. February 1, 1980;
Amended Eff. August 1, 2002; November 1, 1989.*

15A NCAC 11 .1403 DEFINITIONS

As used in this Section, the following definitions shall apply:

- (1) "Agency" means the North Carolina Department of Environment and Natural Resources.
- (2) "Consumer" means any individual who is provided access to a tanning facility which is required to be registered pursuant to provisions of this Section.
- (3) "Formal Operator Training" is a course of study approved by this agency as meeting the requirements in Paragraph (h) of Rule .1418 in this Section.
- (4) "Individual" means any human being.
- (5) "Inspection" means an official examination or observation to determine compliance with the rules in this Section, and orders, requirements and conditions of the agency.
- (6) "Minor" means any individual less than 18 years of age.
- (7) "Medical Lamps" means any lamp that is specifically designed or labeled for medical use only.
- (8) "Operator" means any individual designated by the registrant to operate or to assist and instruct the consumer in the operation and use of the tanning facility or tanning equipment. Under this definition, the term "operator", includes, but is not limited to, any such individual who conducts one or more of the following activities:
 - (a) determining consumer's skin type;
 - (b) determining the suitability of prospective consumers for tanning equipment use;
 - (c) informing the consumer of dangers of ultraviolet radiation exposure including photoallergic reactions and photosensitizing agents;
 - (d) assuring that the consumer reads and properly signs all forms as required by the rules in this Section;
 - (e) maintaining required consumer exposure records;
 - (f) recognizing and reporting consumer injuries or alleged injuries to the registrant;
 - (g) determining the consumer's exposure schedule;
 - (h) setting timers which control the duration of exposure; and

- (i) instructing the consumer in the proper use of protective eyewear.
- (9) "Person", as defined in G.S. 104E-5(11), means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities.
- (10) "Registrant" means any person who is registered with the agency as required by provisions of this Section.
- (11) "Registration" means registration with the agency in accordance with provisions of this Section.
- (12) "Tanning components" means any constituent tanning equipment part, to include ballasts, starters, lamps, reflectors, acrylic shields, timers, and airflow cooling systems.
- (13) "Tanning equipment" means ultraviolet or other lamps and equipment containing such lamps intended to induce skin tanning through the irradiation of any part of the living human body with ultraviolet radiation, e.g., beds, booths, facials and wands.
- (14) "Tanning equipment services" means the installation, sales and servicing of tanning equipment and associated tanning components; calibration of equipment used in surveys to measure radiation and timer accuracy; tanning health physics consulting, e.g. radiation output measurements, design of safety programs, training seminars for tanning operators and service personnel.
- (15) "Tanning facility" means any location, place, area, structure or business which provides consumers access to tanning equipment. For the purpose of this definition tanning equipment registered to different persons at the same location and tanning equipment registered to the same person, but at separate locations, shall constitute separate tanning facilities.
- (16) "Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between 200 nanometers and 400 nanometers.

*History Note: Authority G.S. 104E-7(a)(7);
Eff. June 1, 1989;
Amended Eff. August 1, 2002; May 1, 1993; May 1, 1992.*

15A NCAC 11 .1408 RENEWAL OF CERTIFICATE OF REGISTRATION

- (a) The registrant shall file applications for renewal in accordance with Rule .1405 of this Section.
- (b) Provided that a registrant files with the agency an application for renewal in proper form for renewal by August 29 of each calendar year, such certificate of registration shall not expire pending final action on the application by the agency.

*History Note: Authority G.S. 104E-7(a)(7);
Eff. June 1, 1989;
Amended Eff. August 1, 2002.*

**15A NCAC 11 .1417 PROTECTIVE EYEWEAR
REQUIRED**

- (a) The registrant shall provide protective eyewear to each consumer for use during any use of tanning equipment.
- (b) The protective eyewear in Paragraph (a) of this Rule shall meet the requirements of 21 CFR Part 1040, Section 1040.20(c)(4).
- (c) Tanning facility operators shall instruct the consumer in the proper utilization of the protective eyewear required by this Rule.
- (d) The registrant shall ensure that the protective eyewear required by this Rule is sanitized before each use and shall not rely upon exposure to the ultraviolet radiation produced by the tanning equipment itself to provide such sanitizing.

*History Note: Authority G.S. 104E-7(a)(7);
Eff. June 1, 1989;
Amended Eff. August 1, 2002; November 1, 1989.*

**15A NCAC 11 .1418 RECORDS: REPORTS AND
OPERATING REQUIREMENTS**

- (a) Prior to initial exposure, the tanning facility operator shall provide each consumer the opportunity to read a copy of the warning specified in Rule .1414(b) of this Section and request that the consumer sign a statement that the information has been read and understood. For illiterate or visually impaired persons unable to sign their name, the warning statement shall be read by the operator, in the presence of a witness, and the witness and the operator shall sign the statement.
- (b) The registrant shall maintain a record of each consumer's total number of tanning visits including dates and durations of tanning exposures.
- (c) The registrant shall submit to the agency a written report of injury for which medical attention was sought or obtained from the use of registered tanning equipment within five working days after occurrence. The report shall include:
 - (1) the name of the affected individual;
 - (2) the name and location of the tanning facility involved;
 - (3) the nature of the actual or alleged injury; and
 - (4) any other information relevant to the actual or alleged injury, to include the date and duration of exposure and any documentation of medical attention sought or obtained.
- (d) The registrant shall not allow individuals under the age of 18 to use tanning equipment unless the individual provides a consent form and a statement, described in Paragraph (a) of this Rule, signed by that individual's parent or legal guardian.
- (e) The registrant shall not allow minors to remain in the tanning room while the tanning equipment is in operation except as provided for in this Rule.
- (f) The registrant shall replace defective or burned out lamps, bulbs or filters with a type intended for use in the affected tanning equipment as specified by the manufacturer's product label and having the same spectral distribution (certified equivalent lamp).

(g) The registrant shall replace ultraviolet lamps and bulbs, which are not otherwise defective or damaged, at such frequency or after such duration of use as may be recommended by the manufacturer of such lamps and bulbs.

(h) The registrant shall certify that all tanning equipment operators are trained in at least the following:

- (1) the requirements of this Section;
- (2) procedures for correct operation of the tanning facility and tanning equipment;
- (3) recognition of injury or overexposure to ultraviolet radiation;
- (4) the tanning equipment manufacturer's procedures for operation and maintenance of the tanning equipment;
- (5) the determination of skin type of customers and appropriate determination of duration of exposure to registered tanning equipment; and
- (6) emergency procedures to be followed in case of injury.

(i) The registrant shall allow operation of tanning equipment only by and in the physical presence of persons who have successfully completed formal training courses which meet the requirements of Subparagraphs (h)(1) to (6) of this Rule.

(j) The registrant shall maintain a record of operator training required in Paragraphs (h) and (i) of this Rule for inspection by authorized representatives of the agency.

(k) No registrant shall possess, use, operate or transfer tanning equipment or their ultraviolet radiation sources in such a manner as to cause any individual under 18 years of age to be exposed to radiation emissions from such equipment except in accordance with Paragraph (d) of this Rule.

(l) Each registrant shall make available to all employees current copies of the following documents:

- (1) the facility's certificate of registration; and
- (2) conditions or documents incorporated into the registration by reference and amendments thereto.

*History Note: Authority G.S. 104E-7(a)(7);
Eff. June 1, 1989;
Amended Eff. August 1, 2002; May 1, 1993; May 1, 1992.*

**15A NCAC 11 .1610 DOSE EQUIVALENT TO AN
EMBRYO/FETUS**

(a) The licensee or registrant shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). Recordkeeping requirements for doses to an embryo/fetus are provided in Rule .1640 of this Section.

(b) The licensee or registrant shall make efforts to avoid variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Paragraph (a) of this Rule.

(c) The dose equivalent to an embryo/fetus shall be taken as the sum of:

- (1) the deep-dose equivalent to the declared pregnant woman; and
- (2) the dose equivalent to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

(d) If the dose equivalent to the embryo/fetus is found to have exceeded 0.45 rem (4.5 mSv) by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with Paragraph (a) of this Rule if the additional dose to the embryo/fetus does not exceed 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

*History Note: Authority G.S. 104E-7(a)(2);
Eff. January 1, 1994;
Amended Eff. August 1, 2002.*

15A NCAC 11 .1613 SURVEYS

(a) Each licensee or registrant shall make or cause to be made, surveys that:

- (1) may be necessary for the licensee or registrant to comply with the rules in this Section; and
- (2) are reasonable under the circumstances to evaluate:
 - (A) the magnitude and extent of radiation levels;
 - (B) concentrations or quantities of radioactive material; and
 - (C) the potential radiological hazards that could be present.

(b) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated at the frequency committed to in accordance with the requirements of Rules .0207 or .0317 of this Chapter for the radiation measured.

(c) All personnel dosimeters (except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities) that require processing to determine the radiation dose and that are used by licensees or registrants to comply with Rule .1604 of this Section, with other applicable provisions of this Chapter, or with conditions specified in a license shall be processed and evaluated by a dosimetry processor:

- (1) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and
- (2) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(d) Exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited.

*History Note: Authority G.S. 104E-7(a)(2);
Eff. January 1, 1994;
Amended Eff. August 1, 2002.*

15A NCAC 13A .0104 PUBLIC INFORMATION - PART 2

(a) The provisions concerning requests for information in 40 CFR 2.100 to 2.121 (Subpart A) are incorporated by reference including subsequent amendments and editions, except that 40

CFR 2.106(b), 2.112(f), and 2.120 are not incorporated by reference.

(b) The following address for the Headquarters Freedom of Information Operations (1105) is substituted for the address 1200 Pennsylvania Ave., N.W., Washington, DC 20460 in 40 CFR 2.106(a) and 2.213(a): Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646.

(c) The provisions concerning confidentiality of business information in 40 CFR 2.201 to 2.311 (Subpart B) are incorporated by reference including subsequent amendments and editions, except that 40 CFR 2.209 (b) and (c), 2.301, 2.302, 2.303, 2.304, 2.306, 2.307, 2.308, 2.309, 2.310 and 2.311 are not incorporated by reference.

*History Note: Authority G.S. 130A-294(c); 150B-21.6;
Eff. January 1, 1986;
Amended Eff. June 1, 1988;
Transferred and Recodified from 10 NCAC 10F .0040 Eff. April 4, 1990;
Amended Eff. August 1, 1990;
Recodified from 15A NCAC 13A .0005 Eff. August 30, 1990;
Amended Eff. April 1, 1993; October 1, 1990;
Recodified from 15A NCAC 13A .0004 Eff. December 20, 1996;
Amended Eff. May 1, 2002; August 1, 2000.*

15A NCAC 18D .0105 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

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

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

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

- (d) For cross-connection-control grade means at least 50% of the duties shall consist of on-site performance of cross-connection-control duties for a public water system. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, back flow prevention and other skills necessary for maintaining and operating a cross-connection-control program for a public water system. The remaining duties shall be in related fields such as wastewater facility operation, water/wastewater laboratory, water

pumping stations, water system design and engineering, surface facilities, or wells. The experience of Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50% of their job duties include inspection or on-site technical assistance of public water systems.

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

History Note: Authority G.S. 90A-21(c); Eff. February 1, 1976; Readopted Eff. March 1, 1979; Amended Eff. August 1, 2002; August 1, 1998; August 3, 1992; January 1, 1992; September 1, 1990; June 1, 1988.

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

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

Class C	0-50 points
Class B	51-110 points
Class A	over 110 points

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

(b) The classification of distribution systems shall apply to all community and non-transient non-community public water systems. The distribution system class level shall be the greater of the treatment plant class level from Paragraph (a) of this Rule

or the following class level based on the number of service connections and fire protection:

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

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

History Note: Authority G.S. 90A-21(c); 90A-22; Eff. February 1, 1976;
Amended Eff. September 1, 1977;
Readopted Eff. March 1, 1979;
Amended Eff. August 1, 2002; August 1, 2000; August 3, 1992;
September 1, 1990; December 31, 1980; January 1, 1980.

SECTION .0700 - OPERATIONS AND MANAGEMENT

15A NCAC 18D .0701 OPERATOR IN RESPONSIBLE CHARGE

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

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

- (1) One surface water treatment facility;
- (2) Five community public water systems with well water facilities;
- (3) 10 non-community public water systems with well water facilities;
- (4) One distribution system serving over 3,300 service connections;
- (5) Five distribution systems serving over 500 service connections and less than 3,300 service connections;
- (6) 10 total distribution systems; and
- (7) 10 total cross-connection control systems.

No person shall be in responsible charge of any combination of a surface water treatment facility, a community public water

system with well water facilities, a non-community public water system with well water facilities, a distribution system, and a cross-connection control facility without written permission from the Board.

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

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

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

(f) The operator in responsible charge shall establish standard operating procedures for each facility for which he/she is responsible. These procedures shall provide sufficient instruction to ensure that his/her decisions about water quality or quantity that affect public health are carried out properly. The procedures shall instruct persons lacking proper certification to refer all such decisions affecting public health to the certified operator on duty or to the operator in responsible charge.

History Note: Authority G.S. 90A-21(c); 90A-31; Eff. August 1, 1998;
Amended Eff. August 1, 2002; August 1, 2000.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 03C .0106 REAL PROPERTY:

CREATION OF AN ESTATE BY THE ENTIRETY

17 NCAC 03C .0107 REAL PROPERTY:

TERMINATION OF AN ESTATE BY THE ENTIRETY

History Note: Authority G.S. 105-188; 105-262; Eff. February 1, 1976;
Amended Eff. October 1, 1991;
Repealed Eff. August 1, 2002.

17 NCAC 03C .0108 EXTENSIONS

(a) Application. -- If the Gift Tax Return, Form G-600, cannot be filed by the due date of April 15, a donor may apply for an automatic six-month extension of time to file the return. To receive the extension, a donor must file Form D-410G, Application for Extension for Filing Gift Tax Return, by the original due date of the return.

(b) Late Payment Penalty. -- An extension does not extend the time for payment of the tax due. Tax not paid by the original due date of the return is subject to the 10% penalty for failure to pay a tax when due. The Department does not assess this penalty if the donor paid at least 90% of the amount of tax due by the original due date of the return. Interest applies to all amounts not paid by the original due date of the return.

(c) Donors Outside U.S. - Donors, including military personnel, living outside the United States and Puerto Rico are granted an automatic extension of two months for filing a North Carolina gift tax return. No application is required to receive this extension.

(d) Return. -- A return may be filed at any time within the extension period. A return that is filed after the end of the extension period is subject to the penalty for failure to file a return.

History Note: Authority G.S. 105-197; 105-236; 105-262; 105-263;
Eff. June 1, 1993;
Amended Eff. August 1, 2002; July 1, 2000; August 1, 1998.

17 NCAC 05C .0703 BUSINESS AND NONBUSINESS INCOME

The classification of income by the customary labels, such as interest, rents, royalties, or capital gains, is of no aid in determining whether that income is business or nonbusiness income. For example, income from property or the gain or loss recognized on the sale of property may be business income or nonbusiness income depending upon its relation to the taxpayer's trade or business. Income may be business income even though the transaction or activity that gave rise to the income did not occur in this State. Income is business income unless it is clearly classifiable as nonbusiness income. A taxpayer must establish that its classification of income as nonbusiness income is proper. The following list gives examples of when an item of income is considered business income:

- (1) Rental income from real or tangible personal property constitutes business income when the rental of the property is a principal business activity of the taxpayer or the property is related to or incidental to the taxpayer's principal business activity.
- (2) A gain or loss from the sale, exchange, or other disposition of real or personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business or was used to produce business income, unless either of the following applies:
 - (a) The disposition is a liquidation of a separate and distinct line of the taxpayer's business, the disposition results in the cessation of that line of business, and the taxpayer distributes all of the proceeds of the liquidation to its shareholders and does not reinvest any of the proceeds in its remaining business; or
 - (b) For at least three years before the disposition, either the property was reflected as nonbusiness on the corporate income tax returns filed for those years or the property was used principally for the production of nonbusiness income.
- (3) Interest income is business income if the intangible with respect to which the interest was received arose out of or was created by a business activity of the taxpayer or if the acquisition of the intangible with respect to which the interest was received was related to the business activity of the taxpayer.

- (4) Dividend income is business income if any of the following circumstances applies:
 - (a) The dividend arose out of or was acquired in the regular course of the taxpayer's trade or business.
 - (b) The taxpayer's purpose in acquiring or holding the stock with respect to which the dividend was received was related to the taxpayer's trade or business.
 - (c) The dividend is received from a unitary subsidiary of the taxpayer.
- (5) Patent and copyright royalties are business income if the patent or copyright was created or used as an integral part of a principal business activity of the taxpayer.
- (6) Property that a taxpayer includes in the property factor of its apportionment formula or for which the taxpayer takes a deduction against business income is presumed to be an integral part of the taxpayer's regular trade or business operations unless the taxpayer disposes of the property during the taxable year in a liquidation described in Item (2)(a) of this Rule.

History Note: Authority G.S. 105-130.4; 105-262.
Eff. February 1, 1976;
Amended Eff. August 1, 2002; July 1, 2000; July 1, 1999;
January 1, 1994; April 1, 1991; October 31, 1981.

17 NCAC 05C .2404 DIVIDENDS RECEIVED FROM DISC

Dividends received by a corporate shareholder from a DISC must be included in the corporate shareholder's taxable income. Dividends received from a DISC by a corporate shareholder taxable in another state must be included in the corporate shareholder's business income and apportioned to North Carolina. The term "dividends" means all amounts currently taxable under the Internal Revenue Code to corporate shareholders of a DISC whether or not distributed.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. December 5, 1976;
Amended Eff. August 1, 2002.

17 NCAC 06B .0101 FORMS

History Note: Authority G.S. 105-155; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991;
Repealed Eff. August 1, 2002.

17 NCAC 06B .0104 COMPLETING A RETURN

- (a) A taxpayer must use the North Carolina income tax form for the year in which his or her taxable year begins.
- (b) A person who files an income tax return for an unmarried individual who died during the taxable year must enter the date of the individual's death and the individual's name on the return.
- (c) On a return, a taxpayer must furnish his or her social security number and the name and social security number of his

or her spouse and must indicate whether the return is filed jointly or separately.

(d) The same filing status claimed on the Federal income tax return must be claimed on the North Carolina income tax return. However, if either the taxpayer or the taxpayer's spouse is a nonresident and had no North Carolina taxable income for the taxable year, the filing status **MARRIED FILING SEPARATELY** must be claimed.

(e) Each applicable line of the tax return must be completed and the entering of words or phrases, such as "unconstitutional" or "object - self incrimination" does not meet the requirement of completing each applicable line on the return.

(f) The tax must be computed accurately and, in the case of a delinquent return, the penalty and interest prescribed by statute must be added.

(g) If an individual has moved into or out of North Carolina during the tax year or is a nonresident with income from sources within North Carolina, the section on Form D-400, Computation of North Carolina Taxable Income for Part-Year Residents and Nonresidents, must be completed. Credit for tax paid to another state is not allowed to an individual moving into or out of this State unless the individual has income derived from and taxed by another state or country while a resident of this State.

(h) If a tax credit is claimed for tax paid to another state or country, there must be attached to the return a true copy of the return filed with the other state or country and a canceled check, receipt, or other proof of payment of tax to the other state or country.

(i) Every return must be signed by the taxpayer or his or her authorized agent, and joint returns must be signed by both spouses.

(j) Where tax has been withheld, the state copy of the Wage and Tax Statement must be attached to the return.

(k) Any additional information that will assist in the processing and auditing of a return must be indicated on the return or a worksheet or schedule attached to the return.

(l) Anyone who is paid to prepare a return must sign the return in the space provided. The signature must be by hand. Stamps and labels are not acceptable.

History Note: Authority G.S. 28A-15-8; 105-151; 105-152; 105-154; 105-155; 105-163.5(e); 105-163.7; 105-163.10; 105-251; 105-252; 105-262;

Eff. February 1, 1976;

Amended Eff. August 1, 2002; July 1, 1999; August 1, 1998; November 1, 1994; June 1, 1993; October 1, 1991; June 1, 1990.

17 NCAC 06B .0107 EXTENSIONS

(a) Application. -- If an income tax return cannot be filed by the due date, a taxpayer may apply for an automatic six-month extension of time to file the return. To receive the extension, an individual must file Form D-410, Application for Extension for Filing Individual Income Tax Return, by the original due date of the return, and a partnership, estate, or trust must file Form D-410P, Application for Extension for Filing Partnership, Estate, or Trust Tax Return.

(b) Late Payment Penalty. -- A 10 percent late payment penalty applies to the remaining balance due if the tax paid by the due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance

due, including interest, must be paid with the income tax return before the expiration of the extension period to avoid the late payment penalty. If a taxpayer does not file the application for extension by the original due date of the return, the taxpayer is subject to both the five percent per month late filing penalty (five dollars (\$5.00) minimum; 25 percent maximum) and the 10 percent late payment penalty (five dollars (\$5.00) minimum) on the remaining balance due.

(c) Individuals Outside U.S. -- Individuals living outside the United States and Puerto Rico (including military personnel) are granted an automatic extension of two months for filing a North Carolina income tax return if they attach a statement to the return showing that they were living outside the United States and Puerto Rico on the date the return was due. The time for payment of the tax is also extended; however, interest is due on any unpaid tax from the original due date of the return until the tax is paid. If an individual is unable to file the return within the automatic two-month extension period, an additional four-month extension may be obtained by following the provisions in Paragraph (a) of this Rule; however, Form D-410 must be filed by the automatic two-month extended date of June 15.

(d) Return. -- A return may be filed at any time within the extension period but it must be filed before the end of the extension period to avoid the late filing penalty.

History Note: Authority G.S. 105-155; 105-157; 105-160.6; 105-160.7; 105-236(3); 105-236(4); 105-262; 105-263; *Eff. February 1, 1976;*

Amended Eff. August 1, 2002; August 1, 1998; November 1, 1994; May 1, 1994; June 1, 1993; October 1, 1992.

17 NCAC 06B .0112 JOINT FEDERAL BUT SEPARATE STATE RETURN

(a) Separate Return or Schedule. -- A spouse who files a joint federal return but files a separate North Carolina return must complete a separate federal return and attach it to the North Carolina tax return to show how the spouse's federal taxable income would be determined on a separate federal return. In lieu of completing a separate federal return, the spouse may submit a schedule showing the computation of the spouse's separate federal taxable income. A spouse who submits a schedule must attach a copy of pages 1 and 2 of the spouse's joint federal return if the federal return reflects an address outside North Carolina.

(b) Allowable Deductions. -- In completing a separate federal return or preparing a schedule computing a spouse's separate federal taxable income, deductions are allowable only for items paid during the tax year. Deductions for separate obligations are allowable only to the spouse who paid the obligation and was responsible for paying the obligation. Deductions for joint obligations paid by one spouse from that spouse's separate account are allowable only to that spouse. Deductions for joint obligations, other than medical expenses, paid from a joint account are allowable to each spouse in proportion to the spouses' adjusted gross incomes for that tax year. Deductions for medical expenses paid from a joint account are allowable to the spouse who received the medical care.

History Note: Authority G.S. 105-152(e); 105-262; *Eff. June 1, 1990;*

Amended Eff. August 1, 2002; August 1, 1998;

February 1, 1991.

17 NCAC 06B .0118 ELECTRONIC FILING OF INDIVIDUAL INCOME TAX RETURNS

The Department of Revenue participates in the Federal/State Electronic Filing Program and accepts individual income tax returns filed under that program.

History Note: Authority G.S. 105-262; Rev. Proc. 93-8, Internal Revenue Bulletin 1993-2, January 11, 1993; Eff. May 1, 1994; Amended Eff. August 1, 2002; July 1, 2000; August 1, 1998; November 1, 1994.

17 NCAC 06B .3901 DEFINITION OF RESIDENT

(a) Only One Domicile. -- Domicile means the place where an individual has a true, fixed permanent home and principal establishment, and to which place, whenever absent, the individual has the intention of returning. In many cases, a determination must be made as to when or whether a domicile has been abandoned. A long standing principle in tax administration, repeatedly upheld by the courts, is that an individual can have but one domicile; and, once established, it is not legally abandoned until a new one is established. A taxpayer may have several places of abode in a year, but at no time can an individual have more than one domicile. A mere intent or desire to make a change in domicile is not enough; voluntary and positive action must be taken.

(b) Factors. -- Some of the tests or factors to be considered in determining the legal residence of an individual for income tax purposes are as follows:

- (1) Place of birth of the taxpayer, the taxpayer's spouse, and the taxpayer's children.
- (2) Permanent residence of the taxpayer's parents.
- (3) Family connections and close friends.
- (4) Address used for federal tax returns, military purposes, passports, driver's license, vehicle registrations, insurance policies, professional licenses or certificates, subscriptions for newspapers, magazines, and other publications, and monthly statements for credit cards, utilities, bank accounts, loans, insurance, or any other bill or item that requires a response.
- (5) Civic ties, such as church membership, club membership, or lodge membership.
- (6) Professional ties, such as licensure by a licensing agency or membership in a business association.
- (7) Payment of state income taxes.
- (8) Place of employment or, if self-employed, place where business is conducted.
- (9) Location of healthcare providers, such as doctors, dentists, veterinarians, and pharmacists.
- (10) Voter registration and ballots cast, whether in person or by absentee ballot.
- (11) Occasional visits or spending one's leave "at home" if a member of the armed services.

- (12) Ownership of a home, insuring a home as a primary residence, or deferring gain on the sale of a home as a primary residence.
- (13) Location of pets.
- (14) Attendance of the taxpayer or the taxpayer's children at State supported colleges or universities on a basis of residence--taking advantage of lower tuition fees.
- (15) Location of activities for everyday "hometown" living, such as grocery shopping, haircuts, video rentals, dry cleaning, fueling vehicles, and automated banking transactions.
- (16) Utility usage, including electricity, gas, telecommunications, and cable television.

(c) When Change Occurs. -- The following events indicate a change in residency:

- (1) Selling a house and buying a new one.
- (2) Directing the U.S. Postal Service to forward mail to a new address.
- (3) Notifying senders of statements, bills, subscriptions, and similar items of a new address.
- (4) Transferring family medical records to a new healthcare provider.
- (5) Registering a vehicle in a new jurisdiction.
- (6) Transferring memberships for church, a health club, a lodge, or a similar activity.
- (7) Applying for professional certifications in a new jurisdiction.

(d) Military Service. --A legal resident of North Carolina serving in the United States Armed Forces is liable for North Carolina income tax and North Carolina income tax shall be withheld from that individual's military pay whether the individual is stationed in this State or in some other state or country. An individual who enters military service while a resident of North Carolina is presumed to be a resident of this State for income tax purposes. Residency in this State is not abandoned until residency is established elsewhere. To change residency, an individual in military service must not only be present in the new location with the intention of making it a new domicile, but must also factually establish that the individual has done so.

History Note: Authority G.S. 105-134.1(12); 105-134.5; 105-262; Eff. June 1, 1990; Amended Eff. August 1, 2002; July 1, 1999; June 1, 1993.

17 NCAC 06B .3905 NONRESIDENT MEMBERS OF PROFESSIONAL ATHLETIC TEAMS

(a) Determination of North Carolina source income.

- (1) The North Carolina source income of a nonresident individual who is a member of a professional athletic team shall be determined by multiplying such individual's total compensation for services rendered as a member of a professional athletic team during the taxable year by a fraction, the numerator of which is the number of duty days spent in North Carolina rendering services for the team in any manner during the taxable year. The

- denominator is the total number of duty days spent both within and without North Carolina during the taxable year.
- (2) Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in North Carolina. However, such travel days shall be considered duty days spent within and without North Carolina.
- (3) Definitions. For purposes of this Rule:
- (A) The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer or hockey team.
- (B) The term "member of a professional athletic team" shall include those employees who are active players, players on the disabled list and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers and trainers.
- (C) The term "duty days" shall mean all days during the taxable year from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete. Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the aforementioned period. Such services include participation in instructional leagues, the "Pro Bowl" or promotional caravans. This includes days during the member's off-season where the member conducts training activities at the facilities of the team. Duty days, include game days, practice days, days spent at team meetings, promotional caravans and pre-season training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete. Duty days for any person who joins a team during the season shall begin on the day such person joins the team, and for any person who leaves a team shall end on the day such person leaves the team. Where a person switches teams during the taxable year, a separate duty day calculation shall be made for the period such person was with each team. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when such member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days. Days for which a player is on the disabled list shall be presumed not to be duty days spent in North Carolina. However, such days are considered to be included in total duty days spent within and without North Carolina.
- (D) The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:
- (i) from the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during that taxable year; and
- (ii) for an event during the taxable year which occurs on a date which does not fall within the aforementioned period such as participation in instructional leagues, the "Pro Bowl" or promotional caravans.
- Such compensation shall include, but is not limited to, salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation shall not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the team.
- (E) For purposes of Subparagraph (a)(4) of this Rule, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in Paragraph (a) of this Rule are:
- (i) bonuses earned as a result of play, such as performance bonuses, during the season, including bonuses paid for championship, play-off or "bowl" games played by a team, or for selection to all-

- star league or other honorary positions; and
 - (ii) bonuses paid for signing a contract, unless all of the following conditions are met:
 - (I) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;
 - (II) the signing bonus is payable separately from the salary and any other compensation; and
 - (III) the signing bonus is nonrefundable.
 - (4) Where the method provided in this rule does not fairly and equitably apportion and allocate the compensation of a nonresident member of a professional athletic team for services rendered in North Carolina, the Secretary of Revenue may require such member of a professional athletic team to apportion and allocate such compensation under another method prescribed by the Secretary as long as the prescribed method results in a fair and equitable apportionment and allocation. A nonresident member of a professional athletic team may submit a proposal for a alternative method to apportion and allocate such compensation, demonstrating that the method provided under this section does not fairly and equitably apportion and allocate such compensation. If approved, the proposed method must be fully explained in the North Carolina income tax return filed by the nonresident member.
- (b) Withholding requirements.
 - (1) A professional athletic team shall withhold income tax from the North Carolina source income of a nonresident member of the team at the highest rate for individuals with no allowance for any withholding exemptions as provided in G.S. 105-163.5. Taxes shall be withheld from the income of a resident member of the team as provided in G.S. 105-163.2.
 - (2) A professional athletic team that is not domiciled in this State shall be classified as a quarterly employer and shall file a return reporting the amount of taxes withheld and pay the amounts withheld as provided in G.S. 105-163.6. A professional athletic team that is domiciled in this State shall determine its filing and paying requirements based on its average monthly withholding as provided in G.S. 105-163.6.
- (3) A professional athletic team must include with the annual report required by G.S. 105-163.7 a list of all employees who received North Carolina source income during the year. The list must include the following information:
 - (A) The name, social security number, and mailing address of each employee;
 - (B) Whether the employee is a resident of this State;
 - (C) The total amount of income;
 - (D) The amount of North Carolina source income;
 - (E) The total amount deducted and withheld.
- (c) Income tax return filing requirements.
 - (1) A nonresident member of a professional athletic team is not required to file a North Carolina individual income tax return when the only income from North Carolina sources is the compensation received for services rendered as a member of the team and the team has withheld taxes from the North Carolina source income as prescribed in Paragraph (b) of this Rule. The individual may file an individual income tax return and claim credit for the tax withheld.
 - (2) The individual is liable for any additional tax, penalty, or interest due if the professional athletic team does not properly determine the individual's North Carolina source income or properly withhold tax from that income.

History Note: Authority G.S. 105-134.5; 105-163.2; 105-163.3; 105-163.6; 105-163.7; 105-262; Eff. November 1, 1995; Amended Eff. August 1, 2002.

17 NCAC 06C .0123 EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATE

- (a) Requirement. -- Each new employee, before beginning employment, must furnish his or her employer with a signed North Carolina Employee's Withholding Allowance Certificate, Form NC-4. A federal exemption certificate is not acceptable. A certificate filed by a new employee is effective upon the first payment of wages after it is filed and remains in effect until a new one is furnished. State and Federal definitions of dependent, single person, married, head of household, and qualifying widow(er) are the same; however, the number of allowances to which an individual is entitled differ under federal and state law. If an employee fails to furnish an exemption certificate, Form NC-4, the employer must withhold tax as if the employee is single with no allowances.
- (b) Notice. -- The employer is not required to ascertain whether or not the total amount of allowances claimed is greater than the total number to which the employee is entitled. If, however, the employer has reason to believe that the number of allowances claimed by an employee is greater than the number to which the

employee is entitled, the employer must notify the Department of Revenue immediately.

History Note: Authority G.S. 105-163.3; 105-163.5; 105-163.18; 105-262; Eff. June 1, 1990; Amended Eff. August 1, 2002; June 1, 1993; October 1, 1991.

17 NCAC 07B .0104 RETURNS

(a) General -- G.S. 105-164.16 establishes the filing frequency of sales and use tax returns and the content of the returns. G.S. 105-164.4(c) requires a retailer and a wholesale merchant to register with the Department and obtain a certificate of registration. G.S. 105-164.6 requires a retailer who delivers property for storage, use, or consumption but does not have a place of business in this State to register with the Department and obtain a certificate of registration. A person who is engaged in business, is not otherwise required to file a sales and use tax return, and, on two or more occasions within a twelve-month period, purchases property subject to use tax must register with the Department and begin filing sales and use tax returns. A person who is engaged in business, is not otherwise required to file a sales and use tax return, and purchases property subject to use tax only once in a twelve-month period must file a return and pay the tax due within 15 days after the end of the month in which the purchase was made.

(b) Schedules. -- A retailer who files a return that reports tax payable by more than one location in the State must attach two schedules to the return. One schedule must list the amount of State tax due for each location in the State and the other must list the amount of local tax due for each county.

(c) No Sales or Purchases By Business -- A retailer who does not make any sales during a reporting period must file a return for that period and enter 0.00 (zero) on the Total Due line on the return. Similarly, a person who is not a retailer but is engaged in business, purchases tangible personal property for the business that is subject to use tax, and does not make any taxable purchases during a reporting period must file a return for that period and enter 0.00 (zero) on the Total Due line on the return.

(d) Seasonal Business. -- A retailer who engages in business for six or fewer consecutive months in each year may register as a seasonal filer and indicate the months in which the retailer engages in business. A retailer who is registered as a seasonal filer is not required to file a return for an off-season reporting period in which the retailer did not engage in business.

(e) Wholesale Merchant -- A person who engages exclusively in the business of making wholesale sales is not required to file a return. A person who, on two or more occasions within a twelve-month period, either makes taxable sales to users, consumers, or nonregistered merchants or makes purchases subject to use tax is not engaged exclusively in the business of making wholesale sales and must begin filing sales and use tax returns. A wholesale merchant who is not required to file a sales and use tax return and who, on only one occasion within a twelve-month period, either makes taxable sales to users, consumers, or nonregistered merchants or makes purchases subject to use tax must file a return and pay the tax due within 15 days after the end of the month in which the sale or purchase was made.

(f) Non-Business Use Tax -- An individual who is not engaged in the business of selling tangible personal property at retail and

who purchases for a non-business purpose tangible personal property that is subject to use tax must report the tax due on an annual basis. An individual who is required to file an individual income tax return must pay the use tax with the individual income tax return for that year. An individual who is not required to file an individual income tax return must report the tax due on Form E-554. Form E-554 is due annually by the date set under G.S. 105-164.16.

History Note: Authority G.S. 105-164.3; 105-164.16; 105-262; 105-269.14; Eff. February 1, 1976; Amended Eff. August 1, 2002; July 1, 2000; July 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991; October 1, 1990; April 1, 1986.

17 NCAC 07B .0108 TRADE DISCOUNTS AND CASH DISCOUNTS

(a) Trade. -- Trade discounts and bargaining discounts are not a part of the sales price on which sales tax is computed when the sales price is reduced by the discounts before the computation of tax. A trade discount is a price reduction afforded a particular customer or customers in a particular trade or group without reservation at the time the sale is being negotiated. A bargaining discount is a price reduction extended to a customer at the time the sale is being negotiated as a result of bargaining between the customer and the seller.

(b) Cash. -- A cash discount is a reduction in the sales price, and the tax must be computed and paid on the sales price after allowance for the cash discount. Generally, a cash discount is a deduction from the sales price allowed for prompt payment of the bill. Likewise, cash discounts are not a part of the purchase price on which tax is due. A person who purchases tangible personal property for use or consumption in this State is liable for remitting the tax due on the purchase price after allowance for the cash discount.

(c) Over-allowance. -- The amount of an over-allowance to a purchaser for an item taken in trade as a credit or part payment on the sale of a new article is not a reduction in the sales price of the new article. The tax must be computed and paid on the full gross sales price of the new article without any deduction on account of the trade-in credit or allowance.

History Note: Authority G.S. 105-164.3; 105-262; Eff. February 1, 1976. Amended Eff. August 1, 2002.

17 NCAC 07B .2201 FOOD AND FOOD PRODUCTS

(a) General. -- All retail sales of food or food products are subject to applicable State and local sales or use tax unless a statute exempts the sales from tax. G.S. 105-164.13B lists the food that is exempt from State tax, but not the two percent local tax.

(b) Exempt Cafeteria Food. -- The schools, institutions, and organizations whose sales of food and meals are exempt under G.S. 105-164.13(26), (26a), or (27) are not required to register with the Department. Therefore, unless one of these entities is otherwise required to register with the Department by reason of making other sales or purchases subject to the sales or use tax, it cannot furnish a Certificate of Resale, Form E-590, to its suppliers. When making purchases of food to be sold, one of

these entities that is not registered must give the supplier information to the effect that the food purchased is to be sold by the entity's school cafeteria or dining room, and the supplier must enter this information on its records and on the sales invoices. Otherwise, the transactions may be subject to the tax. Registered schools, institutions, and organizations must furnish a properly executed Certificate of Resale, Form E-590, to a supplier to purchase food without paying tax on the purchase.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-467;
Eff. February 1, 1976;
Amended Eff. August 1, 2002; May 1, 1999; August 1, 1998;
October 1, 1993; October 1, 1991; February 1, 1986;
May 11, 1979.

17 NCAC 07B .2602 CONTRACTORS, SUBCONTRACTORS, AND RETAILER-CONTRACTORS

(a) Contractors are considered the consumers of tangible personal property they use in fulfilling contracts and are liable for payment of applicable State and local sales or use taxes on the property. When a contractor or a subcontractor purchases taxable tangible personal property from a supplier outside this State who collects applicable State and local sales and use taxes, the contractor must remit the tax to the supplier. When a contractor or subcontractor purchases taxable tangible personal property for use in this State from a supplier outside this State who does not collect the applicable State and local sales and use taxes, the contractor or subcontractor must remit the tax directly to the Department.

(b) The term retailer-contractor shall mean any person who engages in the business of selling building materials, supplies, equipment, and fixtures at retail and, in addition to such business, enters into contracts for constructing, building, erecting, altering or repairing buildings or other structures, and for the installation of equipment and fixtures to buildings and, in the performance of such contracts, consumes or uses such materials or merchandise. When a retailer-contractor as herein defined makes purchases of the above-named tangible personal property, a part of which he will use in performing contracts and a part of which he will sell at retail, the retailer-contractor shall furnish his supplier a properly executed certificate of resale. The supplier shall keep the executed certificate for his records as his authority for not charging tax on the transaction. The retailer-contractor then becomes liable for remitting, directly to the department, tax on the sales price of any tangible personal property sold at retail, and tax on the cost price of any tangible personal property used in the performance of a contract.

(c) Sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants are subject to the one percent rate of tax, with a maximum tax of eighty dollars (\$80.00) per article where applicable. Such mill machinery or mill machinery parts and accessories must be for use by a manufacturing industry or plant in the production process, as the term "production" is defined in 17 NCAC 07B .0202(a)(1), to

qualify for the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Office Services Division, Taxpayer Assistance Section, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendors' authority to apply the one percent rate of tax thereto.

(d) Construction materials purchased or sold on and after October 16, 2001, (the effective date of the increase in the state tax rate to four and one-half percent) to fulfill a lump-sum or unit price contract entered into or awarded before October 16, 2001, or entered into or awarded pursuant to a bid made before October 16, 2001, remain taxable at the four percent state rate of tax and the local tax of two percent. (21/2% in Mecklenburg County). Form E-589, Affidavit to Exempt Contractors From the Additional ½ Percent State Tax, must be executed by the contractor or subcontractor to obtain the four percent state rate.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. August 1, 2002; October 1, 1993; June 1, 1992;
October 1, 1991; February 8, 1981.

17 NCAC 07B .2611 BUILDING MATERIALS

All building materials, supplies, fixtures, and equipment of every kind and description that become a part of or are annexed to any building or other structure are subject to applicable State and local sales and use taxes. Vendors of these items must register and collect and remit the tax on their sales to contractors and other users or consumers.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. August 1, 2002; October 1, 1993; June 1, 1992;
October 1, 1991; February 1, 1988.

17 NCAC 07B .3201 TELECOMMUNICATIONS AND TELEGRAPH COMPANIES

(a) Sales to telecommunications and telegraph companies regularly engaged in providing telephone and telegraphic services to subscribers on a commercial basis of central office equipment, switchboard and private branch exchange equipment and prewritten computer programs used in providing telecommunications service to subscribers are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article. For the purpose of determining the items that may be properly included in the terms central office equipment, switchboard equipment and private branch exchange equipment, reference is made to Accounts 2124, 2211, 2212, 2215, 2220, 2231, 2232, 2311, and 2341 of Title 47--Telecommunication Chapter 1, Part 32, Uniform System of Accounts For Telecommunications Companies, of the Federal Communications Commission's rules and regulations as revised to January 1, 1988, which are hereby incorporated by reference. This Rule has no application to future changes in the Federal Communications Commission's rules and regulations until such changes are reviewed by the Secretary of Revenue to determine

the application of tax to the tangible personal property affected by such changes. Copies of these Rules and Regulations may be obtained from the Secretary's Office, Room 202, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, at a fee of ten cents (\$0.10) per page.

(b) Accounts 2211, 2212, 2215, 2220, 2231 and 2232; Central Office Equipment. These accounts include switchboards and other equipment, instruments and apparatus necessary to the functions of central offices. Sales to and purchases by the above-referred to telecommunications and telegraph companies of the items included in Central Office Equipment Accounts, are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article, irrespective of whether the items are classified in the Uniform System of Accounts as capital expenditures or as maintenance expense. Examples of items contained in Central Office Equipment Accounts 2211, 2212, 2215, 2220, 2231 and 2232 and taxable at the general State rate plus any applicable local rate are:

- (1) aisle-lighting equipment attached to buildings;
- (2) building alterations when tangible personal property not properly termed central office equipment is affixed or attached to or in any manner becomes a part of a building or structure;
- (3) cable, other than that connecting central office units to each other or to distributing frames;
- (4) covers for transmission power apparatus;
- (5) desks and tables unless equipped with central office equipment when purchased;
- (6) foundations for engines and other equipment when part of building;
- (7) loading coils used outside central office, loud speaker equipment, operators' chairs;
- (8) platforms, rolling ladders, tarpaulins, ticket holders, toll ticket carriers;
- (9) water stills for battery service; and
- (10) tools and portable testing equipment regardless of where used.

(c) Account 2124 - General Purpose Computers. This account includes any computer system used to test, diagnose, maintain and control more than one type of telecommunications plant in addition to computers which are used to perform general administrative information processing activities. Equipment used for the testing, diagnosis, maintenance, or control of more than one type of central office equipment is taxable at the one percent rate subject to the eighty dollar (\$80.00) maximum tax per article, whether classified under the Uniform System of Accounts as capital expenditures or as maintenance expense; however, all other equipment in this account is subject to tax at the general State rate plus any applicable local rate.

(d) Account 2311 - Station Apparatus. This account includes private branch exchange equipment in addition to station apparatus. Equipment which is properly included in the term private branch exchange equipment is taxable at the one percent rate subject to the eighty dollar (\$80.00) maximum tax per article, whether classified by the Uniform System of Accounts as capital expenditures or as maintenance expense; however, all other equipment in this account is subject to tax at the general state rate plus any applicable local rate. Examples of items that are contained in Account 2311 and are taxable at the general State rate are desk sets, hand sets, wall sets, mobile telephone

equipment, backboards, battery boxes, booths, coil collectors, station wiring, protectors, arresters, ground rods, clamps, wire and similar associated equipment.

(e) Account 2341 - Large Private Branch Exchange. This account contains equipment and apparatus necessary to the operation of the above named exchanges. The equipment and apparatus contained in this account which are properly included in the term private branch exchange equipment are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article, whether classified under the Uniform System of Accounts as capital expenditures or as maintenance expense, but does not include any tangible personal property which is station apparatus. Examples of items that are included in Account 2341 and are taxable at the general State rate are operators' chairs and equipment.

(f) Telecommunications Services. - G.S. 105-164.4(a)(4c) and G.S. 105-164.4C govern the taxation of telecommunications services.

(g) Property Sale or Lease. - A telecommunications company that sells or leases equipment or other tangible personal property is liable for collecting and remitting applicable State and local sales and use taxes on the receipts from the sales or leases. Tax due on the sale or lease of property by a telecommunications company is payable in the same manner as tax due on the sale or lease of property by any other retailer; it is due monthly, quarterly, or semimonthly in accordance with G.S. 105-164.16.

History Note: Authority G.S. 105-164.4; 105-164.4A; 105-164.6; 105-262;

Eff. February 1, 1976;

Amended Eff. August 1, 2002; April 1, 1999; October 1, 1993; October 1, 1991; October 1, 1990; July 1, 1989.

17 NCAC 07B .3202 TELEPHONE COMPANY PROPERTY SUBJECT TO GENERAL RATE

All sales to telephone and telegraph companies of tangible personal property not properly included in the terms central office equipment, switchboard equipment, private branch exchange equipment or prewritten computer programs used in providing telephone services to their subscribers, as explained in 17 NCAC 07B .3201 are subject to the general State tax and any applicable local sales or use tax. This includes all canned or prewritten computer programs to be used for administrative purposes unless specifically exempt by statute; all equipment, materials, supplies and apparatus to be used for distribution purposes; all building materials, supplies, fixtures and equipment of every kind and description annexed to or in any manner becoming a part of a building or structure; apparatus or equipment chargeable to other accounts pursuant to the instructions set out in the notes appearing under Accounts 2124, 2211, 2212, 2215, 2220, 2231, 2232, 2311 and 2341 in Part 32, Uniform System of Accounts For Telecommunications Companies, of the Federal Communications Commission's telecommunication rules and regulations which are hereby incorporated by reference including subsequent amendments and revisions. Copies of these Rules and Regulations may be obtained from the Secretary's Office, Room 202, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, at a fee of ten cents (\$0.10) per page.

History Note: Authority G.S. 105-164.4; 105-164.6;

105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2002; October 1, 1993; October 1, 1991; March 1, 1984; January 1, 1982.

**17 NCAC 07B .3204 CELLULAR
 TELECOMMUNICATIONS COMPANIES**

(a) One %, eighty dollars (\$80.00) Maximum Rate on Purchases -- The preferential one percent, maximum eighty dollars (\$80.00) per article rate in G.S. 105-164.4A(3) applies to cellular telephone companies. Sales to these companies of the following items are subject to this preferential rate:

- (1) Antennas;
- (2) Antenna cable used in transmitting the radio signals from the microwave antenna to the microwave transmitter or receiver;
- (3) Central office telecommunications equipment;
- (4) Microwave transmitters and receivers;
- (5) Prewritten computer programs used in providing telecommunications services to subscribers;
- (6) Radio channel units;
- (7) Switchboard or private branch exchange equipment; and
- (8) Towers to support antennas used to transmit and receive signals of microwave radios used in providing telephonic quality communications. For the purpose of applying the maximum tax, a tower is considered to be a single article only when the complete tower is sold by the same vendor.

(b) Rates on Services and Sales -- Cellular services are subject to tax under G.S. 105-164.4C as mobile telecommunications services. Sales or leases of radio telephone equipment to subscribers are subject to the general State tax and any applicable local sales or use taxes.

History Note: Authority G.S. 105-164.4; 105-164.4A; 105-164.6; 105-262; 105-264;
Eff. June 1, 1992;
Amended Eff. August 1, 2002; July 1, 2000; October 1, 1993.

17 NCAC 07B .3907 REUSABLE CONTAINERS

(a) Deposits charged by vendors for reusable containers, other than those described in G.S. 105-164.13(47) and (48) are subject to sales or use tax when the purchasers of the property contained therein can, during the period the containers are in their possession, exercise such control over the containers as is ordinarily associated with ownership. Such amounts are a part of the sales price even though designated as a deposit for the containers.

(b) When the vendors retain title to such containers and the vendors retain the right to control the use which vendee makes of the containers, the containers are not considered to be a part of the sale of the property. In such cases, amounts charged to the customers as security for the return of the containers are not subject to sales or use tax if such charges are shown separately from the sales price of the property on the customers' invoices. If such amounts are not separately stated, the total charge is subject to the tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2002; January 1, 1982; July 5, 1980.

**17 NCAC 07B .4602 BOATS, BOAT TRAILERS,
 AND ACCESSORIES**

A retail sale of a boat with a boat trailer is considered to be the sale of two separate articles. The retail sale of the boat trailer, a motor vehicle within the meaning of the statute, is subject to the three percent highway use tax. The retail sale of the boat is subject to the three percent rate of tax with a maximum tax of one thousand five hundred dollars (\$1,500.00) applicable to the sale of any boat except for those sales exempt from tax under the provisions of G.S. 105-164.13(9). The tax shall be computed on the gross sales price of the boat, including charges for the boat motor, fenders, boat and motor controls, compasses, windshields, horns, lights, or any other parts or accessories, all of which must be attached thereto at the time of delivery to the purchaser, labor for installing such parts and accessories, freight or any other charge for preparing the boat for sale. Life jackets, life rings, cushions, flares, fire extinguishers and rope are considered to be safety equipment rather than accessories to the boat and sales of such items at retail are subject to the general State tax and any applicable local sales or use tax notwithstanding they are sold with the boat. Parts and accessories, including boat motors, fenders, boat and motor controls, lights, windshields, horns and other above-named items sold separately from the sale of a boat are also subject to the general State tax and any applicable local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2002; October 1, 1993; October 1, 1991; July 1, 1990; January 3, 1984.

**17 NCAC 07B .4901 SHIPMENTS FROM OUTSIDE
 NORTH CAROLINA**

**17 NCAC 07B .4902 SHIPMENTS FROM WITHIN
 NORTH CAROLINA**

History Note: Authority G.S. 105-164.12; 105-262;
Eff. February 1, 1976.
Amended Eff. August 1, 1996; October 1, 1993; October 1, 1991;
Repealed Eff. August 1, 2002.

17 NCAC 07C .0304 APPLICATION OF TAX

The following examples of transactions are intended to serve as guides in applying local sales or use tax to sales and purchases of tangible personal property in this state.

- (1) Vendors Making Sales of Tangible Personal Property From a Place of Business in North Carolina:
 - (a) A vendor making retail sales from a place of business located in a taxing county must collect and remit the local sales tax for the county in which the vendor's place of business is located. For sales tax purposes, the

- situs of the sale is the place in a taxing county where the vendor delivers the property to the purchaser.
- (b) A vendor with a place of business in County A who sends a sales representative into another county to solicit orders, which are accepted at the vendor's place of business in County A and filled by delivery from the vendor's place of business in County A to the purchaser in County B, is liable for collecting and remitting County B's sales tax on these retail sales of tangible personal property.
 - (c) A vendor with places of business in County A and County B receives an order at the location in County A, forwards the order to the location in County B for approval and acceptance, and fills the order by delivery from a location in County B to a customer in County A. County A's tax is due on the sale.
 - (d) A vendor with a place of business in County A receives an order which he approves and accepts at the location in County A but fills the order by making shipment from a location in County B to the purchaser in County B. County B's sales tax is due on such sales.
 - (e) A vendor whose only place of business is in County A receives an order from a customer in County B and the order is approved and accepted in County A but delivery is made from a point in County B to the purchaser in County A. County A's sales tax is due on such sales.
- (2) Vendors Making Sales of Tangible Personal Property From a Place of Business Outside of North Carolina: An out-of-state vendor who is "engaged in business" in North Carolina, as the term is defined by G.S. 105-164.3, is liable for charging or remitting county sales or use tax on all sales of tangible personal property that is sold and delivered from a place of business outside of North Carolina to a purchaser in a county. The purchaser is liable for remitting the applicable county use tax to the Department of Revenue on the cost price of the tangible personal property if the tax is not collected by the vendor.
- (3) Persons Leasing or Renting Tangible Personal Property From an Inventory of Property in North Carolina are Deemed to Have a Place of Business in the County in Which the Inventory is Located:
- (a) A lessor who maintains an inventory of tangible personal property in a taxing county for the purpose of lease or rental is liable for charging and remitting such county's sales tax on receipts from the lease or rental of such property to lessees in that county for use.
 - (b) A lessor who leases tangible personal property from an inventory in a taxing county and ships or delivers the property to a lessee in a county in which he does not have a place of business or an inventory of tangible personal property for the purpose of lease or rental is liable for charging and remitting the county's tax on such lease receipts for the county in which the property is delivered to the lessee.
 - (c) If a lessor has an inventory of tangible personal property in two counties and leases property from the inventory in one county to a lessee in the other county and delivers the property to the lessee in the other county in which he also has an inventory, the lessor is liable for charging and remitting the sales tax of the county where the property is delivered to the lessee.
 - (d) If a lessor keeps an inventory of tangible personal property in a county where he enters into a contract and becomes contractually bound to lease property to a lessee in that county for use in the general conduct of business within and without that county, the lessor is liable for charging and remitting such county's sales tax on the lease or rental receipts.
- (4) Persons Leasing or Renting Tangible Personal Property From an Inventory of Property Located Outside North Carolina:
- (a) A lessor with an inventory of tangible personal property outside North Carolina who leases or rents property to a lessee in this state for use in a taxing county is liable for charging and remitting such county's use tax on the lease or rental receipts.
 - (b) When property that is leased for a definite stipulated period of time is delivered to the lessee prior to the date the tax becomes effective in a taxing county, the lease or rental receipts are not subject to the county tax levied after the delivery of the property. If the lease is on a month to month basis, the lease receipts for months subsequent to the effective date of the local tax are subject to the tax.

- (5) A person who operates a laundry, dry cleaning plant or similar business in a taxing county is liable for charging and remitting such county's sales tax on receipts derived from the operation of the business. The tax applies even though the items being cleaned may be picked up from the customers or delivered to them in another county within North Carolina or outside this state. An independent operator that solicits business on his own account but engages a laundering, dry cleaning or hat blocking firm or similar type business to perform the laundering, dry cleaning or other services is liable for collecting and remitting the county sales tax for the county in which the business is solicited.
- (6) A person who operates a laundry, dry cleaning plant or similar business outside North Carolina and who picks up items from customers in a taxing county, cleans them at the cleaning plant outside this state and then returns them to the customers in the taxing county, is not liable for charging and remitting the taxing county's use tax on the receipts from the cleaning services.

History Note: Authority G.S. 105-262; 105-467; 105-468; S.L. 1967, c. 1096, s. 4 and 5; Eff. February 1, 1976; Amended Eff. August 1, 2002; July 1, 1989; November 1, 1982; January 1, 1982.

TITLE 18 – DEPARTMENT OF SECRETARY OF STATE

18 NCAC 05B .0103 PLACE OF FILING, TIME OF FILING, AND METHODS OF DELIVERY

- (a) The filing party shall have the responsibility to determine if filing is necessary in the UCC Section. The UCC Section shall not give legal assistance to any individual to determine if filing is necessary.
- (b) UCC records may be tendered for filing at the filing office as follows:
 - (1) Personal delivery at the filing office's street address: Old Revenue Building, 2 S. Salisbury Street, P.O. Box 29622, Raleigh, NC 27626-0622. Regular business hours: 8:00 a.m. – 5:00 p.m., Monday through Friday. The file time for a UCC record delivered by this method is when delivery of the UCC record is accepted by the filing office even though the UCC record may not yet have been accepted for filing and subsequently may be rejected.
 - (2) Courier delivery at the filing office's street address. The file time for a UCC record delivered by this method is, notwithstanding the time of the delivery, at the earlier of the time the UCC record is first examined by a filing officer for processing even though the UCC record may not yet have been accepted

- for filing and may be subsequently rejected. A UCC record delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.
- (3) Postal service delivery, to the filing office's mailing address. The file time for a UCC record delivered by this method is the next close of business following the time of delivery even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. A UCC record delivered after regular business hours or on a day the filing office is not open for business shall have a filing time of the close of business on the next day the filing office is open for business.
- (4) Electronic filing: UCC filings, excluding correction statements and filing officer statements, may be transmitted through web site submission, using the current XML standard approved by the International Association of Corporate Administrators. Documentation for the current standard can be obtained at www.sosnc.com/ucc. The file time for a UCC record delivered by this method is the time that the filing office's E-filing system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable. An E-filing account number shall be assigned to the remitter prior to electronic filings.
- (c) UCC search requests shall be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office. Requirements concerning search requests are set forth in Section .0500 of this Subchapter. An Information Request Form shall be used to request a search.
- (d) In addition to contacting the Section at the address provided in Subparagraph (c)(1) of this Rule, information may be obtained from the filing office in the following ways:
 - (1) On-line information service: The filing officer offers on-line information services at www.sosnc.com/ucc.
 - (2) Electronic Mail: For basic information the UCC Section may be contacted by email at uccmail@sosnc.com. Electronic mail shall not be used for filing UCC records or for requesting searches of the records of financing statements.
 - (3) Telephone Number: The telephone number of the Section is 919-807-2111.
 - (4) Fax Number: The fax number of the Section is 919-807-2120.

History Note: Authority G.S. 25-9-501; 25-9-523; Temporary Adoption Eff. July 2, 2001; Eff. August 1, 2002.

18 NCAC 05B .0105 APPROVED FORMS

UCC forms may be obtained at the Department's web page at www.sosnc.com.

History Note: Authority G.S. 25-9-521;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0106 PROCESSING FEES AND METHODS OF PAYMENT

(a) A list of processing fees required by G.S. 25-9-525 and G.S. 147-37 is available upon request.

(b) Processing fees for public records services may be paid by the following methods:

- (1) Cash. Payment in cash shall be accepted if paid in person at the filing office.
- (2) Checks. Personal checks, cashier's checks and money orders made payable to the NC Department of the Secretary of State shall be accepted for payment.
- (3) Electronic funds transfer. E-filing accounts shall be established through an agreement between the filing office and the remitter. Payments shall be made through an automated contract. The filing officer shall deduct processing fees from the remitter's prepaid account when authorized to do so when the remitter files a UCC record with the remitter's E-filing account number.
- (4) Prepaid account. A remitter shall open an E-filing account for prepayment of fees by submitting an application prescribed by the filing officer and prepaying an amount not less than five hundred dollars (\$500.00), the balance of which shall not fall below thirty dollars (\$30.00). The filing officer shall issue an E-filing account number to be used by a remitter who chooses to pay processing fees by this method. The filing officer shall deduct processing fees from the remitter's prepaid account when authorized to do so when the remitter files a UCC record with the remitter's E-filing account number.

(c) The filing office's policies on underpayment of processing fees are as follows:

- (1) Upon receipt of a record without a processing fee, the filing officer shall reject the record.
- (2) In the case of bulk filings which have 50 or more records, and the remitter presents records to be filed with a deficient processing fee, a notice of the deficiency shall be sent to the remitter and the records shall be held for a period of 10 business days from the date of the notice for receipt of the fee. Upon receipt of the fee, the documents shall be filed as of the time and date of receipt of the full processing fee. If the fee is not received within 10 business days of the date of the notice, the document shall be returned to the remitter with a written explanation for the refusal to accept the document(s). Processing fees shall not be refundable.

- (3) If the remitter presents a UCC record that contains a filing and a search request on the same form with an insufficient fee, the filing officer shall accept the record presented for filing if the fee is enough to cover the filing and reject the search request if the balance of the fee is insufficient to cover the search.

History Note: Authority G.S. 25-9-525; 147-37;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0107 PUBLIC RECORDS SERVICES

(a) The following methods shall be available for obtaining copies of UCC records and copies of data from the UCC information management system:

- (1) Copies of individually identified records shall be available in the following forms:
 - (A) "B2G" Relationship by subscription;
 - (B) Paper; and
 - (C) Web-based access.
- (2) Bulk copies of records of UCC records shall be available in the following forms:
 - (A) FTP site by subscription; and
 - (B) Web-based access.

(b) A list of available data elements from the UCC information management system, and the file layout of the data elements, shall be available from the filing officer upon request. Data from the information management system shall be available as follows:

- (1) Full Extracts. Bulk data extracts of information from the UCC information management system shall be available on a weekly basis.
- (2) Format. Extracts from the UCC information management system shall be available in the following formats:
 - (A) FTP site by subscription. ASCII Text delimited with tabs between data elements and carriage returns at end of each record. One table per file. The current data layouts shall be on the FTP site;
 - (B) "B2B Relationship" by subscription; and
 - (C) Web-based access.
- (3) Images of records shall be available by subscription by contacting the filing officer.

History Note: Authority G.S. 25-9-523(d); 25-9-526;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.

18 NCAC 05B .0108 FEES FOR PUBLIC RECORDS SERVICES

Fees for public records services shall be established as follows:

- (1) Paper copies of individual records shall be two dollars (\$2.00) per page.
- (2) Reserved.
- (3) Bulk Copies of records.
 - (a) Reserved.

- (b) Reserved.
- (c) Reserved.

*History Note: Authority G.S. 25-9-523; 25-9-526;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.*

18 NCAC 05B .0310 IACA STANDARD ADOPTED

The XML Format as adopted by the International Association of Corporate Administrators shall be adopted in North Carolina for electronic transmission of UCC records. An E-filing account shall be created before submitting an XML filing. The electronic filing shall pass verification to the DTD (Document Type Definition). Failure to pass this verification shall result in rejection of the record pursuant to G.S. 25-9-516(b)(1).

*History Note: Authority G.S. 25-9-526(b); 25-9-516(b)(1);
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.*

18 NCAC 05B .0410 ARCHIVAL DOCUMENTS

(a) Financing statements shall remain active and searchable for one year after they lapse. The following describes the maintenance of archives of inactive financing statements and the ability of those archived records to be searched.

- (1) Paper UCC records shall be on file in the filing office for at least six years, and shall include an additional one year after the record has lapsed. After the six years has lapsed, the records shall be purged and recycled. Paper UCC records may be searched by submitting an Information Request Form to the filing office.
- (2) Microfilm of all UCC records dating from 1960 shall be kept on file for public inspection in the record and research areas in the filing office. The availability of these microfilmed records shall be kept until these UCC records are imaged in the information management system. The microfilm shall also be sent to the state records center for archiving. Searches on UCC records on microfilm may be conducted in the filing office.
- (3) Electronic images of UCC records dating from 1998 shall be available through the information management system and may be searched through the filing office's web site.

(b) Data in the UCC information management system relating to financing statements that have lapsed shall be retained for five years from the date of lapse and shall thereafter be maintained in archives.

(c) For data that has been placed in an archived status may be searched by submitting an Information Request Form to the filing office.

*History Note: Authority G.S. 25-9-522;
Temporary Adoption Eff. July 2, 2001;
Eff. August 1, 2002.*

19A NCAC 02D .0601 PERMITS-AUTHORITY, APPLICATION AND ENFORCEMENT

(a) The State Highway Administrator or his designee shall issue oversize/overweight permits for qualifying vehicles. Irrespective of the route shown on the permit, a permitted vehicle shall travel an alternate route:

- (1) if directed by a law enforcement officer with jurisdiction;
- (2) if directed by an official traffic control device to follow a route to a weighing device;
- (3) if the specified route on the permit is detoured by an officially erected highway sign, traffic control devices, or law enforcement officer, the driver of the permitted vehicle shall contact the Central Permit Office or the issuing field office for house move permits as soon as reasonably possible for clearance of route or revision of the permit.

(b) Prior to application for an oversize, overweight, or oversize/overweight permit, the vehicle/vehicle combination and the commodity in transport shall be reduced or loaded to the least practical dimensions and weight. Application for permits with the exception of house move permits shall be made to the Central Permit Office in writing on forms prescribed by the Department of Transportation or via telephone. Written applications are required for over heights in excess of 14'. Applications for permits shall be submitted in writing to the Central Permit Office for consideration of approval for moves exceeding:

- (1) a gross weight of 132,000 pounds with the fee specified in G.S. 20-119(b) at least ten working days prior to the anticipated date of movement; or
- (2) a width of 15' with documentation for variances at least ten working days prior to the anticipated date of movement with the exception of a mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge; a width of 16' 11" with the exception of house moves is required to be submitted with the fee specified in G.S. 20-119(b) with documentation for variances at least ten working days prior to the anticipated date of movement; or
- (3) a height of 14 feet at least two working days prior to the anticipated date of movement. Upon completion of an engineering study for moves exceeding a gross weight of 132,000 pounds, a surety bond to cover potential damage to highways and bridge structures shall be required for overweight permits if the engineering study shows potential for damage to highways and bridge structures along the particular route of the requested permit.

(c) The North Carolina licensed mobile/modular home retail dealer shall maintain records of all mobile/modular units moved by authority of an annual permit for a minimum of four years from the date of movement. The records shall be readily available for inspection and audit by officers of the Division of Motor Vehicles. Monthly reports shall be submitted by the

dealer to the Central Permit Office on a form designed and furnished by the Department of Transportation. Failure to comply with any requirement may be grounds for denying, suspending, or revoking Manufacturer's License, Dealer's License, or both issued by the Division of Motor Vehicles as specified in Chapter 20 of the Motor Vehicle Law, Title 19A NCAC 03D .0219, or North Carolina Oversize/Overweight permit privileges.

(d) Officers of the Division of Motor Vehicles may perform on-site inspections of mobile/modular homes ready for shipment at the point of manufacture or at the dealer lot for compliance with Chapter 20 of the General Statutes, dealer and manufacturer regulations, permit regulations, and policy. Notification of violations shall be submitted by enforcement personnel to the Central Permit Office.

(e) The penalties provided in this Rule are in addition to the penalties provided for in Chapter 20 of the North Carolina General Statutes.

(f) Permits may be declared void by the State Highway Administrator or his designee upon determination that such overdimension/overweight permit was being used in violation of the General Statutes of North Carolina, Permit Rules or restrictions stated on the permit.

(g) Permits may also be denied, revoked or declared invalid as stated in Rule .0633 of this Section.

History Note: Authority G.S. 20-119; 136-18(5);

Eff. July 1, 1978;

Amended Eff. November 1, 1993; October 1, 1991;

Temporary Amendment Eff. January 10, 2002; October 1, 2000;

Amended Eff. August 1, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14B .0603 POSTAGE AND HANDLING

There shall be a five dollar (\$5.00) charge for postage and handling for all mailings.

History Note: Authority G.S.12-3.1; 150B-19;

Eff. December 1, 1990;

Temporary Amended Eff. December 1, 2001;

Amended Eff. August 1, 2002.

21 NCAC 14G .0103 SPACE REQUIREMENTS

(a) The Cosmetic Art Board shall issue letters of approval only to cosmetic art schools that have at least 2,800 square feet of inside floor space for 20 stations or 4,200 square feet of inside floor space for 30 stations located within the same building. An additional 140 square feet of floor space shall be required for each station above 20 stations, up to and including a total of 30 stations. Thereafter, an additional 40 square feet shall be required for each station in excess of 30 stations. For purpose of this Rule, the day and night classes shall be counted as separate enrollments. A school may have a recitation room located in an adjacent building or another building within 500 feet of the main cosmetology building.

(b) Each cosmetic art school must have no less than 20 hairdressing stations, arranged to accommodate not less than 20 students and arranged so that the course of study and training cosmetology, as prescribed in 21 NCAC 14J .0306, may be given. All stations must be numbered numerically.

(c) Cosmetic art schools must have a beginner department containing sufficient space to comfortably accommodate at least 10 students and having at least 40 inches between mannequins.

(d) The Board shall issue a letter of approval only to manicurist schools that have at least 1,000 square feet of inside floor space located within the same building.

(e) Manicurist schools with 1,000 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, 40 square feet of inside floor space must be provided.

(f) Manicurist schools must have 10 manicurist tables and chairs a minimum of two feet apart, side to side, arranged to comfortably accommodate ten students.

(g) The Board shall issue a letter of approval only to esthetician schools that have at least 1,500 square feet of inside floor space located within the same building.

(h) Esthetician schools with 1,500 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, 50 square feet of inside floor space must be provided.

(i) Schools combining both manicuring and esthetics training programs with 1,500 feet of inside floor space shall enroll no more than a total of 20 students at one time and for each student enrolled in addition to 20 students, 50 square feet of inside floor space must be provided. Equipment requirements for both manicurist schools and esthetician schools shall be followed.

History Note: Authority G.S. 88B-4;

Eff. February 1, 1976;

Amended Eff. April 1, 1995; January 1, 1992; May 1, 1991;

January 1, 1989;

Temporary Amendment Eff. January 1, 1999;

Amended Eff. August 1, 2002; April 1, 2001; August 1, 2000.

21 NCAC 14J .0208 INTERNSHIPS

Schools and cosmetic art shops desiring to implement an internship program shall follow these requirements:

- (1) Schools wishing to participate in an internship program must notify the Board of intent to implement a program before credit for an internship may be granted. Cosmetic art shops and student selection criteria must be submitted along with the notification.
- (2) Schools shall report to the Board all cosmetic art shops contracted and students selected to participate in the program.
- (3) Internships may be arranged in various time frames but shall never exceed 10% of a student's training period.
- (4) Credit for an internship shall be granted upon submission of student hours verification based on a daily attendance record. Hours must be recorded on a form approved by the school.
- (5) Students may be assigned a variety of duties, but client services are restricted. Cosmetology students may only provide shampoo services,

manicurist students may only remove nail polish and esthetician students may only drape and prep clients. Cosmetic art shop violation of restrictions or school requirements may result in the termination of the internship contract and the possible loss of student training hours.

- (6) Students must follow all cosmetic art shop employee rules and regulations. Violations of cosmetic art shop rules or any misconduct may result in dismissal of the intern or loss of training hours.
- (7) A licensed teacher need not be in attendance during this internship.
- (8) Students participating in the program shall not receive compensation for duties performed in the cosmetic art shop.

History Note: Authority G.S. 88B-4;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;
Amended Eff. August 1, 2002.

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED:

(a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:

- | | | |
|-----|-------------|--------------------|
| (1) | 1st offense | warning (\$100.00) |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

(b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is:

- | | | |
|-----|-------------|--------------------|
| (1) | 1st offense | warning (\$100.00) |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

(c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$300.00 |
| (3) | 3rd offense | \$500.00 |

(d) The presumptive civil penalty for practicing in a cosmetic art shop with an apprentice license or a temporary permit without direct supervision is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$300.00 |
| (3) | 3rd offense | \$500.00 |

History Note: Authority G.S. 88B-4; 88B-21; 88B- 23(a); 88B-24; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Amended Eff. August 1, 2002; April 1, 2001; August 1, 2000.

21 NCAC 14P .0106 LICENSES REQUIRED

(a) The presumptive civil penalty for practicing cosmetic art without a license is:

- | | | |
|-----|-------------|------------|
| (1) | 1st offense | \$200.00 |
| (2) | 2nd offense | \$400.00 |
| (3) | 3rd offense | \$1,000.00 |

(b) The presumptive civil penalty for performing services which the practitioner is not licensed to perform is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

History Note: Authority G.S. 88B-4; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Amended Eff. August 1, 2002; August 1, 2000.

21 NCAC 14P .0108 REVOCATION OF LICENSES AND OTHER DISCIPLINARY MEASURES

(a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:

- | | | |
|-----|-------------|------------|
| (1) | 1st offense | \$250.00 |
| (2) | 2nd offense | \$500.00 |
| (3) | 3rd offense | \$1,000.00 |

(b) The presumptive civil penalty for practicing cosmetology, manicuring or esthetics with a license issued to another person is:

- | | | |
|-----|-------------|------------|
| (1) | 1st offense | \$300.00 |
| (2) | 2nd offense | \$500.00 |
| (3) | 3rd offense | \$1,000.00 |

(c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$300.00 |
| (2) | 2nd offense | \$400.00 |
| (3) | 3rd offense | \$500.00 |

(d) The presumptive civil penalty for submitting false or fraudulent documents:

- | | | |
|-----|-------------|------------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1,000.00 |

(e) The presumptive civil penalty for refusing to present photographic identification:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

(f) The presumptive civil penalty for advertising by means of knowingly false or deceptive statement:

- | | | |
|-----|-------------|--------------------|
| (1) | 1st offense | warning (\$300.00) |
| (2) | 2nd offense | \$400.00 |
| (3) | 3rd offense | \$500.00 |

(g) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license.

- | | | |
|-----|-------------|--------------------|
| (1) | 1st offense | warning (\$300.00) |
| (2) | 2nd offense | \$400.00 |
| (3) | 3rd offense | \$500.00 |

(h) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1000.00 |

(i) The presumptive civil penalty for the illegal use of Methyl Methacrylate Monomer (MMA) in a cosmetic art shop or school is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$300.00 |
| (2) | 2nd offense | \$500.00 |
| (3) | 3rd offense | \$1000.00 |

History Note: Authority G.S. 88B-4; 88B-24; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;

Amended Eff. August 1, 2002; April 1, 2001.

21 NCAC 14P .0116 CIVIL PENALTY PROCEDURES

(a) Citations. The Board, through its duly authorized representatives, shall issue a citation with respect to any violation for which a civil penalty may be assessed. Each citation shall be in writing and shall describe the nature of the violation, including a reference to the specific provision alleged to have been violated. The civil penalty, if any, shall attach at the time the citation is written. The citation shall include an order to correct any condition or violation which lends itself to corrections, as determined by the Board.

(b) Correction of Violation. Any licensee who has been issued a warning citation must present written proof satisfactory to the Board, or its executive director, that the violation has been corrected. This provision applies only to a licensee's first violation in any one year period for a violation with a first offense warning penalty. Proof of correction shall be presented to the Board, through its executive director, within 30 days of the date the warning citation was issued. The Board may extend for a reasonable period, the time within which to correct the warning citation in case of a death or hospitalization. Notices of correction filed after the prescribed date shall not be acceptable and the civil penalty shall be paid.

(c) Contested Case. Persons to whom a notice of violation or a citation is issued and a civil penalty assessed, may contest the civil penalty by filing written notice with the Board. The Board shall institute a contested case by sending a notice of hearing pursuant to G.S. 150B, Article 3A. The issuance of notice of hearing shall stay the civil penalty until the Board renders a final agency decision in the contested case.

(d) Final Agency Decision. The Board, after the hearing has been concluded, may affirm, reduce, or dismiss the charges filed in the notice of hearing or any penalties assessed. In no event shall the civil penalty be increased.

(e) Failure to File. If no written notice contesting the civil penalty is filed as set forth in Paragraph (c), the civil penalty becomes a final agency decision.

(f) Any offender who has not committed a previously cited offense for which a civil penalty has been assessed for a three year period shall have his record of the specific offense cleared. The next subsequent violation shall be treated as a first offense.

*History Note: Authority G.S. 88B-4; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;
Amended Eff. August 1, 2002.*

21 NCAC 14Q .0101 TEACHER CONTINUING EDUCATION

(a) Teacher's continuing education (CE) programs shall be approved by the NC State Board of Cosmetic Art Examiners (Board), if they meet the rules adopted by the Board. Each program shall be conducted and monitored by one of the following statewide organizations in conjunction with the Board:

- (1) National Cosmetology Association of North Carolina;
- (2) High School Cosmetology Educators of North Carolina;

- (3) NC State Beauticians and Cosmetologists Association;
- (4) Cosmetologist Instructors Association of the NC Community College System;
- (5) NC Private School Owners Association; or
- (6) NC Aestheticians Association.

Note: If a provider is associated with or a member of any of the preceding associations, they may be approved.

(b) Any other group or association who can present a program meeting the criteria in Paragraph (c) of this Rule to the Board, shall be eligible to conduct a program.

(c) The Continuing Education Program shall meet the following criteria for approval:

- (1) all seminars must include at least 50% of subject matter in the cosmetic arts and/or teacher training techniques. Esthetician teachers and manicurist teachers must complete CE only in that area in which they are licensed. CE must not promote a particular system or product;
- (2) all seminars shall be monitored by the responsible organization including signing in and out of participants to assure the presence of participants for the required contact hours; and
- (3) all organizations/providers shall present to the Board Curriculum Committee, no earlier than July 1, 2002 and no later than August 30th of each year, a program outline which shall include, but may not be limited to, the following:
 - (A) Date;
 - (B) Time;
 - (C) Place;
 - (D) Instructors Name(s);
 - (E) Course outline including lesson plans;
 - (F) List of monitors; and
 - (G) Fees.

Programs approved by the Curriculum Committee will be submitted to the Board during their October meeting for full approval. Programs will be approved through September 30th of the following year.

*History Note: Authority G.S. 88B-4; 88B-21(e);
Eff. August 1, 2002.*

21 NCAC 14Q .0102 ATTENDANCE VERIFICATION

All providers shall complete an attendance verification form, provided by the Board, verifying participant attendance.

- (1) The monitor shall verify the participants' attendance and signature on the verification form.
- (2) Each provider shall mail completed forms to the Board Operations Officer.
- (3) The forms shall be kept on record with the Board as verification that the participant has met the Continuing Education requirements.

- (4) All participants shall receive from the Board, a Continuing Education Unit (CEU) certificate proving verification.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. August 1, 2002.

21 NCAC 14Q .0103 CERTIFICATING AGENT

The Board shall serve as the certificating agent providing CEU certificates for participants when the following conditions are met:

- (1) The program submitted by any of the program producing associations/providers must be approved by the Board. Upon notification of approval, the association/provider must submit a five dollars (\$5.00) postage/handling/copying fee no less than 30 days prior to a proposed seminar date. Failure to meet this requirement shall result in CE cancellation;
- (2) All attendance verification forms and monitor forms shall be sent to the appropriate association/provider at least two weeks prior to the start of the seminar(s);
- (3) All attendance verification forms must be forwarded to the Board before the certificating process can begin. Certificates shall be mailed to the participants;
- (4) The postage/handling/copying fee shall include:
 - (a) a CEU certificate for participant; and
 - (b) attendance verification forms, seminar monitor forms; and
 - (c) permanent transcripts developed and maintained on each participant. Retrieval of transcripts by participants shall be subject to a five dollars (\$5.00) postage/handling fee.
- (5) Attendance verification forms shall be necessary for all participants in order to complete the certificating process.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. August 1, 2002.

21 NCAC 14Q .0104 PROGRAM SITES

Each association/provider shall submit to the Board Curriculum Committee by August 30th of each year all program sites. The Board shall be notified of any changes in sites during the year the programs are ongoing.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. August 1, 2002.

21 NCAC 14Q .0105 GENERAL PROGRAM FORMAT, TIME FRAME, SPACE

- (a) The program shall consist of no more than six clock hours per day. This does not include breaks and lunch periods.
- (b) No promotion of, or selling of products/systems shall take place.

- (c) All associations/providers shall adhere to the approved program outline.
- (d) Any change in the approved program outline must receive approval by the Board Executive Director.
- (e) If the program for any reason is late starting, the ending time shall be extended accordingly.
- (f) There shall be no early dismissals.
- (g) Adequate space shall be provided so that each attendee shall be able to see and hear all segments of the program.
- (h) Comfortable chairs shall be provided.
- (i) Smoking shall be prohibited while the program is in session. Smoking shall take place only during breaks and lunch periods and only in designated areas.
- (j) Regular cosmetic art school classes shall not take place during the same time as the CE Program is taking place in the same school.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. August 1, 2002.

21 NCAC 14Q .0106 INSTRUCTORS AND MONITORS OF CONTINUING EDUCATION PROGRAMS

Each association/provider shall by August 30th of each year submit to the Board a list of instructors and monitors for the following fiscal years' program. For programs limited to 15 students or less, the instructor may also serve as the program monitor. An association/provider shall notify the Board of any deviation from the list of instructors and monitors submitted.

- (1) Instructors shall not receive CEU credit for any Continuing Education Program they teach.
- (2) A monitor shall be on duty at all times while the program is ongoing.
- (3) Monitors shall see that all attendees sign a check in and check out form for the morning and afternoon sessions.
- (4) The Monitor shall see that order is maintained at all times and that the attendance verification forms are properly completed.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. August 1, 2002.

21 NCAC 14Q .0110 VIOLATIONS

(a) Any sponsor/provider, having been cited by the Board for two violations of any Rules in this Subchapter, may be called before the Board. If the Board finds the violation(s) to adversely affect the program, the provider, depending on the severity of the charges, may:

- (1) receive a verbal reprimand and warning that if the situation continues, the provider will be subject to either items (2), (3) or (4), or
- (2) be disqualified from conducting any Continuing Education Program for a period of time determined by the Board; or
- (3) be disqualified from conducting any further Continuing Education Program for the remainder of the year; or
- (4) be disqualified from ever conducting any further Continuing Education Program.

(b) For esthetician teachers, of the total 16 CE hours they are required to complete in each two year cycle, a minimum of eight hours must be completed in either a basic or an advanced esthetician seminar.

History Note: Authority G.S. 88B-4, 88B-21(e);
Eff. August 1, 2002.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

21 NCAC 16B .0315 REEXAMINATION

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

(b) Any applicant who has failed both the written and clinical portions of the examination three times or who has failed the clinical portion of the examination three times, regardless of having passed the written portion of the examination, shall successfully complete an additional course of study in clinical dentistry encompassing at least one academic year, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

(c) Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination three times shall successfully complete an additional course of study, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

History Note: Authority G.S. 90-28; 90-30; 90-48;
Eff. January 1, 1983;
Amended Eff. August 1, 2002; May 1, 1991; May 1, 1989;
October 1, 1986.

21 NCAC 16C .0310 REEXAMINATION

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

(b) Any applicant who has passed the written portion of the examination but has failed the clinical portion of the examination need not retake the written portion of the examination for a one year period upon reexamination.

(c) Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination may retake the written portion of the examination two additional times during a one year period and need not retake the clinical portion of the examination. If the applicant does not pass the written portion of the examination upon the second reexamination, the applicant must retake both the written and clinical portions of the examination upon subsequent reexamination.

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; October 1, 1986.

21 NCAC 16D .0102 RESTRICTIONS ON PRACTICE

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

(b) The dental practice of a provisional licensee shall be restricted to a specific facility or, to a geographic location, or to a specialized field of dentistry, or any combination thereof. Direction by a dentist licensed in North Carolina shall also be required. Such dentist shall provide direction over the functions performed by the licensee and shall be responsible for all consequences or results arising from the licensee's practice of dentistry.

(c) For purposes of this Section, the acts of a provisional licensee are deemed to be under the direction of a licensed dentist when performed in a locale where a licensed dentist is not always required to be physically present during the performance of such acts and such acts are being performed pursuant to the dentist's order, control, and approval.

History Note: Authority G.S. 90-29.3;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2002; January 1, 1994; May 1, 1989.

21 NCAC 16Q .0202 EQUIPMENT

(a) A dentist administering general anesthesia is solely responsible for providing that the environment in which the general anesthesia is to be administered meets the following requirements:

- (1) The facility is equipped with:
 - (A) An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
 - (B) A chair or table for emergency treatment, including chair suitable for CPR or CPR Board;
 - (C) Lighting as necessary for specific procedures; and
 - (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction;
- (2) The following equipment is maintained:
 - (A) Positive pressure oxygen delivery system, including full face mask for adults and pediatric patients;
 - (B) Oral and nasal airways of various sizes;
 - (C) Blood pressure monitoring device;
 - (D) Electrocardiograph;
 - (E) Pulse oximeter; and
 - (F) Defibrillator;
- (3) The following emergency equipment is maintained:
 - (A) I.V. set-up as necessary for specific procedures, including hardware and fluids;
 - (B) Laryngoscope with current batteries;
 - (C) Intubation forceps and endotracheal tubes;

- (D) Tonsillar suction with back-up suction;
- (E) Syringes as necessary for specific procedures;
- (F) Tourniquet & tape; and
- (G) Blood pressure monitoring device;
- (4) The following drugs are maintained with a current shelf life and within easy accessibility from the operatory and recovery room:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) Lidocaine;
 - (D) Antihistamine;
 - (E) Antihypertensive;
 - (F) Bronchial dilator;
 - (G) Antihypoglycemic agent;
 - (H) Vasopressor;
 - (I) Corticosteroid;
 - (J) Anticonvulsant;
 - (K) Muscle relaxant;
 - (L) Narcotic antagonist;
 - (M) Appropriate anti-arrhythmic medication;
 - (N) Nitroglycerine; and
 - (O) Antiemetic;
- (5) Written emergency and patient discharge protocols and training to familiarize office personnel in the treatment of clinical emergencies are provided; and
- (6) The following records are maintained:
 - (A) Patient's current written medical history, including known allergies and previous surgery;
 - (B) Base line vital signs, including blood pressure and pulse;
 - (C) An anesthesia record which shall include:
 - (i) Periodic vital signs taken at intervals during the procedure;
 - (ii) Drugs administered during the procedure, including route of administration, dosage, time and sequence of administration;
 - (iii) Duration of the procedure;
 - (iv) Documentation of complications or morbidity; and
 - (v) Status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of anesthesia while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring of blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression;

- (4) Sterilization;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.
- (c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:
 - (1) Laryngospasm;
 - (2) Bronchospasm;
 - (3) Emesis and aspiration;
 - (4) Respiratory depression and arrest;
 - (5) Angina pectoris;
 - (6) Myocardial infarction;
 - (7) Hypertension/Hypotension;
 - (8) Syncope;
 - (9) Allergic reactions;
 - (10) Convulsions;
 - (11) Bradycardia;
 - (12) Insulin shock; and
 - (13) Cardiac arrest.
- (d) A dentist administering general anesthesia shall ensure that the facility is staffed with auxiliary personnel who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the general anesthetic or secondary to an unexpected medical complication.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Effective February 1, 1990; Amended Eff. August 1, 2002; August 1, 2000.

21 NCAC 16Q .0302 EQUIPMENT

- (a) A dentist administering parenteral sedation is solely responsible for providing that the environment in which the sedation is to be administered meets the following requirements:
 - (1) The facility is equipped with:
 - (A) An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
 - (B) A chair or table for emergency treatment, including chair suitable for CPR or CPR Board;
 - (C) Lighting as necessary for specific procedures; and
 - (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction;
 - (2) The following equipment is maintained:
 - (A) Positive pressure oxygen delivery system, including full face mask for adults and pediatric patients;
 - (B) Oral and nasal airways of various sizes;
 - (C) Blood pressure monitoring device; and
 - (D) Pulse oximeter;
 - (3) The following emergency equipment is maintained:

- (A) I.V. set-up as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
- (B) Syringes as necessary for specific procedures; and
- (C) Tourniquet & tape;
- (4) The following drugs are maintained with a current shelf life and within easy accessibility from the operatory and recovery room:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) Lidocaine;
 - (D) Narcotic antagonist;
 - (E) Antihistamine;
 - (F) Corticosteroid;
 - (G) Nitroglycerine;
 - (H) Bronchial dilator;
 - (I) Antiemetic;
 - (J) Anectine;
 - (K) Muscle relaxant; and
 - (L) 50% Dextrose;
- (5) Written emergency and patient discharge protocols and training to familiarize office personnel in the treatment of clinical emergencies are provided; and
- (6) The following records are maintained:
 - (A) Patient's current written medical history, including known allergies and previous surgery;
 - (B) Drugs administered during the procedure, including route of administration, dosage, time and sequence of administration;
 - (C) A sedation record which shall include:
 - (i) blood pressure;
 - (ii) pulse rate;
 - (iii) respiration;
 - (iv) duration of procedure;
 - (v) documentation of complications or morbidity; and
 - (vi) status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of conscious sedation while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression;
- (4) Sterilization;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) Laryngospasm;
- (2) Bronchospasm;
- (3) Emesis and aspiration;
- (4) Respiratory depression and arrest;
- (5) Angina pectoris;
- (6) Myocardial infarction;
- (7) Hypertension/Hypotension;
- (8) Allergic reactions;
- (9) Convulsions;
- (10) Syncope;
- (11) Bradycardia;
- (12) Insulin shock; and
- (13) Cardiac arrest.

(d) A dentist administering parenteral sedation shall ensure that the facility is staffed with auxiliary personnel who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(e) Upon request, the holder of an anesthesia or parenteral sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide sedation services for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the office in which the parenteral sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes auxiliary personnel who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the parenteral sedation or secondary to an unexpected medical complication.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990; Amended Eff. August 1, 2002; August 1, 2000.

21 NCAC 16Y .0101 ELIGIBILITY REQUIREMENTS

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

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

History Note: Authority G.S. 90-28; 90-29.4; Eff. August 1, 2002.

21 NCAC 16Y .0102 APPLICATION

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

- (1) complete the Application for Intern Permit as furnished by the Board;
- (2) submit an official copy of dental school transcripts;
- (3) forward a letter from a prospective employer;
- (4) successfully complete written examination(s) administered by the Board; and
- (5) pay the one hundred fifty dollar (\$150.00) permit fee.

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

- (1) submit written confirmation that the applicant has qualified for and is currently enrolled in a graduate, intern, fellowship, or residency program in the North Carolina Dental School or teaching hospital offering programs in dentistry;
- (2) submit written confirmation that an ad hoc committee (consisting of three associate or full professors, only one of whom represents the department in question) has evaluated the applicant's didactic and clinical performance with the point of observation being not less than three months from the applicant's start of the program, and has verified that the applicant is functioning at a professional standard consistent with a dental graduate from an ADA-accredited dental school;
- (3) successfully complete a simulated clinical examination;
- (4) submit written confirmation that the applicant has successfully completed a program of study at the training facility in:
 - (A) clinical pharmacology;
 - (B) prescription writing in compliance with Federal and State laws; and
 - (C) relevant laws and administrative procedures pertaining to the DEA;
- (5) submit a written statement of the total time required to complete the graduate, intern, fellowship, or residency program, and the date that the applicant is scheduled to complete said program;
- (6) successfully complete written examination(s) administered by the Board; and
- (7) pay the one hundred fifty dollar (\$150.00) permit fee.

(c) In making application, the applicant shall authorize the Board to verify the information contained in the application or documents submitted or to seek such further information pertinent to the applicant's qualifications or character as the Board may deem necessary pursuant to G.S. 90-41.

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

*History Note: Authority G.S. 90-28; 90-29.4;
Eff. August 1, 2002.*

21 NCAC 16Y .0103 EMPLOYMENT

(a) The practice of dentistry under an intern permit is limited to the confines and registered patients of the following employment sites:

- (1) a hospital, sanatorium, or a like institution;
- (2) a nonprofit health care facility serving low-income populations; or
- (3) a state or governmental facility or entity or any political subdivision of such.

Each facility or entity set out in Paragraph (a) of this Rule shall submit documentation to the Board evidencing that it meets the qualifications set out in G.S. 90-29.4(3) in order for the facility or site to be considered an approved employment site.

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

(c) A request for change in practice location must be submitted in writing to the Board and is subject to the new practice location meeting the requirements of Paragraph (a) of this Rule.

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

*History Note: Authority G.S. 90-28; 90-29.4;
Eff. August 1, 2002.*

21 NCAC 16Y .0104 DIRECTION AND SUPERVISION

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

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

(c) For purposes of this Section, the acts of a permittee are deemed to be under the direction of a licensed dentist when performed in a locale where a licensed dentist is not always required to be physically present during the performance of such acts and such acts are being performed pursuant to the dentist's order, control, and approval.

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

*History Note: Authority G.S. 90-28; 90-29.4;
Eff. August 1, 2002.*

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

21 NCAC 32A .0101 LOCATION

The location of the office of the North Carolina Medical Board is 1201 Front Street, Raleigh, North Carolina 27609.

History Note: Authority G.S. 90-2;

Eff. February 1, 1976;

Amended Eff. August 1, 2002; September 1, 1995; July 1, 1993;

May 1, 1989.

21 NCAC 32B .0508 MEDICAL EDUCATION

Applicants for resident's training license must have the medical education required by G.S. 90-9. To be eligible for a resident's training license, an applicant must have the following medical education:

- (1) be a graduate of a medical school approved by either LCME or AOA; or
- (2) be a graduate of a medical school not approved by either LCME or AOA and meet the requirement regarding ECFMG under Rule .0507 of this Section.

The burden of proof of medical education is on the applicant.

History Note: Authority G.S. 90-15;

Eff. December 1, 1985;

Recodified from 21 NCAC 32B .0408 Eff. April 5, 1989;

Amended Eff. August 1, 2002; May 1, 1990; May 1, 1989.

CHAPTER 33 - MIDWIFERY JOINT COMMITTEE

21 NCAC 33 .0105 DUE PROCESS

(a) The privilege to practice midwifery may be denied, revoked, or suspended for the reasons set forth in G.S. 90-178.6. The applicant aggrieved by a decision of the Committee shall be entitled to a hearing pursuant to the provisions of G.S. 150B, Article 3A.

(b) Complaints.

- (1) A complaint regarding a violation of the Midwifery Practice Act or Rules shall be submitted in writing and document:
 - (A) the name of the certified nurse-midwife or other person involved;
 - (B) a description of the alleged behavior or incident; and
 - (C) the name, mailing address and phone number of the person filing the complaint;
- (2) The complaint shall be delivered to the Committee administrative office by mail, private carrier or in person. Complaints transmitted by facsimile or electronic mail shall be accepted.

(c) Action on a Complaint. Action on a complaint consists of the following:

- (1) The Committee shall receive and acknowledge complaints, open a file and initiate complaint tracking;
- (2) Complaints shall be screened to determine jurisdiction and the type of response appropriate for the complaint;
- (3) Investigation:
 - (A) If the facts clearly indicate a Midwifery Practice Act violation, the Committee shall commence an investigation; and

(B) A report of each investigation shall be prepared for the Committee's review;

(4) Formal and Informal Hearings:

(A) The Committee, after review of an investigative file, may schedule an informal meeting.

(B) If the matter cannot be resolved informally, then a formal hearing shall be held.

(C) No Committee member shall participate in more than one of the following steps in the enforcement process:

- (i) investigation;
- (ii) informal hearing; or
- (iii) formal hearing; and

(D) Members of the Committee shall not make ex-parte communication with parties to a hearing.

(5) Final Orders: As soon as possible, but at least within 60 days of a hearing, the Committee shall issue its final decision in writing specifying the date on which it shall take effect. The Committee shall serve one copy of the decision on each party to the hearing.

(6) Compliance: The Committee Chair shall cause a follow-up inquiry to determine that the orders of the Committee are being obeyed.

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

(e) Disciplinary Sanctions.

(1) The following types of disciplinary sanctions may, among others, be utilized by the Committee:

- (A) Letter of Reprimand;
- (B) Probation;
- (C) Suspension of approval;
- (D) Nonrenewal of Approval;
- (E) Revocation of approval; and
- (G) Injunction.

(2) The Committee may request information from professional associations, professional review organizations (PROs), hospitals, clinics or other institutions in which a certified nurse-midwife performs professional services, or possible chemical abuse, or incompetent or unethical behavior.

(3) The Committee shall provide notice of sanction taken by it to other public entities as necessary to ensure that other state Boards and enforcement authorities receive the names of applicants disciplined.

History Note: Authority G.S. 90-178.6;

Eff. February 1, 1985;

Amended Eff. August 1, 2002; October 1, 1988.

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0109 SELECTION AND QUALIFICATIONS OF NURSE MEMBERS

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

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

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

- (1) indicate the category for which the nominee is seeking election;
- (2) attest to meeting the qualifications specified in G.S. 90-171.21(d); and
- (3) provide written permission to be listed on the ballot.

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

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

- (1) current unencumbered license to practice in North Carolina;
- (2) evidence of five years of employment in nursing practice at the appropriate level of licensure for the Board member category; and
- (3) maintaining North Carolina as declared primary state of residence consistent with Rule .0702(a) of this Chapter.

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

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

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

- (1) Nurse Educator includes any nurse who teaches in or directs a basic or graduate nursing program; or who teaches in or directs a continuing education or staff development program for nurses.
- (2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing to inpatients.
- (3) Hospital Nursing Service Director is any nurse who is the chief executive officer for nursing service.
- (4) Employed by a hospital includes any nurse employed by a hospital.

(5) Employed by a physician includes any nurse employed by a physician or group of physicians licensed to practice medicine in North Carolina and engaged in private practice.

(6) Employed by skilled or intermediate care facility includes any nurse employed by a long term nursing facility.

(7) A nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist includes any advanced practice registered nurse who meets the criteria specified in G.S. 90-171.21(d)(4).

(8) Community health nurse includes any nurse who functions as a generalist or specialist in areas including, but not limited to, public health, student health, occupational health or community mental health.

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

(h) A nominee shall be listed in only one category on the ballot.

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

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

(k) The procedure for voting shall be identified in the "Bulletin" following the Spring Board meeting.

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

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

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

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

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

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

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

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

History Note: Authority G.S. 90-171.21; 90-171.23(b); Eff. May 1, 1982; Amended Eff. August 1, 1998; January 1, 1996; June 1, 1992; March 1, 1990; April 1, 1989; Temporary Amendment Eff. July 2, 2001; Amended Eff. August 1, 2002.

21 NCAC 36 .0112 DETERMINATION OF VACANCY

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

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

History Note: Authority G.S. 90-171.21(c); 90-171.23(b); Eff. May 1, 1988; Amended Eff. August 1, 2002; March 1, 1990; May 1, 1989.

21 NCAC 36 .0113 DETERMINATION OF QUALIFICATIONS

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

- (1) whether the licensee is presently employed equal to or greater than 50% of a full-time position;
- (2) the number of days during the preceding three years devoted to practice in the specified activity that would qualify the licensee for election in that category as outlined in Rule .0109 of this Section;
- (3) the duration of any periods of interruption of engaging in the specified activity during the

preceding three years and the reasons for any such interruptions;

- (4) job descriptions, contracts, and any other relevant evidence concerning the time, effort, and education devoted to the specified activity; and

- (5) whether engagement in the specified activity is or has been for compensation, and whether income from the specified activity meets the employment requirements outlined in this Rule and in Rule .0109(e) and (f) of this Section.

History Note Authority G.S. 90-171.21(d); 90-171.23(b)(2); Eff. May 1, 1988; Amended Eff. August 1, 2002; May 1, 1989.

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

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

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

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

- (1) Collection of data includes:
 - (A) obtaining data from relevant sources regarding the biophysical, psychological, social and cultural factors of the client's life and the influence these factors have on health status, including:
 - (i) subjective reporting;
 - (ii) observations of appearance and behavior;
 - (iii) measurements of physical structure and physiological functions;
 - (iv) information regarding available resources; and
 - (B) verifying data collected.
- (2) Interpretation of data includes:
 - (A) analyzing the nature and inter-relationships of collected data; and

- (B) determining the significance of data to client's health status, ability to care for self, and treatment regimen.
- (3) Formulation of a nursing diagnosis includes:
- (A) describing actual or potential responses to health conditions. Such responses are those for which nursing care is indicated, or for which referral to medical or community resources is appropriate; and
- (B) developing a statement of a client problem identified through interpretation of collected data.
- (c) Planning nursing care activities includes identifying the client's needs and selecting or modifying nursing interventions related to the findings of the nursing assessment. Components of planning include:
- (1) prioritizing nursing diagnoses and needs;
 - (2) setting realistic, measurable goals and outcome criteria;
 - (3) initiating or participating in multidisciplinary planning;
 - (4) developing a plan of care which includes determining and prioritizing nursing interventions; and
 - (5) identifying resources based on necessity and availability.
- (d) Implementation of nursing activities is the initiating and delivering of nursing care according to an established plan, which includes, but is not limited to:
- (1) procuring resources;
 - (2) implementing nursing interventions and medical orders consistent with 21 NCAC 36 .0221(c) and within an environment conducive to client safety;
 - (3) prioritizing and performing nursing interventions;
 - (4) analyzing responses to nursing interventions;
 - (5) modifying nursing interventions; and
 - (6) assigning, delegating and supervising nursing activities of other licensed and unlicensed personnel consistent with Paragraphs (a) and (i) of this Rule, G.S. 90-171.20(7)d and (7)i, and 21 NCAC 36 .0401.
- (e) Evaluation consists of determining the extent to which desired outcomes of nursing care are met and planning for subsequent care. Components of evaluation include:
- (1) collecting evaluative data from relevant sources;
 - (2) analyzing the effectiveness of nursing interventions; and
 - (3) modifying the plan of care based upon newly collected data, new problem identification, change in the client's status and expected outcomes.
- (f) Reporting and Recording by the registered nurse are those communications required in relation to all aspects of nursing care.
- (1) Reporting means the communication of information to other persons responsible for, or involved in, the care of the client. The registered nurse is accountable for:
 - (A) directing the communication to the appropriate person(s) and consistent with established policies, procedures, practices and channels of communication which lend support to types of nursing services offered;
 - (B) communicating within a time period which is consistent with the client's need for care;
 - (C) evaluating the responses to information reported; and
 - (D) determining whether further communication is indicated.
 - (2) Recording means the documentation of information on the appropriate client record, nursing care plan or other documents. This documentation must:
 - (A) be pertinent to the client's health care;
 - (B) accurately describe all aspects of nursing care including assessment, planning, implementation and evaluation;
 - (C) be completed within a time period consistent with the client's need for care;
 - (D) reflect the communication of information to other persons; and
 - (E) verify the proper administration and disposal of controlled substances.
 - (g) Collaborating involves communicating and working cooperatively with individuals whose services may have a direct or indirect effect upon the client's health care and includes:
 - (1) initiating, coordinating, planning and implementing nursing or multidisciplinary approaches for the client's care;
 - (2) participating in decision-making and in cooperative goal-directed efforts;
 - (3) seeking and utilizing appropriate resources in the referral process; and
 - (4) safeguarding confidentiality.
 - (h) Teaching and Counseling clients is the responsibility of the registered nurse, consistent with G.S. 90-171.20(7)g.
 - (1) Teaching and counseling consist of providing accurate and consistent information, demonstrations and guidance to clients, their families or significant others regarding the client's health status and health care for the purpose of:
 - (A) increasing knowledge;
 - (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
 - (C) promoting the client's ability to make informed decisions.
 - (2) Teaching and counseling include, but are not limited to:
 - (A) assessing the client's needs, abilities and knowledge level;

- (B) adapting teaching content and methods to the identified needs, abilities of the client(s) and knowledge level;
- (C) evaluating effectiveness of teaching and counseling; and
- (D) making referrals to appropriate resources.

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

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

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

- (1) identification, development and updating of standards, policies and procedures related to the delivery of nursing care;
- (2) implementation of the identified standards, policies and procedures to promote safe and effective nursing care for clients;
- (3) planning for and evaluation of the nursing care delivery system; and
- (4) management of licensed and unlicensed personnel who provide nursing care consistent with Paragraphs (a) and (i) of this Rule and which includes:
 - (A) appropriate allocation of human resources to promote safe and effective nursing care;
 - (B) defined levels of accountability and responsibility within the nursing organization;
 - (C) a mechanism to validate qualifications, knowledge and skills of nursing personnel;
 - (D) provision of educational opportunities related to expected nursing performance; and
 - (E) validation of the implementation of a system for periodic performance evaluation.

(k) Accepting responsibility for self for individual nursing actions, competence and behavior is the responsibility of the registered nurse, which includes:

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

*History Note: Authority G.S. 90-171.20(7); 90-171.23(b); 90-171.43(4);
Eff. January 1, 1991;
Temporary Amendment Eff. October 24, 2001;
Amended Eff. August 1, 2002.*

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

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

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

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

- (1) collection of data consists of obtaining data from relevant sources regarding the biophysical, psychological, social and cultural factors of the client's life and the influence these factors have on health status, according to structured written guidelines, policies and forms, and includes:
 - (A) subjective reporting;
 - (B) observations of appearance and behavior;
 - (C) measurements of physical structure and physiologic function; and
 - (D) information regarding available resources.
- (2) interpretation of data is limited to:
 - (A) participation in the analysis of collected data by recognizing existing

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

- (F) the qualifications and number of staff;
 - (G) the accessible resources; and
 - (H) established policies, procedures, practices and channels of communication which lend support to the types of nursing services offered.
- (e) Evaluation, a component of implementing the health care plan, consists of participation in determining the extent to which desired outcomes of nursing care are met and in planning for subsequent care. Components of evaluation by the licensed practical nurse include:
- (1) collecting evaluative data from relevant sources according to written guidelines, policies and forms;
 - (2) recognizing the effectiveness of nursing interventions; and
 - (3) proposing modifications to the plan of care for review by the registered nurse or other person(s) authorized by law to prescribe such a plan.
- (f) Reporting and recording are those communications required in relation to the aspects of nursing care for which the licensed practical nurse has been assigned responsibility.
- (1) Reporting means the communication of information to other persons responsible for or involved in the care of the client. The licensed practical nurse is accountable for:
 - (A) directing the communication to the appropriate person(s) and consistent with established policies, procedures, practices and channels of communication which lend support to types of nursing services offered;
 - (B) communicating within a time period which is consistent with the client's need for care;
 - (C) evaluating the nature of responses to information reported; and
 - (D) determining whether further communication is indicated.
 - (2) Recording means the documentation of information on the appropriate client record, nursing care plan or other documents. This documentation must:
 - (A) be pertinent to the client's health care including client's response to care provided;
 - (B) accurately describe all aspects of nursing care provided by the licensed practical nurse;
 - (C) be completed within a time period consistent with the client's need for care;
 - (D) reflect the communication of information to other persons; and
 - (E) verify the proper administration and disposal of controlled substances.
- (g) Collaborating involves communicating and working cooperatively in implementing the health care plan with individuals whose services may have a direct or indirect effect

upon the client's health care. As delegated by the registered nurse or other person(s) authorized by law, the licensed practical nurse's role in collaborating in client care includes:

- (1) participating in planning and implementing nursing or multidisciplinary approaches for the client's care;
 - (2) seeking and utilizing appropriate resources in the referral process; and
 - (3) safeguarding confidentiality.
- (h) "Participating in the teaching and counseling" of clients as assigned by the registered nurse, physician or other qualified professional licensed to practice in North Carolina is the responsibility of the licensed practical nurse. Participation includes:
- (1) providing accurate and consistent information, demonstrations, and guidance to clients, their families or significant others regarding the client's health status and health care for the purpose of:
 - (A) increasing knowledge;
 - (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
 - (C) promoting the client's ability to make informed decisions.
 - (2) collecting evaluative data consistent with Paragraph (e) of this Rule.
- (i) Accepting responsibility for self for individual nursing actions, competence and behavior which includes:
- (1) having knowledge and understanding of the statutes and rules governing nursing;
 - (2) functioning within the legal boundaries of licensed practical nurse practice; and
 - (3) respecting client rights and property, and the rights and property of others.

History Note: Authority G.S. 90-171.20(7),(8); 90-171.23(b); 90-171.43(4); Eff. January 1, 1991; Amended Eff. January 1, 1996; Temporary Amendment Eff. October 24, 2001; Amended Eff. August 1, 2002.

21 NCAC 36 .0227 APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

(a) Definitions:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.
- (3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board to whom responsibility is given by G.S. 90-6 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (4) "Nurse Practitioner or NP" means a currently licensed registered nurse approved to perform medical acts under an agreement with a licensed physician for ongoing supervision,

- consultation, collaboration and evaluation of the medical acts performed. Only a registered nurse approved by the Medical Board and the Board of Nursing may legally identify oneself as a Nurse Practitioner. It is understood that the nurse practitioner, by virtue of RN licensure, is independently accountable for those nursing acts which he or she may perform.
- (5) "Nurse Practitioner Applicant" means a registered nurse who may function prior to full approval as a Nurse Practitioner in accordance with Part (c)(2)(D) of this Rule.
- (6) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (7) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for on-going supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.
- (8) "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, is held accountable for the on-going supervision, consultation, collaboration and evaluation of the medical acts performed by the nurse practitioner as defined in the site specific written protocols.
- (A) The primary supervising physician shall assume the responsibility of assuring the Boards that the nurse practitioner is qualified to perform those medical acts described in the site specific written protocols.
- (B) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
- (C) A physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation if fully licensed.
- (9) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s) shall be held accountable for the supervision, consultation, collaboration and evaluation of medical acts by the nurse practitioner in accordance with the site specific written protocols when the Primary Supervising Physician is not available.
- (A) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
- (B) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
- (C) A physician in a graduate medical education program who is also practicing in a non-training situation may be a back-up supervising physician to a nurse practitioner in the non-training situation if fully licensed and has signed an agreement with the nurse practitioner and the primary supervising physician.
- (10) "Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Subchapter.
- (11) "Written protocols" means the signed and dated set of written practice guidelines maintained at each practice site which describe the prescribing privileges, treatments, tests and procedures that define the scope of the nurse practitioner's medical acts in that setting. Clinical practice issues that are not covered by the written protocols require nurse practitioner/physician consultation, and documentation related to the treatment plan.
- (12) "Volunteer practice" means practice without expectation of compensation or payment (monetary, in kind or otherwise) to the nurse practitioner either directly or indirectly.
- (13) "Disaster" means a state of disaster as defined in G.S. 166A-4(3) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.
- (14) "Interim Status" means the privilege granted by the Boards to a graduate of an approved nurse practitioner education program or a registered nurse seeking initial approval in North Carolina with limited privileges, as defined in Part (c)(2)(D) of this Rule while awaiting final approval to practice as a nurse practitioner.
- (15) "Temporary Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Rule for a period not to exceed 18 months while awaiting notification of successful completion of the national certification examination.
- (16) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice: American Nurses Credentialing Center (ANCC); American Academy of Nurse Practitioners (AANP); National Certification Corporation of the Obstetric, Gynecologic and Neonatal Nursing Specialties (NCC); and the

National Certification Board of Pediatric Nurse Practitioners and Nurses (PNP/N).

(b) Scope of Practice. The nurse practitioner shall be responsible and accountable for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner shall be educationally prepared and for which competency has been maintained, with physician supervision and collaboration as described in Paragraph (i) of this Rule. These services include but are not restricted to:

- (1) promotion and maintenance of health;
- (2) prevention of illness and disability;
- (3) diagnosing, treating and managing acute and chronic illnesses;
- (4) guidance and counseling for both individuals and families;
- (5) prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs;
- (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
- (7) evaluating health outcomes.

(c) Nurse Practitioner Approval.

- (1) Qualifications for nurse practitioner approval. A registered nurse shall be approved by the Medical Board and the Board of Nursing before the applicant may practice as a nurse practitioner. The Boards may grant approval to practice as a nurse practitioner to an applicant who:

- (A) is duly licensed to practice as a registered nurse in North Carolina;
- (B) has successfully completed an approved educational program as outlined in Paragraph (d) of this Rule; or, as of January 1, 2000, meets the certification requirements set forth in Subparagraph (d)(2) of this Rule;
- (C) has an unrestricted license to practice as a registered nurse and, if applicable, an unrestricted approval to practice as a nurse practitioner unless the Boards consider such condition and agree to approval;
- (D) submits any information deemed necessary to evaluate the application;
- (E) has a collaborative practice agreement with a primary supervising physician; and
- (F) pays the appropriate fee.

- (2) Application for nurse practitioner approval.

- (A) Application for nurse practitioner approval shall be made upon the appropriate forms and shall be submitted jointly by the nurse practitioner and primary supervising physician(s).
- (B) Applications for first-time approval in North Carolina shall be submitted to

the Board of Nursing and then approved by both Boards as follows:

- (i) the Board of Nursing will verify compliance with Parts (c)(1)(A) - (D) of this Rule;
- (ii) the Medical Board will verify compliance with Parts (c)(1)(D) - (F) of this Rule; and
- (iii) the appropriate Board will notify applicant of final approval status.

(C) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- (i) addition or change of primary supervising physician shall be submitted to the Medical Board;
- (ii) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee; and
- (iii) the appropriate Board will notify applicant of final approval status.

(D) Interim status for nurse practitioner applicant may be granted to: a registered nurse who is a new graduate of an approved nurse practitioner educational program as set forth in Paragraph (d) of this Rule; or a registered nurse seeking first time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and who meets the nurse practitioner educational requirement as set forth in Paragraph (d) of this Rule with the following limitations:

- (i) no prescribing privileges;
- (ii) primary or back-up physicians shall be continuously available for ongoing supervision, consultation, collaboration and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
- (iii) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Part (i)(4)(D) of this Rule; and

- (iv) may not exceed period of six months.
 - (E) Beginning January 1, 2000, first time applicants who meet the qualifications for approval, but are awaiting certification from a national credentialing body as referenced in Subparagraph (a)(16) of this Rule, may be granted a temporary approval to practice as a nurse practitioner. Temporary approval is valid for a period not to exceed 18 months from the date temporary approval is granted or until the results of the applicant's certification examination are available, whichever comes first.
 - (F) The registered nurse who was previously approved to practice as a nurse practitioner in this state shall:
 - (i) meet the nurse practitioner approval requirements as stipulated in Parts (c)(1)(A), (C) - (F) of this Paragraph;
 - (ii) complete the appropriate application;
 - (iii) receive notification of approval; and
 - (iv) meet the consultation requirements as outlined in Parts (i)(4)(C) - (D) of this Rule.
 - (G) If for any reason a nurse practitioner discontinues working within the approved nurse practitioner-supervising physician(s) arrangement, the Boards shall be notified in writing and the nurse practitioner's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter. Special consideration may be given in an emergency situation.
 - (H) Volunteer Approval for Nurse Practitioners. The Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications as outlined in Parts (c)(1)(A) - (F) and (2)(A) - (G) of this Rule.
- (d) Requirements for Approval of Nurse Practitioner Educational Programs.
- (1) A nurse practitioner applicant who completed a nurse practitioner educational program prior to December 31, 1999 shall provide evidence of successful completion of a course of formal education which contains a core curriculum including 400 contact hours of didactic education and 400 contact hours of preceptorship or supervised clinical experience.
- (A) The core curriculum shall contain as a minimum the following components:
 - (i) health assessment and diagnostic reasoning including:
 - (I) historical data;
 - (II) physical examination data;
 - (III) organization of data base;
 - (ii) pharmacology;
 - (iii) pathophysiology;
 - (iv) clinical management of common health care problems and diseases related to:
 - (I) respiratory system;
 - (II) cardiovascular system;
 - (III) gastrointestinal system;
 - (IV) genitourinary system;
 - (V) integumentary system;
 - (VI) hematologic and immune systems;
 - (VII) endocrine system;
 - (VIII) musculoskeletal system;
 - (IX) infectious diseases;
 - (X) nervous system;
 - (XI) behavioral, mental health and substance abuse problems;
 - (v) clinical preventative services including health promotion and prevention of disease;
 - (vi) client education related to Parts (d)(1)(A)(iv) and (v) of this Rule; and
 - (vii) role development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.
 - (B) Nurse practitioner applicants who may be exempt from components of the core curriculum requirements listed in Subparagraph (d)(1)(A) of this Rule are:
 - (i) Any nurse practitioner approved in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.
 - (ii) A nurse practitioner certified by a national credentialing body who also provides

evidence of satisfying Parts (d)(1)(A)(i) - (iii) of this Rule shall be exempt from core curriculum requirements in Parts (d)(1)(A)(iv) - (vii) of this Rule. Evidence of satisfying Parts (d)(1)(A)(i) - (iii) of this Rule shall include, but may not be limited to:

- (I) a narrative of course content; and
- (II) contact hours.
- (iii) A nurse practitioner seeking initial approval after January 1, 1998 shall be exempt from the core curriculum requirements if certified as a nurse practitioner in his/her specialty by a national credentialing body when initial certification was obtained after January 1, 1998.
- (iv) A nurse practitioner applicant, whose formal education does not meet all of the stipulations in Subparagraph (d)(1) of this Rule, may appeal to the Joint Subcommittee on the basis of other education and experience.

- (2) Instead of educational program approval, all nurse practitioner applicants who are applying for or have received, first time approval to practice as a nurse practitioner on or after January 1, 2000 shall be certified by a national credentialing body as referenced in Subparagraph (a)(16) of this Rule or be awaiting initial certification by a national credentialing body approved by the Board of Nursing for a period not to exceed 18 months from date temporary approval is granted.

(e) Annual Renewal.

- (1) Each registered nurse who is approved as a nurse practitioner in this state shall annually renew each approval with the Medical Board no later than 30 days after the nurse practitioner's birthday by:
 - (A) Verifying current RN licensure;
 - (B) Submitting the fee required in Paragraph (l) of this Rule; and
 - (C) Completing the renewal form.
- (2) For the nurse practitioner who had first time approval to practice after January 1, 2000, provide evidence of certification or recertification by a national credentialing body.
- (3) If the nurse practitioner has not renewed within 60 days of the nurse practitioner's

birthday, the approval to practice as a nurse practitioner shall lapse.

- (f) Continuing Education (CE). In order to maintain nurse practitioner approval to practice beginning no sooner than two years after initial approval has been granted, the nurse practitioner shall earn 30 hours of continuing education every two years. At least three hours of continuing education every two years shall be the study of the medical and social effects of substance abuse including abuse of prescription drugs, controlled substances, and illicit drugs. Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME) or other national credentialing bodies. Documentation shall be maintained by the nurse practitioner at each practice site and made available upon request to either Board.

(g) Inactive Status.

- (1) Any nurse practitioner who wishes to place his or her approval on an inactive status may notify the Boards by completing the form supplied by the Boards.
- (2) The registered nurse with inactive nurse practitioner status shall not practice as a nurse practitioner.
- (3) The registered nurse with inactive nurse practitioner status who reapplies for approval to practice shall be required to meet the qualifications for approval as stipulated in Parts (c)(1)(A), (c)(1)(C) - (F) and Part (c)(2)(A) of this Rule; and shall provide documentation to the Boards of 30 contact hours of practice relevant continuing education during the preceding two years.

(h) Prescribing Authority.

- (1) The prescribing stipulations contained in this Paragraph apply to writing prescriptions and ordering the administration of medications.
- (2) Prescribing and dispensing stipulations are as follows:
 - (A) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the written protocols as outlined in Paragraph (i), Subparagraph (2) of this Rule.
 - (B) Controlled Substances (Schedules 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in written protocols, providing all of the following requirements are met:
 - (i) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
 - (ii) dosage units for schedules 2, 2N, 3 and 3N are limited to a 30 day supply; and

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| <p>(iii) the prescription or order for schedules 2, 2N, 3 and 3N may not be refilled.</p> <p>(C) The nurse practitioner may prescribe a drug not included in the site-specific written protocols only as follows:</p> <p style="padding-left: 20px;">(i) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and</p> <p style="padding-left: 20px;">(ii) the verbal or written order as described in Subpart (h)(2)(C)(i) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.</p> <p>(D) Refills may be issued for a period not to exceed one year except for schedules 2, 2N, 3 and 3N controlled substances which may not be refilled.</p> <p>(E) Each prescription shall be noted on the patient's chart and include the following information:</p> <p style="padding-left: 20px;">(i) medication and dosage;</p> <p style="padding-left: 20px;">(ii) amount prescribed;</p> <p style="padding-left: 20px;">(iii) directions for use;</p> <p style="padding-left: 20px;">(iv) number of refills; and</p> <p style="padding-left: 20px;">(v) signature of nurse practitioner.</p> <p>(F) The prescribing number assigned by the Medical Board to the nurse practitioner shall appear on all prescriptions issued by the nurse practitioner.</p> <p>(G) Prescription Format:</p> <p style="padding-left: 20px;">(i) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and prescribing number;</p> <p style="padding-left: 20px;">(ii) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Paragraph (h) Part (B) of this Rule; and</p> | <p>(3) The nurse practitioner may obtain approval to dispense the drugs and devices included in written protocols for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1700, which is hereby incorporated by reference including subsequent amendments of the referenced materials.</p> <p>(i) Quality Assurance standards for a Collaborative Practice Agreement.</p> <p style="padding-left: 20px;">(1) Availability: The primary or back-up supervising physician(s) and the nurse practitioner shall be continuously available to each other for consultation by direct communication or telecommunication.</p> <p style="padding-left: 20px;">(2) Written Protocols:</p> <p style="padding-left: 40px;">(A) Written protocols shall be agreed upon and signed by both the primary supervising physician and the nurse practitioner, and maintained in each practice site.</p> <p style="padding-left: 40px;">(B) Written protocols shall be reviewed at least yearly, and this review shall be acknowledged by a dated signature sheet, signed by both the primary supervising physician and the nurse practitioner, appended to the written protocol and available for inspection by members or agents of either Board.</p> <p style="padding-left: 20px;">(C) The written protocols shall include the drugs, devices, medical treatment, tests and procedures that may be prescribed, ordered and implemented by the nurse practitioner consistent with Paragraph (h) of this Rule, and which are appropriate for the diagnosis and treatment of the most commonly encountered health problems in that practice setting.</p> <p style="padding-left: 20px;">(D) The written protocols shall include a pre-determined plan for emergency services.</p> <p style="padding-left: 20px;">(E) The nurse practitioner shall be prepared to demonstrate the ability to perform medical acts as outlined in the written protocols upon request by members or agents of either Board.</p> <p>(3) Quality Improvement Process.</p> <p style="padding-left: 20px;">(A) The primary supervising physician and the nurse practitioner shall develop a process for the on-going review of the care provided in each practice site to include a written plan for evaluating the quality of care provided for one or more frequently encountered clinical problems; and</p> <p style="padding-left: 20px;">(B) This plan shall include a description of the clinical problem(s), an evaluation of the current treatment interventions, and if needed, a plan</p> |
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- for improving outcomes within an identified time-frame.
- (C) The quality improvement process shall include scheduled meetings between the primary supervising physician and the nurse practitioner at least every six months. Documentation for each meeting shall:
- (i) identify clinical problems discussed, including progress toward improving outcomes as stated in Part (i)(3)(B) of this Rule, and recommendations, if any, for changes in treatment plan(s);
 - (ii) be signed and dated by those who attended; and
 - (iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.
- (4) Nurse Practitioner-Physician Consultation. The following requirements establish the minimum standards for consultation between the nurse practitioner/primary or back-up supervising physician(s):
- (A) The nurse practitioner with temporary approval shall have:
- (i) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner-patient contact for the first six months of collaborative agreement. This time-frame includes the period of interim status.
 - (ii) face-to-face consultation with the primary supervising physician on a weekly basis for one month after temporary approval is achieved and at least monthly throughout the period of temporary approval.
- (B) The nurse practitioner with first time approval to practice shall have:
- (i) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner-patient contact for the first six months of collaborative agreement.
- (ii) This time-frame includes the period of interim status.
- (ii) face-to-face consultation with the primary supervising physician on a weekly basis for one month after full approval is received and at least monthly for a period no less than the succeeding five months.
- (C) The nurse practitioner previously approved to practice in North Carolina who changes Primary supervising physician shall have face-to-face consultation with the primary supervising physician weekly for one month and then monthly for the succeeding five months.
- (D) Documentation of consultation shall:
- (i) identify clinical issues discussed and actions taken;
 - (ii) be signed and dated by those who attended; and
 - (iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.
- (j) Method of Identification. The nurse practitioner shall identify themselves as specified in G.S. 90-640 and 21 NCAC 36.0231.
- (k) Disciplinary Action. The approval of a nurse practitioner may be restricted, denied or terminated by the Medical Board and the registered nurse license may be restricted, denied, or terminated by the Board of Nursing, if after due notice and hearing in accordance with provisions of Article 3A of G.S. 150B, the appropriate Board shall find one or more of the following:
- (1) that the nurse practitioner has held himself or herself out or permitted another to represent the nurse practitioner as a licensed physician;
 - (2) that the nurse practitioner has engaged or attempted to engage in the performance of medical acts other than according to the written protocols and collaborative practice agreement;
 - (3) that the nurse practitioner has been convicted in any court of a criminal offense;
 - (4) that the nurse practitioner is adjudicated mentally incompetent or that the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner; or
 - (5) that the nurse practitioner has failed to comply with any of the provisions of this Rule.
- (l) Fees:
- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice. The

- application fee shall be twenty dollars (\$20.00) for volunteer approval.
- (2) The fee for annual renewal of approval shall be fifty dollars (\$50.00).
- (3) The fee for annual renewal of volunteer approval shall be ten dollars (\$10.00).
- (4) No portion of any fee in this Rule is refundable.

(m) **Practice During a Disaster.** A nurse practitioner approved to practice in this State or another state is authorized to perform medical acts, tasks, or functions as a nurse practitioner under the supervision of a physician licensed to practice medicine in North Carolina during a disaster in a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared. The nurse practitioner shall notify the Boards in writing of the names, practice locations and telephone numbers for the nurse practitioner and each primary supervising physician within 15 days of the first performance of medical acts, tasks, or functions as a nurse practitioner during the disaster. Teams of physician(s) and nurse practitioner(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required pursuant to Paragraphs (h) and (i) of this Rule.

History Note: Authority G.S. 90-6; 90-18(c)(13), (14); 90-18.2; 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.36; 90-171.37; 90-171.42; 90-171.83;
Eff. January 1, 1996;
Amended Eff. August 1, 2002; July 1, 2000; May 1, 1999.

21 NCAC 36 .0301 APPROVAL BODY

History Note: Authority G.S. 90-171.23(b)(8); 90-171.23(b)(9); 90-171.23(b)(10); 90-171.38; 90-171.39; 90-171.40;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; January 1, 1989; January 1, 1984;
Temporary Amendment Eff. October 11, 2001;
Repealed Eff. August 1, 2002.

21 NCAC 36 .0302 ESTABLISHMENT OF A NURSING PROGRAM - INITIAL APPROVAL

(a) At least 12 months prior to the proposed enrollment of students in a nursing program, the administrative officer of the parent institution considering establishing a nursing program shall submit a feasibility study documenting the following:

- (1) approval of the program by the governing body of the parent institution or written evidence that the approval is in process;
- (2) evidence of an educational need which cannot be met by existing nursing programs or extensions of those programs;
- (3) proposed student population;
- (4) projected student enrollment;
- (5) potential employment opportunities for graduates;
- (6) available clinical resources and maximum numbers of students that can be accommodated in clinical areas;

- (7) evidence from existing nursing programs of the potential impact of the proposed program on clinical resources; and
- (8) a plan with a specified time frame for availability of:
 - (A) qualified faculty as specified in rules;
 - (B) adequate financial resources;
 - (C) adequate physical facilities to house the program; and
 - (D) support services available to the program from the institution.

(b) The feasibility study shall be presented at the next regular Education Committee meeting. If the Education Committee determines there is a need for the program and the plan includes the availability of the necessary resources to establish a program, the Education Committee shall recommend to the Board that the institution be approved to proceed with the development of the program. The recommendation to proceed shall be contingent upon approval by the governing body.

(c) If the Board determines that a program is approved for development, a minimum of six months prior to the proposed starting date, the institution shall employ a program director and nurse faculty member(s) to develop the proposed program.

(d) The director and faculty shall prepare an application to establish a nursing program, which shall include:

- (1) a narrative description of the organizational structure of the program and its relationship to the controlling institution;
- (2) a general overview of the proposed total curriculum that includes:
 - (A) program philosophy, purposes, and objectives;
 - (B) master plan of curriculum, indicating the sequence for both nursing and non-nursing courses, as well as prerequisites and corequisites;
 - (C) course descriptions and course objectives for all courses; and
 - (D) course syllabi as specified in 21 NCAC 36 .0321(h) for all first-year nursing courses;
- (3) student policies consistent with rules for admission, progression, and graduation of students;
- (4) curriculum vitae for employed nursing faculty members whose numbers and qualifications are consistent with assigned responsibilities in the development of the program; and
- (5) proposed agreements with clinical agencies, including types of units available and number of students that can be accommodated in each area at one time.

(e) The completed application shall be submitted to the Board not less than 90 days prior to a regular meeting of the Board to allow for:

- (1) survey of the proposed program and agencies;
- (2) preparation of the report of the survey;
- (3) response to the survey report by persons from the proposed program; and
- (4) review by the Education Committee of the Board for recommendations to the Board.

(f) The Board shall consider all evidence, including the application, survey report, and recommendations of the Education Committee. Representatives of the petitioning institution may speak at the meeting. The Board shall act upon the data available at the meeting.

(g) If the Board finds, from the evidence presented, that the resources and plans meet all rules for establishing a new nursing program and that the petitioning institution is able and willing to maintain support and resources essential to meet the rules of the Board, and if the first class of students is enrolled within one year after this finding, the Board shall grant initial approval. If the Board determines that a proposed program does not comply with all Standards, initial approval shall be denied. Following the Initial Approval, if the first class of students is not enrolled within one year, the approval shall be rescinded. The period of time a program may retain initial approval status shall be influenced by the length of time necessary for full implementation of the program. A program shall be considered eligible for removal from Initial Approval status and placement on Full Approval status following a survey during the final term of total curriculum implementation.

(h) Programs with initial approval shall be surveyed as follows:

- (1) annually during the specified period of initial approval;
- (2) during the final term of complete implementation of the program; and
- (3) as directed by the Board when a decision has been made that the program is not complying with Law or rules.

(i) Following any survey the Board shall act upon data from the following:

- (1) a report of the survey;
- (2) response from the program representatives to the survey report; and
- (3) recommendations from the Education Committee.

(j) If at any time it comes to the attention of the Board or its designated representative(s) that the program is not complying with all rules or the Law, the program shall correct the area of noncompliance and submit written evidence or submit a written plan for correction to the Board for review and action. Failure to respond shall result in further Board action.

(k) Upon finding by the Board that the program complies with the Law and rules, the Board shall direct that the program remain on the Initial Approval status. If, following the survey during the final term for total curriculum implementation, the Board finds that the program is complying with the Law and all rules, the Board shall direct that the program be placed on Full Approval status and resurveyed within three years.

(l) Upon finding by the Board that the program does not comply with the Law or all rules by the final academic term of initial approval, the Board shall:

- (1) provide the program with written notice of the Board's decision;
- (2) upon written request from the program submitted within 10 business days of the Board's written notice, schedule a hearing. Such hearing shall be held not less than 20 business days from the date on which the request was received.

(m) Following the hearing and consideration of all evidence provided, the Board shall assign the program Full Approval status or shall enter an Order removing the Initial Approval status, which shall constitute discontinuance of the program.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. February 1, 1976;

Amended Eff. June 1, 1992; January 1, 1989; November 1, 1984; May 1, 1982;

Temporary Amendment Eff. October 11, 2001;

Amended Eff. August 1, 2002.

21 NCAC 36 .0321 CURRICULUM

(a) The curriculum shall:

- (1) be planned by nursing program faculty;
- (2) reflect the stated program philosophy, purposes, and objectives; and
- (3) be consistent with the Law and administrative rules governing the practice of nursing.

(b) The curriculum shall include, but not necessarily be limited to, instruction in:

- (1) biological, physical, and social science principles;
- (2) components of basic nursing practice as legally defined for the licensure level; and
- (3) utilization of the nursing process in the care of individuals and families throughout the life cycle including the following areas:
 - (A) maternal and child health;
 - (B) common medical and surgical conditions; and
 - (C) aging populations.

Instruction in nursing care in all areas named shall include both theory and clinical learning experiences.

(c) The curriculum for a nursing program designed to prepare persons for registered nurse licensure shall also include instruction in the nursing care of persons with mental, emotional, or psychiatric disorders. Instruction shall include both theory and clinical learning experiences.

(d) The curriculum for a baccalaureate nursing program shall also include public health nursing. Instruction shall include both theory and clinical learning experiences.

(e) The curriculum for a nursing program designed to prepare persons for practical nurse licensure shall include basic mental health principles and therapeutic communication.

(f) Learning opportunities shall be planned in logical sequence so that prerequisite knowledge is provided prior to the experience to which that knowledge is basic. Corequisites must be placed concurrently with the experience(s) [course(s)] to which they relate.

(g) Objectives for each course shall indicate the knowledge and skills expected of the students. These objectives shall be stated to:

- (1) indicate the relationship between the classroom learning and the application of this learning in the clinical laboratory experience;
- (2) serve as criteria for the selection of the types of and settings for learning experiences; and
- (3) serve as the basis for evaluating student performance.

(h) Student course syllabi shall include, in addition to the objectives described in Paragraph (g) of this Rule, a description and outline of content, learning environments and activities, course placement, allocation of time, and methods of evaluation of student performance, including clinical evaluation tools.

(i) There shall be evidence that each course is implemented in accordance with the student course syllabus.

(j) Nurse faculty shall demonstrate that they have authority and responsibility for:

- (1) teaching and evaluating all classroom and clinical experiences, including precepted experiences;
- (2) planning and implementing learning experiences so that objectives for each course are met; and
- (3) providing placement and logical sequencing of clinical learning experiences to support application of theory and attainment of knowledge and skills.

(k) There shall be a written plan for total program evaluation and documentation of ongoing implementation of the plan. The evaluation components shall include administration, faculty, students, curriculum, facilities, and records and reports. The process of evaluation shall include faculty, student, and graduate involvement.

(l) Requests for approval of changes in, or expansion of, the program accompanied by all required documentation shall be submitted at least 30 days prior to implementation for approval by the Board through its designated representatives. Approval is required for:

- (1) increase in enrollment which may exceed the maximum approved by the Board. Requests for expansion are considered only for programs with Full Approval status;
- (2) changes in curriculum related to philosophy, purpose, or focus of the program; and
- (3) alternative or additional program schedules.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38;

Eff. February 1, 1976;

Amended Eff. June 1, 1992; January 1, 1989; January 1, 1984;

Temporary Amendment Eff. October 11, 2001;

Amended Eff. August 1, 2002.

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

21 NCAC 50 .0404 ACTIVE EMPLOYMENT

(a) In each business location, branch or facility of any kind from which work requiring a license pursuant to G.S. 87, Article 2 is solicited or proposed, or from which contracts for such work are negotiated or entered into, or from which requests for such work are received or accepted, or from which such work is carried out or dispatched, there shall be on-site at least one individual who holds qualification in the classification needed for the work being proposed or performed, whose license is listed in the name of the particular firm or business at that location, and who is engaged in the work of the firm at the business location or at firm job sites at least 1500 hours annually, and who has the responsibility to make, modify, terminate and set the terms of

contracts, and to exercise general supervision, as defined in Rule .0505 of this Chapter, of all work falling within his license qualification. Evidence of compliance shall be required as a condition of renewal or retention of license, and falsification shall constitute fraud in obtaining license. The standards set forth in Rule 21 NCAC 50 .0512 shall be applied.

(b) A temporary field office used solely to conduct the work requiring license involved in an existing contract or contracts entered into by the main license office and from which no new business is solicited or conducted shall not be deemed a separate place of business or branch thereof.

History Note: Authority G.S. 87-18; 87-21(a)(5);

87-21(a)(6); 87-26;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2002; August 1, 2000; July 1, 1998;

July 1, 1991; May 1, 1989.

CHAPTER 56 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

21 NCAC 56 .0501 REQUIREMENTS FOR LICENSING

(a) Education. The education of an applicant shall be considered in determining eligibility for licensing as a Professional Engineer. The following terms used by the Board for the specific educational requirements to be eligible to be licensed as a Professional Engineer are defined by the Board as follows:

- (1) Engineering Curriculum of Four or more Years Approved by the Board is defined as an engineering program that has been accredited by the Accreditation Board for Engineering and Technology (ABET). This program is incorporated by reference including subsequent amendments and editions. This material is available for inspection at the office of the North Carolina Board of Examiners for Engineers and Surveyors. Copies may be obtained at the Board office at a cost of five dollars (\$5.00) per copy.
- (2) Engineering or Related Science Curriculum of Four or more Years Other than Ones Approved by the Board is defined as a curriculum, although not accredited by ABET, of technical courses which contains engineering or scientific principles.
- (3) Equivalent Education Satisfactory to the Board:
 - (A) A graduate degree in Engineering from an institution in which the same discipline undergraduate engineering program has been accredited by ABET shall be considered equivalent to an engineering curriculum of four or more years approved by the Board.
 - (B) A bachelor's degree in Engineering Technology shall be considered equivalent to an engineering or related science curriculum of four or

- more years other than one approved by the Board.
- (C) An associate degree in an engineering related curriculum with an additional two years of progressive engineering experience shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
- (D) A high school diploma with an additional four years of progressive engineering experience shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
- (E) Foreign degrees shall be considered only after receipt of an evaluation from the Foreign Engineering Education Evaluation Program (FEEEP) of the National Council of Examiners for Engineering and Surveying (NCEES), or from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The Board shall equate the degree to one of the education categories in Subparagraphs (a)(1)-(3) of this Rule.

(b) Experience:

- (1) General. The experience of an applicant shall be considered in determining whether an applicant is eligible to be licensed as a Professional Engineer.
- (2) Required Experience. In evaluating the work experience required, the Board may consider the total experience record and the progressive nature of the record. (Not less than half of required engineering experience shall be of a professional grade and character, and shall be performed under the responsible charge of a licensed Professional Engineer, or if not, a written explanation shall be submitted showing why the experience should be considered acceptable and the Board may approve if satisfied of the grade and character of the progressive experience.
- (3) Definition. The terms "progressive engineering experience" or "progressive experience on engineering projects" mean that during the period of time in which an applicant has made a practical utilization of acquired knowledge, continuous improvement, growth and development have been shown in the utilization of that knowledge as revealed in the complexity and technical detail of the work product or work record. The applicant must show continuous assumption of greater individual responsibility for the work product

over that period of time. The progressive experience on engineering projects shall be of a grade and a character which indicates to the board that the applicant may be competent to practice engineering.

- (4) Specific Credit for Experience. In evaluating progressive engineering experience, the Board may give credit for experience in the following areas of work:

- (A) Graduate schooling or research in an approved engineering program resulting in award of an advanced engineering degree, one year for each such degree - maximum two years;
- (B) Progressive land surveying - maximum two years;
- (C) Teaching of engineering subjects at the university level in an approved engineering program offering a four year or more degree approved by the Board - maximum two years.

The Board, however, shall not accept combinations, restricted only to the categories noted above, as fulfilling all the necessary statutory experience requirements. Every applicant for licensure as a Professional Engineer, as part of the total experience requirement, shall show a minimum of one year experience of a progressive engineering nature in industry, or government, or under a licensed Professional Engineer offering service to the public.

Full-time engineering faculty members who teach in an approved engineering program offering a four year or more degree approved by the Board, may request waiver of the minimum one year experience in industry, government, or private practice if they demonstrate consulting or research work of at least one year's duration, which was pursued to fruition, and which is of a progressive engineering nature. The faculty applicant shall document the work and demonstrate that the work meets the Board's requirement.

- (5) Other Experience is Considered if it is:

- (A) Experience obtained prior to graduation as part of an ABET accredited engineering program which must be shown on the transcript, with a maximum credit of one year;
- (B) Experience obtained in a foreign country that is performed under direct supervision of a Professional Engineer licensed with a member Board of the National Council of Examiners for Engineering and Surveying (NCEES).

*History Note: Authority G.S. 89C-10; 89C-13;
Eff. February 1, 1976;*

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2002; August 1, 2000; August 1, 1998;

November 2, 1992.

**21 NCAC 56 .0502 APPLICATION PROCEDURE:
INDIVIDUAL**

(a) General. A person desiring to become licensed as a Professional Engineer must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for an appropriate application form may be made at the Board address.

(c) Applicable Forms:

(1) Engineering Intern Form. This form requires the applicant to set forth personal history, educational background, provide character references, and furnish a photograph for identification purposes. The form is for use by those graduating, or those having graduated, from an engineering curriculum approved by the Board as follows:

(A) Students graduating within two semesters, or the equivalent, of the semester in which the fundamentals of engineering examination is administered.

(B) Graduates with less than two years since graduation.

(2) Professional Engineer Form:

(A) All persons, including comity applicants and graduates of an engineering curriculum approved by the Board with more than two years progressive engineering experience, shall apply for licensure by using the Professional Engineer form. The submission of this form shall signify that the applicant seeks licensure, and shall result in seating for each examination required, when the applicant is so qualified. This form requires the applicant to set forth personal and educational background, engineering experience and character references. A passport-type photographic quality portrait that is adequate for current clear identification purposes is required.

(B) Persons who have previously completed the fundamentals examination by use of the Engineering Intern Form shall submit the Professional Engineer Form to request licensure when qualified to take the final eight-hour examination.

(3) Supplemental Form. Persons who initially applied for the fundamentals of engineering exam using the Professional Engineer form must supplement the initial application upon applying for the principles and practice examination. The supplemental form requires that engineering experience from the date of

the initial application until the date of the supplemental application be listed. Five references shall be submitted which are current to within one year of the examination date.

Reference Forms:

(A) Persons applying to take the examination for fundamentals of engineering must submit to the Board names of three individuals who are familiar with the applicant's work, character and reputation. Persons applying to take the examination for principles and practices of engineering must submit to the Board names of five individuals who are familiar with the applicant's work, character and reputation. Two of these individuals must be Professional Engineers.

(B) In addition to the applicant submitting names to the Board of individuals familiar with the applicant's work, character and reputation, those individuals listed shall submit to the Board their evaluations of the applicant on forms supplied them by the applicant.

(C) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's engineering experience, character and reputation.

(D) The reference forms shall be received by the applicant with the application. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall see that the individuals listed as references return the reference forms to the Board prior to the filing deadline for the examination.

(d) Fees:

(1)

Engineering Intern Form. The examination fee for applicants applying for examination on the fundamentals of engineering using the engineering intern form is payable with the filing of the application. Once the applicant passes the examination on the fundamentals of engineering, the application fee of one hundred dollars (\$100.00) and the examination fee for the principles and practice of engineering examination are payable with the applicant's subsequent application for licensure as a Professional Engineer using the Professional Engineer form.

(2)

Professional Engineer Form. The application fee of one hundred dollars (\$100.00) and appropriate examination fee for applicants

applying for the examination on the fundamentals of engineering or the principles and practice of engineering using the Professional Engineer form are payable with the filing of the application.

- (3) Comity. The licensure fee of one hundred dollars (\$100.00) is payable with the filing of the application.

- (4) Examination. The examination fee for any applicant is payable with the filing of the application in accordance with G.S. 89C-14.

(e) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure the NCEES record shall be accepted in lieu of completing the experience, education and references sections of the application. A comity application, with or without a NCEES record, shall be administratively approved by the Executive Director based upon evidence of current licensure in another jurisdiction based on comparable qualifications, required references and no record of disciplinary action, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(f) Model Law Engineer. The term "Model Law Engineer" refers to a person who meets the requirements of this Section by meeting the requirements of NCEES and has a current NCEES record on file and is designated as a "Model Law Engineer." A "Model Law Engineer" application shall be administratively approved by the Executive Director based upon the designation, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(g) Personal interview. During the application process, the applicant may be interviewed by the Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to education and experience.

History Note: Authority G.S. 89C-10; 89C-13; 89C-14;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. May 1, 1994; November 2, 1992; April 1, 1989;

December 1, 1984;

RRC Objection due to lack of Statutory Authority Eff.

November 17, 1994;

Amended Eff. August 1, 2002; August 1, 2000; August 1, 1998;

January 1, 1995.

21 NCAC 56 .0505 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Engineer Licensure. An annual renewal fee of fifty dollars (\$50.00) for certificates of licensure for Professional Engineers shall be payable to the Board. A late fee shall be applied in accordance with G.S. 89C-17. The Board shall send to each licensed Professional Engineer a form which requires the licensee to provide the Board with both the business and residential addresses, and the professional development hours (PDH) obtained during the previous year. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change.

(b) Engineering Intern Certificate. The Engineering Intern certificate does not expire and, therefore, does not have to be renewed.

History Note: Authority G.S. 89C-10; 89C-17;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2002; August 1, 2000; August 1, 1998;

May 1, 1994.

21 NCAC 56 .0602 APPLICATION PROCEDURE: INDIVIDUAL

(a) General. A person desiring to become a Professional Land Surveyor must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for the application form may be made at the Board address.

(c) Application Form. All persons applying to be licensed as a Professional Land Surveyor shall apply using the standard application form. This form requires the applicant to set forth personal background, plus educational background, land surveying experience, and references. A passport-type photographic quality portrait that shall be adequate for current clear identification purposes shall be required also.

(d) Supplemental Form. Persons who initially applied for licensure as a land surveyor, but were not eligible initially to be admitted to the examination for principles and practice of land surveying, must supplement their initial applications upon ultimately applying for the second examination. The applicant must supplement the initial application by using the supplemental form, which requires the listing of land surveying experience from the date of the initial application to the date of the supplemental application. Five references shall be submitted which are current to within one year of the examination date.

(e) Reference Forms:

- (1) Persons applying to take the examination for the fundamentals of land surveying or the examination for principles and practice must submit to the Board names of individuals who are familiar with the applicant's work, character and reputation. The names are submitted by the applicant on the application form.

- (2) Persons applying for the fundamentals of land surveying examination must submit three references, one of which must be a Professional Land Surveyor. Persons applying for the principles and practice examination must submit five references, two of which must be Professional Land Surveyors.

- (3) In addition to the applicant submitting names to the Board of such individuals, those individuals shall submit to the Board their evaluations of the applicant on reference forms supplied them by the applicant.

- (4) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's land surveying experience, character and reputation.

- (5) The reference forms shall be received by the applicant along with the application for licensure. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall see that the individuals listed as references return the forms to the Board prior to the filing deadline for the examination applied for by the applicant.

(f) Fees:

- (1) Regular. The application fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for licensure based upon examination, experience, character and exhibit are payable with the filing of the application.
- (2) Comity. The licensure fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for licensure based upon comity are payable with the filing of the application.
- (3) Examination. The examination fee for any applicant shall be payable with the filing of the application in accordance with G.S. 89C-14.

(g) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure the NCEES record shall be accepted in lieu of completing the experience, education and references sections of the application. A comity application, with or without a NCEES record, shall be administratively approved by the Executive Director based upon evidence of current licensure in another jurisdiction based on comparable qualifications, required references and no record of disciplinary action, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(h) Personal Interview. During the application process, the applicant may be interviewed by Board members. The purpose of the interview shall be to augment the evidence submitted in an application with regard to education and experience.

History Note: Authority G.S. 89C-10; 89C-13; 89C-14; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2002; August 1, 2000; August 1, 1998; May 1, 1994.

21 NCAC 56 .0606 EXPIRATIONS AND RENEWALS OF CERTIFICATES

- (a) Professional Land Surveyor Licensure. An annual renewal fee of fifty dollars (\$50.00) for certificates of licensure for Professional Land Surveyors shall be payable to the Board. A late fee shall be applied in accordance with G.S. 89C-17. The Board shall send each Professional Land Surveyor a form which requires the licensee to provide to the Board the business and residential addresses, and the professional development hours (PDH) obtained during the previous year. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change.
- (b) Surveyor Intern Certificate. The Surveyor Intern certificate does not expire and, therefore, does not have to be renewed.

History Note: Authority G.S. 89C-17; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2002; August 1, 2000; August 1, 1998; May 1, 1994.

21 NCAC 56 .0804 ANNUAL RENEWAL

- (a) Renewal. The certificate of licensure for a professional corporation, limited liability company or business firm shall be renewed annually.
- (b) Expiration. The certificate of licensure shall expire on the last day of June following its issuance by the Board and shall become invalid on that date unless renewed.
- (c) Written Application. Upon written application on a renewal form prescribed by the Board accompanied by the prescribed fee of fifty dollars (\$50.00), the Board shall renew the certificate of licensure providing that the firm has complied with all rules of the Board and applicable General Statutes of North Carolina. The form shall be mailed to all registrants in good standing no later than June 1st. A late fee shall be applied in accordance with G.S. 89C-17. The licensed entity shall give notice to the Board of a change of business address within 30 days of the change.
- (d) Failure of a firm to renew its certificate of licensure within one year of the expiration date shall require the firm to submit a new application for a new certificate of licensure in accordance with all requirements of these Rules and of all applicable statutes.

History Note: Authority G.S. 55B-11; 57C-2-01; 89C-10; 89C-14; 89C-17; 89C-24; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2002; April 1, 2001; February 1, 1996; May 1, 1994.

21 NCAC 56 .1103 STANDARD CERTIFICATION REQUIREMENTS

(a) Certification of Final Drawings. Drawings or maps not conforming to Paragraph (c) of this Rule shall conform to all of the following:

- (1) Certification is required on reproducible or original drawings;
- (2) The seal may be a rubber stamp, embossed seal, computer-generated seal, or other facsimile that becomes a permanent addition to a plan sheet or map;
- (3) The licensee's written signature must be placed over, or near, the seal on the original document. A facsimile signature is not acceptable;
- (4) The date of signing must be annotated on the original document;
- (5) All sheets of engineering and surveying drawings must be sealed;
- (6) The name and address of the licensee's firm shall be included on each sheet of engineering drawings. For surveys, the licensee's name and address shall be included on the first sheet of the survey or title sheet; and

- (7) Any revision on a drawing after a licensee's certification is affixed shall be noted and dated and if not done under the responsible charge of the same licensee shall be separately certified.
- (b) Certification of Specifications and Reports. All specifications, reports, or other documents, including letter reports and calculations, not conforming to Paragraph (c) of this Rule shall conform to all of the following:
- (1) Certification is required on original specifications, reports, or other documents, including letter reports and calculations;
 - (2) The seal may be a rubber stamp, or other facsimile;
 - (3) The licensee's written signature must be placed over, or near, the seal on the original document. A facsimile signature is not acceptable;
 - (4) The date of signing must be annotated on the original document;
 - (5) The title sheet of engineering specifications or other reports must be sealed and bear the name and address of the licensee's firm. The title sheet of any survey report or written description of property shall include the name and address of the Professional Land Surveyor; and
 - (6) Any revision on a drawing after a licensee's certification is affixed shall be noted and dated and if not done under the responsible charge of the same licensee shall be separately certified.
- (c) Exceptions to Required Certification. The seal of a licensee on a map, drawing, plan, specification, plat, document, or report shall signify that it is the final work of the licensee unless the work is stamped or clearly marked substantially as follows so as to put the public on notice not to use as a final product, in which case certification is optional:
- (1) "Preliminary - Do not use for construction";
 - (2) "Progress Drawings - Do not use for construction";
 - (3) "Preliminary Plat - Not for recordation, conveyances, or sales";
 - (4) "Final Drawing - Not released for construction";
 - (5) "Final Drawing - For Review Purposes Only".
 - (6) "Not a Certified Document - This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document shall not be considered a certified document".
 - (7) "Not a Certified Document as to the Original Document but Only as to the Revisions - This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document is only certified as to the revisions"
- (d) Electronically transmitted documents. Documents, including drawings, specifications and reports, that are transmitted electronically to a client or a governmental agency shall have the computer-generated seal removed from the original file, unless signed with a digital signature as defined in Paragraph (e) of this Rule. After removal of the seal the

electronic media shall have the following inserted in lieu of the signature and date: This document originally issued and sealed by (name of sealer), (license number), on (Date of sealing). This medium shall not be considered a certified document. Hardcopy documents containing the original seal, signature and date of the licensee may be duplicated by photocopy or electronic scanning processes and distributed either in hardcopy or electronic medium. The scanned digital files of properly certified documents are not subject to the requirements of this Paragraph. The electronic transmission of CAD, vector or other similar files subject to easy editing are subject to the requirements of this Paragraph. Easy editing is based on the file consisting of separate elements that can be individually modified or deleted.

(e) Documents to be electronically transmitted that are signed using a digital signature, shall contain the authentication procedure in a secure mode and a list of the hardware, software and parameters used to prepare the document(s). Secure mode means that the authentication procedure has protective measures to prevent alteration or overriding of the authentication procedure. The term "digital signature" shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

- (1) Unique to the licensee using it;
- (2) Capable of verification;
- (3) Under the sole control of the licensee; and
- (4) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

History Note: Authority G.S. 89C-10; 89C-16;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2002; August 1, 2000; August 1, 1998; February 1, 1996.

21 NCAC 56 .1605 CLASSIFICATION OF VERTICAL CONTROL SURVEYS

(a) General. Vertical control surveys are defined as measurements taken by surveying methods to determine elevation with respect to vertical datum, usually National Geodetic Vertical Datum of 1929 (NGVD29) or North American Vertical Datum of 1988 (NAVD88). For the purpose of specifying minimum allowable surveying standards, the following three general classifications of vertical control surveys are established.

- (1) Urban and suburban vertical control surveys. (Class A). Urban and suburban vertical control surveys include lands which lie within or adjoining a town or city. For Class A vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.10 times the square root of the number of miles run from the reference datum.
- (2) Other vertical control surveys (Class B). Other vertical control surveys include all lands which are not covered by Class A as described in Item (1) of this Rule. For Class B vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.20 times the square root of the number of miles run from the reference datum.

- (3) Trigonometric vertical control surveys (Class C). Trigonometric vertical control surveys can be used for vertical control for aerial and topographic mapping. The vertical error in feet shall not exceed 0.3 times the square root of the number of miles run from the reference datum.

*History Note: Authority G.S. 89C-10; 89C-20;
Eff. November 2, 1992;
Amended Eff. August 1, 2002; August 1, 2000.*

**21 NCAC 56 .1606 SPECIFICATIONS FOR
TOPOGRAPHIC AND PLANIMETRIC MAPPING,
INCLUDING GROUND, AIRBORNE, AND
SPACEBORNE SURVEYS**

(a) General.

- (1) Topographic surveys are defined as surveys that have as their major purpose the determination of the configuration (relief) of the earth (ground) and the location of natural or artificial objects thereon.
- (2) Planimetric mapping is defined as producing a map that presents the horizontal positions only for the features represented; distinguished from a topographic map by the omission of relief in measurable form.
- (3) Airborne and spaceborne surveys are defined as the use of photogrammetry, LIDAR, IFSAR, or other similar measurement technologies for obtaining reliable information about physical objects and the environment, including terrain surface, through the process of recording, measuring, and interpreting images and patterns of electromagnetic radiant energy and other phenomena. This Rule establishes minimum allowable photogrammetric production procedures and standards for photogrammetric mapping and digital data production.

(b) Production procedures for topographic and planimetric mapping surveys shall be in accordance with the standards established by Chapter 3 of the Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standard and applicable extensions and revisions. These standards are incorporated by reference including subsequent amendments and editions. The material is available from the Board office at a cost of five dollars (\$5.00) per copy or from the FGDC.

(c) Topographic or planimetric maps, orthophotos, or related electronic data, unless clearly marked as "Preliminary Map," shall meet contractually specified FGDC Standards for horizontal and vertical accuracies (in the absence of specified standards, the National Map Accuracy Standards apply) and shall be sealed, signed and dated by the licensee.

(d) When the issued product is a digital (electronic) data set, or a map or document consisting of more than one sheet or otherwise cannot be signed and sealed, a project report shall be certified, signed and sealed. Such report shall be clearly marked "Preliminary" if applicable.

(e) Ground control for topographic and planimetric mapping projects shall be in North Carolina State Plane Coordinate

System grid coordinates and distances when the project is tied to Grid. A minimum of one permanent project vertical control point shall be shown.

(f) A project map or report shall contain the applicable following information:

- (1) Date of original data acquisition;
- (2) Altitude of sensor and sensor focal length, as applicable;
- (3) Date of document or data set compilation;
- (4) If hard copy product is produced, the maps shall contain a north arrow, map legend, final document scale, including bargraph, and contour interval, as applicable;
- (5) Coordinate system for horizontal and vertical denoting SI (System International) or English units (i.e., NAD83, assumed, or other coordinate system);
- (6) A list or note showing the control points used for the project. The minimum data shown for each point shall include: physical attributes (i.e. iron rod, railroad spike, etc), latitude and longitude (or X and Y Grid coordinates), and elevation, as applicable;
- (7) If other data is included, the source and accuracy of those items must be clearly indicated.
- (8) A statement of accuracy complying with contractually specified FGDC standards consistent with Paragraph (c) of this Rule;
- (9) For topographic maps or data sets, contours in areas obscured by man-made or natural features shall be uniquely identified or enclosed by a polygon clearly identifying the obscured area. The accuracies of the contours or of features in this obscured area shall be noted "No reliance is to be placed on the accuracy of these contours";
- (10) A vicinity map depicting the project location shall appear on the first sheet of all hard copy maps or in the report accompanying digital files;
- (11) Company name, address and phone number; and
- (12) The name of the client for whom the project was conducted.

(g) Nothing in this Rule shall be construed to negate or replace the relative accuracy standards found in Rules .1601 through .1608.

(h) A certificate, substantially in the following form, shall be affixed to all maps or reports:

"I, _____, certify that this project was completed under my direct and responsible charge from an actual (insert as appropriate: ground, airborne, photogrammetric) survey made under my supervision; that this photogrammetric survey was performed to meet Federal Geographic Data Committee Standards as applicable; that the imagery and/or original data was obtained on ____ (date) ____; that the photogrammetric survey was completed on ____ (date) ____; that contours shown as [broken lines] may not meet the stated standard; and all coordinates are based on _____."

(i) Documents transmitted electronically shall have the computer-generated seal removed from the original file and a copy of the project report shall be signed, sealed and sent to the client. The electronic data shall have the following inserted in lieu of the signature and date:

"This document originally issued and sealed by (name of sealer), (license number), on (date of sealing). This electronic media shall not be considered a certified document. See the project report for certificate and seal."

*History Note: Authority G.S. 89C-10; 89C-20;
Eff. November 2, 1992;
Amended Eff. August 1, 2002; August 1, 2000.*

21 NCAC 56 .1607 GLOBAL POSITIONING SYSTEM SURVEYS

(a) General. Global Positioning System (GPS) surveys are defined as any survey performed by using the GPS 3-dimensional measurement system based on observations of the radio signals of the Department of Defense's NAVSTAR (Navigation Satellite Timing and Ranging) GPS System. All GPS boundary and geodetic control surveys, aerial photography control surveys, and GIS/LIS collection surveys of features included in G.S. 89C-3(7) performed in North Carolina shall be performed by a Professional Land Surveyor licensed in North Carolina unless exempt by G.S. 89C-25.

(b) Geodetic control surveys for inclusion of the data in the National Spatial Data Network (Blue Book) shall be performed in accordance with specifications established by the Federal Geographic Data Committee (FGDC) and the National Geodetic Survey. These specifications are incorporated by reference including subsequent amendments and editions. The material is available for inspection at the office of the North Carolina Geodetic Survey, 121 W. Jones Street (Elks Building), Raleigh, North Carolina 27603. Copies may be obtained at the office of the North Carolina Geodetic Survey at a cost of two dollars (\$2.00). GPS surveys performed to other Federal Standards shall conform to the appropriate Federal standard procedures for the specific project.

The Professional Land Surveyor in responsible charge of the GPS survey shall certify, sign and seal all prepared documents. When a map or document consists of more than one sheet, only one sheet must contain the certificate and all others must be signed and sealed. The certificate shall contain the following information:

- (1) Class of GPS survey.
- (2) Type of GPS field procedure (Static, Kinematic, Pseudo-Kinematic).
- (3) Type of adjustment used.
- (4) Dates of survey.
- (5) Type and model of GPS receivers used.
- (6) What datum coordinates or geographic positions are based on.

The certificate shall be substantially in the following form:

"I, _____, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision; that this GPS survey was performed to _____ FGCC specifications and that I used _____. GPS field procedures and coordinates were obtained by _____ adjustment. That this survey was performed on _____ using (type)

(number) of receivers and all coordinates are based on _____.

Prepared documents shall include coordinates [see Paragraph (f) of this Rule for the list of data to show] of all monuments and a map showing all non-trivial vectors measured. The map shall also contain the following information:

- (1) Scale (bar or numerical).
- (2) Legend.
- (3) Loop closures before any adjustment.
- (4) Certification.
- (5) Company name, address and phone number.

(c) GPS surveys performed to provide local control networks for use as a network base shall be performed using static or rapid static methods. These surveys shall be performed in such a manner that a 95% confidence level of the positional accuracy of each point relative to the published positions of the control points used and shall meet the accuracy standards of a Class AA survey as set out in Rule .1603.

(d) GPS surveys performed to provide local horizontal or vertical Grid control on a parcel of land where the boundary or topography of that parcel will be shown relative to NC Grid horizontal or vertical datum shall be performed using static or rapid static techniques, or kinematic or real time kinematic techniques. These surveys shall be performed using techniques that will provide the standards of accuracy for the class of survey being performed while determining the horizontal or vertical positions of objects as set out in Rule .1603 or Rule .1606 of this Section, as applicable.

(e) All plats, maps, and reports published based upon this type of GPS survey shall contain a statement worded substantially as follows: "The NC Grid coordinates shown on this [plat or report] were derived by [static or rapid static or kinematic or real time kinematic] differential GPS observations using [number of receivers] [brand name] [model number] receivers. The vectors were adjusted using the fixed station(s) shown using [software brand and program name] software producing a weighted least squares adjustment of the [WGS 84 or NAD 83 or other system] positions. The median vector error is computed to be [x.x] ppm. A loop of [miles or kilometers or feet or meters] using the un-adjusted vectors passing through the fixed and derived control stations yields a loop precision of [1:xxx or xx.x ppm]."

(f) A list or note showing the fixed station(s) used for the project shall appear on the map, plat, or report. The minimum data shown for each fixed station shall be station name, latitude, longitude, elevation (ellipsoid or orthometric), and geoid height and epoch (93, 96, 99, etc.), and the coordinate reference system. State plane coordinates may be added if desired.

*History Note: Authority G.S. 89C-10; 89C-20;
Eff. November 2, 1992;
Amended Eff. August 1, 2002; August 1, 2000.*

21 NCAC 56 .1608 CLASSIFICATION/LAND INFORMATION SYSTEM/GEOGRAPHIC INFORMATION SYSTEM SURVEYS

(a) General: Land Information System/Geographic Information System (LIS/GIS) surveys are defined as the measurement of existing surface and subsurface features for the purpose of determining their accurate geospatial location for inclusion in an LIS/GIS database. All LIS/GIS surveys as they relate to property lines, rights-of-way, easements, subdivisions of land,

the position for any survey monument or reference point, the determination of the configuration or contour of the earth's surface or the position of fixed objects thereon, and geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry, shall be performed by a Land Surveyor who is a licensee of this Board unless exempt by G.S. 89C-25. For the purpose of specifying minimum allowable surveying standards, three general classifications of LIS/GIS surveys are established:

- (1) Urban and Suburban LIS/GIS surveys (Class A). Urban and suburban LIS/GIS surveys include the location of features within lands which lie in or adjoining a town or city. For Class A LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 0.5 meter (1.64 feet).
- (2) Rural LIS/GIS surveys (Class B). Rural LIS/GIS surveys include the location of features within lands which lie outside of suburban areas. For Class B LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than two meters (6.56 feet).
- (3) Regional LIS/GIS surveys (Class C). Regional LIS/GIS surveys include the location of features within lands which lie in multi-county areas. For Class C LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than five meters (16.40 feet).

(b) Nothing in this Rule shall be construed to negate or replace the relative accuracy standards found in Rules .1601 through .1607 of this Chapter.

(c) The Professional Land Surveyor in responsible charge of the LIS/GIS boundary or geodetic control survey shall certify to all of the following in either written or digital form:

- (1) Class of LIS/GIS survey;
- (2) Method of measurement (i.e. global positioning system, theodolite and electronic distance meter, transit and tape);
- (3) Date(s) of the survey; and
- (4) Datum used for the survey.

History Note: Authority G.S. 89C-10; 89C-20;

Eff. February 1, 1996;

Amended Eff. August 1, 2002; August 1, 2000.

21 NCAC 56 .1713 SPONSORS

(a) The Board shall approve sponsors of Continuing Professional Competency (CPC) activities and not particular courses. The Board shall maintain a list of sponsors which have agreed to conduct programs in accordance with the standards of CPC activities set forth in 21 NCAC 56 .1700. Such sponsors shall indicate their agreement with the requirements by executing a Sponsor Agreement on a form provided by the Board. These sponsors shall be designated as "Approved Sponsors."

(b) By entering into an agreement with the Board to be designated as an "Approved Sponsor," the sponsor shall agree to:

- (1) Allow persons designated by this Board to attend any or all courses, without fee or charge, for the purpose of determining that said course meets the standards of the Board.
- (2) Allow persons designated by this Board to review course material for the purpose of determining that said course meets the standards of the Board.
- (3) State in every brochure, publication or announcement concerning the course, the general content of the course and the specific knowledge or skill to be taught or addressed, as well as the credit to be earned in Professional Development Hours (PDH).
- (4) Ensure that the instructors or presenters of the course or program are qualified to teach the subject matter.
- (5) Provide persons completing the course with written documentation attesting to that person's attendance to the course, as well as the name of the course, the date and location held, the instructor's name and the number of PDHs earned.
- (6) Submit quarterly reports to the Board which shall include the sponsor's name, the name of the course, the date and location held, the instructor's name, the number of PDHs earned and a list of attendees.
- (7) Have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPC program. The contact person shall have the responsibility for assuring and demonstrating to the Board compliance with the Rules in Section .1700, as well as responsibility for any other organization working with the sponsor for the development, distribution or presentation of CPC courses or activities.
- (8) Retain for a period of three years a copy of the above documentation.

(c) Sponsors shall renew annually on a form provided by the Board.

(d) Failure of an approved sponsor to comply with the terms of the CPC sponsor agreement shall be grounds for the Board to revoke, suspend or terminate the agreement, to remove the sponsor's name from the list of approved sponsors and to notify the public of such action. A sponsor that is given notice of revocation, suspension or termination may request an administrative hearing to be conducted as provided in 21 NCAC 56.1400 Contested Cases.

History Note: Authority G.S. 89C-10; 89C-17;

Eff. February 1, 1996;

Amended Eff. August 1, 2002.

CHAPTER 68 - CERTIFICATION BOARD FOR SUBSTANCE ABUSE PROFESSIONALS

21 NCAC 68 .0202 REGISTRATION PROCESS FOR BOARD CERTIFICATION

(a) Individuals may register with the Board at the beginning of their entry into the field. This allows the Board to review the applicant's materials including education, training, experience and supervision contracts and provide the registrant with a clear understanding of his or her standing in the certification process.

(b) Although early registration is not required, it will provide better direction through the process. To register, the applicant shall send the following to the Board:

- (1) Completed registration form provided by the Board;
- (2) Documentation of required high school graduation or completion of GED, as well as documentation of any baccalaureate or advanced degree the applicant may have completed;
- (3) A signed supervision contract provided by the Board documenting the proposed supervision process by an approved supervisor;
- (4) A signed form attesting to the applicant's commitment to adhere to the ethical standards of the Board;
- (5) Documentation of three hours of educational training in ethics; and
- (6) A check or money order in the amount of one hundred fifty dollars (\$150.00) that is non-refundable and made payable to the Board.

(c) Once the materials are determined by the Board to be in order the applicant shall be granted registration status.

(d) If a registrant performs services as a counselor, in order for this experience to be considered toward certification at a later date, the registrant shall receive supervision from an approved supervisor at a ratio of one hour of supervision for every ten hours of practice.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40; Eff. August 1, 1996; Amended Eff. August 1, 2002.

**21 NCAC 68 .0203 DESIGNATION AS
SUBSTANCE ABUSE COUNSELOR INTERN**

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

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

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

(c) Upon the failure of an applicant to achieve a passing score, the applicant may request a reexamination and pay a non-refundable reexamination fee of one hundred fifty dollars

(\$150.00) after a period of three months from the date of the failed test.

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

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.38; 90-113.39; 90-113.40; 90-113.41; Eff. August 1, 1996; Amended Eff. August 1, 2002; August 1, 2000.

**21 NCAC 68 .0205 CERTIFIED SUBSTANCE
ABUSE COUNSELOR CERTIFICATION**

Requirements for certification as a Certified Substance Abuse Counselor shall be as follows:

- (1) Successful completion of at least 6000 hours of paid or volunteer supervised experience earned in not less than three years, or if a graduate of a Board-approved master's degree program, a total of 3,000 hours of paid or volunteer supervised experience in the field, 300 hours of which shall be supervised practice. If the work setting is not exclusively substance abuse focused, the applicant may accumulate experience proportional to the substance abuse services performed;
- (2) Board approved education and training of at least 270 clock hours as follows:
 - (a) Substance Abuse Specific (SAS) education and training in the amount of at least 190 hours;
 - (b) Up to 80 hours may be directed toward general professional skill building to enhance counselor development;
 - (c) No more than 25% of the 270 hours (67.5) hours may be inservice education received within the applicant's organization by staff of the same organization;
 - (d) All 270 clock hours needed for initial certification must be in the core competencies. Core competencies are listed as follows:
 - (i) Basic alcoholism, drug addiction and cross addiction knowledge;
 - (ii) Screening, intake, orientation and assessment;
 - (iii) Individual, group and family counseling and intervention techniques;
 - (iv) Case management, treatment planning, reporting and record keeping;
 - (v) Crisis intervention skills;
 - (vi) Prevention and education;
 - (vii) Consultation, referral and networking that utilizes community resources;

- (viii) Ethics, legal issues, and confidentiality;
- (ix) Special populations which include but are not limited to individuals or groups with specific ethnic, cultural, sexual orientation, and gender characteristics as well as persons dealing with HIV, co-occurring disabilities and perinatal issues;
- (x) Physiology and pharmacology of alcohol and other drugs that include the licit and illicit drugs, inhalants and nicotine;
- (xi) Psychological, emotional, personality and developmental issues; and
- (xii) Traditions and philosophies of 12-step and other recovery support groups;
- (e) Of the 270 clock hours, applicants for certification as a Substance Abuse Professional must document 12 hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education and six hours professional ethics training and education;
- (3) A one hundred dollar (\$100.00) oral examination and case preparation fee plus a one hundred twenty-five dollar (\$125.00) written exam fee and a one hundred twenty-five dollar (\$125.00) non-refundable registration fee, unless previously paid. The applicant may request a reexamination and pay a non-refundable reexamination fee of one hundred dollars (\$100.00) for the oral examination fee and one hundred fifty dollars (\$150.00) for the written exam fee if a passing score is not achieved and at least three months have passed from the date of failed test;
- (4) Successful completion of the IC&RC/AODA, Inc. or its successor organization written exam;
- (5) Successful completion of an IC&RC/AODA, Inc. or its successor organization oral examination and case presentation administered by the Board following review and approval by the Board of the requirements in this Rule;
- (6) Completed evaluation forms and contracts for supervision, these forms must be mailed directly to the Board by three references: a supervisor, co-worker, and colleague;
- (7) A signed form attesting to the applicant's adherence to the Ethical Standards of the Board;

- (8) Documentation of high school graduation, completion of GED, baccalaureate or advanced degree;
- (9) Completed registration forms;
- (10) Resume; and
- (11) Job description which verifies job function.

History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.36; 90-113.39; 90-113.40; Eff. August 1, 1996; Amended Eff. August 1, 2002; August 1, 2000.

21 NCAC 68 .0215 VERIFICATION

- (a) Application for verification of certification shall be made to the Board.
- (b) A request for verification shall be made in writing and submitted with a check or money order in the amount of twenty-five dollars (\$25.00).

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.40; Eff. August 1, 2002.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

25 NCAC 01L .0104 PROGRAM IMPLEMENTATION: AGENCY AND UNIVERSITY LEVEL

- (a) Each state agency head and University Chancellor shall develop and implement an agency or university equal employment opportunity program and plan.
- (b) Each state agency and university shall submit a plan by March 1 of each year to the Office of State Personnel for review, technical assistance and approval by the Director of State Personnel. The Plan and program shall be approved if it complies with the requirements in this Rule.
- (c) Each state agency's and university's equal employment opportunity plan and program shall include but not be limited to the following elements:

- (1) The State EEO policy and an EEO policy statement applicable to the agency or university. The policy shall commit the agency or university to equal employment opportunity, prohibit discrimination, provide equal employment opportunity to applicants and employees without regard to race, color, national origin, religion, creed, sex, age, or disability; list applicable laws, regulations and guidelines pertaining to EEO compliance including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1968 as amended, Executive Order 11246 as amended, the Rehabilitation Act of 1973, the Civil Rights Restoration Act of 1988, the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991, G.S. 126-16 as amended and other state EEO and anti-discrimination laws or statutes; provide a provision prohibiting retaliatory actions against employees who file

- a complaint or charge of employment discrimination, testify, assist or participate in any manner in a hearing, proceeding or investigation of employment discrimination; provide provisions to commit agency or university to non-discriminatory practices in recruitment, selection, hiring, promotion, compensation, performance appraisal, disciplinary and grievance procedures, separations, and reduction in force; describe provisions for providing reasonable accommodation for persons with disabilities; provide a provision for preventing harassment, including sexual harassment; provide provisions describing the accountability of agency head or chancellor, managers, supervisors and others for EEO compliance; provide provisions for monitoring and evaluating the plan and program effectiveness; and include the signature of the agency head or the chancellor and date;
- (2) The assignment of responsibility and accountability. The assignment of responsibility and accountability shall describe the responsibilities of the following:
- (A) the agency head or the university chancellor responsibilities shall include, but are not limited to: the appointment or designation of a management-level official responsible to oversee the EEO program; communication of agency or university commitment to EEO policies, plans, and procedures to all employees, applicants and the general public; providing necessary resources to ensure the successful implementation of the EEO program; and ensuring the development and implementation of policies, procedures, and programs necessary to achieve a workforce in each occupational category that reflects the N.C. State working population as defined by U.S. Census data.
- (B) the managers and supervisors responsibilities shall include, but are not limited to: assisting in the development and implementation of the EEO plan and program; establishing program objectives; maintaining a diverse workforce for the department, division, work unit, or section; assisting the EEO officer in periodic evaluations to determine the effectiveness of the EEO program; and providing a work environment and management practices which support equal opportunity in all terms and conditions of employment,
- (C) the EEO Officer(s) responsibilities shall include, but are not limited to: the interpretation and application of Federal laws, state statutes, policy regulations and guidelines related to discrimination in employment and equal opportunity; reviewing hiring recommendations for compliance with EEO program objectives prior to the final agency or university hiring decision; maintaining and analyzing workforce utilization data for development of the equal employment plan and program in conjunction with management; maintaining and analyzing data on employment practices to monitor and evaluate the effectiveness of the EEO program and make recommendations; advising management of the program's impact and effectiveness on workforce demographics at all occupational levels; providing or coordinating EEO training for management and employees; providing confidential counseling or consultation for management and employees in matters involving EEO concerns or complaints alleging discrimination (formally, informally and within agency or university guidelines); establishing and maintaining effective working relations with groups concerned with equal employment opportunity; coordinating special programs (internally or in cooperation with State Personnel) to achieve program objectives and to provide for management and employee input and assistance in program development and implementation; presenting information on the EEO plan and program to management and employees on a regular basis,
- (D) the EEO Committee responsibilities shall include, but are not limited to: serving as a communication link between managers and employees and the EEO staff on aspects of the EEO plan and program; reviewing and evaluating the equal employment opportunity plan and program; reviewing workforce representation data in each occupational category; surveying the organizational climate, employee attitudes and evaluating the resultant data; meeting with the agency head or university chancellor in conjunction with the EEO Officer to discuss EEO programs, report on

- the employees' concerns, and recommend changes or additions to the EEO policy, plan, or program; identifying recruitment resources and other activities designed to strengthen the EEO program; meeting as a committee at least quarterly;
- (3) The dissemination procedures. These procedures shall include methods for communicating the commitment, intent, and provisions of the EEO plan and program to employees and the general public;
- (4) The workforce analysis. This analysis shall be used to examine the representation of each demographic group within each occupational category using one of the following three bases for comparison:
- (A) the N.C. working populations (ages 18-64) as established by the U.S. Census. The statewide NC working population shall be used for the officials and administrators, management related and professional occupational categories and the geographical recruiting area working population shall be used for the other occupational categories; or
- (B) two factor analysis as defined by the Office of Federal Contract Compliance Programs (OFCCP) regulations; or
- (C) NC Occupational specific civilian labor force and NC working population (18-64) compromise standard. The occupation specific labor force of each demographic group and the working population by each demographic group shall be compared to the agency or university workforce. An average of the underutilization resulting from the comparisons of the two criteria shall be used to determine the workforce underutilization by occupational category for each demographic group. When calculating the underutilization resulting from the occupation specific/working population
- (D) comparison, the statewide working population and the statewide occupational specific category compromise numbers shall be used for analyzing the officials and administrators, management related and the professional occupational categories. When calculating the underutilization resulting from the occupation specific/working population comparison, the working population in the local geographical recruiting area and the occupation specific category compromise numbers in the local geographical recruiting area may be used for analyzing the other occupational categories. Only one basis or criteria for comparison may be selected for use by an agency head or university chancellor. The analysis shall identify each occupational category in which groups are underutilized, as defined as having fewer employees in a demographic group in a particular occupational category than would be expected based on the selected basis or criteria for comparison. The analysis shall also assess the agency's or university's workforce needs and capability for addressing the identified underutilization;
- (5) The program objectives. These objectives shall establish specific strategies targeted at eliminating or reducing any underutilization identified in each occupational category;
- (6) The program activities and strategies. These activities and strategies shall be implemented to accomplish program objectives. These strategies shall include, but are not limited to, the following:
- (A) recruitment procedures to attract a diverse pool of applicants to each occupational category,
- (B) disciplinary process designed to provide equitable treatment for all employees in accordance with the State's discipline policy,
- (C) selection procedures designed to ensure that all of the steps in the process are nondiscriminatory and job related,
- (D) hiring process designed to include consistent information for new hires regarding employment conditions (e.g. type of appointment, salary, etc.),
- (E) promotion procedures designed to enhance upward mobility and fully utilize the skills of the existing workforce,
- (F) training procedures designed to enhance employee development and advancement opportunities,
- (G) compensation and benefits analysis procedures designed to review benefits; monitor salaries; and analyze practices in order to determine trends; and to ensure that all employees receive compensation and benefits without discrimination,
- (H) performance appraisal designed to hold managers and supervisors accountable for the progress of the

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| <p>(I) agency's or university's EEO program; to establish, maintain, and apply employee performance standards that are free from bias, transfer or separation analysis designed to identify trends and to measure impact on underutilized groups,</p> <p>(J) grievance procedures to ensure fair and equitable review of complaints in accordance with agency or university procedures and State policy on grievance, and</p> <p>(K) a process to enroll managers and supervisors in the Equal Employment Opportunity Institute (EEOI), an EEO educational and diversity training program, as defined by G.S. 126-16.1;</p> <p>(7) An evaluation mechanism. This evaluation mechanism shall be designed to assess overall effectiveness of the equal employment opportunity program and to determine the achievement of agency or university EEO objectives as identified in the EEO plan and program;</p> <p>(8) A reporting mechanism. This reporting mechanism shall be designed to provide agency or university management, on a regular basis throughout the year, with data on the various program activities, workforce trends,</p> | <p>(9) and progress towards achievement of program objectives;</p> <p>Procedures to prevent and eliminate harassment. These procedures shall be designed to create an environment that is fair to all employees without regard to race, sex, age, national origin, color, creed, religion, or disability;</p> <p>(10) Reduction-in-force procedures. These procedures shall be designed to analyze layoff decisions and to determine their actual or potential adverse impact on underutilized groups; and</p> <p>(11) Procedures for monitoring. These procedures shall establish a data management system for maintaining and analyzing data on transactions regarding agency or university trends in compensation, promotion, selection, recruitment, training, separations, performance appraisals, and all other terms and conditions or employment.</p> <p>(d) Each state agency head and university chancellor shall designate an official at the deputy secretary, assistant secretary or vice-chancellor or assistant vice-chancellor level or high level official with a direct reporting relationship to the agency head, or chancellor, to assume responsibility for the operation and implementation of their equal opportunity plan and program.</p> |
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- History Note: Authority G.S. 126-4(10); 126-16; 126-19; Eff. October 1, 1977; Amended Eff. August 1, 2002; December 2, 1995; November 1, 1988; November 1, 1987; October 1, 1984.*

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter

James L. Conner, II
Beryl E. Wade
A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
NC ABC Commission v. Polo South, Inc. T/A Polo Club	00 ABC 2194	Gray	05/07/02	
NC ABC Commission v. Benjamin Franklin Black, B and M Convenience	01 ABC 0663	Morrison	07/23/01	
Deleon Christopher Izi v. NC Alcoholic Beverage Control Commission	01 ABC 0709	Gray	10/11/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
Richard Burnette Jones T/A Louie's Lounge v. NC ABC Commission	01 ABC 0949	Wade	04/18/02	
NC ABC Commission v. James Okwudili Nwizu, T/A Sahara Mini Mart	01 ABC 1209	Elkins	02/01/02	
NC ABC Commission v. Polo South, Inc. T/A Polo Club	01 ABC 1409	Lassiter	05/07/02	16:24 NCR 2920
NC ABC Commission v. Colap Ent., Inc. T/A Pantana Bobs	01 ABC 1472	Morrison	03/05/02	
NC ABC Commission v. Circle K Stores, Inc. T/A Circle K #8220, 1040 E Lexington Ave., High Point, NC 27262	01 ABC 1821	Conner	05/15/02	
NC ABC Commission v. W D B, Inc. T/A Twin Peaks	01 ABC 1962	Wade	03/11/02	
NC ABC Commission v. BLL Enterprises, Inc. T/A Leather & Lace South	01 ABC 2207	Lassiter	05/07/02	
NC ABC Commission v. Fadhle Kassim Hussein T/A Hornes Church	01 ABC 2294	Lassiter	03/12/01	
NC ABC Commission v. D B D, Inc. T/A Crazy Horse Convenient Mart	01 ABC 2318	Lassiter	05/07/02	
<u>BOARD OF MORTUARY SCIENCE</u>				
NC Board of Mortuary Science v. Beasley's Funeral Home, Inc., Odell Beasley, Crystal Beasley-Walker	00 BMS 0469	Mann	07/17/01	
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
NC Board of Mortuary Science v. Robert Breece, Jr., and Osborne Owens and Rogers and Breece Funeral Home	00 BMS 1763	Morrison	08/22/01	
NC Board of Mortuary Science v. Kyle Garret Peacock, Philip Smoak and Peggy Peacock	01 BMS 0298	Lassiter	09/20/01	
<u>BOARD OF GEOLOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Georgina Joyner v. NC Crime Victims Compensation Commission	95 CPS 0359	Gray	10/23/01	
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Clarence Forney v. NC Crime Victims Compensation Commission	00 CPS 1994	Elkins	10/11/01	
Sheree D Sirotnak v. NC Crime Victims Compensation Commission	00 CPS 2209	Wade	06/14/01	
Eddie N McLaughlin v. NC Crime Victims Compensation Commission	01 CPS 0086	Elkins	06/05/01	
Ricardo Darnell Jones v. NC Crime Victims Compensation Commission	01 CPS 0242	Elkins	02/01/02	
Marie King Cutler v. NC Crime Victims Compensation Commission	01 CPS 0926	Gray	01/28/02	
Bobby Holmes, Jr. v. NC Crime Victims Compensation Commission	01 CPS 1095	Gray	10/09/01	
Mark A Carroll v. NC Crime Victims Compensation Commission	01 CPS 1108	Gray	04/23/02	
John R. Ackerman v. NC State Highway Patrol	01 CPS 1327	Morrison	09/24/01	
David Nixon v. NC Crime Victims Compensation Commission	01 CPS 1330	Elkins	02/01/02	16:18 NCR 2055
Edna Hunt v. NC Crime Victims Compensation Commission	01 CPS 1434	Chess	01/10/02	
Kiffin Johnson v. NC Dept. of Crime Control & Public Safety	01 CPS 1517	Morrison	03/14/02	
Charles R. Cash v. NC Crime Victims Compensation Commission	02 CPS 0165	Elkins	05/02/02	

CULTURAL RESOURCES

Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01	
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HEALTH AND HUMAN SERVICES

Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1077 ³	Wade	08/16/01	
Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1324 ³	Wade	08/16/01	
Salinda Smith v. NC Department of Health & Human Services	00 DHR 1779	Mann	09/20/01	
Kenneth E. Frost v. DHHS, Julian F. Keith, ADATC	00 DHR 2278	Conner	07/30/01	
Ruby L. Laughter v. Dept. of Health & Human Services	01 DHR 0108	Gray	06/29/01	
Donna Ray Snow v. NC Dept. of Health & Human Services	01 DHR 0122	Gray	11/27/01	
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Lara Beth Henrick v. DHHS, Dorothea Dix Hospital	01 DHR 0409	Mann	07/19/01	
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Yvonne D Cole v. Cherry Hospital, Brenda Wells	01 DHR 0502	Morrison	07/23/01	
Cheryl Holloway v. DHHS, Health Care Register	01 DHR 0513	Morrison	07/27/01	
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Robert W Dietz & wife, Iris Dietz v. NC Dept. of Health & Human Svcs.	01 DHR 0603	Wade	10/11/01	
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Millsway Healthcare, Inc. v. Blue Ridge Area Authority	01 DHR 0628 ¹	Conner	02/25/02	
Tawn Milteer-Ellerbe v. Dept. of Health & Human Services	01 DHR 0629	Conner	09/04/01	
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Fannie Brown v. Caswell Center Healthcare Personnel Registry	01 DHR 0780	Gray	07/02/01	
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Robert & Shirley Harmon on behalf of Gary Harmon v. NC DMH/DD/SAS	01 DHR 0955	Chess	06/25/01	
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Portia A Davis v. Dept. of Health & Human Services	01 DHR 1055	Mann	08/06/01	
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Shirley A Johnson v. Social Services, State Taxes	01 DHR 1126	Wade	09/19/01	
Janet Elizabeth King v. Dept. of Health & Human Services	01 DHR 1185	Morrison	09/11/01	
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Amanda L. Hulin v. NC Nurse Aide Registry, Centerclair Nursing Facility	01 DHR 1253	Chess	11/30/01	
David C Spence v. Walter B Jones, ADATC & NC DHHS	01 DHR 1261	Elkins	10/24/01	
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Sadina Hall v. Carolina House & NC Nurse Aide Registry	01 DHR 1274	Conner	01/10/02	
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Juanita D Blevins v. NC DHHS	01 DHR 1341	Conner	02/13/02	
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Lisa Dupree v. The State Board of Nurse Aid, Debbie Hockaday	01 DHR 1343	Mann	10/12/01	
USA Grocery Store, Yousif Alezi v. NC DHHS	01 DHR 1350	Chess	12/13/01	
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Daniel Repert v. The Guilford Center (The State DMH/DD/SAS	01 DHR 1562	Mann	12/10/01	
Sadio-Tene Lloyd (for client TiNesha Booker) v. The Guilford Center/Child Authorization Team/The State DMH/DD/SAS	01 DHR 1577	Mann	11/15/01	
Inesa C. Thomas v. NC Depts. of Health & Human Services	01 DHR 2108	Elkins	04/22/02	
Anissa Burchette v. NC DHHS, Health Care Personnel Registry	01 DHR 2148	Mann	01/16/02	
Gudrun Davis v. NC Dept. of Health and Human Services	01 DHR 2160	Wade	02/27/02	
Dr. Gregory Ruff, Dept. of Surgery, Duke Univ. Med Ctr. v. NC DHHS	01 DHR 2325	Conner	04/19/02	
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Bonner Family Childcare Ctr. v. NC DHHS, Arnett Cowan	02 DHR 0090	Chess	03/07/02	
Stephen Foster v. NC Dept. of Health & Human Services	02 DHR 0107	Wade	04/19/02	
Helping Hands Home Care, Inc., Charles F. Forte v. DMA Hearing Unit (Mary J. Coward) Vickie Campbell (Deceased) PI Case #2001-1604	02 DHR 0118	Mann	04/22/02	
Latarisha D. Baker v. Office of Administrative Hearings	02 DHR 0330	Wade	04/17/02	
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Lafayette D. Barnes v. Southeastern Regional Mental Health	02 DHR 0638	Gray	05/17/02	
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Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child Development	00 DHR 1270	Wade	05/22/01	
Esther M Huntley, Treasurer, Rainbow Nursery Parents Club, Inc. v. DHHS, Division of Child Development	00 DHR 1419	Gray	09/24/01	
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Shirley Campbell, Shirley's Development Center v. State of NC Dept. of Human Resources, Div. of Child Development	01 DHR 0125	Chess	11/08/01	
Anna Daley v. DHHS, Div. of Child Development	01 DHR 0386	Morrison	11/07/01	
Tiffany D. Lott v. Div. of Child Dev., NC DHHS	01 DHR 0538	Chess	12/10/01	
Sarah L Thomas, Sarah's Child Care v. Division of Child Dev.	01 DHR 0818 ²	Gray	12/28/01	
Sarah's Child Care Center, Inc. v. NC DHHS, Div. of Child Dev.	01 DHR 0830 ²	Gray	12/28/01	
Blackwell and Assoc. & Alamance Child Learning Center v. NC DHHS Div. of Child Development	01 DHR 1281	Chess	02/06/02	
Shirley Campbell, Shirley's Dev. Ctr. v. DHHS, Div. of Child Dev.	02 DHR 0571	Gray	05/02/02	
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Wendy Denise Callender v. DHHS, Division of Facility Services	00 DHR 0608	Conner	08/17/01	
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Ethlyne Phipps v. DHHS, Division of Facility Services	00 DHR 1505	Conner	07/26/01	
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Tonitia Langley v. DHHS, Division of Facility Services	01 DHR 0359	Lassiter	10/16/01	
Davina Brook Grant v. DHHS, Division of Facility Services	01 DHR 0363	Conner	06/08/01	
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Dannette Byrd v. Community Innovations, Health Care Personnel Registry	01 DHR 1016	Wade	11/20/01	
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Henry Monroe v. NC DHHS, Division of Facility Services	01 DHR 1306	Wade	11/16/01	
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Winnie Jane Johnson v. NC DHHS, Div. of Facility Services, Adult Care Licensure Section	01 DHR 2209	Morrison	04/10/02	
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Child Support Enforcement Section

A list of Child Support Decisions may be obtained by accessing the OAH Website – www.ncoah.com/decisions

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Lisa Nichols Caviness v. Alarm Systems Licensing Board	01 DOJ 1258	Conner	10/08/01	
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Michael William Rich v. Alarm System Licensing Board	02 DOJ 0025	Morrison	02/13/02
Ronald Lee Kinzer v. Alarm System Licensing Board	02 DOJ 0035	Lassiter	05/02/02
Lawrence P. Carvana, Jr. v. Alarm System Licensing Board	02 DOJ 0193	Mann	04/09/02

Private Protective Services Board

Linda Morton Kiziah v. Private Protective Services Board	01 DOJ 0353	Wade	06/01/01
Willie Carl Wilson v. Private Protective Services Board	01 DOJ 0580	Morrison	06/04/01
Emar I. Ifediora v. Private Protective Services Board	01 DOJ 0823	Conner	10/16/01
Adonte Mekail Macon v. Private Protective Services Board	01 DOJ 0999	Lassiter	07/05/01
Calvin McNair v. Private Protective Services Board	01 DOJ 1000	Lassiter	07/03/01
Michael David Faris v. Private Protective Services Board	01 DOJ 1271	Gray	10/12/01
Donald Walter Thompson, Jr. v. Private Protective Services Board	01 DOJ 1495	Elkins	11/14/01
Johnny Randolph Clark v. Private Protective Services Board	01 DOJ 1509	Wade	12/27/01
Ricky (Richard struck) Derrick Johnson v. Private Protective Services Bd.	01 DOJ 1550	Elkins	11/15/01
Tamera Ramelle Adams v. Private Protective Services Board	01 DOJ 1817	Morrison	12/06/01
Marsha Lynn Marshall v. Private Protective Services Board	01 DOJ 1856	Morrison	12/06/01
Lonnie Mack Maines, Jr. v. Private Protective Services Board	01 DOJ 1985	Morrison	12/11/01
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John C Bilyk, Jr. v. Private Protective Services Board	01 DOJ 2218	Morrison	03/14/02
Bobby Franklin Boykin v. Private Protective Services Board	02 DOJ 0015	Mann	04/24/02
Jason Delane Mullins v. Private Protective Services Board	02 DOJ 0026	Lassiter	05/02/02
Norman Durham Benjamin v. Private Protective Services Board	02 DOJ 0036	Lassiter	05/02/02
Corey Alexander Covington v. Private Protective Services Board	02 DOJ 0037	Lassiter	05/03/02
Daniel D Adams v. Private Protective Services Board	02 DOJ 0529	Morrison	05/09/02

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Larry Russell Jackson v. NC Criminal Justice & Trng. Stds. Comm.	00 DOJ 0721	Gray	07/20/01
Joshua Craig Brothers v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1558	Elkins	06/12/01
Wardell R.K. Scott v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1577	Gray	08/27/01
Darrick Harris v. NC Sherrifs' Educ. & Training Standards Comm.	00 DOJ 2267	Wade	10/17/01
Anita Allen Coats v. NC Criminal Justice & Training Stds. Comm.	01 DOJ 0023	Morrison	09/07/01
Alan Henry Roebuck v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 0444	Gray	11/30/01
Mark J Smith v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0470	Gray	10/11/01
Gregory Rayvon Wood v. NC Criminal Justice Ed. & Trng. Stds. Comm.	01 DOJ 0478	Morrison	11/08/01
Marcus O Clark v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0500	Gray	10/12/01
Horace H. Lane v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0557	Conner	11/07/01
James D. Panther v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 0616	Wade	08/29/01
Christina Hilliard Davis v. NC Criminal Justice & Trng. Stds. Comm.	01 DOJ 0650	Gray	09/28/01
Donna Ingold Hatley v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 1142	Chess	01/30/02
Mervin Bernard Vaught v. NC Criminal Justice Educ. & Trng. Stds. Comm.	01 DOJ 1266	Conner	03/21/02
Gary C Daugherty v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1267	Chess	10/04/01
Stephen Charles Conely v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1588	Morrison	03/08/02
William T. Young v. NC Sherrifs' Educ. & Trng. Stds. Comm.	01 DOJ 1600	Wade	02/27/02
Kevin Hoover v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1601	Elkins	12/04/01
Keith A Riddick v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1602	Chess	03/26/02
James W. Bush v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1617	Morrison	04/16/02
Hector Cruz Callejas v. NC Criminal Justice Educ. & Trng. Stds. Comm.	01 DOJ 1742	Chess	04/23/02
Darius Zeb Brevard, Jr. v. NC Criminal Justice & Trng. Stds. Comm.	01 DOJ 2309	Wade	02/27/02
Ollie Rose v. NC Sheriffs' Educ. & Training Stds. Comm.	02 DOJ 0063	Conner	04/10/02

DEPARTMENT OF STATE TREASURER

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

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Phase Academy of Jacksonville, Inc., dba Phase Academy Public Charter School v. Public Schools of North Carolina, State Board of Education	00 EDC 2119	Elkins	11/07/01	16:12 NCR 1252
Carolyn H. Lancaster v. NC Department of Public Instruction	01 EDC 0054	Morrison	11/08/01	
Kenneth P. Dankwardt v. NC Dept. of Public Instruction	01 EDC 1175	Chess	03/18/02	
Penny Mae Roberts v. Jones Sr. Hi. Maysville Law Enf., Jones Co. DSS	01 EDC 2305	Mann	04/15/02	
Bobby E Hart v. Superintendent Cumberland Co. Sch., Rockfish Elem.	02 EDC 0106	Mann	02/18/02	
Dr. Monroe R Parker, Esq., v. Brock Murray & NC Dept. of Public Inst.	02 EDC 0261	Gray	03/13/02	

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Dennis Johnson v. Coastal Resources Commission	96 EHR 2112	Gray	04/01/02	
Dennis Johnson v. Coastal Resources Commission	97 EHR 0108	Gray	04/01/02	
James W and Winnifred King v. Div. of Coastal Management	97 EHR 0791	Gray	11/29/01	16:14 NCR 1618
Leahman Coday, Jr. v. NC DENR	99 EHR 1651	Wade	06/21/01	
Hawley Farms, Inc. v. NC DENR, Div. of Water Quality	99 EHR 1740	Conner	10/25/01	
Holly Ridge Associates, LLC, v. NC DENR and its Div. of Land Resources, William P. Holman, Sec. of the DENR, in his official Capacity and	00 EHR 0423	Conner	12/20/01	16:16 NCR 1825

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Charles H. Gardner, Director of the Div. of Land Resources, in his official capacity				
Roger M Oxindine Jr. v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0438	Conner	08/17/01	
Thomas E Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0439	Conner	08/17/01	
Joe Fairlamb, Brenda Fairlamb v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0440	Conner	08/17/01	
Thomas M Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0441	Conner	08/17/01	
Paul Blythe, Lori Blythe v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0448	Conner	08/17/01	
Rusty Eller v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0449	Conner	08/17/01	
Lisa Oxidine v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0450	Conner	08/17/01	
Linda M Hickie v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0501	Conner	08/17/01	
Shannon M Scharm, Alex F Schram v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0508	Conner	08/17/01	
Jacqueline Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0509	Conner	08/17/01	
Gary Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0510	Conner	08/17/01	
Wyatt A Gordon v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0554	Conner	08/17/01	
Chris Conder v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0555	Conner	08/17/01	
Angela & Larry Freeman v. Brunswick Co. Health Department	00 EHR 0635	Conner	11/29/01	
E Dennis Spring v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0698	Conner	08/17/01	
David T. Stephenson, owner, John P. Williams, Agent, Lot 86 v. NC DENR (Brunswick County Health Department)	00 EHR 0769 ³	Gray	08/07/01	16:05 NCR 463
Anson County Citizens Against Chemical Toxins in Underground Storage, Blue Ridge Environmental Defense League, Inc., Mary Gaddy, Bobby Smith and Emma Smith v. DENR	00 EHR 0938	Conner	06/05/01	16:01 NCR 40
Larry Dale McKeel and Robert Morrison Getchell v. NC DENR, Division of Water Quality and NC Dept. of Transportation	00 EHR 1225	Conner	10/19/01	16:11 NCR 1043
Acreage Brokers, Inc., Doug Golightly, Officer, James T. Guley Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214 ¹	Gray	08/07/01	16:05 NCR 463
Albert Galluzzo, James T. Guley, Jr. (Agent) v. NC DENR	00 EHR 1245 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department)	00 EHR 1249 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department)	00 EHR 1250 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department)	00 EHR 1251 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 69 +½ 68 v. NC DENR, (Brunswick County Health Department)	00 EHR 1252 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson v. NC DENR, (Brunswick County Health Dept.)	00 EHR 1253 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 90 v. NC DENR, (Brunswick County Health Department)	00 EHR 1254 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 66 v. NC DENR (Brunswick County Health Department)	00 EHR 1255 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson v. NC DENR, Lot 66				
Sammie Williams and Williams Seafood, Inc. v. NC DENR, Division of Coastal Management	00 EHR 1288	Gray	08/02/01	16:05 NCR 484
S. Adrian Becton v. NC DENR	00 EHR 1358	Chess	01/15/02	
Floyd Robertson d/b/a Parson's Well Drilling v. NC DENR, Division of Water Quality	00 EHR 1656	Conner	09/19/01	
Thomas Tilley, Trustee v. NC DENR	00 EHR 1668	Elkins	11/28/01	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1876 ³	Gray	08/07/01	16:05 NCR 463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1877 ³	Gray	08/07/01	16:05 NCR 463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1878 ³	Gray	08/07/01	16:05 NCR 463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1879 ³	Gray	08/07/01	16:05 NCR 463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1880 ³	Gray	08/07/01	16:05 NCR 463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1881 ³	Gray	08/07/01	16:05 NCR 463
Tate Terrace Realty Investors, Inc. d/b/a Arland Comm. Dev. v. NC Dept. of Env. & Natural Resources	01 EHR 0034	Lassiter	03/28/01	
Martin Properties, Mr. David Martin v. Town of Cary, Development Services Dept. Erosion Control Office	01 EHR 0088	Morrison	09/06/01	
Barbara Barham, Angels at Play v. Alamance Co. Health Dept.	01 EHR 0142	Morrison	08/16/01	
Paul J Williams v. NC Dept. of Env. Man. Comm. and Keith Overcash, PE Deputy Director	01 EHR 0212	Lassiter	07/12/01	
Laura Walters v. Environmental Management Commission	01 EHR 0230	Lassiter	07/19/01	
Brandon H Clewis, Christy Swails Clewis v. Chatham County Health Dept., Office of Environmental Health	01 EHR 0305	Lassiter	06/04/01	
Thomas Tilley, Trustee v. NC DENR, Div. of Water Quality	01 EHR 0339 ²¹	Elkins	03/26/02	
James L. Horton v. NC DENR, Division of Land Resources	01 EHR 0310	Conner	08/30/01	

³ Combined Cases
²¹ Combined Cases

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Robin R Moore v. NC DENR	01 EHR 0441	Conner	09/17/01	
David R Wells v. NC DENR, Division of Air Quality	01 EHR 0555	Morrison	10/05/01	
Terry Peterson Residential Twenty, LLC v. County of Durham	01 EHR 0558	Conner	12/17/01	16:14 NCR 1624
M/T Homes, Donald Fraley v. Durham County	01 EHR 0687	Conner	07/10/01	
Country Lake Estates, by & through David T. Hawks, Manager v. Wm G Ross, Sec. NC Dept of Env. & Natural Resources	01 EHR 0697	Conner	08/17/01	
Earnest F.D. Collier v. Wilson Co. Dept. of Public Health	01 EHR 0699	Mann	10/05/01	
Marc P Walch v. Haywood Co. Health Dept. c/o Daniel F McLawhorn NC DENR	01 EHR 0730	Morrison	06/26/01	
Richard W Brannock v. NC DENR, Div. of Waste Management	01 EHR 0767	Elkins	07/30/01	
Billy James Miller, Jr., Peggy Matthews Miller v. NC Dept. of Health/ Environmental Health Inspections, John Stucky (Inspector)	01 EHR 0934	Elkins	08/02/01	
Mercer Glass v. NC DENR	01 EHR 0935	Conner	09/11/01	
Nancy D. Tuchscherer v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 0992	Gray	11/28/01	16:14 NCR 1634
Thomas Tilley, Trustee v. NC DENR, Div. of Water Quality	01 EHR 1107 ²¹	Elkins	03/26/02	
James A Brown v. NC DENR	01 EHR 1197	Elkins	09/17/01	
Vickie Jacobs Little v. Brunswick County Health Department	01 EHR 1298	Mann	11/30/01	
Southside Mobile Home Park, Southside Trust v. NC DENR	01 EHR 1313	Chess	10/22/01	
John (Jack) W. Henry v. DENR, Env. Health Services Section	01 EHR 1322	Conner	12/14/01	
Albert Eric Pickett v. NC DENR	01 EHR 1332	Elkins	11/30/01	
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Town of Murfreesboro v. NC DENR, Div. of Waste Management	01 EHR 1424	Wade	01/10/02	
Peter Pallas v. New Hanover County Board of Health	01 EHR 1441	Conner	01/09/02	
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Thomas Tilley, Trustee v. NC DENR, Div. of Water Quality	01 EHR 1518	Morrison	03/27/02	
Clyde Harkey, Sr. v. NC DENR, Div. of Waste Management	01 EHR 1536	Mann	04/05/02	16:21 NCR 2416
Nucor Steel v. NC DENR, Div. of Air Quality	01 EHR 2199	Lassiter	03/19/02	
Henry Key Grading Inc./Henry Key v. NC Env. Management	01 EHR 2391	Chess	04/23/02	
Lucille K. Barrow, d/b/a BBC v. NC DENR, Div. of Waste Mgmt.	02 EHR 0041	Chess	04/04/02	
Thomas M Alphin v. NC DENR, Div. of Water Quality	02 EHR 0178	Chess	03/07/02	

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NC Bd. of Examiners for Engineers and Surveyors v. C. Phil Wagoner	01 ELS 0078	Overby	07/11/01	
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OFFICE OF INFORMATION TECHNOLOGY

Spli-Con, LLC v. NC Office of Information Technology	01 GOV 1799	Chess	11/26/01	
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HUMAN RELATIONS COMMISSION

NC Human Relations Commission on behalf of Jeanette Guffey and Harvey Myers	99 HRC 1383	Wade	08/06/01	
NC Human Relations Commission on behalf of Janie Teele v. Wedco Enterprises, Inc., Quality Construction, Inc., The Apartment Group, Erin Banks, and Terry Taylor	00 HRC 1449	Gray	12/21/01	
Sara E. Parker v. NC Human Relations Commission	01 HRC 1284	Chess	10/04/01	

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Wellpath Select, Inc. v. NC Teachers' & State Employees' Comp.	01 INS 0388	Morrison	07/03/01	
Granite State Ins. Company v. NC Department of Insurance	02 INS 0288	Gray	03/13/02	
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LICENSING BOARD FOR GENERAL CONTRACTORS

NC Licensing Bd. for Gen. Con. v. Alderman Brothers Construction, Inc. License No. 34455	01 LBC 1146	Elkins	10/10/01	
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MISCELLANEOUS

Tony L. Arnett v. Administrative Office of the Courts	00 MIS 0424	Wade	06/26/01	
Donald Jason Biles v. W-S/Forsyth Zoning Dept et.al., Forsyth Cty District Atty., et.al.	01 MIS 0905	Chess	10/04/01	
Sara E. Parker v. Medical Review of North Carolina	01 MIS 1607	Lassiter	12/03/01	
Sara E. Parker v. Administrative Office of the Courts	01 MIS 1608	Lassiter	12/03/01	
Sara Parker v. NC State Bar, Calvin E. Murphy	01 MIS 1714	Lassiter	11/06/01	
James E Price v. College of the Albemarle & NC Comm. College Sys.	01 MIS 0122	Conner	03/06/02	

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James Spencer, Jr. v. Office of Administrative Hearings	01 OAH 1115	Chess	10/22/01	
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Pat Hovis v. Lincoln Co. Dept. of Social Services	98 OSP 1348	Conner	05/05/02	16:23 NCR 2695
Debbie Whitley v. Wake County Department of Health	96 OSP 1997	Chess	05/22/01	
Larry R Lane v. NC DOT, G.F. Neal, Cty. Maintenance Engineer	99 OSP 0105	Lassiter	07/16/01	
Timothy Ramey v. NC Department of Correction	99 OSP 1085	Chess	06/27/01	
Richard W. Lee v. NC Department of Transportation	99 OSP 1145	Wade	08/29/01	
Miriam Dukes v. Albemarle Mental Health Center Bd. of Directors	00 OSP 0234	Wade	05/22/01	
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Dennis Joyner v. Off. of Juvenile Justice, 7 th Judicial District	00 OSP 0424 ¹⁰	Reilly	02/05/02	
Ricky E Yates v. NC Department of Correction	00 OSP 0453	Gray	01/31/02	16:17 NCR 1959
Victor Garnett v. Dept. of Correction, Craven Correctional Inst.	00 OSP 0722	Elkins	01/11/02	16:17 NCR 1966
Isaac Randall Hall, Jr. v. NC Dept. of St. Treasurer, Ret. Sys. Div.	00 OSP 0760	Wade	02/27/02	
Tina C. Lowery v. NC DOC/Craven Correctional Institution	00 OSP 0767	Conner	11/28/01	
Ivan Williams v. DOC, Division of Prisons	00 OSP 0877	Wade	09/17/01	

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Ricky N Faircloth v. NC Department of Transportation	00 OSP 0994	Wade	11/14/01		
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Warren E. Pigott v. NC Department of Correction	00 OSP 1096	Gray	11/26/01		
Andora Taylor Hailey v. NC Department of Correction	00 OSP 1247 ⁵	Conner	11/26/01		
A. Mark Esposito v. Dept. of Transportation	00 OSP 1333	Gray	06/13/01		
Stephen E Dunn v. NC Department of Correction	00 OSP 1693	Morgan	01/23/02		
Michael H. Vanderburg v. NC Department of Revenue	00 OSP 1702 ⁸	Gray	12/31/01	16:16 NCR	1853
Bobbie D Sanders v. UNC-CH	00 OSP 1806	Chess	06/21/01	16:03 NCR	271
Robert J Lane v. NC Department of Correction, Central Engineering	00 OSP 1841	Elkins	06/26/01		
Natalynn P. Tollison v. NCSU <i>et al</i>	00 OSP 1909	Wade	06/01/01		
Michael H. Vanderburg v. NC Department of Revenue	00 OSP 2117 ²	Gray	12/31/01	16:16 NCR	1853
Andora Taylor Hailey v. NC Department of Correction	00 OSP 2180 ⁵	Conner	11/26/01		
Jerrelle B Jones v. DHHS, O'Berry Center	01 OSP 0003	Lassiter	06/26/01		
Leonard Eugene Leak v. NC Dept. of Correction	01 OSP 0020	Gray	02/25/02		
Deanna Kay Sadler v. NC Department of Transportation	01 OSP 0097	Gray	01/28/02		
Kit Locklear v. NC Department of Correction	01 OSP 0106	Elkins	07/17/01		
Andrew E Chambers v. NC Department of Corrections	01 OSP 0172	Morrison	07/12/01		
Roy Kevin Tripp v. NC Department of Correction	01 OSP 0231	Morrison	10/04/01	16:09 NCR	864
Lonnie Sessions v. Columbus Correction Inst.	01 OSP 0240	Gray	05/23/01		
Lee Woodburn v. NC State University	01 OSP 0275	Lassiter	06/21/01		
Marsha A Early v. County of Durham, Dept. of Social Services	01 OSP 0279	Lassiter	10/26/01		
Valerie Thompson Enoch v. Alamance Co. Dept. of Social Services	01 OSP 0316	Lassiter	11/29/01		
Jamel O. Frazier v. NC Department of Transportation	01 OSP 0334	Anderson	07/06/01		
Arlene R. Burwell v. Warren Correctional Institute	01 OSP 0448	Mann	07/18/01		
Virginia D. Lindsey v. NC Dept. of Health & Human Services	01 OSP 0543	Mann	04/08/02		
R E Mangum v. Central Prison/ DOC Hospital Administration	01 OSP 0583	Lassiter	05/15/02		
Alecia M York v. Fayetteville State University	01 OSP 0598	Mann	10/04/01		
Thomas Andrew Brandon v. NC Dept. of Correction	01 OSP 0611	Lassiter	04/25/02		
Robert J. Lane v. NC Dept. of Correction, Central Eng. Division	01 OSP 0636	Gray	04/19/02		
James H. Montayner v. NC Department of Correction	01 OSP 0637	Gray	08/16/01		
Leon Lewis, Jr. v. NC School of Science & Math	01 OSP 0639	Conner	08/17/01		
Dennis Joyner v. Off. of Juvenile Justice, 7 th Judicial District	01 OSP 0643 ²	Reilly	02/05/02		
Marianne E Moss v. NC Dept. of Health & Human Services	01 OSP 0778	Conner	02/15/02		
Lisa Scopee Lewis v. Carteret Correctional Facility	01 OSP 0801	Gray	07/17/01		
Antonio J Ballard Sr. v. Morrison Youth Institution (DOC)	01 OSP 0807	Elkins	10/05/01		
Margaret V Carroll v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0851	Conner	08/14/01		
Wanda Lou Mitchell v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0852	Conner	08/14/01		
William David Fox v. NC Department of Transportation	01 OSP 0853	Morrison	07/02/01		
Rita D Wilkins v. WNC Reg. Economic Dev. Commission	01 OSP 0857	Morrison	09/21/01		
Nadine H Ward v. North Carolina State University	01 OSP 0862	Gray	01/31/02		
Lisa M Franklin v. D.A.R.T. Program in DOC	01 OSP 0909	Gray	09/12/01		
Nancy T. Rimmer v. UNC School of Medicine	01 OSP 0952	Gray	08/24/01		
Jeffrey Scott Zaccari v. NC Department of Transportation	01 OSP 0970	Conner	08/17/01		
John A Smith v. Department of Corrections, State of NC	01 OSP 0984	Chess	07/25/01		
Faith J Jackson v. NC Department of Correction	01 OSP 0986	Lassiter	07/12/01		
James W. Robbins, II v. NC Central University	01 OSP 1043	Elkins	04/02/02		
Sharon Locklear Dean v. Dept. of Juvenile Justice & Delinquency Prevention	01 OSP 1063	Mann	09/17/01		
Steven Swearingen v. NC Department of Correction	01 OSP 1066	Wade	10/17/01		
Lisa C. Wells v. Hyde County	01 OSP 1113	Gray	09/04/01		
Earla Kate Simmons v. WIC Nutrition Program, Brunswick County Health Department, Bolivia, NC	01 OSP 1114	Lassiter	10/30/01		
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	11/02/01		
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	12/19/01		
Calvia Lynn Hill v. Lumberton Correctional Inst., DOC	01 OSP 1205	Conner	08/07/01		
Craig B Hilliard v. NC Department of Correction	01 OSP 1214	Morrison	12/18/01		
Rose Beam v. Cabarrus County Board of Education	01 OSP 1233	Elkins	09/27/01		
Darryl Burr v. NC Department of Correction	01 OSP 1282	Morrison	11/13/01	16:12 NCR	1263
Dennis Damon Foster v. NC Department of Correction	01 OSP 1283	Chess	12/07/01		
Thomas H Glendinning v. Chatham County	01 OSP 1287	Chess	09/07/01		
Michael L. Hillis v. NC DHHS, Eastern NC School for the Deaf	01 OSP 1312 ²²	Elkins	04/03/02		
Robin Lee Martin v. Dept. of Correction	01 OSP 1315	Chess	04/22/02		
James L Ragland v. The Harnett Co. Board of Education	01 OSP 1337	Gray	10/15/01		
Jerry Lee Glover v. Gary Miller, NC Dept. of Corrections	01 OSP 1365	Elkins	03/08/02		
Berton Hamm v. Eastern Adolescent Treatment Center	01 OSP 1397	Chess	01/14/02		
Dorothy L. Stinson v. Gaston-Lincoln Area Mental Health "Pathways"	01 OSP 1400	Chess	12/12/01		
Gloria E. Morrow v. NC Division of Social Services	01 OSP 1439	Elkins	12/18/01		
Walter Daniel Giese v. George O' Daniel & the Onslow Co. Health Dept.	01 OSP 1445	Conner	12/17/01		
Annie Karamatsos v. UNC at Charlotte	01 OSP 1456	Mann	11/20/01		
Ronnie McCoy v. Michael Munns, Polk Youth Inst.	01 OSP 1469	Morrison	11/14/01		
Michael T. Bingham v. Harold Seegars, Skilled Trade, NCA&T St. Univ.	01 OSP 1476	Mann	11/20/01		
Larry S Height v. NC Utilities Comm. of the NC Dept. of Commerce	01 OSP 1487	Morrison	12/28/01		
Alvin Earl Williams v. NC DHHS, Division of Facility Services	01 OSP 1491	Mann	12/17/01		
Christina B. Urbina v. Johnston Co. Public Health Dept. Dr. L.S. Woodall	01 OSP 1515	Elkins	04/01/02		
Larry T. Strickland v. Jennifer Heath and the Dept. of Corrections	01 OSP 1537	Mann	11/30/01		
Gregory S. Harmon v. NC Department of Revenue	01 OSP 1575	Mann	01/18/02		

⁵ Combined Cases

⁸ Combined Cases

²² Combined Cases

CONTESTED CASE DECISIONS

Carl L. Cobb v. Walter W. Stelle PhD, Dorothea Dix Hosp. – DHHS	01 OSP 1699	Lassiter	02/15/02
Berkeley E. Freeman v. Cumberland Co. Mental Health Center – SAS	01 OSP 1700	Wade	04/18/02
Michael L. Hillis v. NC DHHS, Eastern NC School for the Deaf	01 OSP 1727 ²²	Elkins	04/03/02
Tammy M. Snipes v. DHHS, (Broughton Hospital)	01 OSP 1873	Chess	01/16/02
Lillie Joyce Blount v. Caswell Center, Human Resources Employee, Clifton Jones, Supervisor	01 OSP 1898	Lassiter	12/04/01
James J. Lewis v. NC Dept. of Correction	01 OSP 1933 ⁴	Mann	03/13/02
James J. Lewis v. NC Dept. of Correction	01 OSP 1951 ¹⁶	Mann	03/13/02
Sheila Nickerson v. UNC-CH	01 OSP 2016	Lassiter	01/02/02
Rebecca Jane Babao v. Buncombe Co. DSS, Asheville, NC	01 OSP 2096	Chess	03/04/02
Michael L. Hillis v. NC DHHS, Eastern NC School for the Deaf	01 OSP 2110 ²²	Elkins	04/03/02
Michael L. Hillis v. NC DHHS, Eastern NC School for the Deaf	01 OSP 2176 ²²	Elkins	04/03/02
Elana B. Brown v. NC A & T State University	01 OSP 2177	Gray	03/05/02
Mark Thomas v. John Umstead Hospital	01 OSP 2180	Mann	02/05/02
Mary Hood Fletcher v. The University of North Carolina at Charlotte	01 OSP 2210	Lassiter	01/15/02
Stephanie W. Taylor v. NC Department of Correction	01 OSP 2277 ²³	Gray	03/28/02
Carolyn Cook Evans v. NC A & T State University	01 OSP 2233	Gray	03/05/02
Mrs. Jennifer D. Askew v. Clifton Hickman, Asst. Dir. of Edgecombe Co. DSS	01 OSP 2275	Mann	04/24/02
Judy Dobson v. Durham Co. Dept. of Social Services	01 OSP 2297	Conner	04/11/02
Elizabeth Hall Austin v. University of North Carolina at Charlotte	01 OSP 2338	Mann	02/07/02
Nona W. Hubbard v. Div. of Comm. Corrections, Frank Davis, Donna Stone and Jerry Wilson	02 OSP 0084	Lassiter	03/04/02
John C. Candillo v. Roselyn Powell, Judicial Div. Chief, NC Div. of Community Corrections, Judicial Division 3	02 OSP 0192	Chess	05/01/02
Vernestine Speller Melton v. Bertie Co. Partnership for Children, Board of Directors, Patricia Ferguson, Chair	02 OSP 0236	Gray	03/21/02
Jesse C. Whitaker v. University Towers (Student Dining Svc.) Glendora	02 OSP 0108	Gray	02/22/02
Stephanie W. Taylor v. NC Department of Correction	02 OSP 0150 ²³	Gray	03/28/02
Raymond L. Smith v. Div. of Facility Svcs., Off. of Emergency Med. Svcs. NC Dept. of Health & Human Services	02 OSP 0260	Elkins	04/04/02
Ruby H. Cox v. Employment Security Commission	02 OSP 0269	Elkins	03/26/02
Viola Moore Forte v. NC Special Care Center	02 OSP 0275	Gray	04/23/02
Roy Kevin Tripp v. NC Department of Correction	02 OSP 0617	Chess	05/23/02

DEPARTMENT OF REVENUE

George T. Brower, Phillip J. Taylor v. NC Dept. of Revenue	01 REV 1779	Gray	01/10/02
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SECRETARY OF STATE

Moab Tiara Cherokee Kituwah Nation Anewa Tiari-El, Empress v. Secretary of State, Elaine Marshall	01 SOS 1798	Morrison	12/11/01
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UNIVERSITY OF NORTH CAROLINA

Tammie Davis v. UNC Hospitals & UNC Physicians	01 UNC 0506	Mann	07/13/01
Jerelle L. Perry v. UNC Hospital	01 UNC 0800	Conner	09/18/01
Lonnie D. Watson v. UNC Hospitals	01 UNC 0837	Conner	09/18/01
Susan Coan v. Secretary of Revenue	01 UNC 0977	Conner	11/08/01
Phyllis Green v. The UNC Hospitals at Chapel Hill	01 UNC 1354	Gray	11/26/01

WELL CONTRACTORS

Floyd V. Robertson v. Well Contractor's Certification Commission	01 WCC 0147	Conner	09/19/01
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²² Combined Cases

⁴ Combined Cases

²² Combined Cases

²² Combined Cases

²³ Combined Cases

²³ Combined Cases

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
01 ABC 1409

N.C. ALCOHOLIC BEVERAGE CONTROL COMMISSION

Petitioner,

vs.

POLO SOUTH, INC.

T/A POLO CLUB

Respondent.

DECISION

On April 12, 2002, the parties filed Stipulations as to the Facts in this case, and asked the undersigned to render a Decision based upon such Stipulations without holding a contested case hearing.

APPEARANCES

For Petitioner: LoRita K. Pinnix
Assistant Counsel
NC ABC Commission
4307 Mail Service Center
Raleigh, NC 27699-4307

For Respondent: Joseph L. Ledford
Attorney at Law
227 W. Trade Street
Suite 2140
Charlotte, NC 28202

ISSUES

1. Did Respondent's employee consume alcoholic beverages on the licensed premises at 9:30 p.m. on April 19, 2001 when she was not off duty for the remainder of that day, and thereby violate ABC Commission Rule 4 NCAC 2S .0212(a)(1)?
2. Did Respondent's employee violate ABC Commission Rule 4 NCAC 2S .0216(a)(3) and N.C. Gen. Stat. § 18B-1005(a)(4) at 1:00 a.m. on February 21, 2001?

STIPULATIONS BY THE PARTIES

1. On April 19, 2001, Respondent held on-premise malt beverage, on-premise unfortified wine, and mixed beverage private club permits issued by Petitioner for its business located at 3441 South Boulevard, Charlotte, North Carolina.
2. On April 19, 2001, Alcohol Law Enforcement Agents William S. Effler and T. Cauthen entered Respondent's business located at 3441 South Boulevard, Charlotte, North Carolina to conduct outlet surveillance.
3. While inside Respondent's business, Agent Effler observed Respondent's employee, stage name "Isis" who was later identified as Kira Alonso consume a mixed beverage. Ms. Alonso was still on duty at Respondent's business when she consumed the mixed beverage.
4. For purposes of this action only and none other, Ms. Alonso is Respondent's employee as that term is interpreted and uniquely defined pursuant to 4 NCAC 2S .0101(1).
5. On February 21, 2001, Charlotte-Mecklenburg Police Department Vice Investigators B.T. Tate and D.M. Moore entered Respondent's business located at 3441 South Boulevard, Charlotte, North Carolina in response to complaints about activities in the business.

6. While inside Respondent's business, two of Respondent's employees, "Jasmine," later identified as Anita Sue Effird, and "Leia," later identified as Jennifer Sue Kutsch, performed dances for Investigators Tarte and Moore.
7. For purposes of this action only and none other, Ms. Effird is Respondent's employee as that term is interpreted and uniquely defined pursuant to 4 NCAC 2S .0101(1).
8. For purposes of this action only and none other, Ms. Kutsch is Respondent's employee as that term is interpreted and uniquely defined pursuant to 4 NCAC 2S .0101(1).
9. While dancing for Investigator Tarte, Ms. Effird pulled her g-string to one side and exposed her vagina to the Investigator several times.
10. While dancing for Investigator Moore, Ms. Kutsch pulled her g-string to one side and exposed her vagina to the Investigator.

FINDINGS OF FACT

11. On February 21, 2001, Respondent held on-premise malt beverage, on-premise unfortified wine, and mixed beverage private club permits issued by Petitioner for its business located at 3441 South Boulevard, Charlotte, North Carolina.
12. The parties' stipulations indicate that Ms. Effird was the only one of Respondent's "employees" involved during Ms. Effird's exposing herself to Investigator Tarte on the Respondent's licensed premises on February 21, 2001. In addition, there are no other facts proving any other employee of Respondent witnessed, allowed, or was involved in Ms. Effird's subject actions on that date.
13. The parties' stipulation proves that Ms. Kutsch was the only one of Respondent's "employees" involved during Ms. Kutsch's exposing herself to Investigator Moore on the Respondent's licensed premises on February 21, 2001. In addition, there are no other facts proving any other employee of Respondent witnessed, allowed, or was involved in Ms. Kutsch's subject actions on that date.
14. By letter dated June 29, 2001, Petitioner notified Respondent that it was charging Respondent's business with the following alleged violations:
 1. Permittee's employee did allow by engaging in an act that exposed to public view the genitals of the employee on the licensed premises on or about February 21, 2001 at 1:00 a.m., in violation of ABC Commission Rule 4 NCAC 2S .0216(a)(3) and G.S. 18B-1005(a)(4).
 2. Permittee's employee was not off duty for the remainder of the day at the licensed premises after consuming alcoholic beverages on or about April 19, 2001 at 9:30 p.m., in violation of ABC Commission Rule 4 NCAC 2S .0212(a)(1).
15. Petitioner did not charge Respondent Permittee with knowingly allowing or allowing any conduct prohibited by and/or in violation of ABC Commission Rule 4 NCAC 2S .0216(a)(3) and G.S. 18B-1005(a)(4) on the licensed premises on February 21, 2001.
16. On August 29, 2001, Petitioner filed a petition for a contested case hearing alleging that Respondent had violated the ABC laws as alleged in the attached Exhibits A and B. Exhibit A was attached to the petition, but there was no Exhibit B attached to the petition.
17. On April 12, 2002, Petitioner, along with Respondent's attorney's consent, filed with the Office of Administrative Hearings, certified copies of Petitioner's Final Agency Decisions/Actions taken against the Respondent's business since 1998. Those Decisions are as follows:
 - a. On November 5, 1999, Petitioner imposed a \$1000.00 fine on Respondent for violations of dissimilar in substance to the alleged violations in this case; to wit, (1) Respondent's employee selling malt beverages to a person less than 21 years old, and (2) Respondent's employee allowing the business to be open to the public.
 - b. On June 22, 1999, Petitioner suspended Respondent's ABC permits for 7 days, and imposed a \$2500.00 fine for the following violations:
 - (1) Respondent employed or allowed a female less than 18 years of age to perform a service while exposing her nipple and areola portion of her breast to the public view on the licensed premise on January 5, 1999, in violation of ABC Commission Rule 4 NCAC .0205(g).

(2) Respondent or its employee allowed a person who exposed any portion of their pubic hair, vulva, genitals, or anus to the public view, to remain in or on the licensed premises on January 5, 1999 in violation of ABC Commission Rule 4 NCAC .0216(6).

(3) Respondent or its employee allowed a person to perform acts where persons displayed her pubic hair, vulva, genitals, or anus to remain in or on the licensed premises on January 5, 1999 in violation of ABC Commission Rule 4 NCAC .0216(3).

c. On August 14, 1998, Petitioner suspended Respondent's ABC permits for 12 days and imposed a \$2000.00 fine for 6 ABC violations including:

(1) Respondent or its employee allowed a person who exposed any portion of their pubic hair, vulva, genitals, or anus to the public view, to remain in or on the licensed premises on March 7, 1998 in violation of ABC Commission Rule 4 NCAC .0216(6).

(3) Respondent or his agent/employee knowingly allowed conduct or entertainment on the licensed premises by a person whose private parts were exposed or who was wearing transparent clothing that revealed private parts on March 11, 1998 in violation of ABC Commission Rule 4 NCAC 2S .0212(a).

d. On September 12, 1997, Petitioner imposed a \$1000.00 fine on Respondent for 4 ABC violations including:

(2) Respondent's employee performed acts of touching and fondling the genitals on the licensed premises on March 14, 1997 in violation of ABC Commission Rule 4 NCAC .0216(a)(2).

(3) Respondent's employee performed acts that simulated sexual intercourse and oral copulation on the licensed premises on March 14, 1997 in violation of ABC Commission Rule 4 NCAC .0216(a)(1).

CONCLUSIONS OF LAW

A. Alleged violation of 4 NCAC 2S .0212(a)(1) - Employee Consuming

1. 4 NCAC 2S .0212(a)(1) "CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED" provides that:

(a) No permittee or his employees shall consume alcoholic beverages on the licensed premises except under the following conditions:

(1) The permittee or employee shall be off duty for the remainder of that day or night during which he consumes any alcoholic beverage;

2. On or about April 19, 2001 at 9:30 p.m., Respondent's employee violated ABC Commission Rule 4 NCAC 2S .0212(a)(1) by consuming alcoholic beverages on the licensed premises when she was not off duty for the remainder of that day.

B. Alleged violation of N.C. Gen. Stat. § 18B-1005 and 4 NCAC 02S .0216

3. N.C. Gen. Stat. § 18B-1005 "CONDUCT ON LICENSED PREMISES" provides that:

(a) Certain Conduct. - It shall be unlawful for a permittee or his agent or employee to knowingly allow any of the following kinds of conduct to occur on his licensed premises:

(4) Any conduct or entertainment by any person whose private parts are exposed or who is wearing transparent clothing that reveals the private parts;

4. 4 NCAC 02S .0216 "ENTERTAINERS AND CONDUCT" provides that:

(a) No permittee or his employee shall allow any person to perform acts of or acts that simulate:

. . . (3) the display of the pubic hair, anus, vulva or genitals.

5. Neither N.C. Gen. Stat. § 18B-1005 nor 4 NCAC 02S .0216 defines the words "knowingly" or "allow."

6. When construing a statute the words used therein will be given their ordinary meaning, unless it appears from the context that they should be taken in a different sense. Abernathy v. Board of Comm'rs, 169 N.C. 631, 86 S.E.2d 577(1915)
7. The word "knowingly" is defined as "with knowledge, consciously, willfully, and intentionally." Black's Law Dictionary, (5th ed. 1979)
8. The North Carolina Supreme Court has defined "knowledge" as "an impression of the mind, the state of being aware; . . . It is usually obtained from a variety of facts and circumstances." Underwood v. State Bd. Of Alcoholic Control, 287 N.C. 623, 181 S.E.2d 1 (1971)
9. The word "allow" is defined as "to permit" Merriam-Webster's Dictionary (2002), or "to bestow, approve of, accept as true." Black's Law Dictionary, (5th ed. 1979)
10. "The words 'permit' and 'allow' are synonymous. 'Permit' has been construed to mean in effect 'knowingly permit.' . . . permitting any person engaging in an affray or disorderly conduct," means knowing acquiescence in such conduct." Underwood v. State Bd. Of Alcoholic Control, 287 N.C. 623, 181 S.E.2d 1, 6 (1971)
11. In reading both N.C. Gen. Stat. § 18B-1005 and 4 NCAC 02S .0216 and giving the words therein their ordinary meanings, knowledge is required to prove a permittee or his employee "allowed" an action to occur on the licensed premises in violation of this statute and rule. It also means that there must be 2 persons involved in a factual scenario for a permittee or his employee to "knowingly allow" or "allow" conduct that violates N.C. Gen. Stat. § 18B-1005 and 4 NCAC 02S .0216. That is, there must be one person (a permittee or his employee) who knowingly allows a second person to engage in the act(s) prohibited by N.C. Gen. Stat. § 18B-1005 and 4 NCAC 02S .0216 to violate N.C. Gen. Stat. § 18B-1005 and 4 NCAC 02S .0216.
12. Here, the alleged violation charged is "Permittee's employee did allow by engaging in" a prohibited act. Since no other person/employee is charged with allowing employees Effird or Kutsch to engage in said prohibited acts, the elements of either violation has neither been pled nor proven. Even if the alleged violation charged one employee allowing another employee to engage in said prohibited acts, Petitioner has failed to prove the violation because the stipulated facts prove there was only one employee (Effird or Kutsch) involved in each of the prohibited acts performed on the Respondent's licensed premises on February 21, 2001. Therefore, the elements of employee "knowingly allowed" or "allowed" as required by N.C. Gen. Stat. § 18B-1005 and 4 NCAC 02S .0216 have not been proven in this case.
13. In Dove v. North Carolina Bd. Of Alcoholic Control, 37 N.C. App. 605, 246 S.E.2d 584 (1978), the Court held that "all acts of employees are imputed to the permittee for purposes of" the statute and the violation at issue in that case. That is, in certain instances the PERMITTEE may be said to have knowingly allowed an employee's unlawful act on the licensed premises even when it was not shown that the permittee had actual knowledge of said acts.
14. However, the Dove case is distinguishable from this case. In Dove, the ABC Board charged the PERMITTEE with "knowingly allowing your licensed premises to be used for unlawful purposes." In this case, the permittee is not charged with allowing any acts, knowingly or otherwise. For that reason, the Dove case is inapplicable under this case's factual scenario.
15. For the foregoing reasons, Petitioner has failed to plead and prove that Respondent violated N.C. Gen. Stat. § 18B-1005 and 4 NCAC 02S .0216 on February 21, 2001.

DECISION

Based upon the foregoing Stipulations by the Parties, Findings of Fact, and Conclusions of Law, the undersigned determines that Petitioner should:

- (1) **SUSPEND** Respondent's ABC permits for 3 days, with such suspension being avoided upon Respondent's payment of a \$300.00 fine for violating ABC Commission Rule 4 NCAC 2S .0212(a)(1) on April 19, 2001 at 9:30 p.m., and
- (2) **DISMISS** the February 21, 2001 alleged violation of N.C. Gen. Stat. § 18B-1005 and 4 NCAC 02S .0216 and take no action against Respondent.

ORDER AND NOTICE

The NC ABC Commission will make the final decision in this contested case. Pursuant to G.S. 150B-36(a), the Commission is required to give each party an opportunity to file exceptions to this recommended decision and present written arguments to those in the agency who will make the final decision.

CONTESTED CASE DECISIONS

Pursuant to G.S. 150B-36(b), the Commission is required to serve a copy of the Final Agency Decision on all parties, the parties' attorneys of record, and on the Office of Administrative Hearing at P.O. Drawer 27447, Raleigh, NC 27611-7447.

This is the 7th day of May, 2002.

Melissa Owens Lassiter
Administrative Law Judge